THE GENERAL LAWS
OF
Massachusetts,
FROM THE ADOPTION OF THE CONSTITUTION,
TO FEBRUARY, 1822.

WITH THE
CONSTITUTIONS
OF THE
United States and of this Commonwealth,
TOGETHER WITH
THEIR RESPECTIVE AMENDMENTS, PREFIXED.

REVISED AND PUBLISHED, BY
AUTHORITY OF THE LEGISLATURE,
IN CONFORMITY WITH A RESOLUTION PASSED
22d. FEBRUARY, 1822.

By ASAHEL STEARNS & LEMUEL SHAW, Esquires,
COMMISSIONERS.
THERON METCALF, Esq. Editor.

IN TWO VOLUMES.

VOL. I.

BOSTON:
PUBLISHED BY WELLS & LILLY AND CUMMINGS & HILLIARD.
1823.
DISTRICT OF MASSACHUSETTS, TO WIT:

District Clerk's Office.

We it remembered, that on the twentieth day of January, A.D. 1823, in the forty-seventh year of the Independence of the United States of America, Wells & Lilly and Cummings & Hilliard of the said District, have deposited in this Office the title of a Book, the Right whereof they claim as Proprietors, in the Words following, to wit:—

"The General Laws of Massachusetts, from the adoption of the Constitution, to February, 1822. With the Constitutions of the United States and of this Commonwealth, together with their respective Amendments, prefixed. Revised and Published, by Authority of the Legislature, in conformity with a resolution passed 22d February, 1822. By Asahel Stearns and Lemuel Shaw, Esquires, Commissioners. Thrasy Metcalf, Esq., Editor. In two volumes."

In Conformity to the Act of the Congress of the United States, entitled, "An Act for the Encouragement of Learning, by securing the copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned" and also to an Act entitled, "An Act supplementary to an Act, entitled, An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies during the times therein mentioned: and extending the benefits thereof to the Arts of Designing, Engraving, and Etching Historical and other Prints."

JNO. W. DAVIS,
Clerk of the District of Massachusetts.
Notice.

The Resolve of the Legislature, under which this edition of the Statutes is published, has been the guide of the Commissioners in preparing it for the press. It has been their design to insert all public Acts of a general nature and applicable to the Commonwealth at large, except such as have ceased to affect existing rights, or would not illustrate the history of the law. They have also inserted a few special and private Acts, which are of general interest, either from their connexion with public Acts, or from the importance of the subjects, to which they relate.

The Acts of each Legislature have been divided into chapters, and numbered in a regular series from the beginning to the end of each political year. This has been done in chronological order, except in a few instances of Acts wholly omitted in former editions, or inserted in the Appendix to the second volume of the edition of 1807. These have been placed at the end of the year in which they were enacted, so as not to derange the numbers under which the statutes have heretofore been cited.

The repealed Acts, which are retained in this edition, and those parts of Acts which are repealed or have otherwise become inoperative, are printed in small type, and the repealing Acts indicated by marginal references. At the end of the public Acts and of the title of the private Acts, reference is made to additional Acts on the same subject; and Acts enlarging, restraining or modifying the text, have been referred to in the margin. The Amendments to the Constitutions of the United States and of this Commonwealth have been indicated in a similar manner.

In arranging the articles of amendment to the Constitution of the United States, they have inserted the thirteenth as an article ratified by a sufficient number of States to become a part of the Constitution. This was done because the article
was inserted in the last edition of the Laws of the United States, published under the sanction of Congress. It was however therein stated to be doubtful, whether the article in question has been so ratified; the evidence on the subject, in the Secretary's office, not affording satisfactory evidence of such ratification. Since this edition has been going through the press, a further application has been made to the Secretary of State of the United States, but no further evidence on the subject has been obtained. The article in question, therefore, cannot be regarded as a component part of the Constitution.

In addition to the references, which were prescribed by the Resolve of the Legislature, the Commissioners have thought proper to refer to the Colony and Province Laws on the subjects of the several statutes, that a view of the whole history of our legislation might be readily obtained by those who desire it.

The title and the text of every Act in this edition have been compared with the original rolls in the Secretary's office, and all the errors of former editions corrected.

An analytical index of the contents of this edition has been prepared with considerable care and attention, and added to the second volume.

It has not always been easy to determine whether an Act or certain parts of it are still in force. Cautious deliberation has been used, and the best judgment of the Commissioners employed in deciding.

The labours of the Commissioners have been shared by an editor employed to prepare the work for the press, under their superintendence; and they trust that the edition will be found worthy of the patronage conferred by the Legislature, and of the hopes of the magistracy and the profession.

ASAHEL STEARNS,
LEMUEL SHAW.

January, 1823.
We, the People of the United States, in order to form a more perfect union, establish justice, insure 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.

ARTICLE I.

SECTION 1.

ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECT. II.

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.

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.

Representatives and direct taxes shall be apportioned among the several States, which may be included 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 choose three, Massachusetts eight, Rhode Island and Providence Plantations one.
CONSTITUTION OF THE UNITED STATES.

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.

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 choose their speaker and other officers; and shall have the sole power of impeachment.

sect. iii.

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, 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.

The Senate shall choose 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.

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.

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. iv.

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 choosing Senators.
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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.

SECT. V.

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 authorised to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

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 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.

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.

SECT. VI.

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 or returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

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.

SECT. VII.

All bills, for raising a revenue, shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other 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 re-consider it. If, after such re-consideration, 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 re-considered: 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 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.

SECT. VIII.

The Congress shall have power
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 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.

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.

sect. ix.

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 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. x.

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

ARTICLE II.

SECT. 1.

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:

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.

[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 choose 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 choose the President. But in choosing 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 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 choose from them, by ballot, the Vice-President.]
The Congress may determine the time of choosing 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.

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.

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.

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."

SECT. II.

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 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 shall 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.
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SECT. III.

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.

SECT. IV.

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 and misdemeanors.

ARTICLE III.

SECT. I.

The Judicial Power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may, from time to time, ordain and establish. The Judges, both of the Supreme and Inferior Courts, 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. II.

The Judicial Power shall extend to all cases, 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 a 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 a 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.

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.

See Amendment XI.
ARTICLE IV.

SECT. I.

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.

SECT. II.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

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.

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.

SECT. III.

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.

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.

SECT. IV.

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 V.

The Congress, whenever two thirds of both Houses shall
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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.

ARTICLE 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.

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.

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.

ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

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.

I. 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.

II. 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.
III. 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.

IV. 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.

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, 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: 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.

VI. 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 favour; and to have the assistance of counsel for his defence.

VII. 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 common law.

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

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

X. The powers, not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

XII. 1. The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists 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 for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing 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. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

XIII. If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any Emperor, King, Prince, or Foreign Power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

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A Constitution,

OR FORM OF GOVERNMENT, FOR THE COMMON-WEALTH OF MASSACHUSETTS.

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals, who compose it, with the power of enjoying, in safety and tranquillity, their natural
CONSTITUTION OF MASSACHUSETTS.

rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures, necessary for their safety, prosperity, and happiness. The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them. We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprize, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of Civil Government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish, the following Declaration of Rights, and Frame of Government, as the Constitution of the Commonwealth of Massachusetts.

Part the First.

A DECLARATION of the RIGHTS of the INHABITANTS of the Commonwealth of MASSACHUSETTS.

Art. I. ALL men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

II. It is the right, as well as the duty, of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion, and morality: Therefore, to promote their happiness, and to secure
the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

And the people of this Commonwealth have also a right to, and do, invest their Legislature with authority to enjoin upon all the subjects, an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided notwithstanding, That the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher, or teachers, of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise, it may be paid towards the support of the teacher, or teachers, of the parish or precinct in which the said monies are raised.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.

IV. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are, at all times, accountable to them.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, law-giver, or judge, is absurd and unnatural.

VII. Government is instituted for the common good; for the
protection, safety, prosperity, and happiness of the people; and not for the profit, honour, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods, and in such manner, as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places, by certain and regular elections and appointments.

IX. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefore.

XI. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favourable to him; to meet the witnesses against him, face to face; and to be fully heard in his defence, by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the Legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.
XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: And no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by a jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

XVI. The liberty of the press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this Commonwealth.

XVII. The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: And they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

XXI. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever.

XXII. The legislature ought frequently to assemble for the
redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII. In time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

XXVIII. No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army and navy, and except the militia in actual service, but by authority of the legislature.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honourable salaries ascertained and established by standing laws.

XXX. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

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Part the Second.

THE FRAME OF GOVERNMENT.

THE People inhabiting the territory formerly called the Province of Massachusetts-Bay, do hereby solemnly and mutually
agree with each other, to form themselves into a free, sovereign, and independent body politic, or State, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

CHAPTER I.
The Legislative Power.

SECTION I.

THE GENERAL COURT.

Art. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives: each of which shall have a negative on the other.

The legislative body shall assemble every year on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled, the General Court of Massachusetts.

II. No bill or resolve of the Senate or House of Representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revisal: And if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the Senate or House of Representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the Governor, at large, on their records, and proceed to re-consider the said bill or resolve: But if after such re-consideration, two thirds of the said Senate or House of Representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be re-considered, and if approved by two thirds of the members present, it shall have the force of a law; But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the Governor within five days after it shall have been presented, the same shall have the force of a law.

III. The General Court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons
inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon: To which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy or depending before them.

IV. And further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said Commonwealth; the election and constitution of whom are not hereafter in this Form of Government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution; and to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and persons resident, and estates, lying within the said Commonwealth; and also to impose, and levy, reasonable duties and excises, upon any produce, goods, wares, merchandize, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates in the manner that has hitherto been practised; in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.
CHAPTER I.

SECTION II.

SENATE.

Art. I. THERE shall be annually elected by the freeholders and other inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be Counsellors and Senators for the year ensuing their election; to be chosen by the inhabitants of the districts, into which the Commonwealth may from time to time be divided by the General Court for that purpose: And the General Court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the Commonwealth, the limits of each district, and the number of Counsellors and Senators to be chosen therein; provided that the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six Senators.

And the several counties in this Commonwealth shall, until the General Court shall determine it necessary to alter the said districts, be districts for the choice of Counsellors and Senators (except that the counties of Dukes-County and Nantucket shall form one district for that purpose) and shall elect the following number for Counsellors and Senators, viz.

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<th>County</th>
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<tr>
<td>Suffolk</td>
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<td>Essex</td>
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<td>Middlesex</td>
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<td>Barnstable</td>
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<td>Bristol</td>
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<td>York</td>
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<td>Dukes-County</td>
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<td>Nantucket</td>
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<td>Worcester</td>
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<td>Cumberland</td>
<td>One</td>
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<td>Lincoln</td>
<td>One</td>
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<td>Berkshire</td>
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II. The Senate shall be the first branch of the legislature; and the Senators shall be chosen in the following manner, viz. There shall be a meeting on the first Monday in April annually; forever, of the inhabitants of each town in the several counties of this Commonwealth; to be called by the Selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be Senators and Counsellors: And at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the Commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the Senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "Inhabitant," in this Constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district or plantation, where he dwelleth, or hath his home.
The Selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for Senators, and shall sort and count them in open town-meeting, and in presence of the Town-Clerk, who shall make a fair record, in presence of the Selectmen, and in open town-meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the Selectmen and the Town-Clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the Town-Clerk of such town to the Sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May annually; or it shall be delivered into the Secretary's office seventeen days at least before the said last Wednesday in May; and the Sheriff of each county shall deliver all such certificates by him received, into the Secretary's office seventeen days before the said last Wednesday in May.

And the inhabitants of plantations unincorporated, qualified as this Constitution provides, who are or shall be empowered and required to assess taxes upon themselves towards the support of government, shall have the same privilege of voting for Counsellors and Senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation-meetings for that purpose shall be held annually on the same first Monday in April, at such place in the plantations respectively as the Assessors thereof shall direct; which Assessors shall have like authority for notifying the electors, collecting and returning the votes, as the Selectmen and Town-Clerks have in their several towns, by this Constitution. And all other persons living in places unincorporated, (qualified as aforesaid) who shall be assessed to the support of government by the Assessors of an adjacent town, shall have the privilege of giving in their votes for Counsellors and Senators, in the town where they shall be assessed, and be notified of the place of meeting by the Selectmen of the town where they shall be assessed, for that purpose accordingly.

III. And that there may be a due convention of Senators on the last Wednesday in May annually, the Governor, with five of the Council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly: Provided nevertheless, that for the first year the said returned copies shall be examined by the President and five of the Council of the former Constitution of Government; and the said President shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

IV. The Senate shall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the Constitution; and shall, on the said last Wednesday in May.
annually, determine and declare who are elected by each district, to be Senators by a majority of votes: And in case there shall not appear to be the full number of Senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz. The members of the House of Representatives, and such Senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of Senators wanting, if there be so many voted for; and out of these, shall elect by ballot a number of Senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the Commonwealth; and in like manner all vacancies in the Senate, arising by death, removal out of the State, or otherwise, shall be supplied as soon as may be, after such vacancies shall happen.

V. Provided nevertheless, That no person shall be capable of being elected as a Senator, who is not seized in his own right of a freehold within this Commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has not been an inhabitant of this Commonwealth for the space of five years immediately preceding his election, and at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

VI. The Senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

VII. The Senate shall choose its own President, appoint its own officers, and determine its own rules of proceedings.

VIII. The Senate shall be a court with full authority to hear and determine all impeachments made by the House of Representatives, against any officer or officers of the Commonwealth, for misconduct and mal-administration in their offices. But previous to the trial of every impeachment, the members of the Senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office, and disqualification to hold or enjoy any place of honour, trust, or profit, under this Commonwealth: But the party so convicted, shall be nevertheless liable to indictment, trial, judgment, and punishment, according to the laws of the land.

IX. Not less than sixteen members of the Senate shall constitute a quorum for doing business.

CHAPTER I.

SECTION III.

HOUSE OF REPRESENTATIVES.

Art. I. THERE shall be in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.
II. And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty rateable polls, may elect one Representative: every corporate town, containing three hundred and seventy-five rateable polls, may elect two Representatives: every corporate town, containing six hundred rateable polls, may elect three Representatives; and proceeding in that manner, making two hundred and twenty-five rateable polls the mean increasing number for every additional Representative.

Provided nevertheless, That each town now incorporated, not having one hundred and fifty rateable polls, may elect one Representative: But no place shall hereafter be incorporated with the privilege of electing a Representative, unless there are within the same, one hundred and fifty rateable polls.

And the House of Representatives shall have power from time to time to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this Constitution.

The expenses of travelling to the General Assembly, and returning home, once in every session and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the House, and does not depart without leave.

III. Every member of the House of Representatives shall be chosen by written votes; and for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of a freehold of the value of one hundred pounds within the town he shall be chosen to represent, or any rateable estate to the value of two hundred pounds; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

IV. Every male person, being twenty-one years of age, and resident in any particular town in this Commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a Representative, or Representatives for the said town.

V. The members of the House of Representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

VI. The House of Representatives shall be the Grand Inquest of this Commonwealth; and all impeachments made by them, shall be heard and tried by the Senate.

VII. All money-bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

VIII. The House of Representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

IX. Not less than sixty members of the House of Representatives, shall constitute a quorum for doing business.
X. The House of Representatives shall be the judge of the returns, elections, and qualifications of its own members as pointed out in the Constitution; shall choose their own Speaker; appoint their own officers, and settle the rules and orders of proceeding in their own House: They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the House, by any disorderly or contemptuous behaviour in its presence; or who, in the town where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the House; or who shall assault any of them therefor; or who shall assault, or arrest any witness, or other person, ordered to attend the House, in his way in going, or returning; or who shall rescue any person arrested by the order of the House.

And no member of the House of Representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending the General Assembly.

XI. The Senate shall have the same powers in the like cases; and the Governor and Council shall have the same authority to punish in like cases. Provided, that no imprisonment on the warrant or order of the Governor, Council, Senate, or House of Representatives, for either of the above-described offences be for a term exceeding thirty days.

And the Senate and House of Representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the Constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

CHAPTER II.

Executive Power.

SECTION I.

GOVERNOR.

Art. I. THERE shall be a supreme executive Magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be, HIS EXCELLENCY.

II. The Governor shall be chosen annually: And no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding; and unless he shall, at the same time, be seized in his own right of a freehold within the Commonwealth, of the value of one thousand pounds; and unless he shall declare himself to be of the Christian religion.

III. Those persons who shall be qualified to vote for Senators and Representatives, within the several towns of this Common-
wealth, shall, at a meeting to be called for that purpose, on the first Monday of April annually, give in their votes for a Governor, to the Selectmen, who shall preside at such meetings; and the Town Clerk, in the presence and with the assistance of the Selectmen, shall, in open town-meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the Selectmen, and transmit the same to the Sheriff of the County, thirty days at least before the last Wednesday in May: and the Sheriff shall transmit the same to the Secretary's office, seventeen days at least before the said last Wednesday in May: or the Selectmen may cause returns of the same to be made to the office of the Secretary of the Commonwealth, seventeen days at least before the said day: and the Secretary shall lay the same before the Senate and the House of Representatives, on the last Wednesday in May, to be by them examined: And in case of an election by a majority of all the votes returned, the choice shall be by them declared and published: But if no person shall have a majority of votes, the House of Representatives shall, by ballot, elect two out of four persons who had the highest numbers of votes, if so many shall have been voted for: but, if otherwise, out of the number voted for; and make return to the Senate of the two persons so elected; on which, the Senate shall proceed by ballot to elect one, who shall be declared Governor.

IV. The Governor shall have authority, from time to time, at his discretion, to assemble and call together the Counsellors of this Commonwealth for the time being; and the Governor, with the said Counsellors, or five of them at least, shall, and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, agreeably to the Constitution, and the laws of the land.

V. The Governor, with the advice of Council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two Houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said Court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same: And in case of any infectious distemper prevailing in the place where the said Court is next at any time to convene, or any other cause happening whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the State.

And the Governor shall dissolve the said General Court on the day next preceding the last Wednesday in May.

VI. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or
prorogation, the Governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

VII. The Governor of this Commonwealth for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer by all fitting ways, enterprizes and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprize by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be entrusted with all these and other powers, incident to the offices of Captain-General and Commander in Chief, and Admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise.

Provided, That the said Governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water for the defence of such part of the State, to which they cannot otherwise conveniently have access.

VIII. The power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of Council: But no charter of pardon, granted by the Governor, with advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

IX. All Judicial Officers, the Attorney-General, the Solicitor-General, all Sheriffs, Coroners, and Registers of Probate, shall be nominated and appointed by the Governor, by and with the advice and consent of the Council; and every such nomination
shall be made by the Governor, and made at least seven days prior to such appointment.

X. The Captains and Subalterns of the militia, shall be elected by the written votes of the train-band and alarm-list of their respective companies, of twenty-one years of age and upwards: The Field-Officers of regiments shall be elected by the written votes of the Captains and Subalterns of their respective regiments: The Brigadiers shall be elected in like manner, by the Field-Officers of their respective brigades: And such officers, so elected, shall be commissioned by the Governor, who shall determine their rank.

The Legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting the votes, and of certifying to the Governor the officers elected.

The Major-Generals shall be appointed by the Senate and House of Representatives, each having a negative upon the other; and be commissioned by the Governor.

And if the electors of Brigadiers, Field-Officers, Captains or Subalterns, shall neglect to make such elections, after being duly notified, according to the laws for the time being, then the Governor, with advice of Council, shall appoint suitable persons to fill such offices.

And no officer duly commissioned to command in the militia, shall be removed from his office, but by the address of both Houses to the Governor, or by fair trial in court-martial, pursuant to the laws of the Commonwealth for the time being.

The commanding officers of regiments shall appoint their Adjutants and Quarter-Masters; the Brigadiers their Brigade-Majors; and the Major-Generals their Aids; and the Governor shall appoint the Adjutant-General.

The Governor, with advice of Council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this Commonwealth shall appoint— as also all officers of forts and garrisons.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth, until the same shall be altered in pursuance of some future law.

XI. No monies shall be issued out of the treasury of this Commonwealth, and disposed of (except such sums as may be appropriated for the redemption of bills of credit or Treasurer’s notes, or for the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

XII. All public boards, the Commissary-General, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially, and without requisition; and at other times, when required
by the Governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons: And the said commanding officer shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbour or harbours adjacent.

And the said boards, and all public officers, shall communicate to the Governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

XIII. As the public good requires that the Governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honourable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: And it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

Permanent and honourable salaries shall also be established by law for the Justices of the Supreme Judicial Court.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged as the General Court shall judge proper.

CHAPTER II.

SECTION II.

LIEUTENANT-GOVERNOR.

Art. I. THERE shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, whose title shall be—HIS HONOUR—and who shall be qualified, in point of religion, property, and residence in the Commonwealth, in the same manner with the Governor: And the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a Governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner: And if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the Senate and House of Representatives, in the same manner as the Governor is to be elected, in case no
one person shall have a majority of the votes of the people to be Governor.

II. The Governor, and in his absence the Lieutenant-Governor, shall be President of the Council, but shall have no vote in Council: And the Lieutenant-Governor shall always be a member of the Council, except when the chair of the Governor shall be vacant.

III. Whenever the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor for the time being, shall, during such vacancy, perform all the duties incumbent upon the Governor, and shall have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

CHAPTER II.

SECTION III.

COUNCIL, AND THE MANNER OF SETTLING ELECTIONS BY THE LEGISLATURE.

Art. I. THERE shall be a Council for advising the Governor in the executive part of government, to consist of nine persons besides the Lieutenant-Governor, whom the Governor for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the Governor, with the said Counsellors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

II. Nine Counsellors shall be annually chosen from among the persons returned for Counsellors and Senators, on the last Wednesday in May, by the joint ballot of the Senators and Representatives assembled in one room: And in case there shall not be found upon the first choice, the whole number of nine persons, who will accept a seat in the Council, the deficiency shall be made up by the electors aforesaid, from among the people at large; and the number of Senators left, shall constitute the Senate for the year. The seats of the persons thus elected from the Senate, and accepting the trust, shall be vacated in the Senate.

III. The Counsellors, in the civil arrangements of the Commonwealth, shall have rank next after the Lieutenant-Governor.

IV. Not more than two Counsellors shall be chosen out of any one district of this Commonwealth.

V. The resolutions and advice of the Council, shall be recorded in a register, and signed by the members present; and this record may be called for, at any time, by either House of
the Legislature; and any member of the Council may insert his opinion contrary to the resolution of the majority.

VI. Whenever the office of the Governor and Lieutenant-Governor shall be vacant, by reason of death, absence, or otherwise, then the Council or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute, all and every such acts, matters and things, as the Governor, or the Lieutenant-Governor, might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

VII. And whereas the elections appointed to be made by this Constitution, on the last Wednesday of May annually, by the two Houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day, until the same shall be completed. And the order of elections shall be as follows: The vacancies in the Senate, if any, shall first be filled up; the Governor and Lieutenant-Governor shall then be elected, provided there should be no choice of them by the people: And afterwards the two Houses shall proceed to the election of the Council.

CHAPTER II.

SECTION IV.

SECRETARY, TREASURER, COMMISSARY, &c.

Art. I. THE Secretary, Treasurer and Receiver-General, and the Commissary-General, Notaries-Public, and Naval-Officers, shall be chosen annually, by joint ballot of the Senators and Representatives in one room. And that the citizens of this Commonwealth may be assured, from time to time, that the monies remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as Treasurer and Receiver-General, more than five years successively.

II. The records of the Commonwealth shall be kept in the office of the Secretary, who may appoint his Deputies, for whose conduct he shall be accountable, and he shall attend the Governor and Council, the Senate and House of Representatives, in person, or by his Deputies, as they shall respectively require.

CHAPTER III.

JUDICIARY POWER.

Art. I. THE tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective
commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behaviour, excepting such concerning whom there is different provision made in this Constitution: Provided nevertheless, the Governor, with consent of the Council, may remove them upon the address of both Houses of the Legislature.

II. Each branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the Supreme Judicial Court, upon important questions of law, and upon solemn occasions.

III. In order that the people may not suffer from the long continuance in place of any Justice of the Peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of Justices of the Peace shall expire and become void, in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the Commonwealth.

IV. The Judges of Probate of Wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require. And the Legislature shall, from time to time, hereafter appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective Judges shall direct.

V. All causes of marriage, divorce and alimony, and all appeals from the Judges of Probate, shall be heard and determined by the Governor and Council, until the Legislature shall, by law, make other provision.

CHAPTER IV.

DELEGATES TO CONGRESS.

THE Delegates of the Commonwealth to the Congress of the United States, shall, some time in the month of June annually, be elected by the joint ballot of the Senate and House of Representatives, assembled together in one room; to serve in Congress for one year, to commence on the first Monday in November, then next ensuing. They shall have commissions under the hand of the Governor, and the great seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.
CHAPTER V.

The University at Cambridge, and Encouragement of Literature, &c.

SECTION I.

THE UNIVERSITY.

Art. I. WHEREAS our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which University many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences, which qualified them for public employments both in Church and State: And whereas the encouragement of arts and sciences, and all good literature, tends to the honour of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America—It is declared, That the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: And the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New-England, or to the President and Fellows of Harvard College, or to the said College, by some other description, under several charters successively: IT IS DECLARED, That all the said gifts, grants, devises, legacies and conveyances are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, deviser or devisors.

III. And whereas by an act of the General Court of the Colony of Massachusetts-Bay, passed in the year one thousand six hundred and forty two, the Governor and Deputy-Governor, for the time being, and all the magistrates of that jurisdiction, were, with the President, and a number of the clergy in the said act described, constituted the Overseers of Harvard College: And it being necessary, in this new Constitution of Government, to ascertain who shall be deemed successors to the said Governor, Deputy-Governor and Magistrates: IT IS DECLARED, That the Governor, Lieutenant-Governor, Council and Senate of this Commonwealth, are, and shall be deemed
their successors; who, with the President of Harvard College, for the time being, together with the Ministers of the Congregational Churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining, to the Overseers of Harvard College; provided, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts-Bay.

CHAPTER V.

SECTION II.

THE ENCOURAGEMENT OF LITERATURE, &c.

WISDOM, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and Magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools, and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good-humour, and all social affections and generous sentiments among the people.

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CHAPTER VI.

Oaths and Subscriptions; Incompatibility of and Exclusion from Offices; Pecuniary Qualifications; Commissions; Writs; Confirmation of Laws; Habeas Corpus; the Enacting Style; Continuance of Officers; Provision for a Future Revival of the Constitution, &c.

Art. I. ANY person chosen Governor, Lieutenant-Governor, Counsellor, Senator, or Representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz.

"I, A. B. do declare, that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the Constitution, as one qualification for the office or place to which I am elected."

And the Governor, Lieutenant-Governor, and Counsellors, shall make and subscribe the said declaration, in the presence of the two Houses of Assembly; and the Senators and Representatives first elected under this Constitution, before the President and five of the Council of the former Constitution, and forever afterwards before the Governor and Council for the time being.

And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.

"I, A. B. do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign and independent State; and I do swear, that I will bear true faith and allegiance to the said Commonwealth, and that I will defend the same against traitorous conspiracies, and all hostile attempts whatsoever: And that I do renounce and abjure all allegiance, submission and obedience, to the King, Queen, or Government of Great-Britain, (as the case may be) and every other foreign power whatsoever: And that no foreign Prince, Person, Prelate, State or Potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing, or other power, in any matter, civil, ecclesiastical or spiritual, within this Commonwealth; except the authority and power which is, or may be, vested by their constituents in the Congress of the United States: And I do further testify and declare, that no man, or body of men, hath, or can have, any right to absolve or discharge me from the obligation of this oath, declaration or affirmation; and that I do make this acknowledgment, profession,
testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptance of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me GOD."

"I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as ; according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution, and the laws of this Commonwealth. So help me GOD."

Provided always, That when any person chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words, "I do swear," "and abjure," "oath or," "and abjuration," in the first oath; and in the second oath, the words "swear and;" and in each of them the words, "So help me GOD;" subjoining instead thereof, "This I do under the pains and penalties of perjury."

And the said oaths or affirmations shall be taken and subscribed by the Governor, Lieutenant-Governor, and Counsellors, before the President of the Senate, in the presence of the two Houses of Assembly; and by the Senators and Representatives first elected under this Constitution, before the President and five of the Council of the former Constitution; and forever afterwards before the Governor and Council for the time being: And by the residue of the officers aforesaid, before such persons, and in such manner, as from time to time shall be prescribed by the Legislature.

II. No Governor, Lieutenant-Governor, or Judge of the Supreme Judicial Court, shall hold any other office or place, under the authority of this Commonwealth, except such as by this Constitution they are admitted to hold, saving that the Judges of the said Court may hold the offices of Justices of the Peace through the State; nor shall they hold any other place or office, or receive any pension or salary from any other State, or Government, or power whatever.

No person shall be capable of holding or exercising at the same time, within this State, more than one of the following offices viz. Judge of Probate—Sheriff—Register of Probate—or Register of Deeds—and never more than any two offices which are to be held by appointment of the Governor, or the Governor and Council, or the Senate, or the House of Representatives, or by the election of the people of the State at large, or of the people of any county, military offices and the offices of Justices of the Peace excepted, shall be held by one person.

No person holding the office of Judge of the Supreme Judicial Court—Secretary—Attorney-General—Solicitor-General—Treasurer or Receiver-General—Judge of Probate—Commissionary General—President, Professor, or Instructor of Harvard College—Sheriff—Clerk of the House of Representatives—Register of Probate—Register of Deeds—Clerk of the Supreme
Judicial Court—Clerk of the Inferior Court of Common Pleas—or Officer of the Customs, including in this description Naval-Officers—shall at the same time have a seat in the Senate or House of Representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the Senate or House of Representatives; and the place so vacated shall be filled up.

And the same rule shall take place in case any Judge of the said Supreme Judicial Court, or Judge of Probate, shall accept a seat in Council; or any Counsellor shall accept of either of those offices or places.

And no person shall ever be admitted to hold a seat in the Legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

III. In all cases where sums of money are mentioned in this Constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce: And it shall be in the power of the Legislature from time to time, to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.

IV. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the Governor, and attested by the Secretary or his Deputy, and have the great seal of the Commonwealth affixed thereto.

V. All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts: They shall be under the seal of the court from whence they issue: They shall bear test of the first Justice of the Court to which they shall be returnable, who is not a party, and be signed by the Clerk of such Court.

VI. All the laws which have heretofore been adopted, used and approved, in the Province, Colony, or State of Massachusetts-Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the Legislature; such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

VII. The privilege and benefit of the writ of Habeas Corpus, shall be enjoyed in this Commonwealth, in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

VIII. The enacting Style, in making and passing all acts, statutes and laws, shall be—"Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same."

IX. To the end there may be no failure of justice, or danger arise to the Commonwealth from a change of the Form of Government—all officers, civil and military, holding commissions under the government and people of Massachusetts-Bay, in New-England, and all other officers of the said government and peo-
CONSTITUTION OF MASSACHUSETTS.

people, at the time this Constitution shall take effect, shall have, hold, use, exercise and enjoy, all the powers and authority to them granted or committed, until other persons shall be appointed in their stead: And all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority; until the General Court, and the supreme and executive officers under this Constitution, are designated and invested with their respective trusts, powers and authority.

X. In order the more effectually to adhere to the principles of the Constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations, as from experience shall be found necessary—the General Court, which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the Selectmen of the several towns, and to the Assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations for the purpose of collecting their sentiments on the necessity or expediency of revising the Constitution, in order to amendments.

And if it shall appear by the returns made, that two thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favour of such revision or amendment, the General Court shall issue precepts, or direct them to be issued from the Secretary’s office to the several towns, to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion, as their Representatives in the second branch of the Legislature are, by this Constitution, to be chosen.

XI. This form of government shall be enrolled on parchment, and deposited in the Secretary’s office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.
Amendments

TO THE

CONSTITUTION OF MASSACHUSETTS.

The following Articles of Amendment to the CONSTITUTION, proposed by the Convention, held on November 15th, 1820, were approved, ratified, and adopted by a majority of the legal voters in the State, and have become a part of the Constitution of the Commonwealth.

Art. I. If any bill or resolve shall be objected to, and not approved by the Governor; and if the General Court shall adjourn within five days after the same shall have been laid before the Governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the Constitution; such bill or resolve shall not become a law, nor have force as such.

II. The General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the Constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards, or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings: provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and held for that purpose: And provided also, that all by-laws made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

III. Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of Governor, Lieutenant-Governor, Senators, or Representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district, of this Commonwealth; and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as abovementioned, shall
have a right to vote in such election of Governor, Lieutenant-Governor, Senators and Representatives; and no other person shall be entitled to vote in such elections.

IV. Notaries Public shall be appointed by the Governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the Governor, with the consent of the Council, upon the address of both Houses of the Legislature.

In case the office of Secretary or Treasurer of the Commonwealth shall become vacant from any cause, during the recess of the General Court, the Governor, with the advice and consent of the Council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the General Court.

Whenever the exigencies of the Commonwealth shall require the appointment of a Commissary General, he shall be nominated, appointed and commissioned, in such manner as the Legislature may, by law, prescribe.

All officers commissioned to command in the militia, may be removed from office in such manner as the Legislature may, by law, prescribe.

V. In the elections of Captains and Subalterns of the militia, all the members of their respective companies, as well those under, as those above the age of twenty-one years, shall have a right to vote.

VI. Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit:

"I, A. B. do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the Constitution thereof. So help me GOD."

Provided, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear," and inserting, instead thereof, the word "affirm," and omitting the words "so help me God," and subjoining, instead thereof, the words "this I do under the pains and penalties of perjury."

VII. No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the Governor, Lieutenant-Governor, Counsellors, Senators or Representatives, to qualify them to perform the duties of their respective offices.

VIII. No Judge of any Court of this Commonwealth, (except the Court of Sessions,) and no person holding any office under the authority of the United States, (Postmasters excepted,) shall, at the same time, hold the office of Governor, Lieutenant-Governor or Counsellor, or have a seat in the Senate or House of Representatives of this Commonwealth; and no Judge of any Court in this Commonwealth, (except the Court of Sessions,)
nor the Attorney-General, Solicitor-General, County-Attorney, Clerk of any Court, Sheriff, Treasurer and Receiver-General, Register of Probate, nor Register of Deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and Judges of the Courts of Common Pleas shall hold no other office under the government of this Commonwealth, the office of Justice of the Peace and Militia Offices excepted.

IX. If at any time hereafter, any specific and particular amendment or amendments to the Constitution be proposed in the General Court, and agreed to by a majority of the Senators and two thirds of the members of the House of Representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if in the General Court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the Senators and two thirds of the members of the House of Representatives present and voting thereon; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and helden for that purpose, they shall become part of the Constitution of this Commonwealth.
AN ACT for erecting a Town within the County of Hampshire, by the name of Montgomery. [This Act passed November 26, 1780.]

Chap. 1.

An ACT making provision for the accommodation of Soldiers and Seamen belonging to other States or Commonwealths, who may be taken sick and be in want within this Commonwealth. [Dec. 1, 1780.]

Chap. 2.

An ACT for repealing certain parts of an Act postponing the payment of Government Securities to a distant period; for the payment of the interest now due on said Securities; and for altering the several Acts of Government which now relate to the currency of the State, and conforming the same to the principles of equality and justice. [Jan. 25, 1781.]

Chap. 3.

An ACT to prevent one seventh part of the Bills of Credit of the new emission coming into circulation, and for directing the Treasurer to issue gold and silver out of the treasury therefor. [Jan. 25, 1781.]

Chap. 4.

An ACT for establishing a Salary of a fixed and permanent value for his Excellency the Governor.

WHEREAS the Constitution of this Commonwealth provides, that amongst the first Acts of the General Court, after the commencement of the Constitution, an establishment shall be made for an honourable stated salary, of a fixed and permanent value, for the Governor of this Commonwealth:

Sect. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the sum of eleven hundred pounds in specie, or bills of credit equivalent, be, and it hereby is established as the annual salary of the Governor for the time being, and a proportional sum for a less time, in full for his services as Governor, to be paid out of the public treasury, to enable him to maintain the dignity of his office.

Sect. 2. And be it further enacted, That the Governor shall not be entitled to any reward, fee, or perquisite, in addition to the salary which shall be allowed him by any act or acts of the Legislature of this Commonwealth. [Feb. 8, 1781.]

This Act was repealed 1788 ch. 57, but is revived by the statute of 1813 ch. 83.

Chap. 5.

Annual salary 1100l.

No fee or perquisite.

An ACT providing that all Vessels of twenty tons burden and upwards, shall be provided with registers, before they are permitted to enter and clear at any of the Naval Offices in this Commonwealth, and for empowering the Governor to sign blank registers. [Feb. 12, 1781.]

Chap. 6.

An ACT to enable the Proprietors of the Great Bridge over York River, in the first Parish in said Town, to take toll for the repair and amendments thereof. [Feb. 13, 1781.]

Chap. 7.
Chap. 8. AN ACT in addition to an Act passed in the year one thousand seven hundred and eighty, entitled, "An Act to indemnify and secure from prosecutions in law, persons who, by their laudable exertions under the late Government of the King of Great Britain, have exposed themselves to actions of damage and other prosecutions in certain cases;" and to extend the benefits thereof to a longer time than is provided in said act. [Feb. 12, 1781.]

Chap. 9. An ACT for establishing salaries of a fixed and permanent value for the Justices of the Supreme Judicial Court. [Feb. 12, 1781.] Repealed 1789 ch. 44.

Chap. 10. An ACT in addition to an Act, entitled, "An Act for taking up and restraining persons dangerous to this State." [Feb. 14, 1781.]

Chap. 11. An ACT for incorporating the second Parish in Georgetown, in the County of Lincoln, into a separate Town, by the name of Bath. [Feb. 17, 1781.]

Chap. 12. An ACT to supply the Treasury with the sum of one hundred thousand pounds—money. [Feb. 17, 1781.] Additional Act—1781 ch. 80.

Chap. 13. An ACT for erecting the District of Natick, in the County of Middlesex, into a Town by the name of Natick. [Feb. 19, 1781.]

Chap. 14. An ACT to set off that part of Shelburne, which lies on the south side of Deerfield river, from said Town, and annexing the same to the Town of Conway. [Feb. 19, 1781.]

Chap. 15. An ACT for instituting a Lottery for the sole purpose of clothing the Massachusetts part of the Continental Army. [Feb. 19, 1781.] Additional Act—1780 ch. 28.

Chap. 16. An ACT more effectually to prevent the destruction of Alewives in their passage up the rivers and streams in the Towns of Salem and Danvers. [Feb. 19, 1781.]

Chap. 17. An ACT empowering the Supreme Judicial Court to take cognizance of matters heretofore cognizable by the late Superior Court.

WHEREAS by the Laws heretofore made by the General Assembly of the late Province, Colony and State of Massachusetts-Bay, a Superior Court of Judicature, Court of Assize and General Gaol Delivery was constituted, and sundry powers and authorities are given to the same court by particular laws: And whereas by the Constitution and Frame of Government of the Commonwealth of Massachusetts, the style and title of the same court is now the Supreme Judicial Court of the Commonwealth of Massachusetts: And the Constitution aforesaid having provided that the laws heretofore made and adopted, should continue and be in force until they shall be altered or repealed by the Legislature; whence some doubts may arise whether the Supreme Judicial Court shall have cognizance of those matters which by particular laws were expressly made cognizable by the Superior Court of Judicature, Court of Assize and General Gaol Delivery:

Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the court which hath been or shall be hereafter appointed and commissioned according to the Constitution as the Supreme Judicial Court of this Commonwealth, shall have cognizance of all such matters as have heretofore happened, or that shall hereafter happen, as by particular laws were made cognizable by the late Superior Court of Judicature, Court of Assize and General Gaol Delivery, unless where the Constitution and Frame of Government hath provided otherwise. [Feb. 20, 1781.]

S. J. Court.
An Act for annexing that part of Lancaster, called the Southerly part, to the Town of Shrewsbury. [Feb. 26, 1781.]  

An Act for postponing the time for holding the first Court of Common Pleas and General Sessions of the Peace in the County of Berkshire; and for not holding more than two of said Courts in said County in one year for the future, until the further order of the General Court. [Feb. 26, 1781.]  

An Act for erecting that tract of land lying in the County of Berkshire, called New Ashford, into a district, by the name of New Ashford. [Feb. 26, 1781.]  

An Act for forming and regulating the Militia within the Commonwealth of Massachusetts, and for repealing all the laws heretofore made for that purpose. [March 3, 1781.]  

An Act for recording and publishing the doings of the Justices of the Supreme Judicial Court relating to the settlement of the value of the Bills of Credit, current within this Commonwealth. [March 3, 1781.]  

An Act for retaliating upon the enemy, who are or that may hereafter be captivated and brought into this Commonwealth, the unwarrantable treatment exercised, or that may hereafter be exercised by the British commanders toward the citizens of this Commonwealth, whom the fortune of war has or may put into their power. [March 3, 1781.]  


An Act to regulate the sale of goods at public venue, and to limit the number of Auctioneers. [March 7, 1781.] Add. Act—1780 ch. 30. Expired—and revived 1782 ch. 66. All repealed 1795 ch. 8.  

An Act empowering Selectmen to call Town-Meetings for the choice of Representatives.  

WHEREAS by the Constitution or Frame of Government of this Commonwealth, chapter first, section third, article fifth, it is declared, "That the members of the House of Representatives shall be chosen annually, in the month of May, ten days at least before the last Wednesday of that month;" but no provision is made for convening the voters, for regulating the meetings, or for making returns of the persons elected:  

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Selectmen for the time being, or the major part of them, in each and every town, authorized to chuse a Representative in this Commonwealth, be, and they are hereby empowered and directed to cause the inhabitants of their Towns respectively, qualified according to the Constitution, to be annually warned in due course of law, to meet at such time and place as they shall appoint (being ten days at least before the said last Wednesday in May) for the purpose of choosing one or more Representatives agreeable to said Constitution; and said Selectmen shall preside at and regulate said meeting, and cause the person or persons so chosen by the major part of the voters present, to be notified of said choice, as soon as may be, by a constable of said town, and they shall make return thereof into the Secretary's Office on or before the said last Wednesday in May annually, in form following, viz.  

Pursuant to a Law of this Commonwealth, the freeholders and other inhabitants of the Town of ——— qualified according to the Constitution, upon due warning given, met together the ——— day of ——— and then did elect ——— to represent them in the General Court appointed to be convened and held for the Government's service at the State House, in Boston, or such other place as may hereafter be appointed for the General Court to convene at, agreeable to the Constitution, upon the last Wednesday of May, the said Person being chosen by the major part of the electors present at said meeting. Dated in ——— aforesaid, the ——— day of ——— in the year of our Lord ——— and in the ——— year of the Independence of the United States of America.  

{ Selectmen of ——— and }  

The person chosen as aforesaid was notified thereof and summoned to attend by me,  

Constable of ———  

Penalty for neglect of duty.  

Selectmen to call town meetings for the choice of representatives annually.  

Selectmen to preside at said meetings, and make return to the Secretary's office.  

Form of the return.  

[April 29, 1781.] Repealed 1795 ch. 55.
Chap. 27. An Act for incorporating the second Precinct of the Town of Lancaster into a Town, by the name of Sterling. [April 25, 1781.]

Chap. 28. An Act in Amendment of an Act made and passed at the last Session of the General Court, entitled, "An Act for instituting a Lottery for the sole purpose of clothing the Continental Army." [April 25, 1781.] 1780 ch. 15.

Chap. 29. An Act for setting off Samuel Park, and others, from the Town of Hopkinton, and annexing them to the Town of Holliston. [April 28, 1781.]

Chap. 30. An Act in Addition to an Act made and passed at the last Session of the General Court, entitled, "An Act to regulate the sale of goods at public vendue, and to limit the number of Auctioneers." [April 28, 1781.] Repealed 1786 ch. 8.

Chap. 31. An Act to prevent damages being done upon the improved Lands adjoining to Connecticut River, by reason of Timber being left thereon, by the spring floods; and for fixing a time for the owners to remove it.

Chap. 32. An Act in Addition to an Act, entitled, "An Act for preventing all Commerce and illegal Correspondence with the enemies of the United States of America." [May 1, 1781.] Add. Act—1782 ch. 52.

Chap. 33. An Act empowering the Superintendent of Purchases of Beef, &c. to issue his executions against the Treasurers of the Towns delinquent in furnishing the article of Beef. [May 1, 1781.]

Chap. 34. An Act to provide more effectually for the preservation of the fish called Alewives, in the streams running into Merrimack River, within the Town of Andover. [May 8, 1781.] See 1791 ch. 63.

Chap. 35. An Act for erecting the Northerly Part of the Town of Shutesbury, and that part of a tract of land called Ervingshire, which lies on the south side of Miller's River, into a separate Town, by the name of Wendell. [May 8, 1781.] Additional Act—1787 ch. 14.

Chap. 36. An Act for altering the Name of Thomas Jackson Greenwood, of Newton, in the County of Middlesex, and permitting him to take the Name of Alexander Shepard. [May 8, 1781.]

Chap. 37. An Act to set off a part of the Town of Murrayfield, and annex it to the Town of Norwich. [May 8, 1781.]

Timber left upon improved land, to be recorded.

Not removed within 12 months, to belong to the owner of the land.

WHEREAS considerable damages have been sustained by reason of timber being left upon the improved lands adjoining to Connecticut River, within this Commonwealth:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That where any timber shall be left upon any improved land adjoining to Connecticut River, by the spring floods, all islands in the river excepted, the owner of the land upon which the timber is left, in case he shall cause to be recorded in the book of records within the same town the marks and length of such timber and the place where it is so left by the flood, shall be entitled to one shilling as a reasonable damage he may sustain for each stick of timber so left on his land, two pence of which to be given to the town-clerk for recording, who is hereby directed to record the same.

Provided nevertheless, if the owner of the timber shall cause it to be removed by the fifteenth of May next succeeding after such timber is left by the flood, no consideration shall be allowed to the owner of the land for any damage.

Sect. 2. And be it further enacted by the authority aforesaid, That if the owners of such timber shall not cause it to be removed within twelve months from the date of the record, in that case the same shall be adjudged to be the property of the owner of the land. [April 25, 1781.] Additional Act—1786 ch. 26.
An Act for incorporating the Plantation called Chesterfield-Gore, and the northwardly part of the Town of Chesterfield, in the county of Hampshire, into a Town by the name of Goshan. [May 14, 1781.]


An Act to supply the Treasury with the Sum of fifteen thousand pounds. [May 15, 1781.]

An Act for repealing one clause or part of an Act of this Commonwealth, made and passed in the year of our Lord one thousand six hundred and ninety-nine, entitled, “An Act for rebuilding the Great Bridge over Charles River in the Town of Cambridge.” [May 16, 1781.]

An Act for the better government and regulation of the Ferry between Boston and Charlestown; and for repealing the laws heretofore made for that purpose. [May 16, 1781.]

An Act for apportioning and assessing a Tax of three hundred and seventy-four thousand seven hundred and ninety five pounds, eight shillings and two pence. [May 18, 1781.]

An Act to empower the Quarter-Master-General or his Deputies within this Commonwealth to impress such teams as may be found necessary to transport supplies to the army. [May 18, 1781.]

An Act for the establishing of a Supreme Judicial Court in the County of Berkshire. [May 18, 1781.]

An Act for altering the time for holding the Supreme Judicial Court in the County of Bristol. [May 18, 1781.]

An Act prescribing the form of the writ of Audita Querela, and of the proceedings thereupon.

WHEREAS justice cannot in many cases be duly administered to the subjects of this Commonwealth without prosecuting a writ of Audita Querela; and whereas there is no statute in force in this Commonwealth directing the form of the said writ, and of the proceedings thereupon:

SECT. 1. Therefore be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That in all cases where by law a writ of Audita Querela lieth, the same may be sued out in the form of a writ of attachment, or a writ of summons, at the election of the complainant: And in all cases where the said writ is brought to set aside or annul any proceedings had upon a writ of execution, the said writ of Audita Querela shall be sued out of and be returnable to the Court to which the said writ of execution was returnable; and in all other cases the said writ shall be sued out of and be returnable to the Inferior Court of Common Pleas, to be holden in such county, whereof one of the parties thereto is an inhabitant or resident; unless where the complainant is not an inhabitant or resident within this Commonwealth; and in such case the said writ may be sued out of and be returnable to any Inferior Court of Common Pleas within this Commonwealth, at the election of the complainant.

SECT. 2. And be it further enacted by the authority aforesaid, That in all cases the said writ of Audita Querela shall be under the seal of the court, out of which the same shall issue, signed by the clerk thereof, and tested by the first justice who is not a party to the same; and the said writ, before the service thereof, shall be indorsed by one or more of the complainants, in the name of Audita Querela, how to be sued out, &c.

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or by his or their attorney, by writing his or their names on
the back thereof towards the bottom; and such indorser shall
be liable to pay to the respondent such costs as he shall have
final judgment for, in that suit, to be recovered by action of debt.

Sect. 3. And be it further enacted by the authority aforesaid,
That the said writ of Audita Querela may be served upon the
adverse party in the same manner as writs of review are di-
rected by law to be served; and upon default of the respon-
dent after such service, without appearance, the Court may
proceed to hear and try the same suit, and thereupon to pro-
ceed to final judgment and execution, in the same manner as
by law they are authorised when the respondent after appear-
ce becomes defaulted. And in all cases after the said writ
is returned, served as aforesaid, the court in which the suit
thereupon is pending, shall have full power to hear and try the
said cause, and thereupon to proceed to judgment and execu-
tion according as to law and justice doth appertain.

Sect. 4. And be it further enacted by the authority aforesaid,
That where the said writ of Audita Querela shall be issued in
the form of a writ of attachment, the form thereof may be as
followeth.—

The Commonwealth of Massachusetts.

[Seal.] To the Sheriff of our County of
Undersheriff or Deputy,

We command you to attach the goods or estate of A. B. of
to the value of pounds, and
for want thereof, to take the body of the said A. B. if he may
be found in your precinct, and him safely keep, so that you
have him before our Justices of our Court
next to be holden at within and for our County
of on the Tuesday of then and
there in our said Court to answer unto the grievous complaint
of C. D. of who complaineth and saith—(Here let
the declaration be inserted)—by all which the said C. D. as he
saith, is damaged the sum of pounds, as shall then and
there be made to appear. And have you there this writ, with
your doings therein. Witness, W. C. Esquire, at
this day of in the year of our Lord

A. H. Clerk.

Sect. 5. And be it further enacted by the authority aforesaid,
That the officer to whom such writ is directed, shall have the
same power and authority, and be under the same obligations,
by virtue of said writ, to attach the body of the respondent,
or his goods, or estate, as he hath and is under by virtue of
any other writ of attachment sued out pursuant to the Laws of
this Commonwealth and to him directed; and in the same
manner and under the same restrictions and regulations as are
by law provided in other cases, the body of the respondent
shall be holden to bail, and the goods or estate so attached be liable to be taken in execution.

Sect. 6. And be it further enacted by the authority aforesaid, That where the goods or estate of the respondent are attached by virtue of the writ of Audita Querela, the summons to give him notice of the suit may be in the form following.

THE COMMONWEALTH OF MASSACHUSETTS.

[Seal.] ss. To A. B. of

Greeting.

WE command you that you appear at our Court next to be holden at within and for our County of on the Tuesday of then and there to answer to the grievous complaint of C. D. of (Here recite an abstract of the declaration) which complaint is to be heard and tried at the said Court; and your goods or estate are attached to the value of pounds, to satisfy the judgment which the said C. D. may recover upon the aforesaid trial. Fail not of appearance at your peril. Witness, W. C. Esquire, at the day of in the year of our Lord A. H. Clerk.

Sect. 7. And be it further enacted by the authority aforesaid, That where the writ of Audita Querela shall be issued in the form of a writ of Summons, the form thereof may be as followeth.

THE COMMONWEALTH OF MASSACHUSETTS.

[Seal.] To the Sheriff of our County of Undersheriff or Deputy,

Greeting.

WE command you that you summons A. B. of if he may be found in your precinct, to appear before our Justices of our Court next to be holden at within and for our County of on the Tuesday of then and there in our said Court to answer to the grievous complaint of C. D. of who complaineth and saith (Here let the declaration be inserted) by all which the said C. D. as he saith is damaged the sum of pounds, as shall then and there be made to appear. And have you there this Writ with your doings therein. Witness, W. C. Esquire, at this day of in the year of our Lord A. H. Clerk.

Sect. 8. And be it further enacted by the authority aforesaid, That where the sheriff of any county in which the writ of Audita Querela is to be served, or his deputy is a party to the said writ, or to the execution issued upon the judgment recovered thereon, the same shall be directed to the coroner or his de-
putty, who shall serve and execute the same in due form of law. And to avoid circuity of actions and a multiplicity of law suits:

Sect. 9. Be it further enacted by the authority aforesaid, That where the complainant in any writ of Audita Querela may, by other subsequent action at law, recover of the respondent any recompense in damages or otherwise, for the wrongs done him by the service of such execution, for the setting aside and annulling of the proceedings upon which, the said writ of Audita Querela is brought, in all such cases the complainant may have the same remedy upon his writ of Audita Querela, and in his declaration therein may declare for the same recompense in damages or otherwise, and judgment shall be rendered and execution issue thereupon accordingly.

Sect. 10. And be it further enacted by the authority aforesaid, That the general issue in all actions prosecuted on writs of Audita Querela may be the plea of not guilty; and upon such plea being duly pleaded by the respondent, either party may give any special matter in evidence by which the truth and justice of the cause may be known.

Provided nevertheless, That the respondent may plead any special matter in bar or the said general issue, at his election.

Sect. 11. And be it further enacted by the authority aforesaid, That in cases where the writ of Audita Querela is returnable to the Inferior Court of Common Pleas in any county within this Commonwealth, and judgment given in said Court, the party aggrieved thereat may appeal to the Supreme Judicial Court of this Commonwealth, next to be holden within the same county; the said appeal to be granted and prosecuted under the same regulations and restrictions as appeals in other actions from the judgment of any Inferior Court are to be granted and prosecuted; and when the appellant shall fail to prosecute his appeal with effect, the Supreme Judicial Court may, upon complaint filed by the appellee, affirm the judgment rendered by the Inferior Court with additional damages and costs, and award execution accordingly.

And whereas the complainant in the writ of Audita Querela may, at the time of suing out the same, be in gaol by virtue of the execution, the proceedings upon which the said writ of Audita Querela is brought to set aside and annul: And whereas in such cases the enlargement and liberation from gaol of the complainant may be necessary to enable him effectually to prosecute his said writ:

Sect. 12. Be it enacted by the authority aforesaid, That in cases where the complainant in such writ of Audita Querela is in gaol by virtue only of such execution, the Court to which such writ is returnable, or the Supreme Judicial Court, upon the appeal, may, at their discretion, according to the circumstances of the case, enlarge and liberate the complainant from gaol, and admit him to bail, upon his sureties (being sufficient freeholders within the Commonwealth, to be approved of by the Court).

*Since the statute 1783 ch. 43, Coroners have not been authorised to appoint deputies. See the Provincial Statutes, 12 Geo. ch. 1 and 13 Geo. II. ch. 2.*
giving bond, together with the complainant, jointly and severally to the respondent, in such penalty as shall be directed by the Court, conditioned, if final judgment be rendered for the respondent, that the complainant shall, within thirty days after the entering such final judgment, surrender himself to the gaolkeeper, to be detained in custody under the same execution, or within that time satisfy the same execution, and also such final judgment as shall be rendered as aforesaid for the respondent. And if the said complainant shall surrender himself to the gaolkeeper as aforesaid, he shall be in custody under said execution, as fully and to all intents and purposes, as if the said writ of Audita Querela had not been brought, nor the said complainant admitted to bail.

Sect. 13. And be it further enacted by the authority aforesaid, That all judgments rendered by the Supreme Judicial Court in actions prosecuted by writs of Audita Querela, shall be final, without being subject to reversal or alteration by any proceedings upon writs of review thereafter to be sued out or prosecuted, and all such writs of review shall by the same Court ex officio be quashed. [May 18, 1781.]

An Act in addition to and for the alteration of some of the provisions of an Act, entitled, “An Act for confiscating the estates of certain persons commonly called Absentees.”

It is among other things provided, the justices of the same court, where any complaint is exhibited in pursuance of the said law, shall order their clerk to cause the notifications, as in the said law is described, to be served by the sheriff or constable, and that the issue shall be tried by a jury, in cases where no claim is made; by means whereof great and needless expenses are incurred, and the good intentions of said Act are not so well answered:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing this act, when any complaint shall be exhibited in any court, or is now depending therein, in pursuance of the said law, then the justices of the same court shall order the notification, as in the said law is described, to be published in three of the public newspapers of this Commonwealth, thirty days at least before the sitting of the said court, to which the same suit shall be continued; which notification, so published, shall avail, to all intents and purposes, instead of the notification being served by the sheriff, &c. as by the said law is provided.

Sect. 2. And be it further enacted by the authority aforesaid, That when no person shall appear to take upon him the defence of the said suit, as mentioned in the said act, that the justices of the same court shall cause proclamation, as in said act is provided, and that then judgment shall be rendered thereon, that the same be forfeited, as by the said law is expressed, without any trial by a verdict of a jury, which shall avail, to all intents and purposes, as though the estates alleged to be forfeited were so found by the verdict of a jury.

Chap. 48. April 30, 1779.

Preamble.

Where complaints are exhibited, the justices to order a notification in 3 public newspapers. 1780 ch. 40.
The expenses incurred in prosecuting complaints to be laid before the General Court, for allowance and payment.

Chap. 49. 1780 ch. 48.

Fremble.

Notifications made valid, their not being published notwithstanding.

Sect. 3. And be it further enacted by the authority aforesaid, That the legal expenses of copies of record, witness, sheriff’s fees, jury fees and court fees, incurred by prosecuting the said complaints to final judgment and execution, shall be taxed by the said court, and laid before the General Court for allowance and payment. [Dec. 4, 1780.] Add. act—1780 ch. 49.

An Act in addition to, and for the explanation of an Act, entitled, “An Act in addition to, and for the alteration of some of the provisions of an Act, entitled, “An Act for confiscating the estates of certain persons commonly called Absentees.”

WHEREAS by the same act it is provided, ‘That when any complaint shall be exhibited in any court, or is now depending therein, in pursuance of the said law, that the justices of the same court shall order the notification, as in the said law is described, to be published in three of the public newspapers of this Commonwealth, thirty days at least before the sitting of the said court, to which the same suit shall be continued.’ And whereas certain complaints have been exhibited before the Justices of the Inferior Court of Common Pleas in the counties of Suffolk and Worcester, upon which notifications have issued and were duly served, according to the said law first mentioned, and before the said additional act was made; and in the Inferior Court of Common Pleas for said county of Worcester, judgment has been, in divers cases since, given upon default, without any advertisement in the public newspapers:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said notifications upon the said complaints, as before described, shall be good and valid, within the true meaning and intent of the said additional act, and to all the purposes thereof; and that the judgments founded thereon are and shall be good and valid, the said notifications not being published in the newspapers notwithstanding; and that the Justices of the Inferior Court of Common Pleas in the county of Suffolk, may proceed on all such complaints now pending before them, according to the directions of the said additional act, though the notifications of them have not been published in the newspapers. [Jan. 18, 1781.]

Chap. 50. 1780 ch. 50.

Fremble.

An Act to provide for the Payment of Debts due from the Conspirators and Absentees, and for the recovery of debts due to them.

WHEREAS, by a certain Act made in the year of our Lord one thousand seven hundred and seventy-nine, entitled, “An Act to confiscate the estates of certain notorious Conspirators against the Government and liberties of the inhabitants of the late Province, now State, of Massachusetts Bay;” and another certain act, passed A. D. one thousand seven hundred and seventy-nine, entitled, “An Act for confiscating the estates of certain persons commonly called Absentees;” it is enacted, ‘That all the debts justly due before the offence committed, to any subject of the United States, from any of the persons aforesaid, shall be payable out of their respective estates:’ And whereas, by another act, passed A.D. one thousand seven
hundred and seventy-seven, entitled, "An Act to prevent the waste, destruction and embezzlement of the goods or estates of such persons who have left the same, and fled to our enemies for protection; and also for the payment of their just debts out of their estates;" the particular mode, way and manner of ascertaining the just debts of said persons is particularly described and set forth:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That committees be appointed and empowered, within each county in this State, to sell the real estates of the conspirators and absentees.

Sect. 2. And be it further enacted, That the debts due therefrom shall be equitably discharged, and the residue paid into the public treasury; but where the estates aforesaid are involved by any mortgages or attachments whatever, said mortgages and attachments shall be discharged in preference, according to law: the other species of debts be afterwards paid; and the residue of said conspirators' and absentees' estates (if any) be lodged in the public treasury.

Provided always, That where any wife or widow of any conspirators or absentee remains in this Commonwealth, one third part of the real estate aforesaid shall be exempt from said sales; and shall be allotted as dower to the support of the wife or widow of any conspirators or absentee resident in this Commonwealth; and after her death, shall be sold for the benefit of the creditors, or the Commonwealth, as the case may be.

Sect. 3. And be it enacted by the authority aforesaid, That in case the proceeds of any conspirators' or absentees' real and personal estates shall not be sufficient to pay all the demands upon the same, as aforesaid, the creditors thereto shall be paid in proportion to their respective demands, so far as the same will go towards the discharge of said debts, according to law.

Sect. 4. And be it further enacted by the authority aforesaid, That where it shall appear, from the report of commissioners appointed by the Judges of Probate for the several counties within this Commonwealth, that allowances have been made to the creditors of the conspirators and absentees aforesaid, for the depreciation of the paper currency, said reports shall be recommitted to the said commissioners, or, in case of their death, absence or refusal, new ones shall be appointed by the Judges of Probate in their room; which commissioners are hereby authorized and directed to take off said allowances, and resolve said demands into their original value, at the time said debts were contracted, provided payment has not been made, agreeable to said reports.

Sect. 5. And be it further enacted by the authority aforesaid, That where any commissioners of claims have not adjusted and reported on the demands of any creditor, said commissioners shall give due notice thereof to the Judge of Probate who appointed them; and the said judge shall, by warrant under his hand and seal, authorize and appoint, and is hereby empowered to authorize and appoint, some meet and discreet per-
son, to appear before said commissioners, and there, in behalf of this Commonwealth, to object to all such proofs offered in support of said claims, as shall be repugnant to law and equity; and in all cases to defend said estates against any collusive or fraudulent claims. And the said commissioners, if they find said claims, or any part of them, supported, they are hereby impowered and directed to liquidate the same, and report to the Judge of Probate, and the same shall be allowed accordingly.

Sect. 6. And be it further enacted, That each creditor to the estates of said conspirators or absentee, shall take and repeat the following oath or affirmation before said commissioners, who are hereby impowered and directed to administer the same, viz.

I, A. B. creditor to C. D. a conspirator or absentee, do hereby declare and make solemn oath, that the demands now exhibited by me against the said C. D. are just and true; and that I have not, directly or indirectly, by myself, or by any other person, for or under me, received any part of said demand; and that I know of no debt or demands whatever of said C. D. against me, more than the sum or articles I have credited said C. D. for, and now exhibited. So help me God.

And whereas it is to be feared, that some persons are so lost to all sense of religion or moral obligation as to forswear themselves for the sake of gain:

Sect. 7. Be it further enacted by the authority aforesaid, That whenever the said commissioners have, in their own minds, just cause of suspicion that the demands exhibited by any creditor against any conspirator or absentee are not just and true, they are hereby directed to require of said creditor, besides his own oaths or affirmation, and before they allow his demands, that he bring before them two respectable freeholders of the town where he belongs, of whom said commissioners shall inquire concerning the character of said creditor, and whether they know of his dealings with said conspirator or absentee; and whether they think there is probable cause to suppose the demands exhibited are just; and if, after such inquiry, they have reason to think the said demands are well proved, they shall allow the same; otherwise, not.

Sect. 8. And be it further enacted, That where any debts are due to any of the said conspirator or absentee, by book, bond, note, or any assignable specialty, and the agents or administrators on the estates of said conspirator or absentee, respectively, are in possession of such books, bonds, notes or assignable specialties, the persons so indebted shall be compellable, by suits at law, to be instituted in the names of the agents or administrators of said estates, respectively, to discharge all such debts as aforesaid: And all courts of law, before whom said debts are proved, shall make up judgment in favour of said agents or administrators accordingly. And the same shall be disposed of for the payment of debts, &c. as aforesaid. And where any person is indebted, as aforesaid, and the agent or
administrators is not in possession of the books or bonds, and the person so indebted is inclined to discharge his debt, the Treasurer of this Commonwealth is hereby authorized and directed to receive said debts or part thereof, and give two receipts therefor, one of which shall be lodged in the Secretary's office by said debtor, and the other receipts shall be a good and sufficient discharge in law for so much of said debt as the real value of the money received for amounts to, which real value if paid in bills of credit, shall be determined as established in an Act passed this present session of the General Court, entitled, "An Act for repealing certain parts of an Act postponing the payment of government securities," &c. &c.

Provided always, That the claims against the estates of the conspirators and absentees to which said person is indebted, do not exceed the value of the real estate of said conspirator or absentee; and in such case the agents or administrators on said estates may receive said debts, and shall, by order of the Judge of Probate, pay them to the creditors of said estates, and the receipts of said agents or administrators shall be valid in manner as aforesaid,

Sect. 9. And be it further enacted, That where any estates of the conspirators or absentees have been sold, and the monies paid into the treasury, the same shall be paid out of the treasury to the creditors of said estates, so far as is necessary to discharge their demands, if there is a sum sufficient therefor; and if not, then in proportion to their demands, having respect to mortgages and attachments, as aforesaid; and the Judges of Probate are hereby directed to give the creditors of said estates certificates as aforesaid: and His Excellency the Governor, with the advice of Council, is hereby requested to grant a warrant on the treasurer in favour of said creditors, agreeable to said certificate, if the monies paid into the treasury are equal to all the demands against said estates. And in order that His Excellency in Council may be ascertained of this, the Judges of Probate are hereby directed to certify to the Governor the whole of the demands against said estates, before they give a certificate to the creditors; and should it appear that said estates were insolvent, then His Excellency the Governor is empowered and requested to appoint meet persons to apportion the same so paid into the treasury (after deducting all necessary charges) among said creditors, agreeable to their demands, having respect to mortgages and attachments, as aforesaid.

Sect. 10. And be it further enacted by the authority aforesaid, That Richard Cranch, Samuel Henshaw, and Samuel Barrett, Esquires, be a committee for the county of Suffolk: That James Prescott, Joseph Hosmer, and Samuel Thatcher, Esquires, be a committee for the county of Middlesex: That Capt. Samuel Ward, Col. Israel Hutchinson, and Dummer Jewett, Esquires, be a committee for the county of Essex; That John Kirkland, Esquire, Mr. David Smead, and Capt. Benjamin Bonney, be a committee for the county of Hampshire: That Mr. Nathan Mitchell, Mr. Joseph Smith, and Mr. Zebediah Sprout, be a committee for the county of Plymouth: That Nathaniel Freeman,
Joseph Otis, and Daniel Davis, Esquires, be a committee for the county of Barnstable: That Mr. Israel Washburne, Samuel Tobey, Esq. and Mr. Isaac Hodges, be a committee for the county of Bristol: That Mr. John Hill, Col. Edward Grow, and Col. Thomas Cutts, be a committee for the county of York: That John Fessenden, Esq. Mr. Caleb Ammidon, and Jonathan Warner, Esq. be a committee for the county of Worcester: That John Lewis, Esq. Solomon Lombard, Esq. and Mr. Samuel Small, be a committee for the county of Cumberland: That Col. John Ashley, Col. Jonathan Smith, and Nathan Kingsley, Esq. be a committee for the county of Berkshire, to make sale of the real estates of said conspirators and absentees as aforesaid, in each of their counties, respectively, for the purposes herein provided. And the Judges of Probate of wills, &c. are hereby directed to give a certificate, under hand and seal of office, to any creditors, of the sum due to him, as the same shall have been liquidated and allowed by the commissioners of claims, as aforesaid; and said committee, on being shewn said certificate by any creditor, shall immediately proceed to advertize and make sale of said estates in the same way as is prescribed by law for advertizing and making sale of the estates of intestates, in order to discharge their just debts.

Provided nevertheless, That if the committees suspect any undue measures are taking at any of said sales, in order to get any of said estates struck off under their real value, in all such cases the committees are hereby directed to suspend the sale: And if they find it for the benefit of the creditors or government to sell said estates, or any part thereof, at private sale, they are hereby impowered to do it accordingly; and the demands of any creditor, allowed as aforesaid, who may purchase any of said estates, shall be received in pay therefor, if said estates are sufficient to discharge all demands: And said committee shall pay the creditors of the estates of the conspirators and absentees aforesaid, without delay, in the way and proportion herein before mentioned: And the said committees, respectively, are hereby authorized and impowered to give good and sufficient deeds in fee to the purchasers, in the name of this Commonwealth.

Sect. 11. And be it further enacted, That every clause of this Act shall be considered to extend to the estates of such conspirators and absentees, who have died while under the protection of the King of Great Britain, his fleets or armies, as well as those conspirators and absentees who are now living.

Sect. 12. And be it further enacted by the authority aforesaid, That the said committees be and they are hereby required to keep a fair and accurate accounts of all their doings in the premises, and to make a return thereof, under oath, into the Secretary's office, there to be recorded.

Sect. 13. Provided nevertheless, and be it further enacted, That the powers given to the several committees for the sale of conspirators' and absentees' estates, shall not extend to impower said committees to make sale of any estates on which money has been advanced to the Commonwealth, agreeable to a resolve
of the General Court, passed the nineteenth of June last, unless the persons who have advanced money, as aforesaid, shall consent to have such estates sold.

And whereas there are divers messages, lands and tenements within this Commonwealth, which heretofore have been conveyed by mortgage to some of the said conspirators or absentees with condition of defeazance on payment of certain sums of money; by means whereof the said estates are liable by the said laws to be confiscated to the use of this Commonwealth:

SECT. 14. Be it enacted by the authority aforesaid. That such mortgagors, upon the payment to the committee before appointed for the sale of the said estates in the county where such mortgaged premises lay, of all the monies due upon such mortgages, computing the same according to the rule of law for the redemption of mortgaged estates, shall be entitled to and receive a discharge and release of the said mortgage-deed from the said committee, in the same manner as though the money was paid to a mortgagee who is a good subject of this Commonwealth.

And whereas there are divers lots and tracts of land, lately belonging to some of the said conspirators or absentees, which have been and still are possessed by some of the good subjects of this Commonwealth, on condition of having a conveyance of the fee simple of such lands to them, upon their payment to the said owners of the said lands of certain sums of money:

SECT. 15. Be it enacted by the authority aforesaid, That the persons holding lands by condition aforesaid, shall be entitled to a deed in fee simple, on paying the money, conditioned as aforesaid, to the said committee; and said committee are hereby authorized and directed to execute such releases and deeds accordingly in the name of this Commonwealth. [March 2, 1781.] Add. acts—1780 ch. 52, 53: 1782 ch. 69.

An Act in addition to an Act entitled "an Act for preventing or punishing Crimes against the Public Safety below the degree of treason or misprision of treason." [March 5, 1781.]

An Act in addition to an Act passed the last session of the General Court, entitled, "An Act to provide for the Payment of the Debts due from the Conspirators and Absentees; and for the recovery of debts due to them."

WHEREAS the creditors to those estates of the conspirators and absentees on which money has been advanced to the Commonwealth, agreeable to a resolve of the General Court of the nineteenth of June last, will be kept out of the debts due to them, unless said estates are sold: And whereas many persons who advanced the money, as aforesaid, are willing to purchase the estates at private sale, and to give the full value thereof:

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the committees, in said Act mentioned, be and they hereby are authorized and empowered to sell said estates at private sale, to the persons who advanced money thereon, as aforesaid, on application made by such persons to the said committee for

Money advanced on absentees' estates, to go in part pay.
that purpose, and the money so advanced (after deducting the rent) shall go in part pay for the same.

Sect. 2. Provided nevertheless, and be it further enacted, That said committees be and they are hereby empowered and directed to appoint three judicious disinterested persons, to appraise, under oath, the estates so to be sold; and if the persons who advanced the money, as aforesaid, are willing to take the estates at the appraisements, the said committees are hereby authorized and empowered to give good and sufficient deeds in fee to the purchasers, in the name and behalf of this Commonwealth. And said committees shall pay the creditors, and the residue into the public treasury, in the way and manner prescribed in said Act; and in case the persons aforesaid do not incline to take the said estates at the appraisement, they shall pay the charge of appraisement. [May 1, 1781.] Add. acts—1780 ch. 55: 1782 ch. 69.

An Act in addition to an Act, entitled, "An Act to provide for the Payment of Debt due from the Conspirators and Absentees, and for the recovery of debts due to them."

WHEREAS many persons among our enemies may have notes, bonds or other securities against the said conspirators or absentees, and may endeavour to send them to their friends or agents here, in order to receive pay from the proceeds of the estates of said conspirators or absentees; and for the prevention thereof:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the commissioners appointed by the Judges of Probate, in the several counties in this Commonwealth, to receive and examine the claims exhibited against any of said estates, be and they are hereby directed and required to reject all notes, bonds and other securities which were originally given in favour of any conspirator or absentee, or which have been assigned over to them; unless it shall evidently appear that such notes, bonds or other securities were taken in the name of any conspirator or absentee, as guardian for a person or persons who have been, and, if living, still are good subjects of these United States.

Sect. 2. And be it further enacted, That when any person shall present his demands against any of said estates, before a Justice of the Peace, and shall swear to the same in manner and form prescribed in said Act, and a certificate thereof from the Justice being produced, the commissioners of claims shall allow it as though the person had sworn to the same before them; any thing in said Act to the contrary notwithstanding.

And whereas many good subjects of these United States, who are in the army, or in Europe, may have demands against the estates of said conspirators or absentees, but, by reason of absence, cannot exhibit their claims to the commissioners:

Sect. 3. Be it enacted, That the Judges of Probate, in the several counties in this Commonwealth, be and they are hereby directed to allow a further time of two months, for creditors to bring in and prove their claims; and where commissioners
are not appointed, the said judges are hereby directed to appoint them, and to have them sworn to the faithful discharge of the trust reposed in them.

And in order that the creditors who have proved their claims may not be kept out of their money till all the claims are exhibited and proved:

Sect. 4. Be it enacted, That the committees appointed to sell the estates of said conspirators and absentees, shall pay the creditors in manner mentioned in said Act: Provided said creditors will give bond, with sureties, to refund and pay back their ratable parts and proportions, in case said estate shall prove insolvent, in order that all the creditors may receive in proportion to their demands. And said committees are hereby directed not to keep any money, arising from the sale of said estates, on hand, but immediately to pay the same into the treasury, except so much as shall be necessary to discharge the debts exhibited to them, in manner prescribed in said Act. And the money so paid into the treasury, shall be appropriated solely for the purpose of paying the officers and soldiers of the Massachusetts line of the army their depreciation notes, agreeable to a resolve of the third of March last, and their three months wages, agreeable to a resolve of the eighth of said March. And all creditors, who shall exhibit and prove their claims after the money is paid into the treasury by said committees, shall receive the same from the treasury, in the way and manner prescribed in said Act.

And whereas many creditors have recovered judgment, in due course of law, against the estates of said conspirators and absentees; but, by the laws of the State, execution has been stayed:

Sect. 5. Be it therefore enacted, That the commissioners of claims, be and they are hereby directed to allow all debts recovered, as aforesaid, if, when such judgments are given by default, it shall be proved to the said commissioners, that the sums so recovered were in fact due and owing from the said absentees, and to liquidate the same according to their real value, and to make return thereof to the Judge of Probate, as of other debts; and the same shall be certified by the judge, and allowed and paid as other debts. [May 15, 1781.] Add. act—1782 ch. 69.

An Act for granting to Thaddeus Newton one hundred acres of land in the Town of Murraysfield. [June 28, 1781.]

An Act for reviving sundry Laws that are expired. [June 28, 1781.] The Acts, hereby revived, expired Nov. 1, 1782.

An Act to prevent Damage being done on the Meadows lying in the Township of Yarmouth, called Nobscusset Meadow; and a small Commonage of land, and beaches thereto adjoining. [June 28, 1781.] Made perpetual, 1796 ch. 69. Add. act—1802 ch. 3.

An Act for continuing a Company or Troop of Horse, in the third regiment of foot in the County of Essex. [June 28, 1781.] Other provisions made by subsequent Acts respecting the Militia.

An Act for altering the Dividing Line between the Towns of South-Hadley and Granby. [June 28, 1781.]

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Chap. 7. An Act providing for the Payment of the Interest on the new bills of credit, and fixing the rate at which they shall be received into the treasury; for suspending the making up judgment in civil causes for a limited time; and repealing all the Laws heretofore passed for making said bills a tender. [July 6, 1791.]

Chap. 8. An Act for setting out Thomas Eaton, with his estate, from the first Parish in the Town of Reading, and annexing him and his estate to the third Parish in said Town. [July 6, 1791.]

Chap. 9. An Act to set out Thomas Moree, and others, from the West Parish in the Town of Bradford, in the County of Essex, and to annex them to the East Parish in said Town. [July 6, 1791.]

Chap. 10. An Act in addition to an Act, entitled, "An Act more effectually to punish persons who shall be convicted of wilfully and corruptly passing counterfeit Bills of Credit." [September 19, 1791.]

Chap. 11. An Act to regulate the mode of procedure in undisputed causes in the Maritime Courts. [October 17, 1791.]


Chap. 14. An Act for widening and amending the Streets, Lanes and Squares, in that part of the Town of Charlestown, which was lately laid waste by fire. [October 30, 1791.]

Chap. 15. An Act to incorporate certain Physicians, by the name of The Massachusetts Medical Society.

AS health is essentially necessary to the happiness of society, and as its preservation or recovery are closely connected with the knowledge of the animal economy, and of the properties and effects of medicines; and as the benefit of medical institutions, formed on liberal principles, and encouraged by the patronage of the law, are universally acknowledged:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That Nathaniel Walker Appleton, William Baylies, Benjamin Curtis, Samuel Danforth, Aaron Dexter, Shirley Erving, John Frink, Joseph Gardner, Samuel Holten, Edward Augustus Holyoke, Ebenezer Hunt, Charles Jarvis, Thomas Kast, Giles Crouch Kellogg, John Linn, James Lloyd, Joseph Orne, James Pecker, Oliver Prescott, Charles Pynchon, Isaac Rand, Sen. Isaac Rand, Micajah Sawyer, John Sprague, Sen. Charles Stockbridge, John Barnard Swett, Cotton Tufts, John Warren, Thomas Welsh, Joseph Whipple, William Whiting, and they hereby are formed into, constituted and made a body politic and corporate, by the name of the Massachusetts Medical Society; and that they and their successors, and such other persons as shall be elected in the manner hereafter mentioned, shall be and continue a body politic and corporate, by the same name forever.

Sect. 2. And be it enacted by the authority aforesaid, That the Fellows of said society may from time to time elect a President, Vice President and Secretary, with other officers as
they shall judge necessary and convenient; and they the Fellows of said society shall have full power and authority, from time to time, to determine and establish the names, number and duty of their several officers, and the tenure or estate they shall respectively have in their offices, and also to authorize and empower their President or some other officer to administer such oaths to such officers, as they the Fellows of said society shall appoint and determine for the well-ordering and good government of said society, provided the same be not repugnant to the laws of this Commonwealth.

Sect. 3. And be it enacted by the authority aforesaid, That the Fellows of said society shall have one common seal, and power to break, change and renew the same at their pleasure.

Sect. 4. And be it enacted by the authority aforesaid, That the Fellows of said society may sue and be sued in all actions real, personal or mixed, and prosecute and defend the same unto final judgment and execution, by the name of the Massachusetts Medical Society.

Sect. 5. And be it enacted by the authority aforesaid, That the Fellows of said society may from time to time elect such persons to be Fellows thereof, as they shall judge proper; and that they the Fellows of said society shall have power to suspend, expel, or disfranchise any Fellows of said society.

Sect. 6. And be it enacted by the authority aforesaid, That the Fellows of said society, shall have full power and authority to make and enact such rules and by-laws for the better government of said society, as are not repugnant to the laws of this Commonwealth; and to annex reasonable fines and penalties to the breach of them, not exceeding the sum of twenty pounds, to be sued for and recovered by said society, and to their own use, in any court of record within this Commonwealth proper to try the same; and also to establish the time and manner of convening the Fellows of said society; and also to determine the number of Fellows that shall be present to constitute a meeting of said society; and also, that the number of said society, who are inhabitants of this Commonwealth, shall not at any one time be more than seventy, nor less than ten; and that their meetings shall be held in the town of Boston, or such other place within this Commonwealth, as a majority of the members present in a legal meeting shall judge most fit and convenient.

And whereas it is clearly of importance, that a just discrimination should be made between such as are duly educated and properly qualified for the duties of their profession, and those who may ignorantly and wickedly administer medicine, whereby the health and lives of many valuable individuals are endangered, or perhaps lost to the community:

Sect. 7. Be it therefore enacted by the authority aforesaid, That the President and Fellows of said society, or other such of their officers or Fellows as they shall appoint, shall have full power and authority to examine all candidates for the practice of physic and surgery, (who shall offer themselves for examination, respecting their skill in their profession,) and if upon such examination, the said candidates shall be found To have one common seal.

May sue and be sued.

Fellows to be elected by the Fellows.

Fellows of said Society empowered to make such laws as are not repugnant to the laws of this Commonwealth.

Where their meetings are to be held.

President and Fellows empowered to examine all candidates for the practice of physic, &c.

1783, ch. 49, § 1. 1802 ch. 173, § 94.
skilled in their profession, and fitted for the practice of it, they shall receive the approbation of the society in letters testimonial of such examination, under the seal of the said society, signed by the President, or such other person or persons as shall be appointed for that purpose.

Sect. 8. And be it further enacted by the authority aforesaid, That if the said President, and such other person or persons so elected and appointed for the purpose of examining candidates as aforesaid, shall obstinately refuse to examine any candidate so offering himself for examination as aforesaid, each and every such person, so elected and appointed as aforesaid, shall be subject to a fine of one hundred pounds, to be recovered by the said candidate, and to his own use, in any court within this Commonwealth, proper to try the same.

Sect. 9. And be it further enacted by the authority aforesaid, That the Fellows of said society may and shall forever be deemed capable in law of having, holding and taking in fee simple, or any less estate, by gift, grant or devise, or otherwise, any land, tenement or other estate, real or personal; provided that the annual income of the whole real estate that may be given, granted or devised to, or purchased by the said society, shall not exceed the sum of two hundred pounds, and the annual income or interest of said personal estate shall not exceed the sum of six hundred pounds; all the sums mentioned in this act, to be valued in silver at six shillings and eight pence per ounce: And the annual income or interest of the said real and personal estate, together with the fines and penalties paid to said society, or recovered by them, shall be appropriated to such purposes as are consistent with the end and design of the institution of said society, and as the Fellows thereof shall determine.

Sect. 10. And be it further enacted, That the first meeting of the said Medical Society shall be held in some convenient place in the town of Boston, and that Edward Augustus Holyoke, Esq. be, and he hereby is authorized and directed to fix the time for holding the said meeting, and to notify the same to the Fellows of said Medical Society. [Nov. 1, 1781.] Add. acts—1738 ch. 49: 1802 ch. 123.

Chap. 16. An Act for apportioning and assessing a Tax of three hundred and three thousand, six hundred and thirty-four Pounds and six pence. [Oct. 31, 1781.]

Chap. 17. An Act laying certain Duties of Excise on certain articles therein mentioned, for the purpose of Paying the interest on Government Securities. [Nov. 1, 1781.] Add. acts—1781 ch. 33: 1782 ch. 13.—All repealed—1782 ch. 33.

Chap. 18. An Act making Provision for the Payment in Specie of such Demands on this Commonwealth, as have, or may hereafter be brought in, or allowed, in Bills of the New-Emission; and for establishing a Rule of Depreciation of said bills, from and after the twenty-seventh day of February, in this present year. [Nov. 1, 1781.]

Chap. 19. An Act for Reviving and Continuing a Law of this Commonwealth, made in the Year of our Lord one thousand seven hundred and seventy-three, entitled, "An Act for establishing and regulating the Fees of the several Officers within this Province, hereafter mentioned." [Nov. 2, 1781.] Further continued—1781 ch. 32. 41.

Chap. 20. An Act to enable the inhabitants and proprietors of the Plantation called Ashuelot, Equivalent, in the County of Berkshire, to tax themselves for past and future taxes that have been or may be laid upon them by the General Court of this Commonwealth. [Nov. 2, 1781.]

Chap. 21. An Act making provision for giving Permits to the Distillers and the Importers of those articles which are subject to an excise duty. [Nov. 2, 1781.] Repealed—1782 ch. 38.
An Act directing the manner in which money shall be raised and levied to defray the charges which may arise within the several counties in this Commonwealth.

WHEREAS by the Constitution of this Commonwealth, it is among other things established, that "no subsidy, charge, tax, impost or duty ought to be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives in the Legislature," so that it is become necessary to make other provision than has been usual for defraying county charges:

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Justices of the Court of General Sessions of the Peace, at the first court which shall be held within each of the counties of this Commonwealth, next preceding the first day of January annually, shall make an estimate of such sum or sums of money as they, according to their best skill and judgment, shall think sufficient to defray the necessary charges of their respective counties for one year, specifying as nearly as may be, the purposes for which such sum or sums may be necessary, and which have been usually considered as county charges; which estimate the clerks of said court are hereby directed to lay before the General Court, from time to time, at their next session after such estimate shall be formed, so that such sum as may be necessary for discharging the county charges of the several counties of this Commonwealth may be regularly laid on the inhabitants of each county respectively.

SECT. 2. And be it enacted by the authority aforesaid, That the sums which shall from time to time be granted or laid on the several counties within this Commonwealth by the General Assembly, for the purposes aforesaid, shall by the justices aforesaid be apportioned on the several towns and places within the respective counties, and by the assessors shall be assessed, and by the collectors or constables collected, and paid in like manner as county taxes have been used and accustomed to be apportioned, assessed, collected and paid, agreeable to the laws of this Commonwealth, unless in such cases where the same shall be otherwise ordered by any Act of the General Assembly. [Nov. 2, 1781.] Add. act—1792 ch. 26.

An Act for apprehending and securing deserters from the Continental Army; and from the fleets and armies of our Allies; and for repealing all Acts heretofore made and passed for that purpose. [Nov. 2, 1781.] Add. act—1782 ch. 54.

An Act in addition to an Act, entitled, "An Act to provide for the security and payment of the balances due to the Officers and Soldiers of the Massachusetts line of the army," [Feb. 11, 1782.] See 1784 ch. 25.

An Act for explaining and altering a certain clause in the last Tax-Act, with regard to the rule given for estimating estates, and for pointing out the qualification of voters in Town affairs.

WHEREAS in and by an Act made in the year of our Lord one thousand six hundred and ninety-two, entitled, "An Act for regulating of Townships, choice of Town Officers and setting forth their power," it is enacted, that the freetholders and inhabitants of each town, who are ratable at twenty pounds estate in one single rate, besides the poll, are empowered to

Chap. 22.

4 W. & M. ch. 12.

Chap. 23.

Chap. 24.

1781 ch. 6.

Chap. 25.

Preamble.

4 W. & M ch. 13.
assemble and to give their votes in the choice of town officers, in the month of March annually; the mode for estimating of estates being more fully pointed out in an additional Act, made in the year of our Lord one thousand seven hundred and forty-two: But whereas the mode of estimating estates given for the direction of assessors in the last Tax Act, is very materially different from the mode prescribed in said Acts, which was not designed nor intended to alter the qualification of voters as provided by the Acts aforesaid:

*Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That every person who is an inhabitant within any town in this Commonwealth, who shall pay to one single tax, besides the poll or polls, a sum equal to two-thirds of a single poll tax, shall be, and hereby is entitled to all the privileges, with regard to voting in any town-affairs, as voters are entitled to by the Acts aforesaid.*

*Provided nevertheless. That where tenants live in the same town with the landlord, the real estate shall not be counted to the tenant, the clause in the Tax-Act to the contrary notwithstanding: And all selectmen and moderators are hereby directed to govern themselves accordingly.* [Feb. 20, 1782]

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**Chap. 26.** An Act for altering the time for holding the Supreme Judicial Court in the County of Bristol. [March 4, 1782.]

**Chap. 27.** An Act for repealing the several laws prohibiting the Exportation of Provisions, and Masts and Spars out of this State. [March 4, 1782.]

**Chap. 28.** An Act for apportioning and assessing a Tax of two hundred thousand pounds. [March 5, 1782. Repealed in part—1782 ch. 17.]

**Chap. 29.** An Act for granting a Lottery for erecting a Bridge over Chebebe River, on the Road leading from Springfield to Hadley, in the County of Hampshire. [March 6, 1782.]

**Chap. 30.** An Act in addition to three several acts, one entitled, *"An Act to supply the treasury with the sum of four hundred thousand pounds money;"* another entitled, *"An Act to empower the Treasurer to receive Government Securities on Loan to the amount of eight hundred thousand pounds;"* and one other Act entitled, *"An Act in addition to an Act, entitled, "An Act to empower the Treasurer to receive Government Securities on Loan to the amount of eight hundred thousand pounds."* [March 6, 1782.]

**Chap. 31.** An Act more effectually to prevent the Desertion of French Sailors. [March 6, 1782. Add. act—1786 ch. 78.]

**Chap. 32.** An Act for continuing a law of this Commonwealth made in the year of our Lord one thousand seven hundred and seventy-three, entitled, *"An Act for establishing and regulating the Fees of the several Officers within this Province hereafter mentioned,"* which Act was revived by an Act passed the last session of the General Court to continue the same to the end of the present sessions. [March 7, 1782.] Further continued—1781 ch. 41.

**Chap. 33.** An Act in Addition unto and for amending and explaining the Act made in the year one thousand seven hundred and eighty-one, laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities. [March 7, 1782. Altered—1782 ch. 13. Both repealed—1782 ch. 33.]

**Chap. 34.** An Act for the establishment of a National Bank; and for preventing the establishment of every other Bank; and to prevent the passing of forged Bank Bills. [March 8, 1782.] Altered as to punishment of offences—1785 ch. 21, § 5.

**Chap. 35.** An Act to incorporate the committee of the Congregational Church and Society in the Town of New-Salem, for certain purposes. [May 3, 1782.] Repealed—1797 ch. 41.
An Act providing a more speedy Method of recovering Debts, and for preventing unnecessary Costs attending the same. [May 3, 1782.] Repealed—1792 ch. 21.

An Act for granting to the United States in Congress assembled, a permanent Revenue, for the purpose of discharging the debts which have arisen, or may arise, in prosecuting the present war with Great Britain. [May 4, 1782.]

An Act for establishing a Court of General Sessions of the Peace, and Court of Common Pleas for the County of Cumberland, to be holden at Falmouth in said County, on the last Tuesday of May annually; and for discontinuing the courts which are by law appointed to be holden for said County on the last Tuesday of March annually. [May 6, 1782.]

An Act for raising by Lottery the sum of twelve hundred pounds, for the purpose of building a Paper Mill, and promoting the manufactory of Paper in Milton, [May 7, 1782.]

An Act empowering the Court of General Sessions of the Peace in the County of Cumberland, to lay out a County Road through the Plantations of Bridgetown, Raymout town and Otisfield. [May 7, 1782.]

An Act for further continuing a Law of this Commonwealth, made and passed in the year of our Lord one thousand seven hundred and seventy-three, entitled, "An Act for establishing and regulating the Fees of the several Officers within this Province hereafter mentioned." [May 9, 1782. Expired.

An Act to prolong the Time for Redemption of estates mortgaged by Conspirators or Absentees before the nineteenth day of April, one thousand seven hundred and seventy-five.

WHEREAS divers persons to whom the estates of conspirators or absentees were mortgaged before the nineteenth of April, one thousand seven hundred and seventy-five, have since taken possession of said estates, by suing out their mortgages or otherwise, and the time limited by law for the redemption of such estates has elapsed, and the mortgagees stand seized in fee of such mortgaged estates, although, in many instances, the sums for which said estates were mortgaged are far below their just value; by means whereof many individuals, creditors of said absentees as well as the public, are deprived of such part of said estates as in justice belong to them, or enure to the Commonwealth after payment of the sums due on said mortgages:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the time for redemption of the estates of persons commonly called conspirators or absentees, which have been taken possession of by any mortgagee since the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, be and hereby is extended to the first day of January one thousand seven hundred and eighty-three.

Sect. 2. And be it also enacted by the authority aforesaid, That the creditors of such conspirators or absentees, whose estates have been mortgaged and taken possession of, as aforesaid, shall have the same power and authority to redeem such estates, within the time limited as aforesaid, as the original mortgagor would have had to have redeemed the same within three years, in case he had not withdrawn himself from this Government.

Sect. 3. And be it further enacted by the authority aforesaid, That the Treasurer (for the time being) of this Commonwealth shall, in behalf thereof, have, in all respects, the same right, within the time limited as aforesaid, in redeeming the estates

Chap. 36.

Chap. 37.

Chap. 38.

Chap. 39.

Chap. 40.

Chap. 41.

Chap. 42.

Preamble.

April 30, 1779.

1780 ch. 48. 49. 50. 52. 53.

1782 ch. 69. 70.

Extending the time for redemption of conspirators or absentees estates to the 1st of January 1783.

Credits empowered to redeem estates, within the times limited as the original mortgagor might.

The Treasurer to have the same right in redeeming the estates of absentees.
of conspirators or absentees, of which possession has been taken, as aforesaid, that the mortgagors or their heirs by law have heretofore had, for redeeming mortgaged estates; any law of this Commonwealth to the contrary notwithstanding.

Provided nevertheless, That if it shall be made to appear that any of the estates of such conspirators or absentees, of which possession has been taken, and the time of redemption elapsed, have since, bona fide, been sold by the said mortgagee; in such case, the provision made by this Act for prolonging the term for the redemption of such mortgaged estates, shall not operate, but the creditors of such conspirator or absentee, whose estate has been sold as aforesaid, or the Treasurer of this Commonwealth, for the time being, are empowered to demand and recover, in any of the courts of law within this Commonwealth proper to try the same, of the said mortgagee or mortgagees, such sum or sums as the said estate was sold for, more than is sufficient for the payment of the sum for which such estate was mortgaged.

Sect. 4. And be it further enacted, That where any mortgagee has taken possession of the estate so mortgaged, by virtue of a former law of this State, and has made any improvements by adding new buildings, or otherways repaired the same; then, and in that case, the value of said improvements, properly adjusted, shall be allowed the mortgagee.

Sect. 5. And be it further enacted, That if any person or persons, creditors to said estate, appears to pay off and redeem the mortgage, or the Treasurer of this Commonwealth, within the limited time before mentioned, they shall not only pay the judgment of court recovered on said mortgage, but also the interest from the time the mortgagee took possession, allowing the original mortgagor the amount of the rent the estate is let for, or if the mortgagee improves the estate himself, he shall pay for the improvement thereof, what any three judicious persons mutually chosen shall determine to be the value, provided the parties cannot mutually agree between themselves. [July 6, 1781.]
An Act against Blasphemy.

BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That if any person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing, or reproaching Jesus Christ, or the Holy Ghost, or by cursing, or contumeliously reproaching the Holy Word of God, that is, the canonical scriptures, contained in the books of the Old and New Testaments, or by exposing them, or any part of them, to contempt and ridicule; which books are as follows: Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Jeremiah. Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi. Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philippians, Colossians Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelations; every person so offending shall be punished by imprisonment not exceeding twelve months, by sitting in the pillory, by whipping, or by sitting on the gallows, with a rope about the neck, or binding to the good behaviour, at the discretion of the Supreme Judicial Court before whom the conviction may be, according to the aggravation of the offence. [July 3, 1782.]

An Act establishing a Supreme Judicial Court within the Commonwealth.

SECT. 1. BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That there shall be a Supreme Judicial Court within this Commonwealth, to be held and kept at the several times and places by law appointed, by one chief justice and four other justices, each of whom shall be an inhabitant of this Commonwealth, of sobriety of manners and learned in the law, to be appointed and commissioned as is by the Constitution provided; and they, or any three of them, shall be a court, and have cognizance of pleas real, personal, and mixed, and of all civil actions between party and party, and between the Commonwealth and any of the subjects thereof, whether the same do concern the realty, and relate to right of freehold, inheritance, or possession; whether the same do concern the personality, and relate to any matter of debt, contract, damage, or personal injury; and also all mixed actions which do concern the realty and personality, brought legally before the same Supreme Judicial Court, by appeal, review, writ of error, or otherwise; and in all such actions, real, personal, and mixed, to give such judgment, and award such execution, as the common rules of justice and laws of this Commonwealth shall direct; and shall take cognizance of all capital and other offences and misdemeanours whatsoever, of a public nature, tending either to a breach of the peace, or the oppression of the subject, or raising of faction, controversy, or debate, to any man-
ner of misgovernment; and of every crime whatsoever that is against the public good; and shall, by virtue of their office, be several conservators of the peace throughout the Commonwealth. And upon all persons duly and legally convicted before the said court of crimes, offences, or misdemeanours, to inflict such punishment as by the laws of the Commonwealth is provided. And in case of legal conviction, where no punishment by statute law is provided, then the said court shall punish the person so convicted, and according to the common usage and practice within this Commonwealth, not repugnant to the Constitution, according to the nature of the offence.

Sect. 2. *And be it further enacted, That the same Supreme Judicial Court may, by certiorari or other legal methods, cause to be brought before them as well indictments or other criminal prosecutions pending in, as the records of sentences, orders, decrees, and judgments of any court of inferior criminal jurisdiction, and to proceed, order, and award thereon, as shall be by law provided and directed. And the said Supreme Judicial Court is empowered to impose and administer all oaths, as well those that are necessary for promoting justice between party and party, as those necessary to the conviction and punishment of offenders; and to punish, at the reasonable discretion of the court, all contempts committed against the authority of the same: And the said court shall have power to issue all writs of prohibition and mandamus, according to the law of the land, to all courts of inferior judiciary powers, and all processes necessary to the furtherance of justice, and the regular execution of the laws.*

Sect. 3. *And it is further enacted, That all writs and processes of the same court shall be in the name of the Commonwealth of Massachusetts, bear test of the first justice who is not a party to the suit, and shall be under the seal of the same court, and signed by the clerk.*

Sect. 4. *And it is further enacted, That the same Supreme Judicial Court shall and may, from time to time, make, record, and establish all such rules and regulations with respect to the admission of attorneys ordinarily practising in the said court, and the creating of barristers at law, and all other rules respecting modes of trial, and the conduct of business, as the discretion of the same court shall dictate. Provided always, That such rules and regulations be not repugnant to the laws of the Commonwealth.*

Sect. 5. *And it is further enacted, That the Justices of the said Supreme Judicial Court, or any three of them, shall be empowered to adjourn the same court, from time to time, as may be necessary to the public good. And when it shall so happen, that any of the justices of the said court shall providentially be detained from attending at the time when the same court, by law, or by any previous adjournment, is to be held, by means whereof there cannot be a competent court, any two justices of the same court may, by writ under their hands and seals, adjourn the same court to such further day as shall be expressed in the same writ; and the sheriff of the county, or his deputy, shall read such writ audibly in the court-house, or place
where the court was to be holden, and post up an attested copy thereof in some public and conspicuous place there, and shall cause publication to be made of the same in some other of the most public places in the county. And the Justices of the Supreme Judicial Court shall, from time to time, appoint a clerk, or clerks, to attend said court, and to record the proceedings thereof, and to do all other things which shall be by law their duty to do; which clerk, or clerks, shall be duly sworn to the faithful performance of their office, and shall hold the same during the pleasure of the said court. [July 3, 1782.] Add. acts—1796 ch. 95: 1801 ch. 6.

An Act directing the Appraisement of certain articles of Personal Estate, when taken to satisfy Executions at the suit of any private person or persons. [July 3, 1782.] Expired July 1, 1783.

An Act establishing Courts of Common Pleas.

Sect. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That there shall be held and kept within each county of this Commonwealth, at the times and places by law appointed, a Court of Common Pleas, by four substantial, discreet, and learned persons, each of whom to be an inhabitant of the county wherein he shall be appointed; which persons shall be appointed and commissioned by the Governor, as is provided by the Constitution, and they, or any three of them, shall be a court, and have cognizance of all civil actions of the value of more than forty shillings, arising or happening within their county, triable by common or statute law, of what nature or species soever the same may be, and shall be fully empowered, when qualified as the Constitution directs, to give judgment, and award execution accordingly, and to administer all necessary oaths, and to do and order whatsoever by the Constitution and laws shall be their duty to do. And all writs and processes issuing from the several Courts of Common Pleas, shall be in the name of the Commonwealth, and shall be of the first justice who is not a party, and be under the seal of the court, and signed by the clerk thereof, and shall have force, be obeyed and executed, in every county within the Commonwealth. And all original processes in the said courts shall be summon, capias or attachment, which shall be served and executed fourteen days before the day of the sitting of the court whereinto they are returnable.

Sect. 2. And be it further enacted, That any party aggrieved at the judgment of the Court of Common Pleas, upon any action, may appeal therefrom to the next Supreme Judicial Court to be held within or for the same county, and the party so appealing, before his appeal shall be allowed, shall recognize to the adverse party, in a reasonable sum to prosecute his appeal with effect, and to pay all intervening damages and cost; and no execution shall be issued by the Court of Common Pleas upon the judgment appealed from.

Sect. 3. And be it enacted, That the appellant shall produce at the court appealed to, attested copies of the writ, judgment, and all papers and evidence filed in the case at the Common Pleas; and if any appellant shall neglect to produce such copies, or shall fail to prosecute his appeal, the Supreme Judicial Court shall, upon complaint thereof made by the appellee, affirm the former judgment, with additional damages and cost. And the Justices of the said Court of Common Pleas shall have power from time to time to make and establish all necessary rules for the orderly conducting of business in the same court, provided such rules are not repugnant to the laws of the Commonwealth, or to those rules established by the Supreme Judicial Court.

Sect. 4. And it is further enacted by the authority aforesaid, That the Court of Common Pleas shall have power to adjourn the same, from time to time, as may be necessary for the public good. And when it shall so happen, that any of the justices of the said court shall be deceased, or shall be providentially detained from attending at the time and place at which said court, by law, or by any previous adjournment, was to have been held, by means whereof there cannot be more than two of the said justices present, then in such case, any two of the justices of the same court being there present, shall, by writ under their hands and seal, adjourn the same court unto a further day, expressed in such writ; and the sheriff of the county, or his deputy, shall read the same writ in the court-house, or place where such court was to have been held, and shall place an attested copy of the same writ up in some public and conspicuous place there, and shall cause publication thereof to be made in some other of the most public places in the county. And the justices of the said Court of Common Pleas shall have power, from time to time, to appoint a clerk to attend them, and record their proceedings; which clerk shall be under oath to the faithful performance of the duties of his office, and shall hold his office during the pleasure of the said court.

To appoint a clerk or clerks.

1796 ch. 95. 1811 ch. 8. 1813 ch. 77. 199. 193 ch. 37.

Chap. 11.

II W. III. ch. 2. 1803 ch. 154. 1805 ch. 116. Court of Common Pleas, jurisdiction, &c. 1807 ch. 123. Writs and processes to be in the name of the Commonwealth. And to be summon, capias or attachment. Appeal to the Supreme Judicial Court. 1803. ch. 134, § 5.

Appellants to produce attested copies of the writ, &c. Court to establish rules for business.

To have power to adjourn.

In case, Empowered to appointa clerk. 1796 ch. 95 § 4. 1811 ch. 8. 1813 ch. 77. 199 § 2. 1815 ch. 37.
Sect. 5. And it is further enacted, That the petit-jurors in the Court of General Sessions of the Peace and Court of Common Pleas, to be held within and for the county of Suffolk, shall not be obliged to give their attendance until the second Tuesday of said court's sitting; and at the said counties, upon the second day of the said court's sitting, and venues shall be issued accordingly.

Sect. 6. And it is also enacted, That no action shall be entered at any Court of Common Pleas, after the first day of the sitting thereof; and all pleas in abatement to the writ, and demurrers to declarations, shall be made, signed, and filed, before the jury is impaneled.

Provided nevertheless, That where, by any inevitable misfortune or accident, the plaintiff shall be prevented from entering his action upon the first day of the court's sitting, he may, upon making the same appear to the court, enter his action at any time before judgment is given for cost to the defendant. [July 3, 1782.]


Chap. 12.

An Act for the better regulation of the Treasury of this Commonwealth; and for appointing an Assistant-Treasurer. [July 3, 1782.] Repealed—except so much as obliges the Assistant-Treasurer to account for his conduct while in office—by an add. act—1782 ch. 24.

Chap. 13.

1751 ch. 17.

1751 ch. 33.

Chap. 14.

11W. III. ch. 1.

13W. III. ch. 15.

1367 ch. 11. 57.

1809 ch. 18.

1311 ch. 81. 93.

1813 ch. 197.

1818 ch. 120.

1819 ch. 139.

1821 ch. 51.

Warrants and processes to be served under the seal of the court, signed by the clerk.

Appeal from the sentence to the Supreme Judicial Court.

Proviso.

The Court empowered to adjourn; and to appoint a clerk to be under oath.

An Act in addition unto an Act, entitled, "An Act for laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities," and for altering another Act, entitled, "An Act in addition unto, and for amending and explaining the Act made in the year one thousand seven hundred and eighty-one, laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities." [July 3, 1782.] Repealed—1782 ch. 33.

Chap. 15.

An Act for establishing Courts of General Sessions of the Peace.*

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall be held in each county in this Commonwealth, at the times and places by law appointed, a Court of General Sessions of the Peace, by the Justices of each county, who are hereby empowered to hear and determine all matters relative to the conservation of the peace, and the punishment of such offences as are cognizable by them at common law, or by the acts and laws of the Legislature, and to give judgment, order, or sentence thereon, as the law directs, and to award execution accordingly.

Sect. 2. And be it further enacted by the same authority, That the warrants and processes of the said Court of General Sessions of the Peace, for the apprehending and bringing to trial any person against whom an indictment is found, or a complaint filed in the same court, for any crime whereof the same court hath cognizance, shall be under the seal of the court, shall be signed by their clerk, and run into, and be executed in any county of the Commonwealth.

Sect. 3. And be it further enacted, That any person against whom a sentence shall be given, in the Court of General Sessions of the Peace, may appeal therefrom unto the Supreme Judicial Court, then next to be held within or for that the county. Provided, That no appeal shall be granted, unless it be claimed at the time of declaring the sentence, and unless the appellant shall, before the rising of the court, recognize to the Commonwealth, and, where by the sentence a forfeiture accrues to a subject, to him, in a reasonable sum, with surety or sureties, for his personal appearance at the court appealed to, and for the prosecution of his appeal there with effect, and to abide the sentence therein given, and to keep the peace, and be of good behaviour in the mean time; and the party appealing shall be in custody, until he shall so recognize; and the party appealing shall produce, at the court appealed to, a copy of the sentence given against him, with a copy of all other proceedings had in the cause, and shall enter his appeal, and pay all such fees in the said Supreme Court as shall be by law provided in other causes: And if he shall fail in the prosecution of his appeal, or in any of the particulars beforementioned, his recognizance shall be forfeited; and the Supreme Judicial Court shall award such sentence against him, for the offence whereof he is charged, as they ought to do in case he stood convicted by verdict of a jury in said court; and may grant as a capias to bring him into court to receive such sentence.

Sect. 4. And be it further enacted by the authority aforesaid, That the said Court of General Sessions of the Peace shall have power to adjourn the same, from time to time, as may be necessary for the public good; and to appoint a clerk to attend said court, and to record the proceedings thereof; which clerk shall be duly sworn to the performance of the duties of his office; and shall hold the same during the pleasure of the said court. [July 3, 1782.]

* The powers conferred and duties imposed by this act were transferred to the Courts of Common Pleas, by statute 1903 ch. 154, § 3.
An Act to remove the obstructions, and open passage-ways for the fish called Alewives, Shad, and other fish, up Neponset-River. [July 3, 1782.] Add. act—1783 ch. 63: 1784 ch. 71. All repealed 1790, ch. 45.

An Act to appropriate forty thousand Pounds of the Continental Tax of two hundred thousand Pounds, for obtaining a Loan of twenty thousand Pounds, and for the security and payment of the same. [July 5, 1782.]

An Act to repeal a certain clause in an Act made and passed in the year of our Lord one thousand seven hundred and eighty-two, entitled, "An Act for apportioning and assessing a Tax of two hundred thousand Pounds;" and for certain other purposes hereafter mentioned. [July 5, 1782.]

An Act for granting a Lottery for repairing the bridge over the River Parker, in the County of Essex. [Oct. 2, 1782.]

An Act directing and regulating the Process of Outlawry.

SECT. 1. BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That when any person that now is charged, or hereafter shall stand charged, of any criminal offence before the Supreme Judicial Court of this government, by the indictment or presentment of a grand jury, whether the same indictment or presentment be originally found in that court, or removed thither from any inferior jurisdiction, by appeal, or writ of certiorari, shall abscond to avoid answering, or abiding and performing the judgment that may be given thereon, whether such absconding be before or after the jury shall indict or present the offender, a writ shall issue to the sheriff of the county where such offender was an inhabitant or resident at the time of finding the same bill, directing him to make known unto such offender, that unless he shall appear on the first day of the next sitting of the said Supreme Judicial Court, and there traverse the same charge, and abide the judgment that may be given thereon, or appear and give such security therefor, by way of recognizance, as the said court shall order, such person will then and there be declared an outlaw, and be subjected to all the penalties and disabilities in this Act declared to be incident to a person under sentence of outlawry. And the mode of executing the said writ of scire facias, shall be by leaving an authenticated copy thereof, certified by the sheriff, at the offender's dwelling-house, or last place of abode, sixty days at the least before the same process shall be returnable, and shall cause an abstract or notification of the subject-matter in the same writ mentioned, sixty days before the return day, at the least, to be printed in one of the most public weekly newspapers, and to be continued five several weeks inclusive, and shall cause him to be publicly called, in every Court of General Sessions of the Peace in his county, that shall be holden while the same process shall be in his custody; which writ of scire facias, being served and returned in manner aforesaid, and filed in court, shall be entered on the docket, and the party against whom the same issued, after having been publicly called in the said Supreme Judicial Court, to appear and answer the charge alleged against him as aforesaid, if he shall not appear upon such notice and proclamation, his default shall be recorded, and such offender may by the same court be declared an outlaw, without any other act or ceremony; any former law, usage, or custom to the contrary notwithstanding.
Provided always, It shall be in the power of the said court, when the offence charged shall be by law bailable, to continue the same sciire facias, or suspend passing judgment of outlawry thereon, until the next or some succeeding term, in case sufficient bail shall be given for the offender's answering and abiding the judgment of the said court thereon. And that it may regularly and certainly be determined when a person may be said to have absconded to escape punishment;

Sect. 2. Be it further enacted, That any person, after having appeared and plead to an indictment or presentment, who shall have departed without leave of the court, or shall have broken gaol after commitment upon, and before conviction on, the charge alleged in the bill, or shall fail or neglect to appear and answer according to the tenor of a recognizance regularly taken for that purpose, or when the sheriff of the same county whereof the offender was an inhabitant or resident, at the time of his committing the offence for which he shall stand indicted, or his deputy, shall make return upon a capias issued in consequence of the bill, wherein the term of four months, at the least, shall have elapsed between the issuing the capias and the return day thereof, that after making diligent search and inquiry after such offender, he could not find him in his precinct, shall be deemed and taken as sufficient evidence of the absconding of such person, within the intent of this Act.

Sect. 3. And be it further enacted, That a capias and an alias capias issued from the Court of General Sessions of the Peace, on a bill of indictment or presentment there found, wherein fifty days, at the least, shall have elapsed between the issuing and return of the same writs respectively, and returned by the proper officer, that after diligent search and inquiry after such offender, he could not find him in his precinct (before the removal of the record into the Supreme Judicial Court) shall render the issuing a like process in the Supreme Judicial Court before sciire facias utlagatum unnecessary.

Sect. 4. And be it further enacted, That where a capias shall issue from the Supreme Judicial Court, to apprehend an offender on a bill of indictment or presentment, in any county where the said court shall be held but once a year, the same capias may be made returnable to some session of the said court in some other county, at the expiration of five or six months, if the said court shall so order, to the end sciire facias utlagatum may timely issue returnable to the next term, if the offender should not be taken on the capias.

Sect. 5. And be it further enacted, That all persons against whom judgment of outlawry shall be given, shall, during the time the same judgment shall continue in force, be and hereby are disabled from bringing or maintaining in their own right, any civil action or suit, in any court of law or equity within this government, excepting a writ of error for reversing his outlawry, and shall be under such other disabilities and disqualifications in civil society as a person convicted and sentenced for the offence charged in the bill upon which he may be outlawed: And in all cases where a greater forfeiture does not
by law accrue to the Commonwealth upon a conviction and judgment on such bill of indictment, shall forfeit the issues and profits of all his real estate during the life of the outlaw, in case the judgment of outlawry shall so long remain in force, and be further liable to be apprehended upon capias ultagatum, and sentenced in the same manner as if he was convicted by a jury of the charge alleged in the bill.

Sect. 6. And be it further enacted, That the real estate of every person outlawed, shall be held liable, and be bound, from the time of issuing the scire facias ultagatum to respond the judgment that shall be given on the indictment or presentment, so far as relates to the fine and cost.

Sect. 7. And be it further enacted by the authority aforesaid, That the lands and tenements of all persons recognizing to the use of this government, before any authority duly authorized and empowered to take the same, are, and shall be, liable to respond the sum mentioned in the same recognizance, from the time the same is taken and acknowledged, notwithstanding any transfer or alienation thereof.

Sect. 8. And be it further enacted, That every offender that may be outlawed, upon his appearing in open court, and confessing the charge, and receiving sentence thereon, or appearing and traversing the charge, shall be acquitted by a jury, or on demurrer, or any other plea, the same shall be adjudged insufficient in law to compel the person accused to answer thereunto, or support a judgment thereon: In every such case, the proceeding shall be construed to operate as a full and effectual reversal of the judgment of outlawry, as though a formal reversal had been given upon a writ of error expressly brought for that purpose. Provided the appearance upon which such acquittal shall be given shall be voluntary and without compulsion, and within one year and a day after judgment of outlawry shall be pronounced, and the cost accruing on the process of outlawry shall be first satisfied and paid. [Oct. 2, 1782.]

An Act to create and erect a Corporation by the name of The Trustees of Dum-mer Academy, in the County of Essex. [Oct. 3, 1782.]

An Act for the repealing of one Act of this Commonwealth, made and passed on the third day of May last, entitled, "An Act providing a speedy method of recovering Debts, and for preventing unnecessary costs attending the same;" and for making other provision which may better answer the ends designed by the said Act.

WHEREAS among other defects in the said Act, there is no certain future day set therein after the day of the acknowledgment of the debt (proposed to be taken) for the payment of the same, or for issuing the writ for the levying thereof:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the said Act, entitled as aforesaid, be, and hereby is repealed; and that every part thereof be hereafter held and taken to be null and void. And that from and after the first day of December, one thousand seven hundred and eighty-two, every Justice of the Peace for any county in this Commonwealth shall severally have power and authority, within his county, to take recognizances for the payment of debts, of
any person or persons (by law capable of binding him or herself) who shall come before him for that purpose, according to such form, or according to the effect and meaning of such form as hereafter ensueh,

That is to say,

Know all men that I, C. D. of in the County of do owe unto E. F. the sum of the lawful money of Massachusetts, to be paid to the said E. F. on the day of 17 and if I shall fail of the payment of the debt aforesaid, by the time aforesaid, I will and grant, that the said debt shall be levied of my goods and chattels, lands and tenements, and in want thereof, of my body. Dated at this day of in the year of our Lord, 17

Witness my hand and seal, C. D.

Acknowledged the day and year last aforesaid,

Before A. B. Justice of the Peace.

Sect. 2. And be it further enacted by the authority aforesaid, That every such recognizance shall be made and written on a piece of paper or parchment; and the Justice of the Peace taking the same shall immediately cause it to be fairly recorded at large, in a book to be therefor by him provided and kept; which original recognizance, after the same shall be recorded as is above directed, at the request of the consee or conuses, or of the person or persons to whom the remedy or executive process on such recognizance shall by law accrue (in case of the decease of any or all of them) shall be delivered to him or them so requesting it. And every consee or conuses, his or their legal representative or representatives, for default of the payment of the debts contained in such recognizances, or any part of such debts by the time therein set and expressed for the payment thereof, shall have in every point, respect and degree, against the consee or conuses, the survivor or survivors of them, his or their heirs, executors and administrators, and the heirs, executors or administrators of the last survivor of such conuses (where there shall be such) the like process or processes, action and remedy, execution or executions, alias and pluries, as hath been hitherto had, used and accustomed, and may at this time be lawfully had, used, done, or made against them respectively, of and upon a judgment of any court of record in this Commonwealth on an action of debt in full force, unreversed and not satisfied. And for the speedy obtaining of such debts, the Justice of the Peace who took such recognizance, at any time within three years from and after the day set and expressed therein for the payment of the debt or any part thereof expressed in such recognizance, at the request of the consee or conuses named therein, or in case of their death, at the request of the person or persons to whom the remedy or chose in action thereof shall be cast by law; and upon his or their producing and delivering to him such original recognizance uncancelled and
without any receipt of payment or satisfaction of the sum alleged to be then payable and due underwritten or indorsed, and lodging the same with the said justice, he shall award and make out on such recognizance a writ or process of execution for the levying of the whole sum, which, by such recognizance and the receipts (if any there be) entered thereon, appear to be then due and payable, of the same nature and effect, against the body or bodies, and estate real and personal of the consors, or consors, as by the laws of this Commonwealth a judgment-creditor is entitled to have for the levying and satisfying any sum or sums of money recovered and due to him, by the judgment of any court of record in this Commonwealth, on an action of debt in full force. And such process for the execution of such recognizance may and shall be directed, executed and returned by, all and any such officer and officers as the writ or process for the execution of the judgment of any court of record, by the laws of this Commonwealth, may and ought to be directed to and returned by. And all and every such officer and officers for any town or county in this Commonwealth, shall have the like powers and authority, and shall be under the like obligations in all respects and regards whatsoever, to execute and return such writ or process made upon such recognizance by such Justice of the Peace empowered by this Act to award the same, as he or they by law have, and are under, to execute and return a writ of execution on any judgment of a court of record, in an action of debt; and shall be subject and liable to all the like action and actions for any fraud or falsehood, neglect, misfeasance and malfeasance, in or concerning the executing or returning of any such process for the executing of such recognizance aforesaid, as he or they by law are liable and subject to for any defaults, neglects, frauds, falsehoods, delinquencies or errors whatsoever, touching, concerning, or in anywise relating to the execution or return of any writ or process on any judgment of a court of record in an action of debt. And every writ or process for the executing such recognizance may run into any county or place (and is hereby made awardeable into any county or place in this Commonwealth) and may and shall be there executed by the officer or officers of such county, town or place by law having the execution and return of writs, to whom it shall be directed. And the writ or process for the executing of such recognizance as is aforesaid, shall be in the form, or to the effect and meaning of the form which here followeth, to wit:

The Commonwealth of Massachusetts.

[Seal.] To the Sheriff of the County of his
Under sheriff or Deputy, or either of the Constables of the Town of in the said County of Greeting.
BECAUSE C. D. of in the county of
on the day of in the year of our Lord 17 before A. B. Esquire, one of the Justices of the Form.

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Peace for the said county of acknowledged that he
was indebted to E. F. of in the county of in the
sum of which he ought to have paid on the
day of and remains unpaid,
as it is said:

We command you therefore, that of the goods, chattels, or
real estate of the said C. D. within your precinct, you cause to
be paid and satisfied unto the said E. F. at the value thereof in
money, the sum last aforesaid, with more for this
writ, and thereof also to satisfy yourself your own lawful fees:
And for want of goods, chattels, or real estate of the said
C. D. to be found within your precinct, to the acceptance of the
said E. F. to satisfy the sums aforesaid, and your said fees; we
command you to take the body of the said C. D. and him com-
mit unto our gaol in our county of aforesaid, there to
be detained in the said gaol until he pay the full sums above-
said with your said fees, or that the said C. D. be discharged
by the said E. F. the creditor, or otherwise by order of law.
Hereof fail not, and make return of this writ, with your doings
therein, unto the above-named A. B. within sixty days next
coming. Witness the said A. B. at the day of
in the year of our Lord 17 A. B.

Sect. 3. And it is further enacted, That in case at the time
of awarding such writ of execution, there shall, by reason of
death, happen to be any change of the person or persons who
by law shall have the right to sue out the same, or of the per-
s ons chargeable with the payment of the contents of the recog-
nizance, from the time when it was taken; the form of the
said writ shall be so varied from the foregoing form, as to make
it take effect, according to the operation of the law upon the
case at the time of the writ's issuing.

Provided always, That in what manner soever the chose in
action may be changed by the death of one or more of the co-
nuees, the property and interest in the debt shall always in that
case vest in such person or persons as a debt which is due to
joint-merchants does by the law-merchant; and that the right
of survivorship shall not take place with regard to the property
in the debt.

Sect. 4. And be it further enacted by the authority aforesaid,
That no writ of this sort shall be awarded in such form as to make
the body or bodies of the heir or heirs at law of the conusor
or consors, or the proper goods or estate of the executors or
administrators liable to be taken in satisfaction of the said
writ: But in case of the death of any conusor or consors of
this sort, such writ shall run against such person, persons and
estate, as a writ of execution on a judgment of a court of re-
cord in an action of debt would by law run. In case the judg-
ment debtor or debtors, or any of them, were dead. And that
every person and persons that shall be grieved and injured by
the wrongful suing out and executing of any writ or process of
execution of this sort, shall have all the like remedy and re-
medies in the law as in case a writ of execution on any judg-
ment of a court of record in debt had been unjustly and wrong-
fully sued out and executed upon him or them.

Sect. 5. And be it further enacted, That in case at any time
it should happen, that full three years shall have elapsed from
and after the time set and limited in and by such recogn-
izance for the payment of the contents thereof, without any
payment made and underwritten or indorsed, and without any
writ of execution having been sued out thereon; or in case any
payment or payments of part shall have been made and under-
written, or indorsed at any time or times after the time set and
expressed for the payment of the contents, and three years shall
have elapsed from and after the last of such payments, and no
writ of execution shall have been sued out within three years
from the last payment; no writ of execution shall be award-
able in either of such cases, until a writ of seire facias shall
have been sued out from a court in which by law an original
action for a like sum might have been brought and served, and
return thereof made as by law is directed; but after that shall
have been done, and upon the defendant's non-appearance, or
not shewing sufficient cause, and the plaintiff's producing and
filing the original recognizance in the court from which the
seire facias issued, the court shall proceed to award execution
for what shall appear to be due on such recognizance with the
lawful costs.

Sect. 6. And be it further enacted by the authority aforesaid,
That in case of the death of the Justice of the Peace, who shall
have taken any such recognizance as the aforesaid, or of his
removal out of the Commonwealth or otherwise, where no writ
of execution thereon has been sued out, and returned satisfied;
in every such case, any creditor or creditors who shall have
any such recognizance taken before such deceased or removed
Justice, and shall file the same in the Court of Common Pleas
for the county where either the creditor or the debtor dwells,
shall be entitled to sue out a writ of seire facias thereon: And
the debtor being served with such writ in the manner above pre-
scribed, and not appearing or shewing sufficient cause why ex-
cution should not be had, the court shall proceed to award
execution for what shall appear to be due with lawful costs.

Sect. 7. And be it further enacted, That any person or per-
sons, in whose favour any acknowledgment has been taken or
may be taken on or before the first day of December next,
agreeable to the Act mentioned as above, to be repealed, shall
be entitled to the benefit of the same proceeding thereon, as he
might have had if the same Act had continued in force and un-
repealed; any thing in this Act to the contrary notwithstanding.

Sect. 8. And be it further enacted, That the fees to the Jus-
tice of the Peace who shall take recognizances pursuant to this
Act, shall be as followeth, to wit:

For taking and attesting any such recognizance, be the num-
ber of the consors or consees more or less, shall be one shil-
ing and six pence, and no more.

For recording such recognizance, one shilling, and no more.
For the writ of execution on such recognizance, one shilling and six pence, and no more. [Oct. 19, 1782.]


Chap. 23. An Act for making more effectual provision for the due observation of the Lord's Day; and for repealing the several Laws heretofore made for that purpose. [Oct. 22, 1782.] Repealed 1791 ch. 58.

Chap. 24. An Act for regulating the Treasury; and for repealing certain parts of an Act, entitled, "An Act for the better Regulation of the Treasury of this Commonwealth, and for appointing an Assistant-Treasurer." [Oct. 22, 1782.]

Chap. 25. An Act to compel Executors living without the Commonwealth to settle their accounts; and to oblige Administrators and Guardians, not being inhabitants of this Commonwealth, to give bonds with proper sureties for the performance of the duties of their trust.

Sect. 1. BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That when any person who shall hereafter be appointed executor to any testament, shall, at the time of the probate of the same, live without this Commonwealth; he shall, before the probate of the will, whereby he is appointed, enter into bonds to the Judge of Probate for the county in which the testator lived, with sufficient sureties, being inhabitants of the said Commonwealth, for his faithful performance of the trust reposed in him: And if such executor shall refuse to enter into such bonds, administration shall be granted, with the will annexed, in the same manner as if such executor declined the trust.

Sect. 2. And be it further enacted, That when any executor shall remove himself without this Commonwealth, and become an inhabitant of some other State, place or kingdom, before his accounts shall be settled, and shall not, upon being thereunto required by the Judge of Probate in the county where the will shall have been proved, come into this Commonwealth and settle his accounts, administration shall be granted de bonis non, with the will annexed, in the same manner as if such executor had died intestate; and he shall be answerable to such administrator for all the estate which shall have come to his hands; having credit for his just expenses, the debts he may have discharged, and the legacies he may have paid.

Sect. 3. And be it further enacted, That where any person now living without this Commonwealth, shall have been appointed executor to the will of any person now deceased, shall, upon being duly required by the Judge of Probate of the county where the will hath been proved, to come and settle his accounts, and shall refuse to appear and settle the same, and pay the debts and legacies, administration de bonis non, with the will annexed, shall be granted in the same manner as if such will had been proved after the making of this Act, and the executor had removed himself without the Commonwealth after the probate of the same will.

Sect. 4. And be it further enacted, That when any person or persons, not being inhabitants of this Commonwealth, shall take letters of administration on any intestate estate, or letters of guardianship in behalf of minors, he or they shall, previous to such letters being granted, give bond, with sufficient sureties,
being inhabitants of this Commonwealth, to the Judge of Probate granting such letters, for the faithful performance of the trust reposed in said administrators or guardians. [Oct. 23, 1782.]

An Act for confirming certain Lands, lying in the county of York, to certain Persons claiming the same, under William Phillips and Bridget Phillips. [Oct. 30, 1782.]

An Act for confirming certain Lands in the County of York, to certain Persons claiming the same, under Nicholas Shapleigh. [Oct. 30, 1782.]

An Act for granting a Lottery for repairing and supporting a Bridge over Agawam River, so called, in West-Springfield. [Nov. 1, 1782.]

An Act in Addition unto an Act, entitled, "An Act providing for the levying and collecting of Taxes in Plantations that are not incorporated. [Nov. 1, 1782.]

An Act for indemnifying all persons, except Samuel Ely, concerned in the late disturbances in the county of Hampshire. [Nov. 4, 1782.]

An Act for apprehending and sending for trial persons charged with having committed crimes in some other State; and to authorize the officers of justice of the other States to continue the execution of their precepts within this State, when necessary.

WHEREAS it will tend to maintain the union and harmony of the United States of America, that persons standing charged with the commission of crimes in one of said States and escaping into another, should be apprehended, secured, and sent for trial to the State where the charge arises: Therefore,

SEC. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That when any person shall stand charged with the commission of any crime in any other of said States, and shall escape into this Commonwealth, it shall be lawful for any Justice of the Peace in any county where the offender may be, upon application made for that purpose, to apprehend such offender by warrant, and cause him to be brought before himself, or some other Justice of the Peace of the county for examination; and it shall be lawful for any Justice, upon such examination (if he shall think proper) to commit such offender to gaol, or send him, by warrant, to the confines of the State where the offence was committed, if an adjoining one, and there deliver him to a proper officer; or if the offence was committed in a more distant State, to some officer in an adjoining one, if there be any empowered to receive, and convey him to such more distant State, in order for trial. And when any offender shall be apprehended in another State, and it may be necessary to carry him through this Commonwealth, in order to his being conveyed to the State where the offence was committed, it shall be lawful for any Justice of the Peace in any county, when applied to, to order such offender to be so carried by warrant; and all warrants for sending offenders to the confines of, or for carrying them through this Commonwealth as aforesaid, may be directed to, and shall be executed by, the sheriffs or their deputies, of the several counties through which it may be necessary to send or carry the offender, or to any or either of the constables of the several towns in such counties respectively: All which officers shall be directed to proceed with such offenders or offenders to the confines of the next adjoining county, and there deliver him or them to some proper officer of such county; which process shall be repeated and continued until such offender or offenders shall have been carried through this Commonwealth, and conveyed to the next adjoining State.

And whereas the public roads leading from many of the towns in this government, and the towns of the neighbouring governments of New-Hampshire, Connecticut, Rhode-Island and New-York, are so intermixed that the officers of justice of the said neighbouring governments, in the execution of their office, are oftentimes obliged (the road or direct way so leading) to pass, and even to convey prisoners through towns or lands belonging to this government, and without the jurisdiction of such officer of justice, whereby disputes, difficulties or inconveniences will arise, as well to the prejudice of the public, as to the damage of private persons, unless some provision is made in that behalf:

SEC. 2. Be it therefore enacted, That the sheriffs, deputy-sheriffs, constables, or other officers of justice, of the neighbouring governments, with their assistants in the execution of any writs, warrants, or other process, issuing from, and returnable to, courts in their respective governments, may and shall have full power, and authority, to pass and repass, and also to convey such persons, or things, as they may have in their custody, by virtue of any writ or warrant aforesaid, in or by any of the roads or ways lying in or leading through any towns or lands of this government, in as full, free, and ample manner as the officers of Persons charged with crimes in other States, Justices to grant warrants to apprehend them.

Justices authorized to commit such offenders, &c.

Warrants to be executed by the sheriffs or their deputies.

Preamble.

Officers of Justice of the neighbouring governments in the execution of any writs, &c. to have liberty to pass and repass.

Preamble.
justice of this government do use and exercise in the discharge of their duty and office: And all persons insulting or obstructing such officers of justice of the neighbouring governments, in such execution of their office, as they are passing through any of the roads or lands of this government, shall be subject to the same pains and penalties as persons would by law be subject unto for insulting or obstructing similar officers of justice of this government in the due execution of their office. [Nov. 7, 1782.] Superseded by the constitution and laws of the United States, and the act of 1791 ch. 10.

Chap. 32. An Act in addition to an Act, entitled, "An Act in addition to an Act, entitled "An Act for preventing all commerce and illegal correspondence with the enemies of the United States of America." [Nov. 8, 1782.] Limited—1782 ch. 64.

Chap. 33. An Act for repealing an Act, entitled, "An Act laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities;" and for repealing another Act, entitled, "An Act in addition unto and for amending and explaining the Act made in the year one thousand seven hundred and eighty-one, laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities;" and for repealing one other Act, entitled, "An Act making provision for giving Permits to the Distillers and the Importers of those articles which are subject to an Excise Duty;" also for repealing one other Act, entitled, "An Act for laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities; and for altering another Act, entitled, An Act in addition unto and for amending and explaining the Act made in the year one thousand seven hundred and eighty-one, laying certain Duties of Excise on certain articles therein mentioned, for the purpose of paying the interest on Government Securities;" and for raising a Revenue by Excise on certain articles therein mentioned for the payment of interest on Government Consolidated Securities, and interest on the Notes issued to the Officers and Soldiers of the Massachusetts Line of the Army for the respective balances due to them for their services in the year one thousand seven hundred and eighty. [Nov. 6, 1782.] Add. act—1782 ch. 51. Both repealed—1783 ch. 12.

Chap. 34. An Act to suspend the privilege of the writ of Habeas Corpus for four months. [Feb. 5, 1783.]

Chap. 35. An Act for reviving and continuing sundry laws that are expired or near expiring. [Feb. 7, 1783.] The acts, hereby revived and continued, expired Nov. 1, 1787.

Chap. 36. An Act to remove certain actions now pending in the Supreme Judicial Court in the County of Hampshire, to the Supreme Judicial Court in the County of Berkshire, and to enable Peter A. Fonda to re-enter a certain action in the Court of Common Pleas in the said County of Berkshire. [Feb. 10, 1783.]

Chap. 37. An Act for granting a Lottery for re-building and making good the public Bridges and Causeways in the Town of Lancaster. [Feb. 15, 1783.]

Chap. 38. An Act appointing a time and place for holding the Supreme Judicial Court in the County of Suffolk. [Feb. 17, 1783.]

Chap. 39. 5 W. & M. ch. 2. 7 W. III. ch. 5. 2 Geo. I. ch. 3. 7 Geo. I. ch. 3. Wolves killed, &c.

Constable to cut off wolf's ears in the presence of the selectmen. Selectmen and constable to give a receipt to the party.

Chap. 39. An Act for encouraging the Killing of Wolves.

Sect. 1. BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That whatsoever shall hereafter, within this Commonwealth, kill any grown wolf or wolf's whelp (other than such as shall be taken out of the belly of any bitch wolf) and bring the head thereof unto the constable of the town in which such wolf or wolf's whelp shall be killed, or to the constable of the town next adjacent unto the place of killing such wolf or wolf's whelp, without the bounds of any township, the constable, in presence of one or more of the selectmen, shall cut off both the ears of the same, and cause them to be burned. And such selectman or men, and constable, shall give the party a receipt for the said head, expressing whether it be a grown wolf, or a whelp; and upon producing such receipt, the party shall be paid and allowed by the treasurer of that town, out of the town treasury, the sum
of four pounds for every head of a grown wolf by him killed, and the sum of one pound for every wolf's whelp; and all such sum and sums of money so paid out of any town treasury, in manner aforesaid, shall be paid and allowed to such town by the Treasurer and Receiver-General of this Commonwealth.

Sect. 2. And be it further enacted by the authority aforesaid, That all certificates of such payments to be returned to the Treasurer and Receiver-General, shall be in the form following: That is to say,

To the Treasurer of the Commonwealth of Massachusetts.

This certifies, that there hath been allowed and paid out of the town stock of the sum of for grown wolves, and the sum of for wolves’ whelps, killed in or near unto said town, and within this Commonwealth, since the day of last, and the heads thereof brought unto a constable of said town, and the ears cut off and burnt in the presence of one or more of the selectmen of said town, as the law directs, and so certified, amounting in the whole to the sum of which you are desired to allow to said town by paying the same to treasurer of said town.

Dated at aforesaid, this day of 17 of Selectmen of Town Treasurer.

Sect. 3. And be it further enacted by the authority aforesaid, That all the laws of this Commonwealth heretofore made respecting wolves or wolves' whelps, so far as they relate to the same, be, and hereby are repealed and declared to be null and void. [Feb. 21, 1783.]

An Act for discontinuing the name of a Town in the County of Hampshire, formerly incorporated by the name of Murrayfield, and calling the same Chester. [Feb. 21, 1783.]

An Act for erecting a District in the County of Middlesex, by the name of Boxborough. [Feb. 25, 1783.]

An Act for discontinuing the name of a Town in the County of Suffolk, incorporated by the name of Stoughtonham, and calling the same Sharon. [Feb. 25, 1783.]

An Act for carrying into execution an Ordinance of Congress for establishing Courts for the trial of Felonies and Piracies committed on the high seas. [Feb. 25, 1783.]

An Act for annexing Noah Wizzle, with his lands, within a certain Gore of Land, lying between the towns of Fitchburgh, Leominster and Westminster, in the County of Worcester, unto the town of Fitchburgh. [Feb. 26, 1783.]

An Act for granting a Lottery for re-building the North Mills in the town of Boston, which were lately consumed by fire. [Feb. 26, 1783.]

An Act in addition to the several Acts already made for the prudent Storage of Gun-Powder within the town of Boston. [March 1, 1783.] See, on this subject, 1801 ch. 20: 1803 ch. 120: 1820 ch. 47.

An Act for setting off David Parker from the District of Carlisle, and annexing him to the town of Chelmsford. [March 1, 1783.]
An Act for raising by Lottery the sum of three thousand pounds, for the purpose of building a Glass House, and promoting the manufacture of crown and other glass, in Boston. [March 1, 1783.] Repealed—1787 ch. 13.

An Act to incorporate the Congregational Society in the town of Norton into a distinct Parish; and also to incorporate a committee of the said Society for certain purposes. [March 4, 1783.] Add. act—1797 ch. 5.

An Act determining at what times and places the several Courts of General Sessions of the Peace and Courts of Common Pleas, shall be held within and for the several Counties of the Commonwealth. [March 10, 1783.]

An Act in addition to an Act passed the eighth day of November, one thousand seven hundred and eighty-two, laying an Excise on certain articles therein mentioned. [March 10, 1783.] Repealed—1783 ch. 12.

An Act for erecting certain Lands, hereafter described, into a town, by the name of Middlefield; and annexing the whole to the County of Hampshire. [March 12, 1783.]

An Act for granting special powers to certain Commissioners of the United States, in certain cases; and to enable the United States to recover debts and effects belonging to the said United States. [March 12, 1783.]

Chap. 54. 1781 ch. 23.

An Act in addition to an Act, entitled, "An Act for apprehending and securing Deserters from the Continental Army, and from the fleets and armies of our Allies; and for repealing all Acts heretofore made and passed for that purpose." [March 12, 1783.]


An Act for appointing the times and places for holding the Supreme Judicial Court. [March 14, 1783.] Repealed—See 1820 ch. 11.

An Act for the purpose of securing to Authors the exclusive right and benefit of publishing their Literary Productions, for twenty-one years.

WHEREAS the improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness, greatly depend on the efforts of learned and ingenious persons in the various arts and sciences:

Sect. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That all books, treatises, and other literary works, having the name or names of the author or authors thereof printed and published with the same, shall be the sole property of the said author or authors, being subjects of the United States of America, their heirs and assigns, for the full and complete term of twenty-one years, from the date of their first publication.

Persons prohibiting printing, &c. any literary productions, Penalty. Proviso.

Books, &c. the sole property of authors.

Therefore, to encourage learned and ingenious persons to write useful books for the benefit of mankind,

Sect. 2. And be it further enacted by the authority aforesaid, That if any person or persons shall print, reprint, publish, sell or expose to sale, or shall cause to be printed, reprinted, published, sold, or exposed to sale, any book, treatise, or other literary work not yet printed, written by any subject of the United States of America, whose name, as author, shall have been thereto prefixed, without consent of the author or authors, or their assigns, during said term, shall forfeit and pay a sum not exceeding three thousand pounds, nor less than five pounds, to the use of such author or authors, or their assigns; to be recovered by action of debt in any court of record proper to try the same. Provided always, That every author of such book, treatise, or other literary work, shall, in order to his holding such sole property in them, present two printed copies of each and every of them to the library of the University at Cambridge, for the use of the said University; and prior to his recovery of the said forfeiture, or any part thereof, shall produce, in open court where such action shall be tried, a receipt of such book, treatise or other literary work, from the librarian of the said University for the time being. Provided also, That this act shall not be construed to extend in favour or for the benefit of any author or authors, subject or subjects of any other of the United States, until the
State or States of which such authors are subjects, shall have passed similar
laws, for securing to authors the exclusive right and benefit of publishing their liter-
ary productions. [March 17, 1783.] Superseded by the constitution and laws of
the United States.

An ACT for establishing and confirming a certain instrument, as the last Will and
Testament of Nicholas Gardner. [March 10, 1783.]

An ACT for preventing the unnecessary Destruction of Shad, Alewives, and other
fish, in Cathance and Abagadasset Rivers, in the Town of Bowdoinham. [March
20, 1783.] Repealed 1797 ch. 70.

An ACT more effectually to enable Constables and Collectors of Taxes to collect
assessments in certain cases.

WHEREAS towns, districts and plantations, in certain in-
stances, are by law authorised to assess the inhabitants adja-
cent to such towns, districts and plantations, their proportion of
the public taxes; and whereas doubts have arisen, and may
hereafter arise, whether constables and collectors are by law
authorised to command assistance when out of the limits of their
respective towns: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representa-
tives in General Court assembled, and by the authority of the same,
That when and so often as any constable or collector of public
taxes shall have any list of assessment to him committed, in
which list shall be named and legally assessed, in any sum or
sums, any person or persons not inhabitants of the town, dis-
trict or plantation to which such constable or collector belongs,
in every such case it shall and may be lawful for any such con-
stable or collector to require and command any person or per-
sons within the limits of their respective towns, districts or
plantations, to assist such constable or collector, in the collect-
ion of the taxes assessed as aforesaid, on any of the inhabitants
of any such adjacent lands, and such constable or collector
may, and hereby is also fully authorised to require and com-
mand any of the inhabitants of the aforesaid lands adjacent, to
assist him in collecting any such assessment as aforesaid.

Sect. 2. And be it further enacted by the authority aforesaid,
That if any person or persons, when thereto required, shall re-
fuse or neglect to aid and assist any constable or collector re-
quiring such aid, he or they so refusing or neglecting, shall be,
and hereby are made liable to, and shall pay the same penalties,
to be recovered and disposed of in the same manner, as by law
is provided in case of refusing to assist constables or collectors
when thereto required within the limits of their respective
towns. [March 20, 1783.]

An ACT to empower the Corporation of Harvard College to make a legal conveyance
of a certain lot of land, being the property of the said College. [March 20, 1783.]

An ACT in addition to, and for altering and amending an Act, entitled, "An ACT
for forming and regulating the Militia within the Commonwealth of Massa-
chusetts, and for repealing all Laws heretofore made for that purpose." [March
21, 1783.] Repealed—1794 ch. 55.

An ACT laying an Impost on certain Goods, Wares and Merchandize. [March 22,
1783.] Repealed—1783 ch. 12.

An ACT for apportioning and assessing a Tax of two hundred thousand Pounds,
[March 22, 1783.]

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An Act for reviving the Act, entitled, "An Act to regulate the sale of goods at Public Venude, and to limit the number of Auctioneers;" also another Act, entitled, "An Act in addition to an Act made and passed at the last Session of the General Court, entitled, "An Act to regulate the sale of goods at Public Venude, and to limit the number of Auctioneers." [March 24, 1783.] Repealed—1789 ch. 59. See 1785 ch. 8.

An Act in addition to an Act, entitled, "An Act in addition to an Act, entitled, an Act to empower the Treasurer to receive Government Securities on Loan," to empower the Treasurer to receive Government Securities on Loan, and to consolidate the same to the further amount of three hundred thousand Pounds. [March 25, 1783.]

An Act limiting the continuance of certain Acts and Resolves for preventing intercourse with the enemy. [March 25, 1783.]

An Act in addition to an Act, entitled, "An Act to provide for the Payment of Debts due from the Conspirators and Absentees; and for the recovery of debts due to them.

WHERAS by said Act, the powers given to the committees therein mentioned, do not extend to empower them to make sale of any estates on which money has been advanced to the Commonwealth, agreeable to a resolve of the General Court, passed the nineteenth of June, in the year of our Lord one thousand seven hundred and eighty, unless the persons who advanced money, as aforesaid, shall consent to have such estate sold, which prohibition operates greatly to the damage of the creditors to such estates: Therefore, to remedy the same,

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all cases where the creditors to such estates shall exhibit to the said committees certificates, agreeable to said Act, of debts due from the estate of any conspirator or absentee, leased as aforesaid, the said committees are hereby empowered to cause such leased estates, within their respective counties, to be appraised by three disinterested, judicious freeholders under oath; and they are hereby directed to offer the said estates to the persons to whom they are leased, at the said appraisement; and in case the lessee shall take the estate at the appraisement, the said committees are respectively empowered, in behalf of this Commonwealth, to make and execute deeds sufficient to convey estates in fee simple to the said purchaser; the money advanced on any such estate, as aforesaid, to be in part pay for the same, agreeable to the lease, and the remainder to be disposed of, agreeable to said Act.

SECT. 2. And be it further enacted by the authority aforesaid, That in case any lessee or lessees, as aforesaid, shall refuse or neglect to purchase the estate leased to him or them, as aforesaid, at the said appraisement, for the space of thirty days after the committees shall have notified him or them of the appraisement, the committee are hereby empowered to sell the same to any other person, at public or private sale, as shall appear to them most advantageous to the creditors and the Commonwealth; and upon the payment of the sums due to the said lessees, or security given to their satisfaction, to make good and sufficient deeds, as aforesaid, to the purchasers, and dispose of the remainder of the proceeds of such sale according to said Act.

And whereas no direct provision is made by any Act or re-
solve of this Court, for making equitable distribution of the net proceeds of the estates of conspirators and absentees among their creditors, by the committees of sales, in the several counties, in cases of insolvency:

Sect. 3. Be it enacted by the authority aforesaid, That in all cases where the net proceeds of sale of the estate of any conspirator or absentee shall be found insufficient to discharge the whole of the debts due therefrom, the said committees in the several counties, be and they hereby are empowered and directed to make, distribution of the sums by them received, as the net proceeds of the said estates, among the several creditors therein, in just and due proportion; taking bonds from the said creditors, respectively, in double the sum to them paid, with two sufficient sureties, conditioned to refund the ratable proportion of such creditor's demand upon the said estate, and the net proceeds thereof, in case, after claims legally exhibited, supported and certified, shall render the said estate further insolvent. And the bonds, given as aforesaid, shall be lodged in the probate office of the county where the estates of such conspirators or absentees shall be settled; any law or resolve to the contrary notwithstanding. [June 15, 1782.]

An Act empowering the Committees for the Sale of the estates of Conspirators and Absentees, and the agents appointed by the Judges of Probate on such estates, in certain cases, to plead the general issue, and give the Acts and Resolves of the General Court and any special matter in evidence.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That in all cases where actions shall be commenced against the committees and agents aforesaid, or either of them, by any private person or persons, the said committees and agents may plead the general issue, and give the Acts and Resolves of the General Court and any special matter in evidence. [March 13, 1783.]

Chap. 70. Where actions shall be commenced against committees and agents; to plead the general issue.

An Act for granting a Lottery for the re-building and repairing the public bridges, and repairing the highway in the Town of Winchendon, which lead to Charlestown, in the State of New-Hampshire. [June 16, 1783.]

Chap. 1.

An Act for granting a Lottery for the purpose of rebuilding a Bridge across Westfield-River, in the Town of Westfield, nigh to a place called Weller's-Mills. [June 18, 1783.]

Chap. 2.

An Act for incorporating a number of the inhabitants of the Town of Amherst, in the County of Hampshire, into a separate Parish, by the name of the Second Parish in the Town of Amherst. [June 19, 1783.] Add. act—1788 ch. 4.

Chap. 3.

An Act in addition to the several Acts of this Commonwealth already made, for the preservation of fish called Alewifes, and for the better regulating the river called Wewewanetit-River, in the County of Plymouth. [June 23, 1783.] Add. acts—1767 ch. 62: 1788 ch. 58. All repealed—1797 ch. 69.

Chap. 4.

An Act for incorporating the proprietors of Mattackesset-Creeks (so called) in the Town of Edgartown, in the County of Dukes-County, into a body politic, by the name of the Proprietors of Mattackesset-Creeks; and also for the regulating and better improving the Low Grounds and Meadows adjoining the said Creeks and Great-Pond (so called) in the said town. [June 24, 1783.]

Chap. 5.

An Act to carry into execution an Act made in the year one thousand seven hundred and seventy-eight, entitled, "An Act to prevent the Return to this State of certain Persons therein named, and others, who have left this State or either of the United States, and joined the Enemies thereof." [July 2, 1783.] Repealed—1783 ch. 69.

Chap. 7.  An Act for reviving and continuing sundry Laws that are expired, or near expiring. [July 2, 1783.] The Acts, hereby revived and continued, expired, Nov. 1, 1735.

Chap. 8.  An Act to incorporate the East Parish of South-Brinfield, in the County of Hamp- shire, into a District by the name of Holland. [July 5, 1783.] Add. act—1785 ch. 37.

Chap. 9.  An Act to empower the Proprietors of the Meeting-House in the East Parish in Salem, to raise money by a tax on the pews and seats in the said Meeting-House, to support a colleague to their present minister, and making provision for the dissolution of the said Parish. [July 5, 1783.] Explanatory act—1789 ch. 37.

Chap. 10.  An Act to provide for the Collection of Taxes in cases where the constables or collectors appointed for that purpose have removed or may remove themselves out of this Commonwealth.

Sect. 1. Be it enacted by the Senate and House of Representa- tives, in General Court assembled, and by the authority of the same, That where any constable or collector in any town, precinct or parish, within this Commonwealth, shall have had any rates or assessments committed to him to collect, and has removed, or in the judgment of the selectmen, assessors or treasurer of the said town, or the committee or treasurer of the precinct or parish (as the case may be) is about to remove out of this Commonwealth before the time set in his warrant or warrants to make payment to the several treasurers therein mentioned, or the time of payment be elapsed, and the treasurer or treasurers have thereupon issued his or their warrant or warrants of distress, that in either case it shall and may be lawful for the selectmen of such town, or committee of such precinct or parish, on their own motion, or at the request of their respective assessors or treasurers, to call a town, precinct or parish meeting, in due form of law, setting forth in their warrant the cause of such meeting, and requiring the voters qualified by law at the said meeting, if the said voters shall think it proper, either by themselves or such person or persons as they shall appoint, to settle with the said constable or collector who is under either of the aforesaid circumstances, and who has or is about to remove as aforesaid, for the money he has received on the rate-bill or bills that has been delivered to him, and demand and receive his said bill or bills, and give him a discharge therefor; and at the said meeting may proceed to the choice of another constable or collector, who, upon non-acceptance, shall be liable to the same fine as if he had been originally chosen in the month of March, and the town, parish or precinct, shall proceed to a new choice, and so totes quoties, until one is chosen who shall accept, and be sworn accordingly; and the assessors shall make out a new warrant under their hands and seals, in due form of law, and shall deliver the warrant, together with the same bill or bills, to the person chosen as aforesaid, to collect and levy what shall be remaining due thereon; and the person so chosen is hereby vested with the same authority to levy and collect what shall then remain due on the same bill or bills, as the constable or the collector was to whom they were first committed.

Sect. 2. And be it further enacted by the authority aforesaid, That if any constable or collector so removing or intending to
An Act determining at what Times and Places the Supreme Judicial Court, the Court of General Sessions of the Peace, and Court of Common Pleas, shall be held within and for the County of Berkshire. [July 9, 1783.] Altered—See 1820 ch. 14: 1816 ch. 67: 1818 ch. 120.

An Act laying Duties of Impost and Excise on certain goods, wares and merchandise therein described, and for repealing the several Laws heretofore made for that purpose. [July 10, 1783.] Add. acts—1784 ch. 13: 1785 ch. 17: 1786 ch. 28. All repealed 1786 ch. 48. 49.

An Act for regulating Pilotage in several ports in this Commonwealth.*

WHEREAS frequent and heavy losses have been sustained, and navigation greatly injured, for want of a well regulated pilotage in the harbours hereafter mentioned:

Sect. 1. Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, That the Governor, with advice of Council, be, and he hereby is empowered and requested, as soon as may be, to appoint suitable persons as pilots for the several harbours and coasts hereafter mentioned, viz. three for the port of Boston; two for the port of Salem; two for the port of Marblehead; and two for the port of Gloucester; two for the port of Newburyport; two for the port of Plymouth; four for the coasts of Nantucket; ten for the coasts of Martha’s-Vineyard; and to give to each of the said pilots branches or warrants for the due execution of the duties of their respective offices, with power of substitution in certain cases to be therein prescribed. And such deputies, as the said branch pilots shall severally deput, shall be by them reported to the Governor, for his approbation.

Sect. 2. And be it further enacted by the authority aforesaid, That every pilot and deputy, appointed as aforesaid, shall, before his entering upon the business of his office, take the following oath or affirmation, before some Justice of the Peace, viz.

You A. B. do swear, (or affirm, as the case may be) that you will from time to time, truly and faithfully perform the duties of a pilot for the harbour or port of ——, according to your best skill and judgment, agreeable to the laws of this Commonwealth.—So help you God.

* Repealed so far as relates to the appointing and regulating of pilots and pilot-boats—as to the coast of Martha’s Vineyard, 1785 ch. 56—as to the port of Newburyport, 1785 ch. 29—and as to the port of Boston, 1796 ch. 85, and different provisions made for the ports of Boston and Newburyport. See 1819 ch. 45.
And each of the said branch pilots shall enter into bonds, with sufficient sureties, to the Treasurer of this Commonwealth, in the sum of one thousand pounds, for the due performance of the trust reposed in him. And every branch pilot, being commissioned and qualified as aforesaid, is hereby empowered and directed, by himself or his deputy, to take charge of any vessel or vessels drawing nine feet of water and upwards (coasting and fishing vessels excepted) bound into any of the ports aforesaid, and shall pilot such vessel or vessels into the port assigned to him, first shewing to the master or masters thereof, his branch or warrant, and acquainting him or them of his fees.

SECT. 3. And be it further enacted by the authority aforesaid, That the districts of the several pilots be, and they are hereby limited in manner following, viz. The pilots for the port of Boston, from the highlands of Marshfield, on the south, to what is usually called Nehant-Rock, on the north; the pilots for the ports of Salem and Marblehead, from the said Nehant-Rock, on the south, to Norman's-Woe, on the north; the pilots for the port of Gloucester, from the said Norman's-Woe, round the Cape, to Jabackah-Barr, (so called;) the pilots for the port of Newburyport, from Jabackah-Barr, on the south, to the Isle of Shoals, on the north; the pilots for the port of Plymouth, from the highlands aforesaid, on the north, to the point of Cape-Cod, on the south; the pilots for the coasts of Nantucket and Martha's-Vineyard, to take charge of any vessel or vessels on the coasts thereof, that shall be bound over the shoals.

SECT. 4. And be it further enacted by the authority aforesaid, That each of the said branch pilots shall always keep one decked boat in good repair, except the pilots for the coasts of Nantucket, who, as well as all other branch pilots, shall at all times keep a sufficient number of suitable row-boats, for the purposes aforesaid; and one of the boats for the port of Boston, shall be stationed at the Light-House Island; one for the port of Newburyport, at Salisbury-Point, or Plumb-Island; one for the port of Plymouth, in the harbour of Plymouth; two for the port of Salem, in the harbour of Salem; two at Marblehead, one in the harbour of Gloucester; and one in Sandy-Bay (so called;) four for the coasts of Martha's-Vineyard, at Gay-Head; four at Holmes's-Hole; and two at Edgarton; and all the above mentioned boats shall cruise on the pilot-ground of their respective stations, as often as the weather shall permit.

SECT. 5. And be it further enacted by the authority aforesaid, That the Governor, with the advice of Council, be, and he hereby is empowered and requested, to determine and fix the fees of pilotage of the several pilots, according as the circumstances of peace or war may require, and to specify the same in their respective warrants; and also to transmit to each naval-officer in the ports and harbours aforesaid, a schedule of the said fees, to be by such naval-officer hung up in his office, for public inspection.

SECT. 6. Provided nevertheless, and be it further enacted by the

* And coasts of Martha's Vineyard, 1783 ch. 23.
authority aforesaid, That any master of a vessel who may choose

to hazard the pilotage of his own vessel into any port, shall be

at liberty so to do, subject however to pay such pilot of the

said port, as shall first come on board his vessel, one half pilota-

tage according to the fees specified in his warrant; and such

pilot is hereby empowered, on refusal of the payment thereof,

to sue for and recover the same.

Sect. 7. Provided also, and be it further enacted by the autho-

rity aforesaid, That if any vessel shall be within the light-house in

the port of Boston, or within the chops of the harbours of Salem,

Marblehead and Gloucester, or within the barr at the entrance of

the harbour of Newburyport, or within the gurnet at the en-

trance of the harbour of Plymouth, or within any barred-har-

bour, before any pilot shall go on board, and the master of such

vessel shall then decline taking a pilot, he shall be exempt from

any fees of pilotage in the said ports.

Sect. 8. And be it further enacted, That if any vessel, while

under the charge and direction of a branch or warrant pilot, or

his deputy, shall be lost, cast away or run aground, through

the unskilfulness or neglect of such branch or warrant pilot, or

his deputy, then, and in that case, such branch or warrant pilot

shall be liable not only for himself but for his deputy (provided

the said deputy shall be the pilot of the said vessel at the time

thereof) to pay the just value of the vessel and her cargo, or any

proportionable damage which may be sustained thereby, to be

sued for and recovered by the owner or owners, or insurer or

insurers thereof, in any court proper to try the same.

Sect. 9. And be it further enacted by the authority aforesaid,

That if it shall hereafter become necessary for any port or ports

within this Commonwealth, not mentioned in this Act, to have

a pilot or pilots assigned them, the Governor, with the advice

of Council, be, and he hereby is empowered and requested, to

appoint and commission one or more pilots for every such port

or ports as to him shall appear necessary, in the same manner

as the pilots for the ports mentioned in this Act are directed

to be appointed and commissioned: And the pilot or pilots so

appointed, are hereby vested with the same power and authori-

ty, and shall be under the same bonds, and subject to the same

penalties, that are provided in this Act for any of the pilots be-

fore mentioned.

Sect. 10. And be it further enacted by the authority aforesaid,

That all vessels drawing nine feet of water and upwards, bound

to sea, out of any of the ports aforesaid, except coasting and

fishing vessels, shall be under the same restrictions, and liable

to pay the same fees that vessels are under and liable to, that

are bound into any of the same ports, and all pilots of any out-

ward-bound vessels shall be liable to similar actions for dam-

ages, and subject to the same penalties for their unskilfulness or

neglect, that they would have been, if the same vessels had been

bound into any of the ports aforesaid.

And to the intent that a suitable check may be had upon the

pilots aforesaid, and that they may be excited to a due vigilance

in the discharge of the duties assigned them:
Sect. 11. Be it enacted by the authority aforesaid, That the Governor and Council be and they hereby are empowered to hear and determine all complaints exhibited against the said pilots, or their deputies, or either of them, for mal-conduct in the premises, and to suspend or remove them, or either of them, at their discretion, and to appoint others in their room, laying the reasons therefor before the General Court, at the next session after such suspension or removal. [July 11, 1783.]

An Act for altering the Line between the Towns of Stow and Marlborough. [July 11, 1783.]

An Act for the Admeasurement of Boards, and regulating the tale of Shingles, Clapboards, Hoops and Staves, and for other purposes therein mentioned.*

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall be one or more suitable persons elected in every town and district in this Commonwealth, at their annual meeting in the month of March, to be surveyors and measurers of boards, plank, timber and slit-work, and surveyors of shingles, clapboards, staves and hoops, who shall be sworn to the faithful performance of the trust reposed in them. And all boards, plank, timber or slit-work, offered for sale, shall, previous thereto, be surveyed, and also measured, by one of the said surveyors, where he shall have any doubt of the measure, having due consideration for drying and shrinking; who shall also mark anew all such to the just contents thereof, making reasonable allowance for rots, knots and splits; and the buyer shall pay to the surveyor six pence per thousand feet, for viewing only, and six pence per thousand feet more for measuring and marking, and so in proportion for a lesser quantity.

Sect. 2. And be it further enacted by the authority aforesaid, That no pine boards shall be shipped for exportation to foreign markets, but such as are square edged, and not less than one inch in thickness, and not less than ten feet in length, on pain of being forfeited to the use of the town where they shall be shipped.

Sect. 3. Be it further enacted by the authority aforesaid, That no shingles, clapboards, staves or hoops, shall be offered for sale in any town in this Commonwealth, that shall be under the following dimensions, viz. all shingles shall be split crossways the grain, and be eighteen inches long, unless those made for home use; pine shingles shall be free from sap, and all shingles shall be free from shakes and worm-holes, and shall be half an inch thick at the butt-end, when green, and full three-eighths of an inch when thoroughly seasoned, if for exportation to a foreign market; and not less than one-third of an inch thick at the butt, when fully seasoned, if for home use, and four inches and a half wide on an average, and none less than three inches wide, and shall hold their width three-fourths the way to the thin end, and be well shaved; and each bundle shall contain two hundred and fifty shingles, or if bound in square

* The operation of this act was suspended until January 1st, 1785. Stat. 1783 ch. 54; § 6.
bundles, shall contain twenty-five courses, and measure twenty-two inches and an half at the lay: And in case there shall be more than five shingles in any one bundle that are under the above length, breadth or thickness, or five short in the tale of any one bundle of two hundred and fifty, the bundle which is so deficient, or in which such shingles are contained, shall be forfeited, and the shingles in each bundle, which are not merchantable, shall be burnt, and the residue sold, and the money arising from the sale shall be paid into the hands of the town treasurer, for the benefit of the poor of such town where the shingles are condemned, first deducting therefrom the charge of culling and surveying. And all white-oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart, or thinnest edge, and every part thereof. And all white-oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three quarters of an inch thick on the heart, or thinnest edge. And all white-oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart, or thinnest edge. And all white-oak barrel staves, for a foreign market, shall be thirty-two inches long; and for home use, shall be thirty inches long; and all shall be half an inch thick on the heart, or thinnest edge. And all white-oak hogshead and barrel staves shall be at least, one with another, four inches in breadth, and none less than three inches in breadth, in the narrowest part; and those of the breadth last mentioned shall be clear of sap. And all red-oak hogshead and barrel staves shall be of the same length, width and thickness, with the white-oak hogshead and barrel staves above mentioned: And all staves shall be well and proportionably split. And all pine clapboards, that shall be exposed to sale, shall be made of good sound timber, clear of sap; and all clapboards shall be free from shakes and worm-holes, and of the following dimensions, viz. full five-eighths of an inch on the back, or thickest part, five inches wide, and four feet six inches long, and they shall be straight and well shaved. And all hogshead hoops that shall be exposed to sale, or exported, shall be from ten to thirteen feet in length, and shall be made of white oak or walnut, and of good and sufficient substance, well shaved; those made of oak shall be not less than one inch broad at the least end, and those made of walnut shall be not less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve and thirteen feet respectively, shall be made up in distinct bundles by themselves; and if any hoops are packed of less dimensions than those prescribed by this law, or if any bundle shall contain less than thirty hoops, such bundle shall be forfeited and sold for the benefit of the poor of the town where it is offered for sale.

Sect. 4. And be it further enacted, That the surveyor of shingles and clapboards shall be allowed by the buyer, six pence per thousand for surveying and telling, and before any shingles are sent from the town where they are made, or at
Shingles offered for sale without being surveyed, to be forfeited.

[Or April—1785 ch. 75, § 10.] Viewers and cullers of staves and hoops to be annually elected in maritime towns. Their fees.

Staves exported to be first culled, and hoops first viewed, and a certificate to be given.

Shingles and clapboards, for exportation, to be certified.

Forfeiture for selling or buying before, &c.


Master or owner of any vessel having staves, &c. on board, for exportation, to make oath, and a certificate thereof to be transmitted to the naval officer.

the place of first sale, before their delivery, they shall be viewed, surveyed and measured by a sworn surveyor, and the town brand set upon the hoop of the bundle; and all shingles offered for sale without being surveyed and marked as aforesaid, shall be forfeited and disposed of as before provided in this act; and in each maritime town in this Commonwealth, from whence staves or hoops are usually exported beyond sea, there shall be two or more suitable persons chosen by such towns, some time before the twelfth day of December next, and forever afterwards at their annual meeting in March,* to be viewers and cullers of staves and hoops, who shall be under oath, faithfully to discharge their office; and for their encouragement to accept this trust, they shall be allowed for their time and service as follows, viz.—one shilling and eight pence per thousand for barrel staves, two shillings per thousand for hogshoof staves, two shillings and four pence per thousand for pipe staves, and two shillings and eight pence per thousand for butt staves, as well refuse as merchantable; the merchantable to be paid for by the buyer, the refuse by the seller; and the culler shall be allowed three shillings per thousand for hoops.

Sect. 5. And be it further enacted by the authority aforesaid, That from and after the twelfth day of December next, all staves that shall be exported from this Commonwealth beyond sea, shall be first culled, and all hoops first viewed and surveyed by one of the officers aforesaid, and a certificate given, by the culler or surveyor, to the master or commander of the ship or vessel on board which they are laden, of the quantity by him so culled or surveyed; and the bands with which the bundles of hoops are bound shall be sealed with the brand of the town from whence they are exported; and that all shingles and clapboards that shall be exported beyond sea, shall likewise be certified by one of the surveyors already required by law to be chosen in each maritime town within this Commonwealth, to have been by him surveyed, viewed and approved, and the number or quantity thereof; and any sellers of boards, staves, hoops, clapboards or shingles, that shall deliver any of the said articles before they are culled or surveyed, shall forfeit the sum of twelve shillings per thousand, and any person purchasing any of the articles before mentioned, and who shall receive them before they are culled or surveyed, shall forfeit and pay the sum of twelve shillings per thousand, one half to the informer, who shall sue for the same in any court of this Commonwealth proper to try the same, or before any magistrate within this Commonwealth, in case the forfeiture does not exceed forty shillings; the other half to the poor of the town where such offence is committed.

Sect. 6. And be it further enacted, That from and after the said twelfth day of December next, the master or owner of any vessel having any staves, hoops, boards, clapboards or shingles on board, for their cargo, and which shall be shipped for exportation to a foreign market, after the said twelfth day of December next, before such vessel shall be cleared at the naval-office, a certificate of such staves, hoops, clapboards, boards and shingles, having been culled or surveyed, and shall likewise make
oath before the naval-officer (who is hereby required and empowered to administer the same) or before any Justice of Peace, who shall give a certificate of the said oath, which shall by the master or owner be transmitted to the naval officer, that the boards, staves, hoops, clapboards and shingles, on board his vessel, are bona fide the same boards, staves, hoops, clapboards and shingles, certified to have been culled or surveyed, and that he has no other on board, and that he will not take any others on board.

Sect. 7. And be it further enacted, That from and after the twelfth day of December next, if any person shall presume to ship off any boards, staves, hoops, clapboards or shingles, unless the same shall first have been culled or surveyed, and marked by a sworn culler or surveyor as aforesaid, he shall forfeit and pay the sum of twelve shillings per thousand, to be reckoned by feet or tale, according as the articles are usually sold, to be disposed of, one half to the poor of the town where the offence is committed, and the other half to the surveyor, or any other person or persons who shall sue for the same, which he or they are hereby enabled to do, by action, bill, plaint or information, in any court proper to try the same, or before any Justice of the Peace, if the forfeiture does not exceed forty shillings.

Sect. 8. And be it further enacted, That in case any culler or surveyor shall connive at, or allow of the breach of this act, or shall be guilty of any fraud or deceit in surveying or culling of boards, staves, hoops, clapboards, or shingles, he shall forfeit and pay the sum of ten pounds for each offence; and in case of his refusal to attend the aforesaid service, when he shall be thereto requested, he shall forfeit and pay the sum of twenty shillings; the forfeitures and penalties in such cases to be recovered and disposed of as aforesaid.

Sect. 9. And be it further enacted, That if any person or persons, who shall be duly chosen to serve as a surveyor of boards, clapboards or shingles, or as a culler of staves or hoops, shall refuse or neglect to take the oath for the faithful discharge of the office, or to serve therein, every such person or persons shall pay the sum of twenty shillings, to the use of the poor of the town choosing such person or persons, and every such town shall proceed to the choice of other or others, in the room of any person so refusing or neglecting, and so toties quoties.

Sect. 10. And be it enacted by the authority aforesaid, That all Acts heretofore made for the admeasurement of boards, and for regulating the tale and dimensions of shingles, clapboards, hoops and staves, be, and they are hereby repealed. [July 11, 1783] Add. act—1783 ch. 54.

An Act to incorporate the Second Parish in Springfield, called Long-Meadow, into a Town by the name of Long-Meadow. [Oct. 13, 1783]

An Act for erecting the southeasterly part of the Town of Warwick, and a tract of land called Ervingshire, lying on the northerly side of Miller's River, in the county of Hampshire, and the northwesterly part of the Town of Athol, and the southwesterly part of the town of Royalston, in the County of Worcester, into a separate District, by the name of Orange. [Oct. 15, 1783]
Chap. 13.  An Act for granting to the United States in Congress assembled, certain Imposi-
and Duties upon foreign goods imported into this State, and for the purpose of 
paying the Principal and Interest of the Debt contracted in the prosecution of the 
late war with Great-Britain. [Oct. 20, 1783.]

Chap. 19.  An Act making provision for the support and maintenance of Light-Houses on the 
Sea-Coast of this Commonwealth. [Oct. 22, 1763.] Add. acts—1764 ch. 19: 
1786 ch. 62. All repealed—1767 ch. 31.

Chap. 20.  An Act for ratifying and confirming an Agreement between the Towns of Concord 
and Lincoln, for the more convenient building and repairing the bridges over the 
Great-River in the said Towns. [Oct. 22, 1783.]

Chap. 21.  An Act to regulate the catching of Salmon, Shad and Alewives, and to remove and 
prevent obstructions in Merrimack-River, and in the other rivers and streams 
routing into the same, within this Commonwealth, and for repealing several Acts 
heretofore made for that purpose. [Oct. 24, 1783.] Add. acts—1785 ch. 13: 
1787 ch. 57. All repealed—1789 ch. 51.

Chap. 22.  An Act to prevent the Destruction of White-Pine Trees in this Commonwealth.

BE it enacted by the Senate and House of Representatives in General 
Court assembled, and by the authority of the same, That if any person, 
after the publication of this Act, shall cut, fell or de-
stroy any white-pine tree, which is, or shall be at the time of 
felling or destroying the same, of the diameter of twenty-four 
inches, or upwards of twelve inches from the ground, growing 
or standing on any tract of land within any part of this Com-
monwealth, not the property of any private person or persons, 
without license first had and obtained for so doing, from this 
Legislature, or be aiding and assisting therein, or in drawing 
away the same after so cut or felled, he shall forfeit the sum of 
three pounds, to be recovered by bill, indictment or informa-
tion, in any court of record in this Commonwealth proper to 
try the same, two thirds thereof to the use of this Common- 
wealth, and one third thereof to the informer; and the sum of 
three pounds for any other white-pine tree on the land aforesaid, 
to be recovered as aforesaid, and to the uses before men-
tioned; provided such prosecution be commenced within two 
years from the time when the offence shall be committed. 
[Oct. 24, 1783.]

Chap. 23.  An Act for altering and amending one Clause or Part of an Act made and passed 
the last sitting of the General Court, entitled, “An Act for regulating Pilotage 
in several ports in this Commonwealth.” [Oct. 24, 1783.] Repealed 1783 ch. 
56.

Chap. 24.  An Act prescribing the Manner of devising Lands, Tenements, and 
Hereditaments.

Sect. 1.  Be it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same, 
That every person lawfully seized of any lands, tenements or 
hereditaments, within this State, in his or her own right, in fee 
simple, or for the life or lives of any other person or persons, 
of the age of twenty-one years, and upwards, and of sane mind, 
shall have power to give, dispose of and devise the same, as 
well by last will and testament in writing, as otherwise by any 
act executed in his or her life time, to and among his or her 
children, or others, as he or she shall think fit.

Sect. 2.  And be it further enacted by the authority aforesaid. 
That all devises and bequests of any lands or tenements shall
be in writing, and signed by the party so devising the same, or by some person in his presence, and by his express direction, and shall be attested and subscribed in the presence of the said devisor, by three or more credible witnesses, or else shall be utterly void and of no effect. And moreover, no devise in writing, of lands, tenements, and hereditaments, or any clause thereof shall be revocable, otherways 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 himself, or in his presence, and by his direction and consent; but all devises and bequests of lands and tenements shall remain and continue in full force until the same be burnt, cancelled, torn or obliterating the testator, or his direction, in manner aforesaid, or unless the same be altered by some other will or codicil, or other writing of the devisor, signed in the presence of three or more witnesses, declaring such alteration.

Sect. 3. And be it further enacted, That no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of fifty pounds, that is not proved by the oath of three witnesses (at the least) that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect, nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will; except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

Sect. 4. And be it further enacted, That no letters testamentary, or probate of any nuncupative will, shall pass the seal of any court of probate, till fourteen days (at the least) after the decease of the testator be fully expired; nor shall any nuncupative will be at any time approved and allowed, unless process shall have first issued, to call in the widow and other person or persons principally interested, if resident within the government, to the end they may contest the same if they please.

Sect. 5. And be it further enacted, That after six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken.

Sect. 6. And be it further enacted, That no will in writing, concerning any goods, chattels or personal estate, shall be repealed, nor shall any clause or bequest therin be altered or changed by any words or will, by word of mouth only, except the same be in the life time of the testator committed to writing and read to the testator, and allowed by him in the presence of three credible witnesses at the least. Provided always, That
notwithstanding this Act, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his moveables, wages and other personal estate, as he might have done before the making of this Act.

Sect. 7. And be it further enacted, That when any child shall happen to be born after the death of the father, without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father, in like manner as if the father had died intestate, and the same shall be assigned to him or her accordingly; and in every such case the Judge of Probate shall issue his warrant, as in case of intestate estates, to assign to such posthumous child a share in his or her father's estate, equal to what he would have inherited if his or her father had died intestate, and the same shall be taken in proportion from the devisees and legatees who own the estate by virtue of such will.

Sect. 8. And be it further enacted, That any child or children, or their legal representatives in case of their death, not having a legacy given him, her or them, in the will of their father or mother, shall have a proportion of the estate of their parents assigned unto him, her or them, as though such parent had died intestate; provided such child, children or grand-children have not had an equal proportion of the deceased's estate bestowed on him, her or them, in the deceased's life-time. And when any child, grand-child or other relation having a devise of personal estate or real estate, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real or personal, in the same way and manner such devisee would have done in case he had survived the testator, any law, usage or custom to the contrary notwithstanding: Also the widow in all cases may wave the provision made for her in the will of her deceased husband, and claim her dower and have the same assigned her, in the same manner as though her husband had died intestate, in which case she shall receive no benefit from such provision, unless it appears by the will plainly the testator's intention to be in addition to her dower. And as it may sometimes happen that a will respecting lands and personal estate, through inattention or otherwise, may be attested and subscribed by a less number of credible witnesses, than this Act directs for devising lands, tenements and hereditaments, which, if approved and allowed as a testament of personal estate only, might defeat the original intention of the devisor respecting the settlement of his estate:

Sect. 9. Be it therefore further enacted by the authority aforesaid, That any will in writing hereafter offered for probate, which purports a disposition of both real and personal estate, that shall not be attested and subscribed as this Act directs, for the devising of lands, tenements and hereditaments, shall not be approved and allowed as a testament of personal estate only.
Sect. 10. And be it further enacted, That all such estate, real or personal, that is not devised or bequeathed in the last will and testament of any person, hereafter to be proved, shall be distributed in the same manner as if it were an intestate estate, and the executor or executors shall administer on the same as such. And whereas doubts may arise who are to be deemed and taken as legal and credible witnesses to wills:

Sect. 11. Be it further enacted by the authority aforesaid, That if any person hath attested or shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting any real or personal estate, (other than and except charges on lands, tenements, or hereditaments, for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or codicil, shall be void; and such person shall be deemed and taken as legal and credible witnesses to wills, and the executor or executors shall administer on the same as such.

Sect. 12. And be it further enacted, That in case, by any will or codicil already made or hereafter to be made, any lands, tenements, or hereditaments are or shall be charged with any debt or debts, and any creditor whose debt is so charged hath attested or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Sect. 13. And be it further enacted, That if any person hath attested or shall attest the execution of any will or codicil, to whom any legacy or bequest is or shall be thereby given, and such person, before he or she shall give his or her testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest, upon tender thereof, such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such legacy or bequest.

Provided always, That the credit of such witnesses as aforesaid shall be subject to the consideration of the court or jury before whom such witness or witnesses may be examined, or his or her testimony or attestation made use of, in like manner, to all intents and purposes, as the credit of other witnesses in all other cases ought to be considered of and determined.

Sect. 14. And be it further enacted, That in case any legatee as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil which shall hereafter be made, shall have died in the lifetime of the testator, or before he or she shall have

*See the English statute, 25 Geo. II. ch. 6, which extended to the Colonies, and of which this act is a revision. The inconsistency of the eleventh and thirteenth sections is not found in the original statute; in which the provision, that the legatees, &c, of an attesting witness shall be void, is wholly prospective; and the provision for a release, &c, retrospective.

† This provision, in the English statute, is retrospective.
received or released the legacy or bequest so given him or her as aforesaid, and before he or she shall have refused to receive such legacy or bequest on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil, within the intent of this Act, notwithstanding such legacy or bequest.

Sect. 15. And be it further enacted, That no person to whom any beneficial estate, interest, gift, or appointment, shall be given or made, which is hereby enacted to be null and void as aforesaid, or who shall have refused to receive any such legacy or bequest on tender made as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he or she shall have been so examined, demand or receive any profit or benefit of or from any such estate, interest, gift, or appointment, so given or made to him or her in and by any such will or codicil, or demand, receive or accept from any person or persons whatsoever, any such legacy or bequest, or any satisfaction or compensation for the same, in any manner whatever.

Sect. 16. And be it further enacted by the authority aforesaid, That if any executor or executors of the will of any person deceased, knowing of their being so named and appointed, shall not within thirty days next after the decease of the testator, cause such will to be proved and recorded in the register of probate's office, of the same county where the deceased person last dwelt, or present the said will, and in writing declare his, her or their refusal, every executor so neglecting his or her trust and duty in that behalf, (without just excuse made and accepted by the Judge of Probate for such delay) shall forfeit the sum of five pounds a month, from and after the expiration of the said thirty days, until he, she or they shall cause probate of such will to be made, or present the same as aforesaid; every such forfeiture to be had and recovered by action of debt in the Court of Common Pleas, in the same county, one moiety for him or them that shall sue for the same, and the other moiety for the use of the legatees named in the same will; and upon any such refusal of the executor or executors, the Judge of Probate shall commit administration of the estate of the deceased, with the will annexed, unto the widow or next of kin to the deceased, or one or more of the devisees, or in case of their refusal, to one or more of the principal creditors, as he shall think fit. And if any person shall alienate or embezze any of the goods or chattels of any deceased person, before he or she have taken out letters of administration, and exhibited a true inventory of all the known estate of the person deceased, every such person shall stand chargeable and liable to the actions of the creditors and other persons aggrieved, as being executors in their own wrong.

Sect. 17. And be it further enacted, That every executor named in a will hereafter to be proved, and taking upon him that trust by proving the same, shall give bond to the Judge of Probate, with sufficient surety or sureties, to return upon oath a true and perfect inventory of the testator's estate into the
probate office, within three months, and to render an account of his proceedings thereon, in the same manner administrators are by law obliged to be bound, unless such executor or executors are residuary legatees, in which case bonds may be given by him or them to pay the debts and legacies of the testator; and in case such executor or executors shall neglect or refuse, for the space of twenty days, to give bond as aforesaid, the Judge of Probate may commit administration of the estate of such testator, with the will annexed, to some other person, in like manner as he may grant the same when the executor refuses the trust; and when the executor is under the age of twenty-one years at the time of proving the will, administration may be granted with the will annexed during the minority of such executor. And where there are divers persons named executors, in any will hereafter to be proved, none shall intermeddle and act as such, but those who actually give bond as aforesaid. And any executor being a residuary legatee, may bring an action of account against his co-executor or executors of the estate of the testator in his or their hands, and may also sue for and recover his equal and proportionable part thereof; and any other residuary legatee shall have like remedy against the executors. And any person having a legacy given in any last will, may sue for and recover the same at the common law.

SECT. 18. And be it further enacted by the authority aforesaid, That when any testator, in and by his last will and testament, hath given or shall give any chattels or real estate to any person or persons, and the same shall be taken in execution for the payment of the testator’s debts, or shall be sold therefor as the law provides, in such case all the other legatees, devisees, and heirs, shall refund their average or proportional part of such loss to such person or persons from whom the bequest shall be so taken away, and he or they shall and may maintain a suit or action at law to compel such contribution.

SECT. 19. And be it further enacted by the authority aforesaid, That when any executor or executors of any last will and testament, or administrator of an intestate estate, shall reside without the limits of this government, at the time of taking upon him that trust, or shall afterwards remove out of this government, and shall neglect or refuse, after due notice from the Judge of Probate, to render his account and make a settlement of such estate with the creditors, legatees, or heirs, or their legal representatives, or when any executor or administrator shall become insane, or otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him, the Judges of Probate in their respective counties within this government, are authorized and empowered in such cases, to grant letters of administration with the will annexed (or otherwise as the case may require) to such person within this government, as to the said judge shall seem meet: And the administrator thus appointed shall have the same power and authority to administer the estate of the deceased, not administered upon by such former executor or administrator, and be subjected to the same duties, in as full and ample a manner, as if the executor or admin-
Chap. 25.

An Act to establish a Bank in this State, and to incorporate the Subscribers thereto.

WHEREAS the establishment of a bank within this State will probably be of great public utility, and as it will be particularly beneficial to the trading part of the community, and many persons, under the expectation of an Act of incorporation from the Legislature of this Commonwealth, have accordingly subscribed thereto; and whereas William Phillips, Isaac Smith, Jonathan Mason, Thomas Russell, John Lowell, and Stephen Higginson, Esquires, in behalf of such subscribers, have applied for such an Act:

Sect. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That William Phillips, Isaac Smith, Jonathan Mason, Thomas Russell, John Lowell, and Stephen Higginson, Esquires, so long as they shall continue to be proprietors in the said bank, together with all those who are and those who shall become proprietors to the said bank, shall be a corporation and body politic, under the name of The President and Directors of the Massachusetts Bank.

Sect. 2. And be it further enacted by the authority aforesaid, That the said corporation are hereby declared and made able and capable in law to have, hold, and enjoy, and retain lands, rents, and tenements, to the amount of fifty thousand pounds, and no more at any one time, and also monies, goods, chattels, and effects, to the amount of five hundred thousand pounds, and no more, and also to sell, grant, devise, alien, or dispose of the same lands, rents, tenements, money, goods, chattels, and effects. Provided, That the said President
and Directors, nor any or either of them in their said capacity, nor any person or persons for or in behalf of the said corporation or body politic, shall at any time, directly or indirectly, use or employ any money or monies of the said corporation or body politic, in trade or commerce.

Sect. 3. *And be it further enacted by the authority aforesaid,* that the said corporation shall be capable in law, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of record, or other courts or places whatsoever; and to do and execute all and singular other matters and things, that to them shall or may appertain to do.

Sect. 4. *And be it further enacted by the authority aforesaid,* that for the well governing of the said corporation, and the ordering their affairs, they shall have such officers as they shall hereafter direct and appoint, and that such officers as shall be designated by the laws and regulations of the said corporation, for the purpose, shall be capable of exercising such power, for the well governing and ordering the affairs of the said corporation, and calling and holding such occasional meetings for that purpose, as shall be fixed and determined by the said laws and regulations.

Sect. 5. *And be it further enacted by the authority aforesaid,* that the said corporation may make, establish, and put in execution, such laws and regulations as may be necessary to the government of the said corporation; provided the same shall in no case be repugnant to the laws and constitution of this State.

Sect. 6. *And be it further enacted by the authority aforesaid,* that the said corporation shall have full power and authority to make, have, and use a common seal, and the same to break, alter, and renew at pleasure.

Sect. 7. *And be it further enacted by the authority aforesaid,* that William Phillips, Isaac Smith, and Jonathan Mason, Esquires, be empowered to call a meeting of the subscribers to the said bank, at such time and place as they may think convenient, by advertising the same in two of the Boston newspapers, fifteen days before the time of holding the said meeting, at which, or any future meeting of the stockholders, all matters shall be determined by the major votes of persons present at such meeting, who are stockholders, or who represent stockholders; the number of votes to be determined by the number of shares each voter holds or represents; save only, that nothing shall prevent the stockholders from determining that the holders of a certain number of shares shall be present, or represented at the transaction of any particular business. Provided always, That any person specially appointed by the Legislature of this State, for that purpose, shall have a right to examine into the affairs of the bank, and shall at all times have access to the bank books. [Feb. 7, 1784.] Add. act—1791 ch. 65.

An Act for incorporating certain persons therein named into a Society by the name of The Boston Episcopal Charitable Society. [Feb. 12, 1784.]

An Act to set off Jacob Smith, Joseph Kingsbury, Isaac Smith, and Enoch Ellis, from the Town of Walpole, in the County of Suffolk, and annex them to the third Parish in the town of Dedham, in the said County. [Feb. 12. 1784.]


Chap. 30. An Act for apportioning and establishing the possessions of the Heirs at Law of Richard Kent, son of Richard Kent, late of Newbury, deceased, to a certain Island called Kent's Island, in Newbury aforesaid. [March 1, 1784.]

Chap. 31. An Act for reviving one law now expired, and continuing the same, and another law near expiring. [March 3, 1784.] The acts hereby revived, expired Nov. 1, 1785.

Chap. 32. An Act directing the Settlement of the Estates of persons deceased, and for the Conveyance of Real Estates in certain cases.

SECTION 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when the goods and chattels belonging to the estate of any person deceased, or that hereafter may decease, shall not be sufficient to answer the just debts which the deceased owed, or legacies given, upon representation thereof, and the same being made to appear to the Supreme Judicial Court, at any term or sitting of the said court, in any county in this Commonwealth, or the court of Common Pleas* in the county where the deceased person last dwelt, or in the county in which the said real estate lies, the said courts are severally and respectively authorized to empower and license the executor or administrator of such estate to make sale of all or any part of the houses, lands or tenements of the deceased, so far as shall be necessary to satisfy the just debts which the deceased owed at the time of his death, and legacies bequeathed in and by the last will and testament of the deceased, with incidental charges: And every executor or administrator being so licensed and authorized as aforesaid, shall and may, by virtue of such authority, make, sign and execute, in due form of law, deeds and conveyances for such houses, lands or tenements as they shall so sell; which instruments shall make as good a title to the purchaser, his heirs and assigns, forever, as the testator or intestate, being of full age, of sane mind and memory, in his or her life time, might or could for a valuable consideration.—Provided always, That the executor or administrator, before sale be made as aforesaid, give thirty days public notice by posting up notifications of such sale in the town or plantation where the lands lie, as well as where the deceased person last dwelt, and in the two next adjoining towns, as also in the shire town of the county; and whosoever will give most, shall have the preference in such sale; and in case it be an insolvent estate, the whole produce of such sale shall be divided in due proportion to and among the creditors.

And whereas, by the partial sale of real estates for the payment of debts or legacies as aforesaid, it often happens that the remainder thereof is much injured:

SECTION 2. Be it therefore enacted, by the authority aforesaid, That whenever it shall be necessary that executors or adminis—

* Or Court of Probate—1817 ch. 190, § 10.
† And charges of administration—1818 ch. 112, § 3.
irators shall be empowered to sell some part of the real estate of deceased testators or intestates, or for guardians to sell some part of the real estates of minors or persons non compos mentis, for the payment of just debts, legacies or taxes, or for the support or legal expenses of minors or persons non compos mentis, and by such partial sale the residue of such real estates would be greatly injured, and the same shall be represented and made to appear to the justices of either of the aforesaid courts, on petition, and declaration filed, and duly proved therein, by the said executors, administrators, or guardians, the justices of the aforesaid courts respectively, may authorize and empower such executors, administrators or guardians,* to sell and convey the whole or so much of such real estates, as shall be most for the interest and benefit of the parties concerned therein, at public auction, and good and sufficient deed or deeds of conveyance thereof to make and execute; which deed or deeds, when duly acknowledged and recorded in the registry of deeds for the county where the said real estate lies, shall make a complete and legal title in fee to the purchaser or purchasers thereof; provided the said executors, administrators or guardians, give thirty days public notice of such intended sale in manner and form herein before prescribed; and provided also they first give bonds, with sufficient sureties, to the Judge of Probate for the county where the deceased testator or intestate last dwelt,† and his estate inventoried, that he or she will observe the rules and directions of law for the sale of real estates by executors or administrators, and that the proceeds of the said sale, after the payment of just debts, legacies, taxes, and just debts for the support of minors, and other legal expenses and incidental charges, shall be put on interest on good security, and that the same shall be disposed of agreeable to the rules of law.

Sect. 3. And be it further enacted, That every representation to be made as aforesaid, shall be accompanied with a certificate from the Judge of Probate of the county where the deceased person's estate was inventoried, certifying the value of the real estate and the value of the personal estate of such deceased person, and the amount of his or her just debts; and also his opinion whether it be necessary that the whole or a part of the estate should be sold, or if part only, what part. And the said justices, previous to their passing on the said representation, shall order due notice to be given to all parties concerned, or their guardians, who do not signify their consent to such sale, to shew cause, at such time and place as they shall appoint, why such license should not be granted. And in case any person concerned in the said sale be not an inhabitant of this Commonwealth, nor have any guardian, agent or attorney therein, who may represent him or her, the said justices may cause the said petition to be continued for a reasonable time; and the petitioner or petitioners shall give personal notice of the said petition to such absent person, his or her agent, attorney or guardian, or

* And guardians of spendthrifts—1818 ch. 112, § 1.
† Or where the land is situated, if the deceased was not an inhabitant of the Commonwealth—1818 ch. 112, § 2.
cause the same to be published in some one of the Boston newspapers, three weeks successively. And the said justices, where they may think it expedient, may examine the said petitioner or petitioners, on oath, touching the truth of facts set forth in the said petition, and the circumstances attending the same.

And whereas it may be often necessary to enable the representatives of persons deceased, to perform the engagements entered into by such deceased persons for the transfer of real estates:

Sect. 4. Therefore be it further enacted, That whenever it shall be represented and made to appear to the justices of either of the aforesaid courts, in form aforesaid, by any person or persons, contracted with by bond, covenant or other contract under seal, that a deceased testator or intestate, in his or her life time, entered into such bond, covenant or contract, to convey some real estate to him or her, but was prevented by death; and that such person or persons, contracted with as aforesaid, have, on his, her or their part performed, or stand ready to perform, the conditions of such bond, covenant or contract made with the deceased, the said justices may, after due notice given to all concerned as aforesaid, in form aforesaid, and a full hearing had, grant license to, and empower the executors or administrators of such deceased obligor, covenantor or contractor, to make and execute such conveyance or conveyances, to such person or persons contracted with as aforesaid, as it shall appear the said obligor, covenantor or contractor would, by his bond, covenant or contract, be obliged to make and execute; in case he, she or they, were living at the time of the performance of the conditions of the bond, covenant or contract by the contractees on their part, making reasonable allowances for any alteration, improvements or injuries, that may be made or done in the same estate since such contract was made, as the said justices may award; which conveyance or conveyances, when the instruments thereof are duly acknowledged and recorded in the registry of deeds for the county where such estate shall lie, shall be good and valid; and the monies or consideration paid for such estate, if not paid to the deceased contractor in his lifetime, shall be assets in the hands of the said executors or administrators, and be apportioned among the representatives of the deceased as other personal estate.

Sect. 5. Be it further enacted by the authority aforesaid, That when it shall fully appear to the Justices of the Supreme Judicial Court aforesaid, by the petition and representation of the friends or guardians of minors interested in the real estate of any deceased testator or intestate, that it would be for the benefit of such minors, or persons non compos mentis, that their interest therein should be disposed of, and the proceeds thereof be put out and secured to them on interest, the said justices last mentioned, after a full examination on the oath of the petitioner or otherwise, may authorize some suitable person or persons to sell and convey such estate or part thereof, by deed or deeds duly acknowledged and recorded in the registry of deeds as aforesaid; provided such person or persons first give bond, with
sufficient sureties, to the Judge of Probate for the county where
the said deceased person last dwelt, to observe the rules and di-
rections of law in the sale of real estates by executors or admin-
istrators in the first enacting clause herein prescribed; and to
account for and make payment of the proceeds of the said sale,
agreeable to the rules of law: Provided, That the said Judge
of Probate shall certify that the whole or a part of the said es-
\a, in his opinion, necessary to be sold, or if part only, what
part.

Sect. 6. And be it further enacted, That when it shall appear
to the said justices, on examination, that the said petition or pe-
titions, in any of the foregoing applications, are unreasonable,
the said justices may award reasonable costs to such respond-
ents as shall appear and object thereto.

Sect. 7. And be it further enacted, That the real estate of any
testator or intestate, is and shall be liable to be taken and levi-
ed upon by any execution issuing upon judgments recovered
against executors or administrators, in such capacity, being the
proper debts of the testator or intestate, and that the method of
levying, appraising and recording, shall be the same as by law
is provided respecting other real estates levied upon and taken
in execution, and may be redeemed by the executor, adminis-
trator or heir, in like time and manner.

Sect. 8. And be it further enacted, That when any executor
or administrator shall neglect or unreasonably delay to raise
money out of the testator’s or intestate’s estate, by collecting the
debts due to such estate, and by selling the personal estate, or
the real estate (if need be, and he has power or can obtain li-
cense to sell the same) or shall neglect to pay what he has in
his hands, and by such neglect or delay shall subject the testa-
tor’s or intestate’s real or personal estate to be taken in personal
execution, the same shall be deemed waste and unfaithful ad-
ministration in such executor or administrator.

Sect. 9. And be it further enacted, That all writs of attachment
and executions, shall run only against the goods or estate of the
party deceased, in the hands of executors or administrators,
and not against their bodies; nor shall any executor or admin-
istrator be held to special bail upon mean process, nor his own
proper goods or estate be attached, or his person be arrested
or taken in execution for the debts or legacies of the testator
or intestate, but upon suggestion of waste, founded on a return
made by the sheriff, that he could not find any goods or estate
of the testator or intestate; in which case a writ commonly
called seire facias, shall be issued out of the clerk’s office of the
same court, against such executor or administrator, which writ,
being duly served and returned, if the executor or administra-
tor make default of appearance, or coming in, shall not shew
cause sufficient to the contrary, execution shall be adjudged
and awarded against him of his own proper goods and estate,
to the value of such waste, where it can be ascertained, other-
ways for the whole sum recovered;* and for want of goods or
estate, against the body of such executor or administrator.

* With interest thereon from the time when the first judgment was rendered—
1319 ch. 157.
Sect. 10. And be it further enacted, That in case of the death of any party, either the appellant or appellee, before the sitting of the court appealed unto, or where any action or suit is or shall be depending, either in the Court of Common Pleas, or in the Supreme Judicial Court, in any county of this Commonwealth, and it so happen that either party be taken away by death before final judgment, the executor or administrator of such deceased party, who was plaintiff, complainant or defendant (in case the cause of action doth by law survive) shall have full power to prosecute or defend any such suit or action from court to court, until final judgment; and the defendants or appellees are hereby obliged to answer to such actions accordingly; and the Justices of the Court of Common Pleas and Supreme Judicial Court, respectively, before whom such causes are or may be triable and depending, are hereby empowered and directed to hear and determine all such causes, proceed to judgment, and award execution accordingly: And if it shall so happen that the executor or administrator of the deceased hath not suitable time in the judgment of the court where such action or suit shall be pending, and doth by law survive as aforesaid, to prepare for managing the cause, or to become duly qualified to prosecute or defend the same; in such case it shall and may be lawful for the court to suspend the hearing and try thereof until the next term. And if by the verdict of a jury, or by the default or neglect of the executor or administrator, in prosecuting or defending such suit, after the executor or administrator shall have appeared and undertaken in his capacity to prosecute or defend the suit, judgment pass against the executor or administrator, the Supreme Judicial Court and Court of Common Pleas are hereby respectively authorized, empowered and directed, to enter up judgment for or against the estate of the deceased, in their hands and under their administration, as the case may require.

Sect. 11. And be it further enacted, That each Judge of Probate within his county be, and hereby is fully authorized and empowered, to call before him and to examine upon oath, any person suspected and complained of by any executor or administrator, heir, creditor, legatee or other person, having lawful right or claim to the estate of any person deceased, to have concealed, embezzled or conveyed away any of the money, goods or chattels left by the testator or intestate, for the discovery of the same. And if the person suspected and complained of as aforesaid, shall refuse to be examined, or to answer interrogatories, upon oath, respecting the estate which he or she may be suspected of concealing, embezzling or conveying away, it shall and may be lawful for, and the said judge is hereby empowered to commit such person, so refusing to be examined or answer interrogatories upon oath as aforesaid, unto the common gaol of the county, there to remain until he or she shall consent to be examined and answer interrogatories upon oath as aforesaid, or be released by the consent of the person suspecting and complaining against him or her, or by order of the Supreme Judicial Court.
Sect. 12. And be it further enacted, That the several Judges of Probate be, and hereby are empowered, to convene before them any person that has been or may hereafter be intrusted by any executor or administrator with any part of the estate of the testator or intestate (and to be assisting to such executor or administrator in the execution of their trust) who shall refuse, upon a citation issued from the Judge of Probate for that purpose, to appear before him, and render a full account, upon oath, of any money, goods or chattels, and of any bonds, accounts or other papers belonging to the estate of the testator or intestate, which he shall have taken into his hands or custody; and of his proceeding for and in behalf of such executor or administrator in his capacity as such. And if such person shall refuse to render account as aforesaid, such judge may proceed against him in the way and manner before directed for persons suspected of concealment, who refuse to answer interrogatories upon oath.

Sect. 13. And be it further enacted, That when any person shall be cited to appear as a witness before the Judge of Probate in any cause or hearing, and such person shall refuse to appear or give evidence, he or she shall be liable to the like penalty or damage as such person would be liable unto for refusing to appear or give evidence in any Court of Common Pleas.

Sect. 14. And be it further enacted, That in all cases where the appraisers, commissioners or dividers, appointed by the judge to perform any service respecting the estate of any person deceased, or persons appointed to set off the widow's dowry therein, and are by law directed to be under oath, or sworn by the Judge of Probate, they may be sworn before a Justice of the Peace; and in case there be no Justice of the Peace in the same town, they may be sworn before the town-clerk; a certificate of such oath to be returned to the probate-office from whence the warrant or commission appointing them issu’d. [March 4, 1784.] Add. act—1819 ch. 157.

An Act for settling the estate of Benjamin White, late of Brookline, Yeoman, deceased, according to the intention of the last Will and Testament of the said Benjamin. [March 5, 1784.]

An Act in addition to an Act, entitled, "An Act to incorporate Jonathan Gardner, jun. and others, therein named, into a Society by the name of The Marine Society at Salem, in the County of Essex, in the Province of the Massachusetts Bay, in New-England." [March 9, 1784.] Repealed—1789 ch. 32.

An Act for empowering certain persons to examine the Sales that have been made by the Moheunmnunk Tribe of Indians, and for regulating the future sales and leases of all lands from the said Tribe of Indians. [March 9, 1784.]

An Act directing the Descent of intestate Estates, and for empowering the Judge of Probate to make Partition in certain cases.*

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any person shall die seized of lands, tenements or hereditaments, not by him devised, the same shall descend in equal shares to and among his children, and such as shall legally represent them, (if any of them be dead) except the eldest son then surviving, who

Judges of Probate empowered to convene before them any person intrusted with any estate of testators or intestates.

Penalty for witnesses refusing to appear.

Appraisers, &c., may be sworn before Justice of the Peace or town clerk, in case—

1817 ch. 190, § 27.

Chap. 33.

Chap. 34.

Chap. 35.

Chap. 36.

How lands shall descend.

*The three first sections of this act are repealed by 1789 ch. 2, & 1805 ch. 90. Part of the fifth, the sixth, eighth, and subsequent sections are repealed by 1817 ch. 190, § 45.
shall have two shares, if there is no issue of an older son, in which case such issue and his eldest descendant, or descendants of such issue, shall have two shares in right of the father, although the father died before the grandfather: and in every case where children shall inherit by representation, it shall be in equal shares; and where there are no children of the intestate, the inheritance shall descend equally to the next of kin, in equal degree, and those who represent them, computing by the rules of the civil law—no person to be considered as a legal representative of collaterals beyond the degrees of brothers' and sisters' children; and for want of heirs, the estate shall accrue to the Commonwealth. And when any of the children of an intestate die before his arrival to the age of twenty-one years, and unmarried, such deceased child's share shall descend equally among the surviving brothers and sisters, and such as legally represent them; but if such deceased child die after having arrived to the age of twenty-one years, unmarried and intestate, in the life time of the mother, every brother and sister shall inherit equally with the mother.

Sect. 2. And be it further enacted, That when any person shall die possessed of any chattels or personal estate, not by him bequeathed, the same shall be distributed among his heirs, in the same way and manner real estates descend by this Act.

Sect. 3. Provided nevertheless, and it is enacted, That such chattels or personal estate shall stand chargeable with the payment of all the just debts and funeral charges of the deceased; and after the payment thereof, the surplusage (if any there be) shall, by the Judge of Probate, be decreed, one third part to the widow of the deceased forever, unless the intestate died without issue, in which case she shall have one half thereof forever. And when the personal estate shall be insufficient to pay the debts and funeral charges of the deceased, the widow shall nevertheless be entitled to her apparel, and such other of the personal estate as the Judge of Probate shall determine necessary, according to her quality and degree; and such part of the personal estate, as the judge may allow the widow, shall not be assets in the hands of the executor or administrator. And the real estate shall stand chargeable with all the debts of the deceased, over and above what the personal shall be sufficient to pay as aforesaid.

Sect. 4. And be it further enacted, That the widow of the deceased shall in all cases be entitled to her dower in the real estate, (where she shall not have been otherwise endowed before marriage) and to a recovery of the same in manner as the law directs. And after the payment of debts, funeral expenses, and the charges necessarily incurred in the settlement of any estate, are deducted, the Judge of Probate of the county where the deceased was an inhabitant or resident, at the time of his death, shall cause the residue, whether it be situate in the county in which he is judge, or any other county in the government, to be divided, and partition thereof to be made among the children or heirs as this Act directs; unless it shall so happen, that some one or more of the children or grand-children shall have portions of the intestate assigned or delivered them by him in his life time; in which case such portions shall be taken into consideration, and deducted from their shares in such partition respectively.

Sect. 5. And be it further enacted, That when a man and his wife shall be seized of lands, tenements, or hereditaments, in her right in fee, and issue shall be born alive of the body of such wife, that may inherit the same, and such wife shall die, the husband shall have and hold such estate during his natural life, as tenant by the curtesy.

Provided always, That when the real estate cannot be divided among all the children, or their legal representatives, without great prejudice to, or spoiling the whole, the Judge of Probate may order the whole to the eldest son, if he accept the same, or to any other of the sons successively, on his refusal, he paying unto the other children of the deceased, their equal and proportionable shares of the true value thereof, upon an appraisement to be made by three disinterested freeholders, appointed by the judge for that purpose, and under oath; or giving good security to pay the same, in such convenient time as the said judge shall limit and appoint, making reasonable allowance in the interim, not exceeding six per cent. per annum.

Sect. 6. And be it further enacted by the authority aforesaid, That when the real estate of an intestate will conveniently accommodate more of the children than
Be it further enacted. That any deed of lands or tenement made for love and affection, or where any personal estate delivered a child shall be charged in writing by the intestate, or by his order, or a memorandum made thereof, or delivered expressly for that purpose, before two witnesses who were bid to take notice thereof, the same shall be deemed and taken an advancement to such child or children to the value of such lands, tenements, or personal estate, within the intent of this Act.

Sect. 8. And be it further enacted. That after the decease of any person intestate, administration of such intestate's goods and estate shall be granted unto the widow, or next of kin to the intestate, within thirty days, or sooner, and an inventory taken of the said estate of the deceased, within three months or sooner, by three suitable persons appointed by, and sworn before the Judge of Probate, for the faithful discharge of that trust. And after the expiration of thirty days from the death of any person intestate, in case the widow or next of kin, shall refuse or neglect to take out letters of administration, being cited before the judge for that purpose, in case they are resident within the county, he may commit administration of any such estate to some one or more of the principal creditors, if accepted by them, or others, as he shall think fit upon their refusal; and every administrator shall, before he or she shall enter upon the execution of that trust, give bond to the Judge of Probate, with good and sufficient sureties, upon condition among other things, to make and return a true inventory of the estate administered on into the probate office, within three months, and to render an account of administration within one year from the time of taking administration, which bond shall be in the form following:

Know all men by these Presents, that we

within the Commonwealth of Massachusetts, are holden, and stand firmly bound and obliged unto the

Esq. Judge of Probate of wills, and granting administration within the county of

in the full sum of pounds, in lawful money, of said Commonwealth, to be paid unto the said

his successors in the said office, or assigns; to the true payment whereof, we do bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, for the whole and in the whole, firmly by these presents. Sealed with our seals, dated the day of

Anno Domini, one thousand seven hundred and

The condition of this present obligation is such, that if the above bounden do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels, rights, and credits, of the said deceased, which have or shall come to the hands, possession or knowledge of the said or into the hands and possession of any other person or persons for the same so made, do exhibit, or cause to be exhibited, into the registry of the Court of Probate, for the said county of at or before the
day of next ensuing; and the said goods, chattels, rights, and credits, and all other the goods, chattels, rights, and credits of the said deceased, at the time of death, which at any time after shall come to the hands and possession of the said or into the hands and possession of any other person or persons for well and truly administer according to law: And further do make or cause to be made, a just and true account of said administration, upon oath, at or before the
day of which will be the year of our Lord, one thousand seven hundred and

And all the rest and residue of the said goods, chattels, rights, and credits, which shall be found remaining upon the said administration account (the same being first examined and allowed of by the judge or judges, for the time being, of probate of wills, and to remain taken in all administrations within the county of

and shall deliver and pay unto such person or persons respectively, as the said judge or judges, by his or their decree or sentence, pursuant to law, shall limit and appoint: And if it shall hereafter appear, that any last will and testament

1805 ch.90, § 3.
1817 ch. 190, § 45.
1817 ch. 190, § 14.
was made by the said deceased, and the executor or executors therein named, do exhibit the same into the Court of Probate, for the said county of making request to have it allowed and approved accordingly; if the said within bounden being thereunto required, do render and deliver the said letter of administration (approbation of such testament being first had and made) into the said court; then such order shall be made. And such order shall be binding on the administrator, or the aggrieved administrator to bring his action of account against the other administrator or administrators, and recover his proportionable share of such intestate's estate as shall belong or appertain to him.

Sect. 9. And be it further enacted, That where two or more have letters of administration granted them of any intestate estate, and one or more of them take all or the greatest part of such estate into his or their hands, and refuse to pay the debts or funeral charges of such intestate, or refuse to account with the other administrator, the said administrator shall be lawful to sue for such an aggrieved administrator to bring his action of account against the other administrator or administrators.

Sect. 10. And be it further enacted, That no administration of the goods or estate of any deceased person, not administered upon by a former administration or executor, shall be granted, until it shall evidently appear to the Judge of Probate, by the oath of the party applying therefor, or otherways, that there is such personal estate of the deceased, to the amount of five pounds, or upwards, or debts of the like or greater value, due from the deceased's estate unpaid. Nor shall administration be originally granted upon the estate of any deceased person, after the expiration of twenty years, from the death of such person.

Sect. 11. And be it further enacted, That the respective Judges of Probate, within this government, be, and hereby are directed and empowered, when they make out their warrants for the division of the real estate of any person dying intestate, to divide among the heirs, or for assigning the widow's dower, where such estate or any part thereof lies in common or undivided with the real estate of any other person, to direct the committee named in such warrant, first to sever and divide the intestate's estate from the estate with which it lies in common as aforesaid; the said committee to give timely notice to all parties interested, to be present if they see cause; and such division, so made and accepted by the judge, and duly recorded in the probate office for the same county, shall be binding on all persons interested. Provided, That where any minors or persons non compos, or otherwise incapacitated to take care of their estates, are interested in either estates, or out of the government, guardians shall be appointed over them, and some discreet person shall be appointed by the judge to represent and act for such absent party before such division is made. Provided also, That before the order of such division issue, it be made to appear to the Judge of Probate, that the several persons interested in such estate, if living within this government, or the attorney of such as are absent, and have attorneys residing within this government, have been duly notified of such partition, and have had opportunity to make their exception to the same.

Sect. 12. And be it further enacted, That when and so often as any devisee (or his guardian) who holds any real estate in partnership with any person or persons, by force of any last will and testament, shall make application to the Judge of Probate of wills, &c. in the county where such estate lies, for a division thereof, it shall and may be lawful for such Judge of Probate to order the whole of the real estate so devised, (or that part of it the partition wherein is requested) to be divided to and among the devisees, in proportion according to the will of the testator, by five or three good and discreet freeholders of the same county, to be appointed by and sworn before the said judge, to the due performance of that service; notice being first given to all parties concerned to be present at the making of such partition, if they see cause, which partition or division being returned into the probate office, and approved by the judge, and there recorded, shall be valid in the law to all intents and purposes, unless upon the appeal of any party aggrieved at the partition so made, the same should be reversed or altered before the Supreme Court of Probate. And whereas it sometimes happens, that real estates, devised by will, lie in common and undivided with other real estate.

Sect. 13. Be it further enacted, That in every such case it shall and may be lawful for the said Judge of Probate, to order and direct the freeholders aforesaid, first to make partition between the estate given by will, and any other land, in common and undivided with other real estate.
Sect. 14. And be it further enacted, That when partition or division shall be made by any Judge of Probate, of the real estate of any deceased person, agreeable to the method before prescribed, and any one or more of the interested party shall neglect or refuse to pay their just proportion of the charge, which may attend such division or settlement, it shall and may be lawful for the judge to issue a warrant of distress against any delinquent or delinquents interested as aforesaid, provided an account of such charge be first laid before the judge, and the just proportion of the person interested, settled and allowed, they having been duly notified to be present at such settlement or allowance.

Sect. 15. And be it further enacted, That when any message, tract of land, or other tenement, shall be of greater value than either party's part or share in the estate to be divided, and cannot at the same time be subdivided, or part thereof assigned to one and part to another, (without great inconvenience) the same may be settled by the judge; such party to whom the share is awarded, assigning paying such sum or sums of money to such party or parties, as by means thereof have less than their share of the real estate, as the committee appointed to make partition shall award.

Sect. 16. Be it further enacted, That in case the estate of any person dying intestate shall lay more than ten miles from the dwelling-place of the Judge of Probate, of the county in which such estate lies, then shall and may be lawful for any Justice of the Peace to appoint the appraisers of such estate; and in case any part of the estate of any person dying testament or intestate, shall lay without the limits of the county of the Judge of Probate, to whom it appertains to act as such in the settlement of the same, then it shall and may be lawful for any Justice of the Peace to appoint the appraisers of such part of such estate; and in both the cases last mentioned, the Justice of the Peace appointing appraisers, shall administer to them the necessary oaths, and shall certify the same, together with the appointment, which shall be considered as valid and effectual in law as if such persons were appointed and sworn by the Judge of Probate, any thing in this Act to the contrary notwithstanding.

Provided nevertheless, That every administrator shall be held to account with the Judge of Probate for the personal estate of the deceased, as the same shall be appraised, unless the judge shall think it will be more for the benefit of those concerned otherwise to dispose of the same; in which case the said judge shall order the same, or any part thereof, to be sold at public auction or at private sale, in such manner as he shall determine will best serve the interest of all persons concerned, and the administrator shall account for such estate as the same was sold.

Whereas it sometimes happens, that for want of prudent management in executors, administrators or guardians, who may obtain a legal order for selling real estate, shall, previous to the sale, before some Justice of the Peace, take the following oath:

"I A. B. do solemnly swear, that in disposing of the estate lately belonging to now deceased, I will use my best skill and judgment in fixing on the time and place of sale; and that I will exert my utmost endeavours to dispose of the same in such manner as will produce the greatest advantage to all persons interested therein, and that, without any sinister views whatever."

And the said executor, administrator or guardian, shall return to the Judge of Probate a certificate of the same, under the hand of the Justice before whom such oath was taken. [March 9, 1784.]

An Act directing the Mode of transferring Real Estates by Deed, and for preventing Fraud therein.

WHEREAS it is necessary (to prevent uncertainty, fraud and perjury in the transferring real estates) that a mode therefor should be established, easy, certain and notorious:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all leases, estates, interests of freehold, or terms of years, or any uncertain interests of, in or out of any messuages, lands, tenements, or hereditaments, made or created by livery and seize only, or by parole, and not put in writing, and signed by the parties so making or creating the same or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only; and shall not, either in

Parties refusing to pay charges of division, the Judge of Probate to issue a warrant of distress.

1017 ch. 190, § 29.

Settlements to be made when any message, &c. is of greater value than either party's part.

1817 ch. 190, § 29.

Justices of the Peace empowered to appoint the appraisers, in case—

Provided

Executors. &c. to be under oath previous to sales.

Form of the oath.

1817 ch. 190, § 11.

An Act directing the Mode of transferring Real Estates by Deed, and for preventing Fraud therein.

Chap. 37.

Col. L. 1834. 40. 51. 52.

4 W. & M. ch. 3.

Parole leases, &c. to have the force of estates at will only.
law or equity, be deemed or taken to have any other, or greater force or effect; any consideration for making any such parole leases, or estates, notwithstanding. And no leases, estates, or interests, either of freehold or term of years, or any uncertain interest of, in, to, or out of any messuages, lands, tenements, or hereditaments, shall at any time be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

Sect. 2. *And be it further enacted,* That no action shall hereafter be maintained upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning the same, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

Sect. 3. *And be it further enacted,* That all grants and assignments, as well as all declarations or creations of trusts or confidence of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party, who is by law enabled to grant, assign, or to declare such trust, or by his last will in writing, or else the same shall be utterly void and of no effect. *Provided always,* That where any conveyance shall be made of any lands, tenements, or hereditaments, by which a trust or confidence shall or may arise or result, by the implication or construction of law, or be transferred or extinguished by an act or operation of law; then, and in every such case, such trust or confidence shall be of the like force and effect, as the same would have been if this Act had not been made; any thing herein contained to the contrary notwithstanding.

Sect. 4. *And be it further enacted by the authority aforesaid,* That all deeds or other conveyances of any lands, tenements or hereditaments, lying within this Commonwealth, signed and sealed by the party or parties granting the same, having good and lawful right or authority thereunto, and acknowledged by such grantor or grantors, before a Justice of the Peace in this State, or before a Justice of the Peace or magistrate in some other of the United States of America, (or in any other State or kingdom wherein the grantor or vendor may reside at the time of making and executing the deed) and recorded at length in the registry of deeds in the county where such lands, tenements, or hereditaments do lie, shall be valid to pass the same without any other act or ceremony in the law whatsoever. And no bargain, sale, mortgage or other conveyance in fee simple, fee tail, or for term of life, or any lease for more than seven years from the making thereof, of any lands, tenements, or hereditaments, within this Commonwealth, shall be good and effectual in law to hold such lands, tenements or hereditaments, against any other person or persons but the grantor or grantors, and their heirs only, unless the deed or deeds thereof be acknowledged and recorded in manner aforesaid. *Provided never-
1783. — Chap. 37.

thereless, That when any grantor or lessor as aforesaid shall go beyond sea, or be removed out of this government, or be dead, before the deed or conveyance, by him executed, shall be acknowledged as aforesaid, in every such case the proof of such deed or conveyance, made by the oath of one or more of the witnesses whose names may be thereunto subscribed, before any court of record within this Commonwealth, shall be equivalent to the party's own acknowledgment thereof before a Justice of the Peace as aforesaid.

Sect. 5. And be it further enacted, That if any grantor or lessor of any lands, tenements or hereditaments, shall refuse to acknowledge any bargain, sale, mortgage or other conveyance as aforesaid, it shall be lawful for such grantee or lessee to leave a copy of such deed or lease, compared with the original by the register, in the register's office, and such copy so left shall be deemed sufficient caution to all persons against purchasing or extending execution thereon for the space of forty days from the time of leaving such copy. And any Justice of the Peace in the same county, after such refusal, at the request of the grantee or lessee, his heirs, executors, administrators or assigns, may issue a summons for such grantor or lessor to appear (if he see cause) at a certain time and place therein mentioned, to hear the testimony of the subscribing witnesses thereunto; which summons shall be served by the proper officer, seven days at the least before the time therein assigned for proving the deed; and at such time and place, whether the grantor or lessor be present or not, it being made to appear by the oath of one or more of the witnesses thereunto subscribed, that they saw the said grantor (or lessor) voluntarily sign and seal the deed, and that they subscribed their names as witnesses thereunto at the same time, such proceedings, and a certificate thereof under the hand of the justice annexed to the deed (wherein the presence or absence of the adverse party shall be noted) shall be equivalent to the acknowledgment of the grantor before a Justice of the Peace.

Provided, That nothing in this Act shall be construed, deemed or extended, to bar any widow of any vendor or mortgagor of lands or tenements from her dower or right in or to such lands or tenements, who did not join with her husband in such sale or mortgage, or otherwise lawfully bar or exclude herself from such dower or right.

Sect. 6. And it is further enacted, That any mortgagee of any lands, tenements or hereditaments, his or her heirs, executors or administrators, having received full satisfaction and payment of all such sum and sums of money as are really due to him by such mortgage, shall, at the request of the mortgagor, his heirs, executors or administrators, acknowledge and cause such satisfaction and payment to be entered in the margin of the record of such mortgage, in the register's office, and shall sign the same, which shall forever after discharge, defeat and release such mortgage, and perpetually bar all actions to be brought thereupon in any court of record. And if such mortgagee, his heirs, executors or administrators, shall not, within

1737 ch. 5.

Grantees refusing to acknowledge their deeds.

Proof of execution equivalent to acknowledgment of the grantor.
Mortgagee liable for refusing to release or discharge.

Former deeds valid.

 Chap. 38.

4 & 5 W. & M. ch. 20.

28 Geo. II.—

Guardians to be allowed and appointed by the Judge of Probate.

Minor over 14 years old neglecting to choose guardian, &c.

Proviso.

Judges empowered, upon request made by the friends of any idiot, &c., to direct the selectmen to make inquisition.

10 Geo. II.—

1783. —Chap. 38.

An Act empowering the Judges of Probate to appoint Guardians to minors and others.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Judge of Probate in each county respectively, when and so often as there shall be occasion, be, and hereby is empowered, to allow of guardians that shall be chosen by minors of fourteen years of age, and to appoint guardians for such as shall be within or under that age, taking sufficient security of all such guardians for the faithful discharge of their trust, and to account either with the judge or minor when such minor shall arrive to the age of twenty-one years, or at such other time as the judge, upon complaint to him made, shall direct. And when any minor above the age of fourteen years shall be cited by the Judge of Probate to choose a guardian, and such minor shall refuse or neglect to appear, or when appearing shall refuse to choose a guardian, or any guardian chosen by such minor shall be unable to give sufficient security, or shall refuse the trust, or when any minor above the age of fourteen years shall be without this government, in every such case the Judge of Probate shall have the same power to appoint a guardian as though such minor were under the age of fourteen years. Provided nevertheless, That when a minor above the age of fourteen years, living more than ten miles distant from the Judge of Probate's dwelling-house, shall choose a guardian, such minor may have that choice certified to the judge by any Justice of the Peace in the same county, or by the town-clerk, if no justice shall dwell in such town, which choice so certified shall be deemed as good and valid as if done in the said judge's presence.

Sect. 2. And be it further enacted, That it shall be in the power of the Judges for the Probate of wills, within their respective counties, from time to time, (upon request made by the friends or relations of any idiot, non compos, or lunatic person, or by the overseers of the poor in such town where such idiot, non compos, or lunatic person lives or is an inhabitant) to direct the selectmen of such town to make inquisition thereinto; and if the person, said to be an idiot, lunatic, or distracted person, shall be adjudged by the selectmen of the town, (or
the major part of them) where such person resides, to be incapable to take care of him or herself, and they shall certify the same under their hands, to the judge, the said Judge of Probate shall be empowered to assign some suitable person or persons to be guardian or guardians to such idiot, lunatic, non compos, or distracted person, directing and empowering such guardian or guardians to take care of the person and estate, both real and personal, of such person, and to make a true and perfect inventory of the said estate, to be returned into and filed in the probate office in such county.

SECT. 3. And be it further enacted, That the Judges of Probate in their respective counties, are also fully authorized and empowered, upon the complaint of any heir, creditor or other person, having lawful right or claims in expectancy, to the estate of any idiot, lunatic, non compos, or distracted person, as well as the guardian or guardians, to proceed with any person or persons suspected of concealing, embezzling or conveying away any of the money, goods or chattels of such idiot, lunatic, non compos, or distracted person, in the same way and manner as is by law prescribed for persons suspected of concealing, embezzling, or conveying away the money, goods or effects of deceased persons.

SECT. 4. And be it further enacted by the authority aforesaid, That the guardian or guardians appointed as aforesaid, shall improve frugally and without waste and destruction, the estate of the idiot, non compos, lunatic or distracted person, and apply the annual income and profits thereof for the comfortable maintenance and support of the said idiot, lunatic, non compos or distracted person, and also of his or her household or family, (if any such there be) and the said guardian or guardians are hereby empowered to settle accounts, receive, (and if need be) to sue for and recover all just debts due to the said idiot, lunatic, non compos, or distracted person, from any person or persons, whomsoever, and to manage, improve, or divide the real estate in as full and ample a manner as the said idiot, lunatic, non compos, or distracted person might or could, were they restored to the full use of their rational faculties; and shall also be subject to the payment of all just debts owing by such person which were contracted before their distraction, out of their personal estate, or in case that he be insufficient, then out of the real estate, being first empowered to make sale thereof by the Supreme Judicial Court,* in the way and manner executors or administrators are empowered to make sale of the real estates of deceased persons. And in case the income or improvement of the personal and real estate of such persons shall not be sufficient to support them, the said Supreme Judicial Court may license and authorize the guardians to make sale of the whole or part of the real estate of such person for that purpose, as occasion may require. And in case any such idiot, lunatic, or distracted person shall be restored to the use of his reason, the residue and remainder of the estate real and personal shall be returned and delivered to him, or in case of his death to his

To be certified to the Judge.

Judge of Probate authorized, upon complaint of any heirs, &c., to call before him persons suspected of concealing, &c.

10 Geo. II. c. 1733 ch. 32, § 11.

Guardians to improve the estate of the idiot, &c., and to settle accounts.

To sell real estate upon license of Sup. Court.

6 W. & M. ch. 2.

1783 ch. 32.

To return property in case—

* Or Court of Probate—1817 ch. 199, § 10.

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heirs, executors, or administrators; the guardian or guardians having first such a reasonable allowance out of the same for their charge and trouble as the Judge of Probate shall order.

Sect. 5. And be it further enacted, That the guardian or guardians appointed as aforesaid, shall give bond to the Judge of Probate for the time being in a reasonable sum, with sufficient sureties for the faithful discharge of the trust reposed in them, and more especially for the rendering a just and true account of their guardianship, when and so often as they shall be thereunto required.

Sect. 6. And be it further enacted, That the Judges of Probate in their respective counties may also, as occasion may require, appoint guardians for the children of lunatics, idiots, non composit, or distracted persons, in the same way and manner as though their parents were naturally dead.

And whereas, to the dishonour of human nature and the great injury of society, individuals oftentimes spend, lessen and waste their estates by excessive drinking, gaming, idleness and debauchery, and thereby involve themselves and families in distress, misery and ruin; and subject the towns to which they belong to expense and charge for their maintenance and support:

Sect. 7. Be it therefore enacted by the authority aforesaid, That when any person by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste, or lessen his or her estate, as thereby to expose himself or herself, or his or her family, or any of them, to want or suffering circumstances, or shall, by thus spending, wasting, or lessening his or her estate, endanger or expose the town to which he or she belongs, in the judgment of the selectmen thereof, to a charge or expense for the maintenance or support of him or her, or his or her family, or any of them, such selectmen, or the major part of them, shall, in such case, lodge a complaint with the Judge of Probate for the county to which the person spending, wasting or lessening his estate as aforesaid, doth belong; and if it shall appear to the said Judge of Probate, that the person complained of comes within the description of this Act, and has had due notice of the complaint exhibited against him or her, as the case may be, then, and in that case, the said Judge of Probate shall appoint the said selectmen, or the major part of them, or some suitable and discreet person or persons, guardian or guardians to such person. And no sale or bargain of any real or personal estate, made by such person or persons, after the appointment of guardianship, as aforesaid, shall be held valid in law. And the guardian or guardians that may be thus appointed, shall, in discharging the duties of their appointment, pursue the same method, and be under similar obligations for a faithful discharge of their trust, as guardians appointed for idiots, lunatics, or for persons non composit mentis.

* Or after copy of complaint, &c. is filed in the office of the Register of Deeds.—1818 ch. 60.
† Authorized to sell so much of the real estate of their wards, as may be necessary to pay debts and provide for their maintenance.—1806 ch. 102.—or the whole, when by a partial sale, the remainder would be greatly injured.—1918 ch. 112.
1783. — Chap. 39.

Sect. 8. And be it further enacted, That executors, administrators, and guardians shall not be compelled to plead specially to any action or suit at law, brought against them in their said capacity; but may under the general issue give any special matter in evidence.

Sect. 9. And be it further enacted, That the Judges of Probate in the respective counties of this State, shall have certain fixed days for the making and publishing their orders and decrees, and such days to be made known by public notifications thereof in the several counties. And no Judge of Probate shall be allowed or admitted to have a voice in judging and determining (nor shall he be admitted to plead or act as an attorney) in any civil action whatsoever, which may depend on or have relation to any sentence or decree made or passed by him in his office aforesaid, [March 10, 1784.] Add. act—1816 ch. 60.

An Act for the better managing Lands, Wharves, and other Real Estate, lying in common.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when and so often as any five or a major part of the proprietors of lands, wharves, or other real estate lying in common in any part of this Commonwealth, shall judge a proprietors' meeting to be necessary, they may make a written application to a Justice of the Peace through the Commonwealth, or to a Justice of the Peace within the county where such estate lies, for a warrant for the calling of a meeting, expressing the time, place and occasion thereof; and such justice is hereby empowered to grant a warrant for such meeting accordingly, directed to one of the proprietors asking the same, or to the proprietors' clerk, requiring him to notify the proprietors of the meeting, and the time, place, and occasion of the same; which notification, in case such undivided estate lies in any incorporated town, shall be given in writing and posted up in some public place or places within such town, fourteen days at least before the day appointed for the meeting; and for the like time (at least) before such meeting, shall be advertised in one of the Boston weekly news-papers, and in one of the news-papers (if such there be) printed in the county wherein such real estate lies; or in case such undivided estate doth not, or shall not lie within any incorporated town, such written notification shall be given by advertising the same in any two of the said Boston news-papers, and in one other newspaper (if such there be) printed out of Boston, in the county where such estate lies, at least four weeks successively before such meeting; or such meetings may be otherwise warned by posting up written notifications in some public place in each and every town and plantation where any one or more of the said proprietors may reside, fourteen days at least before the time appointed for holding such meeting; and such and so many of the proprietors as shall assemble personally, or by their attorneys, and meet accordingly, shall have power by a major vote to choose a moderator, a clerk, a treasurer, a collector or collectors of taxes, a committee or committees, and any other needful officers to manage their affairs; which clerk shall enter and record all votes and orders that from time to time shall be made and passed in the proprietors' meetings, who shall be sworn to the faithful discharge of his office; and to agree upon and appoint any other way or method of Executors, &c., not compelled to plead specially.

This section repealed—1817 ch. 190, § 45.

Chap. 39.

1785 ch. 55.

How proprietors' meetings are to be called.

12 Anne ch. 2. 8 & 9 Geo. II. ch. 4. 26 Geo. II. ch. 2.

Fourteen days notice for a meeting—In case

Four weeks notice—in case

To choose a moderator, clerk, &c.

Clerk to be sworn.
Proprietors may make orders and annex penalties.

Such orders to be approved by Court of Sessions.

Votes to be numbered according to the interest of the proprietors.

Moderator empowered.

No persons to speak without leave.

Penalty.

How recoverable.

1783 ch. 12.

Persons, towns, &c. to sue or defend in any court.

1785 ch. 75, § 8.
1786 ch. 10, § 2.

calling and summoning meetings for the future, that shall be most suitable and convenient to the proprietors; as also to pass votes or orders for the settling, or encouraging the settling, managing, improving, or dividing such common lands, wharves, or other real estate, not before severed and divided; and to annex penalties to the breach and non-observance of such orders; Provided, such penalty doth not exceed fifteen shillings for one offence; Provided also, That such orders so made, with penalties annexed to them, be allowed and approved by the Court of General Sessions of the Peace for the county where such land or estate lies, and be not repugnant to the general laws of this Commonwealth; in which case such orders shall have such force and effect as that such proprietors, by their treasurer, agent or agents, may recover the penalty thereto annexed against the breakers or non-observers thereof, in any court proper to try the same; such penalty to be disposed of as the proprietors shall direct: And the votes shall always be collected and numbered according to the interest of the proprietors present, where the same is known. And no other affair shall be acted on at any meeting of the proprietors, than what is expressed in the warrant or notification for such meeting.

Sect. 2. And be it further enacted by the authority aforesaid, That the moderator chosen at any such meeting shall be thereby empowered to manage and regulate the business of that meeting: And where it shall so happen that any matter remains doubtful after a vote, the moderator is hereby directed and required to cause the same to be decided by the poll, if any one or more desire it; such polls to be numbered according to their interest.

Sect. 3. And be it further enacted by the authority aforesaid, That no person shall have right to speak before leave first obtained from the moderator, nor when any other is orderly speaking, and that all persons be silent at the order of the moderator, under the penalty and forfeiture of five shillings, for the breach of every such order; and if any person being by the moderator notified of such offence shall still persist in the same, then the moderator may order such person to withdraw from the said meeting; and such offender upon his refusal to do so shall forfeit and pay the sum of twenty shillings: The respective forfeitures to be recovered by the clerk of such proprietors, before any one of the Justices of the Peace for the county wherein such land or other estate lies, or such clerk lives, to be disposed of, the one half for the use of the propriety, the other half to the said clerk.—And for the better enabling such proprietors, and all persons, towns, villages, trustees for schools and others (holding or claiming by any lawful title) to maintain, recover and defend their respective grants, lands, interests and estates:

Sect. 4. Be it enacted by the authority aforesaid, That it shall and may be lawful for all and every the said persons, towns, villages, precincts, parishes, trustees for schools, and proprietors in common and undivided lands, grants and other real estates or interests whatsoever, to sue, commence and prosecute any suits or actions in any court proper to try the same,
either by themselves or their agents or attorneys, and in like manner to defend all such suits and actions as shall be commenced against them or any of them; and at a legal meeting to choose such agents or attorneys to prosecute for, or defend them—such choice being certified by the clerk of such town, village, precincts, parishes, trustees or proprietors, or by such other person as they shall respectively appoint.

Sect. 5. Be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the proprietors of any common and undivided lands or other real estate, or the major part of them according to the interest of the proprietors present, by themselves or their lawful attorneys, at any legal meeting, to vote, grant or order the raising of any suitable sum or sums of money that shall by them be thought sufficient for bringing forward, completing the settlement of, or managing or improving such lands and estate; and to carry on and prosecute or defend any actions or suits that may be brought by or against them, or for carrying on, managing, or effecting any other affair for the common good of such proprietors; and to levy and apportion such sum or sum (raised for the ends and uses aforesaid) upon the proprietors' several rights in such common and undivided lands or estates, equally and ratably according to their several interests therein. And every proprietor who shall neglect to pay to the collector, or treasurer, or committee of such propriety, his proportion of such sum or sums of money as have been, or from time to time shall be duly granted and voted to be raised and levied upon the proprietors' rights and shares in such lands and estate, for the space of six months with respect to those who live within this Common-wealth, and twelve months with respect to those who live out of it, after such grant, and his or their proportion thereof shall have been posted and published in the several newspapers as in the case of notifications aforesaid; then the committee of the proprietors, or the major part of such committee, may, and are hereby fully empowered, from time to time, at a public venue, to sell and convey away so much of such delinquent proprietor's right or share in such common land or estate as will be sufficient to pay and satisfy his tax or proportion of such grant, and all reasonable charges attending such sale, to any person that will give most for the same; notice of such sale and of the time and place thereof being given by posting as aforesaid, and publishing the same in at least two of the newspapers aforesaid, five weeks successively before the time of such sale; and may execute a good deed or deeds of conveyance of the lands or estate so sold unto the purchaser thereof to hold in fee simple.

Provided nevertheless, That the proprietor or proprietors, whose right or share shall be so sold, shall have liberty to redeem the same at any time within twelve months after such sale, by paying the sum such right or share sold for and charges, together with the further sum of twelve pounds for each hundred pounds produced by such sale, and so pro rata for any less or greater sum.
Sect. 6. And be it further enacted by the authority aforesaid, That when it shall happen that suit shall be brought against any towns, precincts, parishes or villages, or against the proprietors of any common or undivided lands or other estate, the plaintiff bringing forward such suit, shall cause the clerk of such towns, villages, precincts or proprietors, or one or more of the principal inhabitants or proprietors respectively, to be served with a copy of the writ or summons, at least thirty days before the day of the sitting of the court to which the same shall be returnable.

Sect. 7. And be it further enacted by the authority aforesaid, That the treasurer, assessors, collector or collectors, which at any time may be chosen by the proprietors of any common and undivided lands or other real estate, shall be sworn before a Justice of the Peace to the faithful discharge of their respective trusts; and in case no Justice of the Peace shall be present at the meeting of such proprietors, then any, or all the officers directed to be sworn by this act, may be sworn by the moderator; and such treasurer is hereby empowered to demand, sue for, recover and receive all such sums of money, debts and dues, as shall at any time belong to the said proprietors, or be any ways due or coming to them, and make payment thereof according as he shall be lawfully ordered and directed by the proprietors, and render his reasonable account thereof on demand; and such treasurer shall continue in his office till the proprietors shall see cause to choose another.

Sect. 3. And be it further enacted by the authority aforesaid, That the proprietors of such undivided land or estate where the same hath been heretofore stated, and each one's proportion known, shall be, and hereby are empowered to order, manage, improve, divide, or dispose of the same in such way and manner as shall be concluded and agreed upon by the major part of the interested present at any legal meeting, the votes to be collected and accounted according to the interests. And any proprietor may vote, as well by attorney, specially appointed for that purpose, as in person: And the proprietors of all such undivided lands and estate not stated, nor the proportions known as aforesaid, shall be, and hereby are empowered to order, manage, improve, divide or dispose of the same, as hath been or shall be concluded and agreed on by the major part in number of such proprietors present at any such meeting. Provided always, That the meetings of proprietors that may be notified, or which may hereafter be held by adjournment or adjournments agreeable to former laws, shall not be affected by the passing this act: But such meetings, and the transactions regularly made thereat, shall be as valid to every intent and purpose as though this act had never been made.

And whereas it is needful that provision be made for the preservation and safe keeping of the records of such proprietors, after they have made a full and complete division of their lands, or other real estate lying in common and undivided, and reduced the same to severalty:
Sect. 9. Be it further enacted by the authority aforesaid, That the last clerk chosen by the proprietors of any common and undivided land, or other real estate in this Commonwealth, who are or have been, or may hereafter be empowered by law to hold meetings, choose a clerk and other officers, shall continue to execute the office of clerk to which he was appointed, notwithstanding the final and total division of such lands and estate, as fully, to all intents, constructions and purposes whatsoever, as though there had been no such division made, and until the same records shall be lodged with the clerk of the town in which the land lies; and when the lands lie in several towns, they may be lodged with the clerk of such town, as the Court of Sessions, upon application to them made for that purpose, shall order and direct; and the clerk with whom they may be lodged, and his successors in office, shall be fully authorized to authenticate any copies therefrom, as from the records of the town of which he is clerk. [March 10, 1784.] Add. act—1790 ch. 40.

An Act for the speedy Assignment of Dower, and for the preventing of Strip and Waste by tenants therein.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That when the heir or other person having the next immediate estate of freehold or inheritance, shall not within one month next after demand made, assign and set out to the widow of the deceased, her dower or just third part of and in all lands, tenements, and hereditaments, whereof by law she is or may be dowable, to her satisfaction, according to the true intentment of law, then such widow may sue for and recover the same by writ of dower, to be brought against the tenant in possession, or such persons who have or claim right or inheritance in the same estate, in manner and form as the law prescribes.

Sect. 2. And be it further enacted, That upon rendering judgment for any woman to recover her dower in any lands, tenements, or hereditaments, reasonable damage shall also be awarded to her from the time of the demand and refusal to assign to her her reasonable dower. And a writ of seisin shall be directed to the sheriff of the county, his under-sheriff or deputy, in manner and form as is by law prescribed; and the sheriff or other person, unto whom by law such writ of seisin is directed, shall cause her dower in such estate to be set forth unto her by three disinterested freeholders of the same county, under oath, (to be administered by any Justice of the Peace) to set forth the same equally and impartially without favour or affection, as conveniently as may be.

Sect. 3. And be it further enacted, That of estates of which a woman is dowable, and that be entire, and where no division can be made by metes and bounds, dower shall be assigned thereof in a special manner, as of a third part of the rents, issues, or profits, to be computed and ascertained in manner as aforesaid; and no woman that shall be endowed of any lands, tenements, or hereditaments as aforesaid, shall commit or suffer Estates where no division can be made, dower to be assigned as of one third part of the rents, issues or profits.
No strip or waste to be made.

any strip or waste thereon, upon penalty of forfeiting the part of the estate upon which such strip or waste shall be made, and the damages assessed for waste, to him or them that have the immediate estate of freehold or inheritance in remainder or reversion, by an action of waste to be brought therefor. And all tenants in dower shall maintain the houses and tenements with the fences and appurtenances, whereof they may be endowed, in good repair during the term, and shall leave the same so at the expiration thereof. And the writs of dower and seisin, shall be in form following:

COMMONWEALTH OF MASSACHUSETTS.

[Seal.] ——— ss.
To the Sheriff of our county of S——, or his Deputy.

GREETING.

WE command you, that you summon of in our said county, of S——, if may be found in your precinct, to appear before our Justices of our Court of Common Pleas next to be holden at within and for our said county of S——, upon the Tuesday in next; then and there in our said court to answer unto of in a plea of dower, for that

[Here the declaration.]

to the damage of the said as saith, the sum of pounds, as shall then and there appear. Witness T—— N——, Esq.; at B——, the day of in the year of our Lord L. M. Clerk.

[Writ of seisin.]

COMMONWEALTH OF MASSACHUSETTS.

[Seal.] S——— ss.
To the Sheriff of our said county of S——, or his Deputy.

GREETING.

WHEREAS who was the wife of E. D. late of B—— in the county aforesaid (addition) deceased, before our Justices of our Court of holden at B—— for our county aforesaid, on the day of now last past, did recover seisin against A. B. of B—— aforesaid, (addition) of one third part of a certain messuage or tenement, with the appurtenances, situate in B—— aforesaid, in the possession of the said A. B. (addition) as her dower of the endowment of the said E. D. her certain husband, by our writ of dower, whereof she hath nothing; therefore we command you, that to the said full seisin of one third part of the aforesaid messuage or tenement with the appurtenances, you cause to be had without delay, to hold to in severalty by metes and bounds. We command you also, that of the goods or chattels of the said A. B. within your precinct, you cause to be paid and satisfied unto the said at the value thereof in money, the sum of for damages awarded her by our said court, for her being held and kept out of her dower aforesaid, and costs expended on this suit, with shillings more for this writ; and thereof also to satisfy yourself your own fees; and for want of goods or chattels of the said A. B.
to be by him shewn unto or found within your precinct to satisfy the same, we command you to take his body, and to commit him to the keeper of our gaol in B in our county aforesaid, within the said prison, whom we likewise command to receive the said A, B, and him safely to keep until he pay unto the said the full sum abovementioned, and also satisfy your fees.

Hereof fail not, and make return of this writ, and how you shall have executed the same, to our next Court of to be holden at B for our said county of S on the day of next. Witness, E. H. Esq.; at B. the day of in the year of Lord,

Clerk.

[March 11, 1784.] Add. acts : 1812 ch. 93 : 1816 ch. 84.

An Act for the more easy Partition of Lands, or other Real Estate.

WHEREAS the partition of lands and other real estate among the persons interested, though much desired and of great advantage, is often hindered and delayed by reason that infants are interested, or that the parties concerned are numerous and live remote from each other, and sometimes in parts beyond seas, and are some of them unknown:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any person or persons interested with others in any lot, tract of land, or other real estate, making application (either by themselves or their agents, attorneys or guardians) to the Supreme Judicial Court of this Commonwealth, or Court of Common Pleas, of the county in which such land or other real estate lies; the said courts are severally authorized and empowered to cause partition to be made of such lands or other real estate, and the share or shares of the party or parties applying for the same, to be set off and divided from the rest. The partition to be made by five or three freeholders, under oaths, to be appointed by the said court who shall order the partition, and a return of such partition to be made into the clerk's office of the said court; and the partition or division so made being accepted by the said court which ordered the division to be made, and there recorded, and also recorded in the registry of deeds, in the county where such estate lies, shall be valid and effectual to all intents and purposes.

Sect. 2. And be it further enacted by the authority aforesaid, That when partition shall be made as aforesaid, if any one or more of the interested parties applying, shall neglect or refuse to pay their just proportion of the charges which may attend such division, it shall and may be lawful for the said court who ordered the partition, to issue an execution against the delinquent or delinquents interested, and applying as aforesaid; provided an account of such charge be first laid before the said court who ordered the partition, and the just proportions of the persons interested, settled and allowed, they having been duly notified to be present at such settlement and allowance. And when any message, tract of land, or other real estate shall be
Proviso when land, &c. cannot be subdivided.

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Sect. 3. And be it further enacted, That neither of the said courts shall proceed to order such partition, until it shall appear to them respectively, that the several persons interested in such estate, and living within the State, or the attorneys of such as are absent, and have attorneys residing in the State, have been duly notified of such petition (by being personally served with a copy thereof, or a copy left at their dwelling house, or last place of abode, or that the substance of the petition shall have been inserted three weeks successively, in one or more of the public newspapers) and have had opportunity to make their exception to the granting the same. Provided nevertheless, That before partition be made, where any infants, persons non compos mentis, or otherways incapacitated to take care of their estates are interested, guardians shall be appointed for all such persons according to law, if they live within this State, and if any person or persons interested in any such estate happen (at the time when such application shall be made) to have been beyond sea, or out of this State for the space of one year, and not returned, and having no sufficient attorney within the same, in such case the said court to whom application shall be made for partition, shall appoint some discreet and disinterested person or persons, as agent or agents for such absent party or parties, to be advising on his or their behalf in making such partition; and due notice shall be given by the committee to all concerned (that are known and within the State) before such partition be made, that so they may be present (if they see meet) at the time of making the same. Provided also, That no partition be made where any partner shall be beyond sea, and shall not have been absent twelve months, and shall be expected to return within six months. Provided also, That if any partner shall have a larger share set off than is such partner's true and real interest, or if any share set off should be more than equal in value to the proportion it was set off for, then and in every such case, upon complaint (to the court which caused such partition to be made) within three years of the making thereof, by any aggrieved partner or partners, who at the time of making such partition were out of the State, and not notified thereof as aforesaid seasonably to be present at the same, the said court shall cause partition thereof to be made anew. And in such new partition so much and no more shall be taken off from any share, as such share shall be adjudged more than the proportion of the whole it was designed for, estimating such lands or real estate as in the state they were in when first divided; and in case any improvements shall be
made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made him by the partner or partners to whose share the same shall be added, by the estimation of the freeholders employed in making such new partition, or the major part of them. And the justices of the same court, who ordered partition, are also empowered to issue execution for such satisfaction, and for costs in such new partition, the same being first taxed and allowed in the said court. [March 11, 1784.] Add. act—1786 ch. 53.

An Act describing the Power of Justices of the Peace in Civil Actions.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all manner of debts, trespasses, and other matters not exceeding the value of four pounds,* (and wherein the title of real estate is not in question) shall, and may be heard, tried, adjudged, and determined by any justice of the Peace within his county, and the Justices are severally empowered to grant summons, capias and attachment, at the request of any person applying for the same, directed to some proper officer within the same county, empowered by law to execute the same. And such summons or capias and attachment shall be duly served by such officer, seven days at the least before the day therein set for trial, otherwise the party sued shall not be held to answer thereon; and if after such process shall be duly served, the party sued, after being duly called, shall not appear to answer to the same suit, the charge against him in the declaration shall be taken to be true, and the justice shall give judgment against him for such damages as he shall find the plaintiff to have sustained, with costs; and if the person sued shall appear to defend the suit or oppose the same, the justice shall award such damages as he shall find the plaintiff to have sustained; Provided. That no more damages than the sum of eighty shillings* shall be awarded in any action originally brought or tried before a Justice of the Peace; but if the plaintiff shall not support his action, shall fail to prosecute or become nonsuit, the justice shall award to the party sued, his reasonable costs, taxed as the law directs. And upon all judgments given by a Justice of the Peace in civil actions, he shall award execution thereon in form by law prescribed.

Sect. 2. And be it further enacted, That when an action of trespass shall be brought before any Justice of the Peace, and the defendant shall plead the general issue, he shall not be allowed to offer any evidence that may bring the title of real estate in question. And when the defendant in any such action shall plead the title of himself or any other person in justification, the justice, upon having such plea filed, shall order the defendant to recognize to the adverse party, in a reasonable sum, with sufficient surety or sureties, to enter the said action at the next Court of Common Pleas to be holden within the same county, and to prosecute the same in the same manner as upon an appeal from a justice's judgment; and if such

Chap. 42.

9 W. III. ch. 2.

Debts, trespasses and other matters, not exceeding four pounds, to be tried by Justices of the Peace.

*Twenty dollars—1807 ch. 122.

Summons, &c. to be served seven days before trial.

In case of non-appearance, justices to give judgment.

Provide.

In action of trespass if the defendant shall plead the title of himself or another—the cause to be removed, and bond given.

10 W. III. ch. 5.
pleader shall refuse so to recognize, the justice shall render judgment against him in the same manner as if he had refused to make answer to the same suit. And either party in such cause shall be allowed to appeal from the judgment of the Court of Common Pleas, in the same manner as if the suit had been originally commenced there. And every Justice of the Peace shall have power by public proclamation to adjourn the trial of any action brought before him, from time to time, when equity may require it; but he shall not be of counsel to either party, or undertake to advise or assist any party in suit before him.

Sect. 3. And be it further enacted, That each Justice of the Peace shall keep a fair record of all his proceedings; and when any Justice of the Peace shall die before a judgment given by him is paid and satisfied, it shall be in the power of any Justice of the Peace in the same county to grant a scire facias upon the same judgment, to the party against whom such judgment was rendered up, for him to shew cause, if any he hath, why execution should not be issued against him. And although the cost and debt awarded by the deceased justice, when added together, shall amount to more than eighty shillings, it shall be no bar upon such scire facias, but judgment shall be given thereon for the whole debt and cost, together with the cost arising upon the scire facias: Provided always, That either party may appeal from the judgment as in other personal actions, where judgment is given by a Justice of the Peace. And every Justice of the Peace who shall have complaint made to him, that a judgment given by a justice of the same county, then deceased, remains unsatisfied, shall issue his summons to the person in whose possession the record of the same judgment is, directing him to bring and to produce to him the same record; and if such person shall contemptuously refuse to produce the same record, or shall refuse to be examined respecting the same, upon oath, the justice may punish the contempt by imprisonment until he shall produce the same, or until he submits to be examined as aforesaid; and when the justice is possessed of such record, he shall transcribe the same upon his own book of records, before he shall issue his scire facias, and shall deliver the original back again to the person who shall have produced it, and a copy of such transcription attested by the transcribing justice, shall be allowed in evidence in all cases where an authenticated copy of the original might be received.

Sect. 4. And it is further enacted, That when an executor or administrator shall be guilty of committing waste, whereby he is rendered unable to pay the judgment recovered before any Justice of the Peace, against the goods and estate of the deceased in his hands, out of the same, the justice may proceed against the proper goods and estate of such executor or administrator, in the same manner as the Court of Common Pleas are empowered to do.

Sect. 5. It is also enacted, That each Justice of the Peace may grant subpoenaas for witnesses in all civil actions and causes pending before the Supreme Judicial Court, Court of Common

1763. — Chap. 42.
Chap. 42.

1783. —

Pleas, Court of General Sessions of the Peace, and before him or any other justices, and in all civil actions and causes pending before arbitrators or referees.

Sect. 6. And be it further enacted, That any party aggrieved at the judgment of any Justice of the Peace in a civil action, where both parties have appeared and pleaded, may appeal therefrom to the next Court of Common Pleas to be held within the same county; and shall, before his appeal is allowed, recognize with a surety or sureties, in such reasonable sum as the justice shall order, not exceeding ten pounds, to pay all intervening damages and costs, and to prosecute his appeal with effect, and shall be held to produce a copy of the whole case at the court appealed to; and both parties shall be allowed to offer any evidence upon the trial at the Common Pleas, in the same manner as if the cause had been originally commenced there. And no other appeal or review shall be had on such action, after one trial at the Court of Common Pleas. And the Court of Common Pleas, when any person recognized as before mentioned to bring forward an action of trespass, doth neglect to do it, upon complaint thereof made in writing by the plaintiff, shall give judgment for such sum in damages as the plaintiff hath declared for, together with all reasonable costs which accrued both in the same court, and before the justice. And the Court of Common Pleas shall, when any appellant thereto shall fail to prosecute his appeal, or if he shall neglect to produce a copy of the case, affirm the former judgment upon the appellee's complaint, and award such additional damages as shall have arisen in consequence of the said appeal and cost.

Sect. 7. Be it further enacted by the authority aforesaid, That in all civil actions triable before a Justice of the Peace, except such actions of trespass wherein the defendant means to avail himself, by pleading the title of himself or any other person, under whom he claims in justification of the trespass or trespasses alleged to be committed on real estate; the defendant shall be entitled to all evidence under the general issue, which by law he might avail himself of under any special plea in excuse or justification; any law, usage or custom to the contrary notwithstanding.

Sect. 8. Be it further enacted by the authority aforesaid, That no action shall be sustained in any Court of Common Pleas within this Commonwealth, where the damage demanded shall not exceed the sum of four pounds, unless by an appeal from a Justice of the Peace, saving such actions wherein the title to real estate may be concerned; and if upon any action originally brought before the Court of Common Pleas judgment shall be recovered for no more than four pounds, debt or damage, in all such cases the plaintiff shall be entitled, for his costs, to no more than one quarter part of the amount of the debt or damage so recovered.

Sect. 9. Provided nevertheless, and be it further enacted by the authority aforesaid, That all actions already commenced, or which may be commenced before the first day of June next, shall be proceeded upon, heard, and determined in the same
manner as they might have been before the passing of this Act, any thing herein to the contrary notwithstanding. [March 11, 1784.] Add. acts—1797 ch. 21 : 1807 ch. 123.

Chap. 43.

An Act describing the Duty and Power of Coroners.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every coroner within the county for which he is appointed, shall serve all writs and precepts when the sheriff or either of his deputies shall be a party to the same, and shall, if present in court, return jurors de talibus circumstantantibus in all causes where the sheriff of the county shall be interested or related to either party; they shall take inquests of violent deaths committed, and casual deaths happening within their respective counties, and shall, before they enter upon the duties of their office, be sworn to the faithful discharge thereof, and give security before they proceed to act, in the same manner as sheriffs by law are obliged to do.

SECT. 2. And be it further enacted by the authority aforesaid, That each coroner shall, as soon as he shall be certified of the dead body of any person, supposed to have come to his death by violence, or casualty, found or lying within his county, make out his warrant, directed to the constable of the town where the dead body is found or lying, or to the constables of one or more of the three or four next adjacent towns, requiring them forthwith to summon a jury of good and lawful men of the same town or towns, sufficient to make up eighteen in all, to appear before him at the time and place in such warrant mentioned and expressed; which warrant shall be in form following:

**Suffolk, ss.**

[SEAL.] To either of the Constables of B—, in the said county of S—,

GREETING.

THese are in the name of the Commonwealth of Massachusetts, to require you immediately to summon and warn good and lawful men of the said town of B to appear before me, one of the coroners of the said county of S at the dwelling-house of or at a place called within the said town of B at the hour of and there to inquire, upon the view of the body of , there lying dead, how and in what manner he came to his death.

Fail not herein at your peril. Given under my hand and seal, at B the day of in the year of our Lord W. G.

And every constable, to whom such warrants shall be directed and delivered, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant with his doings thereon, unto the coroner that granted the same. And every constable failing unnecessarily of executing such warrant, or of returning the same as aforesaid, shall forfeit the sum of three pounds; and every person summoned as a juror as aforesaid, that shall
fail of appearance without having reasonable excuse therefor, shall forfeit forty shillings, which forfeitures shall be recovered by action of debt, before any court that can take cognizance of the same, and shall be applied to the use of the county. And the coroner shall swear twelve or more of the jurors that shall appear, and shall give the foreman (by him appointed) his oath, upon view of the body, in form following:

You solemnly swear, that you will diligently inquire and true presentment make on behalf of this Commonwealth, how and in what manner A. B. who lies here dead, came to his death; and you shall deliver up to me, one of the coroners of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge. So help you God.

And then shall swear the other jurors, in form following:

Such oath as your foreman hath taken, you, and each of you, shall well and truly observe and keep. So help you God.

And the jurors being sworn, the coroner shall give them a charge upon their oaths, to declare of the death of the person, whether he died of felony, or of mischance, or accident; and if of felony, who were principals, and who were accessories, with what instrument he was struck or wounded, and so of all prevailing circumstances which may come by presumption; and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise: To inquire of the persons who were present, the finders of the body, his relations and neighbours, whether he was killed in the same place where he was found, and if elsewhere by whom, and how he was brought from thence; and of all circumstances relating to the said death: And if he died of his own felony, then to inquire of the manner, means, or instrument, and of all circumstances concerning it. And the jury being charged shall stand together, and proclamation shall be made for any person that can give evidence, to draw near and that they shall be heard. And every coroner is further empowered to send out his warrant for witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question, and he shall administer an oath to them in form following:

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

The evidence of such witnesses shall be in writing subscribed by them: And if they relate to the trial of any person concerned in the death, then shall the coroner bind such witnesses by recognizance in a reasonable sum, for their personal appearance
at the next Supreme Judicial Court, to be holden within or for the same county, there to give evidence accordingly, and commit to the common gaol of the county such witness or witnesses as shall refuse to recognize as aforesaid, and shall return to the same court the inquisition, written evidence, and recognition by him taken. And the jury having viewed the body, heard the evidence, and made all the inquiry within their power, they shall draw up and deliver unto the coroner their verdict upon the death under consideration, in writing, under their hands and seals, in form following:

**Inquisition.**

**Suffolk, ss.**  
{ An inquisition taken at B within the said county of S the day of ___ in the year of our Lord before W. G. gentleman, one of the coroners of the said county of S upon the view of the body of A. B. there lying dead, by the oaths of yeomen, good and lawful men, who being charged and sworn to inquire for the Commonwealth, when, how, and by what means the said A. B. came to his death, upon their oaths do say

[Then insert how, when, and by what means, with what instrument he was killed, and if it appears that he hath been murdered by a person known, then the inquisition shall be concluded in this form:] to wit:

And so the jurors aforesaid, upon their oaths aforesaid, do say, that the aforesaid A. B. in manner and form aforesaid, and there of his malice aforethought, did kill and murder, against the peace and dignity of the Commonwealth, and the laws of the same.

[If it appears to be self-murder, then shall the inquisition be concluded thus:]

And so the jurors aforesaid, thus upon their oaths aforesaid, do say, that the said A. B. in manner and form aforesaid, and there voluntarily and feloniously as a felon of himself, did kill and murder himself, against the peace.

[And if it appears that the death was by misfortune]

And so the jurors aforesaid, upon their oaths say, that the said A. B. in manner aforesaid, came to his death by misfortune.

[If innocently by the hands of any person]

The jurors upon their oaths aforesaid do say, that the aforesaid D. R. the aforesaid A. B. by misfortune, and against and contrary to the will of him the said D. R. in manner and form aforesaid, did kill and slay. In witness whereof the said coroner and jurors to this inquisition have set their hands and seals, the day and year aforesaid.

And upon an inquisition found before any coroner of the death of any person, by the felony or misfortune of another, he shall speedily inform one or more of the justices of the same county thereof, to the intent that the person killing or being
any way instrumental to the death, may be apprehended, examined, and secured in order for trial. [March 12, 1784.] Add. acts—1805 ch. 66 : 1806 ch. 29.

An Act defining the general Powers and Duties, and regulating the Office of Sheriffs.

Sect. 1. BE it enacted by the Senate and House of Representa-" tives, in General Court assembled, and by the authority of the same, That the sheriff of each county in this Common-wealth shall have power, and it shall be his duty, and the duty of each of his deputies, to serve and execute within his county, all writs and precepts to him or them directed and committed, issued from good and lawful authority; and the sheriff of each county shall have the custody, rule, and charge of the gaol or gaols therein, and of all prisoners within such gaol or gaols, and shall keep the same himself personally, or by his deputy, for whom he shall be answerable; and every sheriff shall give sufficient security at the discretion of the Court of Common Pleas, in his county, unto the Treasurer of the Commonwealth, for his faithful performance of the duties of his office, and to answer the malfeasance and mis-feasance of all his deputies:

And if any sheriff shall neglect to give such security at the Court of Common Pleas which shall be held in his county, next after his being commissioned, all services done by him afterwards, and before he shall give such security, shall be null and void.

Sect. 2. And be it further enacted by the authority aforesaid, That the clerk of the Supreme Judicial Court, and each clerk of the peace, shall, within fifty days after the end of their courts respectively, return into the office of the Treasurer of the State, a certificate of all fines, amerciaments, issues, and forfeitures arising or imposed to the use of the Commonwealth, by their respective courts, on penalty of twenty pounds for each and every neglect, to be disposed of as follows, viz. the one moiety to him or them who shall sue for the same, and the other moiety to the benefit of this Commonwealth. And the attorney-general, as well as such persons as may from time to time be appointed by the Courts of General Sessions of the Peace within their respective counties, be, and hereby are especially directed and enjoined to give information of, and prosecute for the recovery of all such fines and forfeitures as may be in-urred by the clerks aforesaid, in consequence of their breach of this act: And the said clerks shall respectively return a like certificate into the Secretary's office, that the General Court may thereby be enabled to settle with the Treasurer; and each clerk of the peace shall certify to the treasurer of his county, the fines arising to the county from time to time, from convictions in the Court of General Sessions of the Peace. And the Supreme Judicial Court, and the Court of General Sessions of

* In the Colony Laws, the officer now called sheriff was denominated marshal. (Col. L. 1647, 1662, 1675, 1694.) The Province Charter authorized the Governor and Council to appoint sheriffs, marshals, &c.; and in the Province Laws, frequent mention is made of marshals as well as of sheriffs. Writs were directed to the marshal or sheriff of the county—his undersheriff or deputy—or either of their deputies. See 13 W. III. ch. 11. 13. 14.

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the Peace, shall audit and settle the sheriffs' accounts for such fines as shall have been by them imposed, and for forfeitures arising in them respectively, and thereupon grant the sheriff a full discharge.

SECT. 3. And be it further enacted, That no sheriff or deputy-sheriff* shall be suffered to appear in any court, or before any Justice of the Peace, as attorney to, or in behalf of, or assisting, or advising to any party in a suit, nor shall any sheriff or his deputy be allowed to draw, make or fill up any plaint, declaration, writ or process, or to draw or make any plea for any other person; but all such acts done by either of them shall be void. And if any sheriff or his deputy shall unreasonably neglect or refuse to pay to any person, any money received by him upon execution to the use of such person, upon demand thereof being made, he shall forfeit and pay to such person five times the lawful interest of such money, so long as he shall so unreasonably detain the same after such demand is made.

SECT. 4. And be it further enacted by the authority aforesaid, That no sheriff shall have his body arrested upon mean process, or upon an execution awarded upon a judgment consequent upon a civil action, and that when judgment shall be rendered against any person holding the office of sheriff, either in his official or private capacity, for any sum of money, the execution thereof shall be issued against his goods, chattels, and lands, but not against his body; and if any execution issued against the goods, chattels, or lands of a person who holds the office of sheriff, shall be returned not satisfied, the creditor may file before the Governor and Council an attested copy of such execution and return, and also serve such sheriff with a copy of such copy filed, attested by the secretary, together with notice under the hand of the secretary, of the day of filing such copy. And if such sheriff shall not, within forty days next after his being served with such copy and notice, pay the creditor the full of his debt, together with reasonable costs of the copies and notifications aforesaid, the Governor, with the advice of Council, shall remove such sheriff from his office, and shall appoint some other person to the same.

And all sheriffs, when removed from their office, as well as their deputies, shall have power to execute all such precepts as may be in their hands at the time of their removal from office: And such sheriff shall be held answerable for the delivery over to their respective successors, of all prisoners which may be in their custody at the time of their removal, and for that intent shall still retain the keeping of the gaol or gaols in their respective counties, and the prisoners therein, until their successors shall be appointed and qualified as the law directs. And when a sheriff shall be removed from his office, the clerk of the court from whence executions have been issued and returned not satisfied, shall be empowered as soon as another sheriff shall be appointed and legally qualified, to make out

* This prohibition is extended to constables, by 1822 ch. 29.
An Act for establishing Courts of Probate.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That a Court of Probate shall be held within the several counties in this Commonwealth, and there shall be, in the manner the constitution directs, some able and learned person in each county within this Commonwealth, appointed or to be appointed judge for taking the probate of wills, and granting administrations on the estates of persons deceased, being inhabitants of, or resident in the same county at the time of their decease; for appointing guardians to minors, idiots and distracted persons; for examining and allowing the accounts of executors, administrators or guardians; and for such other matters and things as the Courts of Probate, within the several counties, shall, by the laws of the Commonwealth, have cognizance and jurisdiction of; who shall have full power and authority to make out such process or processes, as may be needful for the discharge of the trust reposed in him; and all sheriffs, deputy sheriffs and constables, are required duly to serve and execute all legal warrants or summons to them directed by any Judge of Probate. And contempt of authority, in any cause or hearing before any Judge of Probate, shall and may be punished in like manner, as such contempt of authority in any Court of Common Pleas may, or can by law be punished.

Sect. 2. And be it further enacted, That there shall be in manner as the constitution directs, a suitable person in each county within this Commonwealth, appointed or to be appointed register of wills, administrations, accounts, decrees, orders, determinations, and other writings which shall be made, granted, or decreed upon by the Judges of Probate of wills, in their respective counties, which register shall be sworn to the faithful performance of the duties of his office, and have the care, custody, and keeping of all files, papers and books, to the probate office belonging; and in case of the death, sickness, or necessary absence of the register, or other cause may be shown and may be lawful for the Judge of Probate to nominate and appoint some meet person to officiate as a register, to be sworn as aforesaid, until the standing register shall be able to attend his duty, or till a new one shall be appointed by the Governor and Council.

Sect. 3. And be it further enacted, That the Supreme Judicial Court shall be the Supreme Court of Probate within this Commonwealth, who shall have the jurisdiction of all matters determinable by the Judges of Probate in their respective counties; and all appeals from any order or decree of the Judge of Probate which shall be made after the passing of this Act, shall be to the said Court accordingly; and that the said Supreme Court of Probate shall also have cognizance in the first instance of all matters wherein the Judge of Probate of any county is a party or interested.

Sect. 4. And be it further enacted, That any person aggrieved at any order, sentence, decree, or denial of any Judge of Probate in any county within this Commonwealth, may appeal therefrom to the Supreme Court of Probate aforesaid; Provided, The appeal to be claimed within one month from the time of making such order, sentence, decree, or denial, and bonds be given and filed in the probate office by the appellant, within ten days after such appeal shall be claimed and granted, for the prosecution thereof to effect, at the next Supreme Court of Probate, and for paying all intervening costs and damages, and such costs as the Supreme Court of Probate shall tax against him. And such appeal shall be taken notice of, and proceeded upon at the term of the Supreme Judicial Court, which shall be held next after the expiration of twenty days after such appeal shall be made, and the party aggrieved, or denial of such order, sentence, decree, or denial was made, and the appellant shall file the reasons of appealing in the Probate Court appealed from, within ten days after the security is given, and shall serve the adverse party or parties with an attested copy of such reasons fourteen days at least before the sitting of the said Supreme Court of Probate, at which the trial is to be had. And when it shall appear from the reasons of appeal, that the sanity of the testator or the attestation of the witnesses in his presence, as the law directs, is the question in controversy on any will or codicil, the said Supreme Court of Probate may, for the determination thereof, direct a real or leignd issue to be tried before a jury in the same court at the expense of the appellant, in case the issue be found against him. And in case the party or parties appealing, fail in the prosecution of the said appeal to effect, then the adverse party, or any person interested in the sentence or decree so appealed from, shall have the benefit of the same, by filing a complaint before the Supreme Judicial Court to be the Supreme Court of Probate.

1817 ch. 190, § 6. An appeal allowed.

1812 ch. 29, 1817 ch. 190, § 7-8. Proviso.

Time when the appeal shall be taken notice of.

Appellant to file the reasons in the Probate Court.

Party appealing failing to prosecute to effect, adverse party to have the benefit of the same.
provision.

In case of an appeal, further proceedings to renew until final determination.

1817 ch. 190, 49.

Chap. 47.

An Act to incorporate the South Parish in the Town of Bolton, together with David Taylor, Silas Carley, Job Spafford, and John Brigham, inhabitants of Marlborough, with their estates, into a district by the name of Berlin. [March 16, 1878.]

Chap. 48.


WHEREAS by an Act made and passed in the year of our Lord one thousand seven hundred and eighty-two, entitled "An Act Establishing Courts of Common Pleas," it is provided and enacted, that there shall be held and kept within each county of this Commonwealth, at the times and places by law appointed, a Court of Common Pleas, by four substantial, discreet and learned persons, each one of whom to be an inhabitant of the county wherein he is appointed; but no provision is made for the appointment of such justices, or for the sitting of the same, or for the cause of action, when any of the standing justices thereof shall be interested, or necessarily absent:

Sec. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall, from time to time, be a suitable number of special justices of the Courts of Common Pleas, appointed by the Governor, with the advice and consent of Council, as the constitution directs, each one of whom to be an inhabitant of the county for which he may be appointed; and when it shall so happen that so many, not exceeding two, of the standing justices of the Court of Common Pleas shall be absent at the time appointed by law for holding the said court, or at any adjournment of the same in any county, so that there cannot be a quorum of the standing justices of the same court to proceed to business, then and in such case the senior special justice of the said county present, shall sit in the room of one of those absent, with the two of the standing justices present, and shall have all the powers and authorities in such case, as a standing justice hath by the laws of the State.

Sec. 2. And be it further enacted, That when all the standing justices of the Court of Common Pleas within any county, shall be parties in a cause at the time of bringing the suit, the writ shall bear test of the name of the senior special justice of the county; and when all the said standing justices shall be interested in the event of any suit brought in the court whereof they are justices, and thereby shall be rendered unsuitable to sit and give judgment in such suit, then the three senior special justices present, who shall not be interested in the event of each suit, shall take the seat of justice, and have the power and authority in such suit, as if the standing justices have in any other case; and when such cause shall be decided, the standing justices shall re-assume their seat, and proceed to the other business of the county, without any formalities of opening the court anew. And when so many of the standing justices of the Court of Common Pleas in any county, shall be interested in the event of any suit, or related to any person interested therein, and thereby shall be rendered unsuitable to sit and give judgment in such suit, then in such cases so many of the senior special justices present, as may be necessary to make a quorum of the said court, shall take the seat of justice, and with him or them who are not interested in such suit, or related to any person interested therein, shall proceed to try the cause whereon such suit is brought, and give judgment in the same manner as the Court of Common Pleas are authorized to do in other suits. [March 16, 1878.]

Repealed—1811 ch. 33.

An Act vesting certain Powers in Justices of the Peace in Criminal Cases.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That it shall be within the power, and be the duty of every Justice of the Peace within his county, to punish by such fine as is by the statute law of the Commonwealth provided, all assaults and batteries that are not of a high and aggravated nature, and to cause to be stayed and arrested all affrayers, rioters, disturbers and breakers of the peace, and to bind them by recognizance to appear at the next Supreme Judicial Court, or Court of General Sessions of the Peace,* to be held within or for the same county, at the discretion of the justice; and also to require such persons to find sureties for their keeping the peace, and being of good behaviour until the sitting of the court they are to appear before, and to commit such persons as shall refuse so to recognize and find such surety or sureties. And the Justices of the Peace shall examine into all homicides, murders, treasons, and felonies done and committed in their counties, and commit to prison all persons guilty or suspected to be guilty of manslaughter, murder, treason or other capital offence. And to hold to bail all persons guilty or suspected to be guilty of lesser offences which are not cognizable by a Justice of the Peace, and require sureties for the good behaviour of dangerous and disorderly persons; and shall take cognizance of, or examine into all other crimes, matters and offences, which by particular laws are put within their jurisdiction.

Sect. 2. And it is also enacted by the authority aforesaid, That Justices of the Peace within their respective counties, be, and they are hereby authorized and empowered, to grant subpœnas for witnesses in all criminal causes pending before the Supreme Judicial Court, and Court of General Sessions of the Peace,* and before themselves or any other justice. And all sheriffs, constables and other officers, are directed and empowered to serve any warrant issuing from a Justice of the Peace; and each justice shall have authority to command the assistance of every sheriff, deputy-sheriff, constable, and all other persons present at any affray, riot, assault or battery, and may fine any person refusing such assistance, in a sum not exceeding forty shillings, to be disposed of for the use of the town where the offence shall be committed, and levied by warrant of distress on the offender’s goods and chattels, and for want thereof, on his body.

Sect. 3. And be it further enacted by the authority aforesaid, That any person aggrieved at the sentence given against him by any Justice of the Peace, may appeal therefrom to the next Court of General Sessions of the Peace,* to be held within the same county, and shall, before his appeal is granted, recognize to the Commonwealth in such reasonable sum, not less than five pounds, as the justice shall order, with sufficient surety or sureties for his prosecuting his appeal, and shall be held to produce the copy of the whole process, and of all writings filed

1804 ch. 143, § 2.

Justices to grant subpœnas for witnesses.

[1791 ch. 63, § 6, at the request only of the State’s attorney.]

Persons aggrieved, allowed an appeal from the sentence of any justice.

See 1803 ch. 154, § 3, and the acts there referred to.
Persons failing to prosecute their appeal, how to be proceeded against.

1810 ch. 30.

1783. Before the justice at the court appealed to. And if he shall not there prosecute his appeal, and produce the copies as aforesaid, the court shall order his default to be noted upon their record, and shall certify the same recognizance with the record of the default in the performance of the condition thereof, to the Court of Common Pleas, to the intent that a seire facias may be thereupon issued for the recovery of the penalty. And the said court of General Sessions of the Peace,* may order the same case to be laid before the grand jury, or may issue an attachment against the body of such appellant, and cause him thereby to be brought before them, and when he is so in court, shall affirm the sentence of the justice against him with all additional costs.

SECT. 3. And be it further enacted, That the Justices of the Peace shall account annually with the treasurer of the Commonwealth, the treasurer of their respective counties, and the town treasurer, as the case may be, for all fines by them received or imposed, upon pain of forfeiting the sum of ten pounds, to be sued for and recovered by the treasurer of the Commonwealth, the county or town treasurer for the time being, to which the said fines may respectively belong. [March 16, 1784.]

Chap. 52. An Act to prevent Coparceners, Joint Tenants, and Tenants in Common, from committing Waste, and for making Partition of their interest, and for abolishing the Principle of Survivorship in joint tenancy.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person being a tenant in common of any lands, shall cut down, destroy, or carry away any trees, wood or underwood whatsoever, standing or lying on such lands, or make any other strip or waste thereon, without first giving notice in writing under his or their hands, unto all the persons interested therein, or to their agents, factors or attorneys, forty days beforehand, setting forth that he or they have occasion for, and shall enter upon and improve such lot or lots of land lying in common as aforesaid, shall forfeit and pay the sum of forty shillings for every tree measuring one foot diameter at the distance of two feet from the ground, and for all trees of greater dimensions three times the value thereof, besides forty shillings as aforesaid, and twenty shillings for every tree or pole under the dimensions of one foot diameter, and for other wood or underwood treble the value thereof; and treble damage for other strip or waste; the said forfeiture to be recovered by any one or more of the persons interested, who shall prosecute and sue for the same in an action of trespass in his or their own names, as well on the behalf of the other tenants in common, as of him or themselves, (who are hereby authorized and empowered so to do) one moiety of the aforesaid penalty to be for the use of such person or persons who shall sue for the same, and the other moiety to and for the use of the rest of the tenants in common aforesaid.

SECT. 2. And be it further enacted by the authority aforesaid, That all persons having or holding, or that hereafter shall have or hold any lands, tenements, or hereditaments, a coparcener, joint tenant, or tenant in common, may be compelled by writ of partition at the common law to divide the same; and when any writ shall be brought and served at the suit of any one or more persons interested in any lot or lots of land, tenements or hereditaments, held in common or undivided, or a petition shall be pending in the Supreme Judicial Court for a division and partition of the same, no person or persons whatsoever having a right to, or interest in any such lands, tenements, or hereditaments, or holding any part or share of the same in common as aforesaid, (whilst such suit or petition is depending) shall or may cut down, destroy, or carry away any trees, timber, wood or underwood, whatsoever, standing, growing, or lying on such lands, or shall otherwise hurt or damage any such lands, tenements, or hereditaments, until partition can be made of the same according to law, on pain that every person or persons so offending, shall incur the like forfeitures and penalties as are before in this Act mentioned, to be recovered in like manner as before named, and for such uses as are before mentioned and declared.

* See 1803 ch. 154, s 3, and the acts there referred to.
And to prevent any doubts hereafter, respecting the manner heirs are to prosecute in the courts of law, for possession of inheritances descended to them from a common ancestor:

Sect. 3. Be it further enacted, That in actions of waste, ejectment or other real actions, where possession of the inheritance alleged to have descended, is the object of the suit, they may all or any two or more of them join, or each one may prosecute for his particular share, any law, usage or custom to the contrary notwithstanding.

And whereas the principle of survivorship established by the rules of the common law, in cases where lands or real estate are, or may be held in joint tenancy, has been found by experience to work great injustice in various instances; And whereas the reasons, upon which the said principle was originally founded, have long ceased to exist:

Sect. 4. It is therefore further enacted, That the said principle of survivorship shall no longer be in force in this Commonwealth; and all devises of lands, or other real estate that may hereafter be made, in manner prescribed by law by any joint tenant, shall have all the force and effect of devises duly and legally made and executed by any tenant or tenants who may hold lands or other real estate in severalty.

Sect. 5. And it is further enacted, That where no disposition shall be made of any real estate held in joint tenancy in the life-time of the tenant, the same shall descend to his or her legal representative or representatives, in the same manner as real estates held in severalty do or may by law descend. [March 16, 1784.] Repealed—1785 ch. 62.

An Act to prevent Frauds on the Massachusetts Bank.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any president, director, officer, or servant of the Massachusetts Bank, shall secrete, embezzle, or convert to his own use, any note, bill, obligation, security, money, or effects, belonging to the said bank, or deposited there by any other person, every person so offending and being thereof convicted before the Supreme Judicial Court, shall be set upon the gallows with a rope about his neck, or be set in and upon the pillory, for the space of two hours, shall forfeit all his personal estate, and the issues and profits of his real estate during life, to the use of the Commonwealth, (after deducting such sum as shall indemnify the bank for the loss they may have sustained by means of the said fraud) and shall never after be rendered infamous and incapable of sustaining any office either civil or military.

Sect. 2. And be it enacted by the authority aforesaid, That if any person shall forge, counterfeit, or alter any bill, note, or obligation, made, signed, or given for or in the name of the president, directors, cashier, or other person in behalf of the said bank, or shall forge, counterfeit, or alter any indorsement on such bill, note, or obligation, or shall forge, alter, or counterfeit any order or check drawn by any person on the said president, directors, or cashier; every person so offending, and being thereof convicted before the Supreme Judicial Court, shall suffer the pains, penalties, forfeitures, and disabilities as aforesaid, and shall be subjected to hard labour within this Commonwealth, during the term of seven years; to be disposed of by the directors of the said bank, in such manner and under such confinement as they shall direct, for the use and benefit of the said bank.

Sect. 3. And be it enacted by the authority aforesaid, That if any person shall utter, pass, tender in payment, or offer to pass any forged, altered, or counterfeited bill, note, or obligation, made, signed, or given in the name of the said president, Heirs may bring real actions jointly or severally.

Principle of survivorship abolished—

In devises—

In descents.

Officers of the bank embezzling any money, &c. their punishment.

Persons who shall counterfeit any bank note, &c. their punishment.

Persons who shall knowingly pass counterfeit bank notes, &c. their punishment.
directors, cashier or other person, in behalf of the said bank, or any order or check drawn by any person on the said president, directors, or cashier, knowing such bill, note, obligation, or check to be so forged, altered, or counterfeited; every person so offending, and being convicted as aforesaid, shall suffer the pains, penalties, forfeitures, and disabilities as aforesaid, and shall be subjected to hard labour in manner and for the purpose as aforesaid.

Sect. 4. And be it enacted by the authority aforesaid, That if any person shall forge, alter, or counterfeit any letter of attorney, order or other instrument, to transfer or convey any share or shares of stock in the said bank, or to receive the same or any dividend or part thereof, or shall knowingly and fraudulently demand to have such share or shares, dividend or any parts thereof, transferred, conveyed, or received by virtue of such forged, altered, or counterfeited letter of attorney, order or other instrument, or shall falsely and deceitfully personate any true and lawful proprietor or proprietors of any share or shares of stock or dividend, or money, or other property deposited in the said bank, thereby transferring or endeavouring to transfer the said stock, dividend, money, or other property, or receiving or endeavouring to receive the said stock, dividend, money, or other property, in every such case the person so offending and being thereof convicted as aforesaid, shall suffer the pains, penalties, forfeitures, and disabilities as aforesaid, and shall be subjected to hard labour in manner and for the purpose as aforesaid. [March 16, 1784.]

An Act in addition to an Act, entitled, "An Act for the Admeasurement of Boards, and regulating the tale of Shingles, Clapboards, Hoops and Staves, and for other purposes therein mentioned."

WHEREAS it is the wisdom of every commercial country to prevent an abuse in the manufacture of those articles intended for exportation, in such a manner as that they may preserve their credit with foreigners, and thereby render their exports as permanent and beneficial as possible: And whereas the above mentioned Act does not sufficiently provide for carrying the good intentions thereof into effect:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of January next, wherever the restriction upon the shipping of any kind of lumber is mentioned in any of the clauses of the before recited Act, to or for any foreign market, or beyond sea, the same shall be considered and understood to extend to any port or place not within this Commonwealth, and that, previous to any naval officer’s clearing out any vessel with lumber to any port or place not within this Commonwealth, the like certificate of such staves, hoops, clapboards and shingles having been culled or surveyed, shall be produced, and the same oath administered, as is required to be produced and administered by the aforesaid Act for the exportation of lumber to a foreign market.

Sect. 2. And be it further enacted by the authority aforesaid, That from and after the first day of January next (in addition
to the penalty of twelve shillings per thousand, as mentioned in the said Act for the shipping of lumber otherwise than is therein prescribed, to be reckoned by feet or tate according as the articles are usually sold) whenever it shall appear that any of the kinds of lumber mentioned in the said Act have been exported in any vessel whatever out of this Commonwealth, to any port or place not within the same, unless the said lumber has been first culled or surveyed agreeable to the said Act; the master or owner of such vessel shall, for the first offence, forfeit and pay the sum of fifty pounds, and for the second offence the vessel so carrying the said lumber as aforesaid, being afterwards found in any part of this Commonwealth, shall be forfeited, to be recovered and applied in like manner as is provided by the said Act, for recovering and applying the penalty of twelve shillings per thousand as aforesaid.

And whereas some persons, from consulting their private convenience in preference to the commercial benefit of the public, may endeavour to evade the good intentions of the before recited Act, by clearing out or exporting the kinds of lumber mentioned therein, without the same being culled or surveyed agreeable to the said Act, by calling it by some other name than what it is usually known by:

Sect. 3. Be it therefore enacted by the authority aforesaid, That from and after the first day of January next, no naval officer, in any case whatever, shall presume to clear any vessel for any port or place not within this Commonwealth, that may have any lumber of the kind on board, mentioned in the before recited Act, under the specious pretence of its being chips, wood, or refuse lumber, or by whatever name it may be called, otherwise than what it is usually known by; and if it can be made to appear that any naval officer shall knowingly clear any vessel with lumber on board, of the kind as mentioned in the aforesaid Act, to or for any port or place not within this Commonwealth, without a certificate being produced previous to his clearing the said vessel, of the said lumber’s being culled or surveyed agreeable to the said Act, or shall clear the same under any other name whatever; the said naval officer for such neglect of duty, shall forfeit and pay for every such offence, one hundred pounds, to be disposed of one half to the poor of the town where such offence is committed, and the other half to the surveyor, or any other person who shall sue for the same; which they are hereby enabled to do by action, bill, plaint, or information, in any court proper to try the same. And on information’s being given to the said naval officer, by any two or more credible witnesses (upon oath if thereto required) of such vessel’s having such lumber on board, previous to his clearing the same, such information so given to the said naval officer, shall be deemed his having sufficient knowledge of the same.

Sect. 4. And be it further enacted, That when any naval officer shall connive at any breach of this or the before recited Act, or when information is properly given to him, with sufficient evidence of any violation thereof, and he neglects to in-
quire into and prosecute the same as his duty requires, upon proof being exhibited of such neglect, before the Court of General Sessions of the Peace, for the county where the said officer may reside; shall, if convicted of the said neglect before the said court, be adjudged by the said court as incapacitated from any further exercise of his office. And in case of the removal of such officer for such neglect, the naval officer of the port highest the place from whence the said officer may be removed, shall do and exercise all the duties of the said office until another may be appointed in his stead.

Sect. 5. Be it further enacted by the authority aforesaid, That a proper allowance shall be made for the drying and shrinking of pine boards, and that such as shall be seven-eighths of an inch thick after being fully seasoned, or in the same proportion as to thickness, being partly seasoned, and that any shingles being four inches in width on an average, shall be accounted merchantable, and may be sold here as such, or shipped or exported to any market. Provided, That such boards and shingles shall, in all other respects, be conformable to the said Act; and all naval officers, surveyors, and other persons concerned, are directed and required to govern themselves accordingly; any thing in this or the Act aforesaid to the contrary notwithstanding.

Sect. 6. And be it further enacted, That the operation of the Act aforesaid, and every article and clause thereof be, and, hereby is suspended until the first day of January, which will be in the year of our Lord one thousand seven hundred and eighty-five. [March 16, 1784.]
agreed for, to be recovered by indictment, or action of the case, one moiety thereof to the use of this Commonwealth, and the other moiety to him or them who prosecutes, complains, or sues for the same, any custom, usage or law to the contrary notwithstanding.

Sect. 2. And be further enacted, That when and so often as any person or persons are or shall be sued on any bond, contract, mortgage, or assurance whatsoever, for the payment of any monies, wares, merchantize, or other commodities whatsoever, whereby or wherein any sum is given, secured, or taken for the forbearing, or giving day of payment for a longer or shorter time; then and in such case, (the creditor being alive) if the debtor or debtors shall come into court where the said cause is to be tried, and shall offer to make oath, and if required by the court, shall actually swear to the same, that there is taken, reserved, or secured by such bond, contract, or assurance, above the rate of six pounds in the hundred, for the forbearance of the property actually lent or sold, whether it be in money or other things, for one year, and so after that rate for a greater or lesser sum, or for a longer or shorter time, or that the creditor or creditors have received more than at the rate of six pounds in the hundred, for the loan or forbearing of the monies or other things actually lent or sold; such bond, contract, mortgage or assurance shall be utterly void, and the debtor fully and absolutely discharged from the payment of any monies, goods, or other things lent, exchanged, bargained, sold, or agreed for as aforesaid, unless the creditor or creditors will swear that he, she or they have not, directly or indirectly, wittingly taken or received more than after the rate of six pounds in the hundred, for forbearing or giving day of payment; and that by such bond, contract, mortgage, or assurance, there is not reserved, secured, or taken, more than after the rate of six per cent. for forbearing or giving day of payment for the goods, monies, or other things actually lent or sold, any law, usage or custom to the contrary notwithstanding.

Provided, Nothing in this Act shall extend to the letting of cattle, or other usages of the like nature in practice amongst farmers, or maritime contracts among merchants, as bottomry, insurance, or course of exchange, as hath been heretofore accustomed. [March 16, 1784.]

An Act for repealing certain parts of one Act regulating Pilotage, and for repealing an Act for altering and amending the same.

WHEREAS one Act made and passed the eleventh day of July last, entitled, "An Act for regulating Pilotage," has not been found productive of the good effects thereby intended, so far as the same respects the establishing and regulating of pilots and pilot-boats for the coast of Martha’s Vineyard:

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said Act, so far as the same respects the appointing and regulating of pilots and pilot-boats for the coast aforesaid, together with one other Act made passed the twenty-fourth day of October last, for the amendment of the same, be, and hereby is repealed and made null and void. [March 16, 1784.]
An Act directing the issuing, extending and serving of Executions.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the party obtaining judgment in a civil action, in any court of judicature within this Commonwealth, shall be entitled to have his execution thereon at any time after the expiration of twenty-four hours after judgment rendered, and within one year next after the entering up of such judgment. Provided, that there is no appeal granted or bond given for review. And execution issuing from the Common Pleas, shall be made returnable to the next Court of Common Pleas to be held within the county, excepting where there are but two or three courts in a year, in which case they shall be made returnable within three months, unless the Court of Common Pleas shall sit within that time, and in that case it shall be made returnable to the next court, and those issuing from the Supreme Judicial Court shall, in such counties as have two Supreme Judicial Courts established to be holden annually in them, be made returnable to the next court; and in those counties where the said court is held but once a year, the executions therefrom shall be made returnable at the end of six months, unless the Supreme Judicial Court shall sit in the said county within that time, and in that case it shall be returnable to the same; and those issuing from a Justice of the Peace, shall be made returnable within sixty days from the day of issuing them; and when such executions shall be returned without any satisfaction made or satisfied only in part, the clerk of the court from whence, or justice from whom such execution issued, shall, upon application of the creditor, make out an alias or pluries execution for the whole or the remainder, as the case may be, till the judgment shall be fully satisfied: But if the party shall neglect for the space of one year next after obtaining judgment to take out his execution, or shall not, within one year next after his execution shall be returned not satisfied, take out his alias or pluries, he shall sue out his writ of scire facias, and shall cause the adverse party to be served with the same personally, or by leaving an attested copy thereof at his last and usual place of abode, fourteen days before the sitting of the court, notifying him to shew cause, if any he hath, why execution ought not to be done; and upon his non-appearance or not shewing sufficient cause, the court shall award execution for what remaineth, with additional costs.

Sect. 2. And be it further enacted by the authority aforesaid, That when any person shall obtain judgment in any court within this Commonwealth, for any sum of money or other specie, and the person or persons against whom the judgment is, does not satisfy such judgment by money or other specie, and the creditor can find no personal estate to his acceptance wherewith to satisfy his execution, and shall think proper to levy his execution upon the debtor's real estate; then the officer to whom the execution is directed and delivered, shall cause three disinterested and discreet men, being freeholders in the county, one to be chosen by the creditor or creditors, one by the debtor or debtors, whose land is to be taken, if they see cause, and a
third by the officer; and in case the debtor or debtors shall neglect or refuse to choose as aforesaid, the officer shall appoint one for such debtor or debtors, to be sworn before one of the Justices of the Peace of the same county, faithfully and impartially to appraise such real estate as shall be shewn to them who shall appraise the same, to satisfy the same execution with all fees, and shall set out such estate by meets and bounds, and the officer shall deliver possession and seizin thereof to the creditor or creditors, his or their attorney. And when the real estate of the debtor or debtors shall be held in joint tenancy, in coparcenary or tenancy in common with the real estate of other persons, then the said officer may extend execution on such debtor or debtors' real estate held as aforesaid, or part thereof, describing the same with as much precision as the nature and situation thereof will admit of, and give the creditor or creditors, his or their attorney, seizin or possession of such debtor or debtors' real estate held as aforesaid, or part thereof, to hold in common with the said other persons; which execution, being returned with the doings thereon into the clerk's office, and before such return into the clerk's office or afterwards, and within three months, the same shall be recorded in the registry of deeds in the county where the land lays, shall make as good title to such creditor or creditors, his or their heirs and assigns, as the debtor had therein.

Sect. 3. And it is further enacted, That when any tenement or lands in part or in whole shall be taken in execution for debt, it shall and may be lawful to and for the person, his heirs or assigns, executors or administrators, whose estate is so taken in execution, within the space of one year next following the extending execution thereon, and not afterwards, to tender the creditor or the tenant in possession under his title by the execution, the full of the debt for which the same tenement was taken, with interest from the time of the extending the execution, and the reasonable and necessary charges and disbursements laid out and expended thereon in repairing or bettering the same, over and above what the rents, profits and improvements thereof shall fall short of reimbursing such charges, and interest to be accounted for by the party for whom the same was taken, or the tenant in possession, under his title, which disbursements, expenses, rents, profits and improvements may be settled by any three Justices of the Peace in the county where the land lays, at the charge and expense of the debtor, one to be chosen by the debtor, and the other by the creditor, if he shall see cause to choose one, otherwise they may be both chosen by the debtor, and the third by the two justices so chosen by the parties, or one of them as above directed, and which third shall be chosen before the other two proceed to a consideration of the business; and if the creditor or the tenant in possession as aforesaid, upon having a tender made of the sum certified under the hands of the said justices chosen as aforesaid, or either two of them, to be due to him upon the execution, shall refuse to execute a good and lawful deed of release to the debtor or his heirs (in case of his decease) of the land.
or tenement so taken in his execution, the debtor or his heirs, executors, or administrators, who shall make such tender, may bring his action of ejectment against the creditor or the tenant in possession, under his title; and upon lodging in court the money tendered, shall recover the title and possession of the land, as fully as the debtor held the same before the extending the execution upon it, together with his cost of suit.

Provided nevertheless, That if the creditor or the tenant in possession under him as aforesaid, shall, before the bringing the action, have offered the debtor or his heirs, executors or administrators, to make and execute such deed of release, and shall plead the same with disclaimer to the premises; then and in such case, upon the plaintiff's producing in court the money so tendered, judgment shall be given for the plaintiff to recover possession of the lands so taken in execution, and the defendant shall recover his cost. And when it so happens that the real estate extended upon, cannot be divided and set out by metes and bounds as before prescribed, or by the description before mentioned, then execution shall be extended upon the rents of such real estate, and the officer shall give seizin thereof to the creditor or creditors, his or their attorney; and also in case of extending execution on rents as aforesaid, shall cause the person in possession and improvement to attorn and become tenant to such creditor or creditors, and to pay the rent to him or them accordingly; and upon refusal thereof, to turn the person so refusing out of possession, and give seizin and possession of the same to the creditor, to hold and enjoy the same until it shall be redeemed, as by this Act is provided. Provided always, That in such case it shall and may be lawful for any debtor or debtors, his or their executors, administrators or assigns, at any time before the debt with interest is fully satisfied, to tender and pay to the creditor or the tenant in possession under him, the full remainder of his debt, interest and charges, to be liquidated by the Justices of the Peace in manner before provided in this Act, and to recover the possession of the same as before provided.

Sect. 4. And it is further enacted by the authority aforesaid, That all rights in equity of redeeming lands mortgaged, reversions, or the remainders, shall be liable to be taken by attachment and execution.

6 Geo. I. ch. 2.

When real estate cannot be divided, &c.

execution to be extended upon the rents, 1818 ch. 115.

Proviso.

Right of redeeming lands liable to be taken by attachment and execution.

8 & 9 Geo. II. ch. 5.

1798 ch. 77.

Goods taken by execution, to be sold at public vendue.

or tenement so taken in his execution, the debtor or his heirs, executors, or administrators, who shall make such tender, may bring his action of ejectment against the creditor or the tenant in possession, under his title; and upon lodging in court the money tendered, shall recover the title and possession of the land, as fully as the debtor held the same before the extending the execution upon it, together with his cost of suit.

Provided nevertheless, That if the creditor or the tenant in possession under him as aforesaid, shall, before the bringing the action, have offered the debtor or his heirs, executors or administrators, to make and execute such deed of release, and shall plead the same with disclaimer to the premises; then and in such case, upon the plaintiff's producing in court the money so tendered, judgment shall be given for the plaintiff to recover possession of the lands so taken in execution, and the defendant shall recover his cost. And when it so happens that the real estate extended upon, cannot be divided and set out by metes and bounds as before prescribed, or by the description before mentioned, then execution shall be extended upon the rents of such real estate, and the officer shall give seizin thereof to the creditor or creditors, his or their attorney; and also in case of extending execution on rents as aforesaid, shall cause the person in possession and improvement to attorn and become tenant to such creditor or creditors, and to pay the rent to him or them accordingly; and upon refusal thereof, to turn the person so refusing out of possession, and give seizin and possession of the same to the creditor, to hold and enjoy the same until it shall be redeemed, as by this Act is provided. Provided always, That in such case it shall and may be lawful for any debtor or debtors, his or their executors, administrators or assigns, at any time before the debt with interest is fully satisfied, to tender and pay to the creditor or the tenant in possession under him, the full remainder of his debt, interest and charges, to be liquidated by the Justices of the Peace in manner before provided in this Act, and to recover the possession of the same as before provided.

Sect. 4. And it is further enacted by the authority aforesaid, That all rights in equity of redeeming lands mortgaged, reversions, or the remainders, shall be liable to be taken by capias or attachment upon mesne process, and by execution upon judgment recovered for the payment of the just debts of the mortgagor or owner; and any person, at whose suit such right in equity of redeeming such mortgaged lands is taken in execution, shall have the same and as full and ample right and power of redeeming such lands as the mortgagor himself had or ought to have, and may procure and receive a discharge of mortgages, in the same manner as the original mortgagor might have done, saving always to widows their dower in all lands taken from their husbands by execution.

Sect. 5. And be it further enacted, That when any goods or chattels shall be taken to satisfy an execution issuing upon a judgment obtained, such goods or chattels shall be safely kept by the officer, at the expense of the debtor, for the space of
four days next after they are so taken; and if within that time the owner shall not redeem the same, by otherwise satisfying the execution, such goods and chattels shall be sold at public vendue to the highest bidder, having first been advertised by the posting up notifications of the time and place of sale, forty-eight hours before the expiration of the four days, in the town or place where the sale is to be, and the money arising upon such sale shall be applied to the paying charges, and the satisfying the execution, and the officer shall return the overplus (if any there be) to the debtor. And the officer, who is possessed of the execution, shall make return of the same with his doings therein, particularly describing the goods taken and sold, and the sum for which each article was struck off, and if any officer shall be guilty of any fraud in the sale or in the return, he shall be liable to the debtor to pay him five times the sum defrauded, to be recovered by action of the case. [March 17, 1784.]

An Act prescribing the method of satisfying Judgments in favour of this Commonwealth.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That upon all judgments already recovered, which remain unsatisfied, or that may hereafter be recovered, in the name or for the use and benefit of this Commonwealth, for any sum or sums of money, in any of the courts of law within this Commonwealth, a warrant of distress reciting such judgments respectively, shall issue thereon, which shall be directed to such officer or officers as writs of execution are by law to be directed to, who shall be thereby directed to levy the monies mentioned and expressed in such warrant of distress, of the money, goods or estate of such debtor or debtors, and for want thereof on his or their body or bodies, and to commit him or them unto the common gaol in the county where apprehended; and in all such cases the said sum or sums of money mentioned and expressed in such warrant of distress (where the same can be done) shall be satisfied out of the monies or personal estate of the debtor or debtors.

Sect. 2. And be it further enacted. That before sale be made of any personal estate by virtue of a warrant of distress to be issued as aforesaid, notice shall be given of the time and place of sale, by posting up notifications thereof, by the officer executing such warrant, in two or more public places in the town or plantation where the warrant is executed, (within which the sale shall be) four days at the least before the time of sale.

Sect. 3. And be it further enacted by the authority aforesaid, That when it shall be necessary to dispose of real estate to satisfy such warrant of distress, in whole or in part, the officer executing the same is hereby fully authorized, empowered and directed, to make, execute, acknowledge, and deliver to the highest bidder, good and sufficient deed or deeds of any real estate sold at public vendue, in manner as hereafter expressed.

Sect. 4. Provided always, and it is enacted by the authority aforesaid, That the officer executing such warrant of distress,
when real estate shall be taken as aforesaid, shall give public notice of the time and place of sale, by posting up notifications thereof in two or more public places in the town or plantations where the real estate lies, thirty days before the time of sale, and also in two or more public places in two adjoining towns. And where it shall so happen, that the sum, for the satisfaction of which a warrant of distress shall be levied on any real estate as aforesaid, shall amount to the sum of one hundred pounds, the officer executing the same, shall, in addition to the notifications aforesaid, cause an advertisement of the time and place of such sale, to be published in some public newspaper printed in the county where such real estate lies, three weeks successively before the day of sale, if any such newspaper shall be there printed, but if not, then said officers shall cause advertisement, in manner aforesaid, to be published in a newspaper printed in the Commonwealth nearest the county where such land lies. And in case the estate notified for sale as aforesaid shall not be disposed of at the time and place appointed, the officer shall adjourn the vendue, not exceeding three days, and so from time to time, until the sale shall be completed.

Sect. 5. And be it further enacted by the authority aforesaid, That deeds made and executed as aforesaid, shall be as effectual to all intents and purposes, to convey the debtor's title in such real estate to the vender, his heirs, executors, or administrators, as if the same had been made or executed by such debtor or debtors.

Sect. 6. Provided always, and be it enacted by the authority aforesaid, That every such debtor shall have liberty to redeem such real estate, within the term of one year from the time of executing deed or deeds thereof in manner aforesaid, by paying the sum at which the same may be sold, together with the interest thereof, to the person who purchased the same, or to his heirs or assigns.

Sect. 7. And be it further enacted by the authority aforesaid, That all warrants of distress to be issued as aforesaid, shall be under the seal of the court from whence they issue, be signed by the clerk, and bear test the chief or first justice thereof, and be made returnable in the same time and manner other judicial writs are, or by law may be. And whenever any such warrant of distress shall be returned satisfied in part only, an alias or pluries warrant of distress for the sum remaining due shall issue; and the clerks of the respective courts shall be entitled to take and receive the same fees for the said warrants of distress, as for writs of execution, and no more.

Sect. 8. Provided always, and be it further enacted by the authority aforesaid, That in all cases where judgment as aforesaid shall be recovered against any person or persons, as debtor or debtors to any person or persons where estate or estates have been or may be confiscated, become forfeit, or be otherwise transferred to the use of the Commonwealth, executions shall be levied in the same manner as is or may be by law provided in case of judgment recovered by one individual against another in their private capacities respectively; any thing herein contained to the contrary notwithstanding.
Sect. 9. And be it further enacted, That the attorney-general of the said Commonwealth for the time being, or any person who may be by him appointed for the purpose, or any agent who may be specially appointed by the General Court, shall respectively be vested with all the powers in extending and levying executions on the persons or estates of any such debtor or debtors, as the creditor or creditors would have had, provided no such confiscation, forfeiture or transfer had taken place. [March 17, 1784.]

An act to authorize the Courts of Law to enter up Judgment against the Goods and Estate of deceased persons, when the Executor or Administrator neglects or refuses to prosecute or defend.

WHEREAS the courts of common law, when the plaintiff or defendant, appellant or appellee die before judgment, are not authorized to render judgment against the estate of the deceased, unless the executor or administrator does voluntarily appear and become a party to the suit:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all actions now pending, or that may be hereafter pending in the Supreme Judicial Court, or in any Court of Common Pleas in this Commonwealth, by appeal, continuance or otherwise, and the plaintiff or defendant, appellant or appellee, complainant or respondent shall die before final judgment, and the executor or administrator of the deceased party, after taking upon himself the said trust, shall neglect or refuse to become a party to the suit, the court before whom such cause shall be pending, in case the cause of action does by law survive, may enter up judgment against the goods and estate of the deceased party, in the same way and manner judgment might have been, in case the executor or administrator had voluntarily after such death made himself a party to the suit. Provided always, That such executor or administrator be duly served with a notification from the clerk of the court where such suit is pending, fourteen days beforehand.

Sect. 2. And be it further enacted by the authority aforesaid, That when any goods or estate are attached upon any writ or process which shall be pending as aforesaid, the same shall not be released or discharged, by reason of the death of either party, but be held good to respond the judgment to be given on such suit or process, in the same manner as by law they would have been if such deceased person had been living; any law, usage or custom to the contrary notwithstanding. Provided always, That where any estate attached as aforesaid, shall by the executor or executors, or administrator or administrators of the same, be represented as insolvent, and a commission of insolvency shall thereupon issue; in all such cases, attachments made as aforesaid shall have no force or efficacy after the death of the original defendant or defendants in the action.

Sect. 3. And be it further enacted, That all executors and administrators of any estate, shall, upon motion to the court where any suit is or may be depending against them in their said capacity, be entitled to continuance of the same until the next term of the said court. [March 17, 1784.]
An Act for the more safe keeping the Registry of Deeds and Conveyances of Land, and for appointing the time and manner of choosing Registers.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall be chosen in each county within this Commonwealth, by the written votes of such persons as are by the Constitution qualified to vote for representatives in the several towns, at their respective annual town meetings in the month of March, one thousand seven hundred and eighty-six, some discreet, suitable person, having a freehold within the same county, of the annual income of ten pounds at the least; the votes to be counted and sorted in the town meeting by such persons as shall be chosen to count and sort the votes for that meeting; the names of the persons voted for, and the number of votes each person had, shall be recorded by the town clerk, in the town book, and an attested copy of such record shall be transmitted under seal to the next Court of General Sessions of the Peace, to be held within and for the county, on the first day of the court's sitting there, to be opened and compared with the like returns from the several towns in such county.

And the person having the majority of the said voters, and accepting of the said office, after being sworn to the faithful discharge of the trust before the Supreme Judicial Court, or Court of Common Pleas, Court of Sessions, or two justices of the peace within the county; and giving bond to the clerk of the Court of General Sessions of the Peace in the said county, with two sureties in the sum of five hundred pounds, for the faithful discharge of his trust, shall be and continue in the said office five years, and until some other person shall be chosen and qualified in like manner in his stead, unless sooner removed or displaced by order of the Court of General Sessions of the Peace in such county, for misconduct in the discharge of his duty; and the person so chosen and qualified as aforesaid, shall reside and keep his office daily open in the shire town of the county, and therein keep the books, records, files, and papers to the said office belonging.

SECT. 2. And be it further enacted, That upon the death, resignation, or removal of any register of deeds, two or more Justices of the Peace, quorum unus, living in or near the shire town of the same county, shall issue their warrants directed to the selectmen of the several towns within such county, ordering them forthwith to convene the inhabitants of their respective towns, qualified as the Constitution provides, to vote for representatives, and proceed to the choice of some meet person qualified as aforesaid to fill up the vacancy; and the said justices shall make their warrants returnable to themselves at a certain day, as soon as conveniently may be, ordering the selectmen to seal up and transmit a transcript of the record of the number

* By the Colony Law, 1641, 42, the clerk of every shire court was ordered to enter all grants, sales, mortgages, &c. The Province Law, 9 W. III, ch. 7, made the clerk of the Inferior Court of Pleas, in each respective county, register of deeds and conveyances—established his fees, and required that he should be sworn. The Register's office was first made distinct and elective, by the statute of 1 Geo. 3, ch. 4.
of votes and person or persons voted for in their respective towns as before directed, together with the warrants; and the abovesaid justices shall at the same time give out their notifications to the other justices of such county of their proceedings therein, notifying them to meet upon the day appointed for the return of the said warrants, at some certain place in the shire town; and the major part of the justices of such county, who shall meet at the time and place assigned as aforesaid, shall open and compare the returns made as before directed, and the person having the majority of votes after being sworn, and giving bonds as aforesaid, shall be the register of deeds for such county, until the time appointed by this Act for the election of registers of deeds throughout the Commonwealth, unless sooner removed by the Court of General Sessions of the Peace of the same county, for misconduct in the discharge of his duty.

Sect. 3. And be it further enacted by the authority aforesaid, That upon any second or subsequent removal of any register of deeds, for either of the causes aforesaid, or in case any vacancy shall happen in the office of register of deeds, in any county within this Commonwealth, before the month of March, one thousand seven hundred and eighty-six, the same mode of procedure as is herein before provided in case of the death, resignation, or removal of any register of deeds, shall be constantly observed in order for a new choice, from time to time, until some discreet and meet person, qualified as aforesaid, shall be chosen to the said office by the majority of the votes returned, in which case the person so chosen, after being sworn and obliged as aforesaid, shall be register of deeds for such county, until some other shall be chosen.

Sect. 4. And be it further enacted, That upon a vacancy in the office of register of deeds in any county, the clerk of the Court of Common Pleas of such county being first sworn before two justices of the peace, quorum vasis, for the faithful discharge of the trust, shall take into his custody the several books wherein the deeds and conveyances of land are recorded, together with the deeds and other papers to the said office belonging. And the said clerk shall receive all deeds and other papers brought to be recorded during such vacancy, and he shall note thereon the time of their being received, and the record shall bear date accordingly, for which he shall be allowed six pence for each deed or paper, and no more; and such clerk is also empowered, during such vacancy, to make out attested copies of any such deeds and other papers and records to him committed as aforesaid, which copies shall be valid to all intents and purposes, as though the same had been made out by any register chosen, qualified, sworn and obliged as aforesaid, for which copies the said clerk shall be allowed the same fees as is or may be provided for registers in similar cases. And upon the appointment of a register as aforesaid, he shall deliver up the said books, deeds and papers, into his hands.

Sect. 5. And be it further enacted by the authority aforesaid, That the qualified voters as aforesaid in each respective town within this Commonwealth, at their annual meeting in March,
seven hundred and ninety-one, and every five years from thence successively following, forever, at their several town meetings in March,* shall be, and hereby are empowered and required, to proceed to choose a register of deeds for each county respectively within this Commonwealth, qualified as in this Act is directed, the manner and determination of the choice, initiation into office, and the duties and obligations he shall be under while in office, to be the same as in this Act is before expressed.

Sect. 6. And be it further enacted, That if upon comparing the votes that may be collected in March, one thousand seven hundred and eighty-six, or in the month of March at any period five years afterwards, no person shall be chose by a majority of the whole votes returned, the Court of Sessions shall issue their warrants to the selectmen of the several towns, to call a meeting of their respective towns to vote a second time for the choice of a register, and make their warrants returnable at the then next Court of General Sessions of the Peace to be held in the same county, and so toties quoties, until some one person shall be elected by the majority voting. And to the end there may not be too great a risk of fire by keeping more public records, papers and files in one house or under one roof than is necessary:

Sect. 7. Be it further enacted, That no clerk of any Court of Common Pleas, or of the Supreme Judicial Court, shall at the same time be the register of deeds for any county. [March 17, 1784.] Add. act—1791 ch. 12.

Chap. 61. An Act for the appointing and empowering Commissioners, on the part of this Commonwealth, in conjunction with such as are or may be appointed by the State of New-York, to ascertain the Boundary Line between the Commonwealth and State aforesaid, eastward of Hudson's-River. [March 16, 1784.] Repealed—1784 ch. 1.

Chap. 62. An Act for preventing in part the operation of an Act made in the year of our Lord one thousand seven hundred and seventy, entitled, "An act for the repealing the several Laws now in force, which relate to the limitation of personal Actions, and for the Limitation of personal Actions for the future, and avoiding suits at law." [March 19, 1784.]

Chap. 63. An Act in addition to, and for repealing certain parts of an Act, made and passed the third day of July, A.D. one thousand seven hundred and eighty-two, entitled, "An Act to remove the Obstructions and open Passage-Ways for the fish called Alewives, Shad, and other fish, up Neponset-River," and for making more effectual provision for the passing of the said fish. [March 19, 1784.] Add. act—1784 ch. 71. Both repealed—1790 ch. 45.

Chap. 64. An Act to incorporate a new plantation called Ashuelot Equivalent, in the County of Berkshire, into a Town by the name of Dalton. [March 20, 1784.]

Chap. 65. An Act to unite the first and third Precincts in the town of Plymouth, by the name of the First Precinct. [March 20, 1784.]

Chap. 66. An Act to enable the inhabitants of the several Towns and Plantations within this Commonwealth, to ascertain from time to time the Amount of Monies received by their respective Collectors of public taxes, and what Payments they have made to the Treasurer of the Commonwealth.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the several Collectors of public taxes shall, once every two months at least, exhibit to the selectmen, and where there are no selectmen, to the assessors of the respective towns or plan-
tations to which they belong, a just and true account of all the monies they have received on the several taxes committed to them, and produce the treasurer's receipts for all the monies by them respectively paid into the treasury.

Sect. 2. And be it further enacted by the authority aforesaid, That if any collector of public taxes shall neglect to exhibit his accounts in manner aforesaid, he shall forfeit and pay for every neglect, the sum of two and a half per cent. on the sum or sums committed to him to collect, to the use of the town or plantation of which he is or has been a collector, to be recovered by such town or plantation in any court of law proper to try the same.

Sect. 3. And be it further enacted by the authority aforesaid, That whenever the time fixed by law for collecting any tax shall have expired, the Treasurer of this Commonwealth shall, and he is hereby authorized and empowered, at the request of the selectmen or assessors of any town or plantation, to issue his execution against any collector or collectors of their respective towns or plantations without any further order from the General Court; any Law or Resolve to the contrary notwithstanding. [March 23, 1784.]

An Act to incorporate an Academy in the Town of Leicester, by the name of Leicester Academy. [March 23, 1784.]

An Act for naturalizing Thomas Hopkins. [March 23, 1784.]

An Act, for repealing two Laws of this State, and for asserting the Right of this free and sovereign Commonwealth, to expel such Aliens as may be dangerous to the peace and good order of government.

WHEREAS it is necessarily incident to every free, sovereign and independent State, to hold the right of expelling from the dominions thereof, all aliens who profess dispositions, or hold principles incompatible with the safety or sovereignty of the State: And whereas all those persons who have since the fifth day of October, in the year one thousand seven hundred and seventy-four, and before the making the present form of government of this Commonwealth, gone off to, and taken the protection of the government, or fleet, or army of Great-Britain, are considered, and justly held to be aliens to this Commonwealth: And whereas those of them who are named and mentioned in an Act of this State, passed in the year one thousand seven hundred and seventy-nine, entitled, "An Act to confiscate the estates of certain notorious conspirators against the government and liberties of the habitants of the late Province, now State of Massachusetts-Bay;" and all others of them who have borne arms in the late war, against this or either of the United States, or against the allies of the said States, or have lent money to the government of Great-Britain to carry on the late war, are justly deemed to hold principles, and possess dispositions incompatible with the safety of the Commonwealth, and therefore ought to be excluded from this Commonwealth: And it being evident that an indiscriminate admission of the other descriptions of those unhappy people, at this period, might be attended with disagreeable and dangerous consequences; but the laws made for their exclusion being not calculated to pro-

in two months, an account of monies received, &c.

Collectors neglecting, forfeit 2½ per cent.

When the time for collecting a tax has expired, Treasurer to issue execution.

4 Geo. II. ch. 1.

Chap. 67.

Chap. 68.

Chap. 69.

Preamble.

April 30, 1779.
duce those measures which are suitable to a state of peace and tranquillity:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That an act made and passed in the year one thousand seven hundred and seventy eight, entitled, "An Act to prevent the return to this State of certain persons therein named, and others who have left this State, or either of the United States, and joined the enemies thereof;" and also another Act passed in the year one thousand seven hundred and eighty-three, entitled, "An Act to carry into execution an Act made in the year one thousand seven hundred and seventy-eight, entitled, "An Act to prevent the return to this State of certain persons therein named, and others who have left this State, or either of the United States, and joined the enemies thereof," be, and they both are hereby repealed.

Sect. 2. And be it enacted, That if any of the persons aforesaid who have left this State, and gone off to, and taken the protection of the government, fleet, or army of Great Britain, and are named in the Act aforesaid, entitled, "An Act to confiscate the estates of certain notorious conspirators against the government and liberties of the inhabitants of the late Province, now State of Massachusetts-Bay," or have borne arms, or been joined to the said fleet, army, or to any volunteer corps of the king of Great Britain, shall presume to return to this State to reside therein, it shall be the duty of every Justice of the Peace to give notice thereof to the Governor, and if such person shall not immediately upon the Governor's giving order therefor, depart the State, it shall be the duty of every Justice of the Peace to whom complaint shall be made thereof, to apprehend such person, and him commit to the common gaol of the county where he may be, to be sent off by the order of the Governor with advice of Council.

Sect. 3. And be it enacted, That no one of any other description of the said absentees shall be allowed to reside in this State, until such person shall obtain a license therefor from the Governor with advice of Council; and if any one of the said persons shall presume to reside within this State without such license, he shall be treated in the same manner as is provided by this Act, respecting those who have borne arms against these States. Provided also, That no license so given by the Governor with advice of Council, shall have any force after the end of the next session of the General Court after the same license shall be granted; and that the person who shall obtain the same, unless an act of naturalization shall be passed in his favour, or the said license shall be approved at the said session of the General Court, shall be treated in the same manner as if the said license had not been obtained.

And whereas by the sixth article of the treaty, lately made between the United States and the King of Great-Britain, it is provided that no further confiscations shall be made:

Sect. 4. Be it therefore enacted by the authority aforesaid, That the lands and buildings which any of the persons afore-
mentioned held in fee simple, or by a lesser estate, on the nineteenth day of April, one thousand seven hundred and seventy-five, and which have not by the aforesaid Act, entitled, “An Act to confiscate the estates of certain notorious conspirators against the government and liberties of the inhabitants of the late Province, now State of Massachusetts-Bay,” or by judgment had on due process of law on such estates, been confiscated, nor have been pledged by government for money borrowed, or sold by agents according to the laws of the State, for the payment of debts due from the absentees, or have been made liable to pay an annual charge for the support of any poor person, shall be delivered up to the persons who respectively owned such lands or buildings last before the nineteenth of April, 1775, or to any persons claiming under them respectively, Provided such claimers are not included in the Act aforesaid, made in the year one thousand seven hundred and seventy-eight, who shall have the privilege of disposing of the same, at any time within the space of three years next coming; and any deed or other conveyance made thereof, to any citizen of this or either of the United States, shall be held good and valid in law, to convey the same, to all intents and purposes, as fully and amply as if such grantor was a free citizen of this Commonwealth; any Law of this Commonwealth to the contrary notwithstanding. [March 24, 1784.] Add. act—1784 ch. 31.

An Act for the appointing and empowering Commissioners, on the part the Commonwealth, in conjunction with such as are or may be appointed by the State of New-York, to ascertain the Boundary Line between the Commonwealth and State aforesaid, eastward of Hudson’s-River. [June 4, 1784.]

Chap. 1.

1783 ch. 61.

Chap. 2.

Col. L. 1677.
8 W. III, ch. 2.
12 W. III, ch. 3.
26 Geo. II.—

Judge of Probate to appoint commissioners—
1789 ch. 50.

who shall give notice—
1821 ch. 72.

Lands held on the 19th April, 1775, which have not been confiscated, &c. to be delivered up.

Deeds made thereof to be held valid in law.

An Act for the Distribution of Insolvent Estates.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when the estate of any person deceased shall be insolvent or insufficient to pay all just debts which the deceased owed, the same shall be distributed to and among all the creditors, in proportion to the sums to them respectively due and owing, saving that debts due for all rates and taxes, and debts due to the Commonwealth, and for the last sickness and necessary funeral expenses of the deceased, are to be first paid. And the executor or administrator appointed to any such insolvent estate, before payment to any be made (except as aforesaid) shall represent the condition and circumstances thereof unto the Judge of Probate. And the said judge shall nominate and appoint two or more fit persons to be commissioners, with full power to receive and examine all claims of the several creditors; and such commissioners shall cause the times and places of their meeting, to attend the creditors for receiving and examining their claims, to be made known, by causing notifications thereof to be posted up in some public place, in the shire town of the county where such deceased person last dwelt, and of the two next counties, or by causing an advertisement thereof to be printed in such public newspaper or papers as the Judge of Probate shall direct; and six months and such further time not exceeding eighteen months (as the circumstances of any
state may require) shall be allowed by the said judge to the
creditors for bringing in and proving their claims; at the end of
which limited time, such commissioners shall make their report,
and present upon oath a list of all the claims that shall have
been laid before them, with the sums they shall allow on each
claim unto the said judge; and the judge shall order them meet
recompense out of the deceased’s estate for their care and la-
bour in examining the claims; and the debts due for all rates
and taxes, and debts due to the Commonwealth, debts incurred
for the last sickness of the deceased, and necessary funeral ex-
enses, as afore provided, being first deducted, shall order the
residue and remainder of the estate both real and personal (the
real estate being sold according to law) to be paid and distrib-
uted to and among the creditors who shall have made out their
claims with the commissioners as aforesaid, in proportion to the
sums unto them respectively due and owing, saving unto the
widow (if any be) her right of dower in the housing and lands
of the deceased, which dower (unless the reversion shall be sold
by the executor or administrator, and distributed with the oth-
er estate, which the judge may order if he see fit, upon applica-
tion (therefor) at the expiration of her term, shall also be dis-
bursed among the creditors aforesaid in like proportion. Pro-
vied, That notwithstanding the report of any commissioners,
any creditor whose claim is wholly or in part rejected, may
have the same determined at the common law, in case he shall
give notice thereof within writing at the probate office, within twen-
ty days after such report shall be made, and bring and prose-
cute his action as soon as may be; and in case the executor or
administrator shall be dissatisfied with any creditor’s claim al-
lowed by the commissioners, and shall give notice thereof at
the probate office, and also to the creditor, within twenty days
as aforesaid, such claim shall by the judge of probate be struck
out of the commissioners’ report, unless such creditor shall
commence and prosecute at the common law his claim as afores-
said as speedily as the same can be done, or unless the creditor
and the executor or administrator shall agree before the judge
to submit the same to reference; in which case the determina-
tion of the referees shall be final: and when a claim shall be
disputed in the course of the common law as aforesaid, execu-
tion shall not issue as in common cases, but the judgment of
the court respecting the same, shall be the amount of the claim,
and added to or deducted from the commissioners’ report, as
the case may require. And no action brought against any
executor or administrator after the estate shall be represented
insolvent, shall be sustained, except for debts due to the Com-
monwealth, debts due for all rates or taxes, for the deceased’s
last sickness and funeral charges, unless the executor or ad-
ministrator, having objection to the claim upon which such ac-
tion shall be brought, shall consent to have the same settled by
course of law, in which case the judgment of the court shall de-
termine the said claim, and be reported by the commissioners
as such. And all actions brought against any executor or ad-
ministrator before the estate is represented insolvent, shall be
continued until it shall appear whether the said estate is insolvent or not; and if found insolvent, the process shall be conducted as above provided. And if any creditor shall not make out his claim with the commissioners within the time of their commission, or at the common law, or before referees, in the manner this Act provides, he shall be forever barred of his debt; unless such creditor shall find some other estate of the deceased, not inventoried or accounted for by the executor or administrator before distribution. [June 15, 1784.] Add. acts—1794 ch. 5: 1821 ch. 72.

An Act for enabling the first Precinct belonging to, and lying within the Town of Cambridge, to raise money for discharging the debts incurred in carrying on the late war, and for confirming the Grants and Assessments that have been already made for that purpose. [June 21, 1784.]

Section 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That thirty days at the least before the sitting of the Supreme Judicial Court in each county within this Commonwealth, the clerk of the same court shall issue his warrants, directed to the constables of the several towns within the county or counties for which the said court is to be held, or to so many of the said towns as the court shall order, requiring the constables respectively to assemble the freeholders and other inhabitants in the said towns, qualified by law to vote in the choice of representatives, to elect and choose by ballot, so many good and lawful men of their town, of like qualification, and of good moral character, as such warrant shall direct, to serve on the grand jury at the same court; and the constables shall summon the persons so chosen, four days at the least before the sitting of the court, to attend accordingly at the day and place where the court is to be held, and to appear at ten of the clock in the forenoon upon the same day; and the constables shall make timely return of the warrants, with their doings therein, to the same court. And when the court is opened, the grand jury shall be empanelled and sworn as follows:

Foreman's Oath.

I solemnly swear, that as foreman of this inquest for the body of this county of S., you shall diligently inquire, and a true presentment make of all such matters and things as shall be given you in charge; the Commonwealth's counsel, your fellows and your own, you shall keep secret; you shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented, for love, fear, favour, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God.

The other Jurors' Oath.

The same oath which your foreman hath taken on his part, you, and each of you, on your behalf, shall well and truly observe and keep. So help you God.

And if any constable shall neglect to assemble the inhabitants of his town, qualified as aforesaid, when he shall have received such warrant, or shall neglect to summon the persons chosen in pursuance thereof, or shall not make due return of the same, with his doings therein, he shall pay such fine as the court in their discretion shall impose, not exceeding the sum of twenty pounds. And if any town being duly notified as above provided, shall neglect to choose as many good and lawful men able to attend, as are directed in and by such warrant, such town shall be amerced in such sum as the court shall order, not exceeding the sum of forty pounds. And if any person chosen and notified to attend as aforesaid, shall unnecessarily fail of attending, he shall (if he be an inhabitant of Boston, Salem, or Newport) pay a fine of five pounds, and otherwise a fine of forty shillings, to be divided equally amongst the grand jurors who shall attend their duty at the same court.

Section 2. And it is further enacted by the authority aforesaid, That the clerk of the Court of General Sessions of the Peace, shall, forty days at the least before the first day of March annually, make out his warrant to the constables of the several towns in the county, or to so many of them as the Court shall order, requiring them severally to assemble the freeholders and inhabitants of their respective towns, qualified to vote for a representative, to choose by ballot, one or more good and lawful men or men in each town, as the court shall direct, of like qualification, and of good moral character, to appear at the Court of General Sessions of the Peace, to be held within the said county, next after the first day of March, and there to

Chap. 3.

Clerk of the Supreme Judicial Court to issue his warrant to the constables 30 days before the sitting of the court.

1793 ch. 62. Constables to summon the persons chosen.


The other jurors' oath.

Constables neglecting their duty.

1807 ch. 140, § 17. Penalty.

Towns neglecting to choose men, to be amerced by the court.

Chap. 4.

Clerk of the Court of Sessions to issue his warrant to the constables 30 days before the first of March, to choose representative jurors. 1793 ch. 62.
Consistently to notify the persons chosen.

Grand jury to have the same oath administered to them as those serving at the Supreme Judicial Court.

Penalties for neglect in consalia, towns, or persons chosen to serve as grand juries.

Two boxes to be kept.

Jury how to be chosen.

Any person being convicted of any scandalous crime, his name to be withdrawn.

Selectmen neglecting their duty.

Penalty.

Duty of town clerk or selectmen.

serve on the grand jury at every Court of General Sessions of the Peace, throughout the whole year, and until another grand jury shall be chosen, empanelled, and sworn in their room, and the constables shall notify the persons so chosen, four days before the sitting of the court, and it shall be the business of such grand jury to present all crimes, offences and breaches of law, as may be cognizable in said court, and they shall have the same oath administered to them, as is in and by this Act provided for the grand jury serving at the Supreme Judicial Court.

And if any constable shall neglect to assemble the inhabitants of his town, when he shall have received such warrant, or shall neglect to summon such person as shall be chosen in pursuance of such warrant, shall not make a timely return of the same, with his doings therein, he shall pay such fine as the court shall order, not exceeding the sum of ten pounds, and if any town shall, after being duly notified, neglect to choose such grand jury or grand jurors, such town shall be amerced to the use of the county, in a sum not exceeding twenty pounds, at the discretion of the court. And if any person chosen and summoned to attend as aforesaid, shall unnecessarily fail of attending at the time and place appointed therefor, he shall (if he is an inhabitant of Boston, Salem or Newburyport) pay a fine of five pounds, otherwise a fine of forty shillings, to be divided amongst the grand jurors who shall attend their duty.


An Act for granting a Lottery for the purpose of widening and repairing the Great Bridge over Charles River in the town of Watertown. [June 22, 1784.]

An Act for constituting a Grant of a certain Tract of Land called Machias, in the County of Lincoln, and for incorporating the said tract of land, and the inhabitants thereof, into a Town, by the name of Machias. [June 23, 1784.]

An Act for regulating the Choice and Services of Petit Juries.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the towns in this Commonwealth shall, upon the first day of January, seventeen hundred and eighty-five, proceed in the appointment of jurors, as hath been heretofore practised in this government, and that forever hereafter the clerks of the respective courts in this Commonwealth, shall issue their venire facias for jurors to serve a respective courts, from their offices, thirty days at the least before the return day of the same, directed to the constables of each town in the county, or so many of them as the court shall order, and the respective constables, upon receipt thereof, shall notify the freeholders and inhabitants in their towns, qualified to vote in the election of representatives, to assemble and be present at the appointment of the jurors called for, and to be appointed in manner by this Act provided.

Sect. 2. And it is further enacted, That the selectmen of each town in this Commonwealth shall provide, and from time to time cause to be kept in their respective towns, two boxes, and shall, once at least in every three years, lay before their town a list of such persons in their respective towns as are of good moral character and qualified as the Constitution directs, to vote in the choice of representatives in this Act, and such selectmen, as shall be qualified to serve as jurors, and the town shall select out of the list one quarter part of the number laid before them, and such as they shall judge best qualified to serve at the Supreme Judicial Court, and have their names written by the town-clerk on separate pieces of paper and put into one of the boxes, to be liable to be drawn out as is herein hereafter directed, to serve on the petit jury, at the Supreme Judicial Court, and the town shall direct that such of the remainder of such list as the town shall think proper, shall have their names written on separate pieces of paper and put into the other box, to be directed, as is herein hereafter directed, to serve on the petit jury at the Courts of Common Pleas and General Sessions of the Peace; and if any person whose name shall be put into either box, shall be convicted of any scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the box by the selectmen of his town. Provided nevertheless, If the can obtain a vote of the town to have his name restored to the box again, it shall be restored, and such boxes shall be locked by the selectmen, and delivered to the town-clerks.

Sect. 3. And be it further enacted by the authority aforesaid, That if the selectmen of any or either of the towns in this Commonwealth, for the time being, shall neglect or refuse to prepare and lay before their respective towns a list of jurors, as is required in and by this Act, every selectman so neglecting his duty, shall forfeit and pay the sum of three pounds, for the use of the county in which he or they dwell at the time of such neglect, to be recovered by action or information, brought by the treasurer of such county, before any court proper to try the same, provided that the action be brought within twelve months after the offence be committed.

Sect. 4. And be it further enacted by the authority aforesaid, That when any venire facias shall be issued us by this Act is provided, and the inhabitants of any town shall be assembled for that purpose, the town-clerk, or in his absence one of
the selectmen, shall carry into the meeting the box wherein the names of those persons are put who are设计 to serve at the court from whence the *reverie facias* issued, which shall be Unlocked in the meeting by the major part of the selectmen, who are to be present (and the constable who shall warn the meeting shall particularly notify them, and the town-clerk, for that purpose) and the town-clerk, or in his absence one of the selectmen, shall draw out so many tickets as there are jurymen to be returned by the *reverie*; and if the persons that shall be returned to serve as jurors, saving that if any whose names are so drawn, and otherwise unable to attend at that time, in the judgment of the town, their names shall be returned into the box, and others be drawn in their stead; and to the intent that the same persons may not be obliged to serve two often, the clerk or selectmen who shall draw the ticket or name of any person returned to serve as aforesaid, shall enter upon the back thereof the date of the draft, and return the same into the box again, and no person shall be obliged to serve as juror oftener than once in three years.

**Sect. 5.** **And be it further enacted.** That the meeting for the appointment of petit jurors, shall be six days at the least before the day of the sitting of the court, to which the *reverie* is returnable; and the constables shall notify the persons thus appointed of the same, four days at the least before the sitting of the court wherein they are to serve, either by rendering the *reverie*, and minute of the appointment thereof, to the person appointed, or by leaving at their usual abode a written notification of their being drawn as aforesaid, and of the time and place of the court’s sitting, and when they are to attend; and when the selectmen shall at any time lay a list of the persons liable and capable to serve before their names, they shall equally transfer from the back of each old ticket, the minute thereon made, to the new one wherein the same name is written, that it may be certainly known, whether such person shall have been drawn within three years. *Provided always,* That if any person shall be drawn and returned, and shall not appear, or serving shall be excused by the court, the minute on his ticket shall not excuse him from being returned again when he shall be drawn, although it shall happen within three years.

**Sect. 6.** **And it is further enacted by the authority aforesaid,** That when there shall upon any occasion be a deficiency either of grand or petit jurors, by means whereof either the Supreme Judicial Court, or the Court of Common Pleas, or General Sessions of the Peace, cannot proceed conveniently in the business of the county, the courts shall cause writs of *reverie facias* to be forthwith issued, and directed to the constables of any town or towns in the county, for the appointment and return of so many good and lawful men to serve on either jury at the said court, as may be necessary; and the number required in such *reverie* shall be appointed as the law directs, and notified to attend immediately. And when from challenges or otherwise, there shall not be a jury to determine any civil or criminal cause, the sheriff or his deputy, shall, by order of the court where such defect of jurors shall happen, return jurymen de *talibus circumstansibus*, sufficient to complete the panel; and when the sheriff or his deputy is interested or related, jurors may be returned by the coroner, or such other disinterested person as the court shall appoint. *Provided,* There be seven, at the least, of the jurors returned by the *reverie*.

**Sect. 7.** **And it is further enacted,** That if any constable to whom such *reverie facias* shall be directed and comply shall neglect to do his duty, or shall negligent in assembling the town, notifying the selectmen and town-clerk, or in notifying the juror appointed, or in returning the *reverie facias*, he shall pay such fine as the court in their discretion shall order, not exceeding the sum of ten pounds; and if any selectmen or town-clerk, shall, after due notification by the constable, neglect to attend and perform his duty herein prescribed, by means whereof the jurors called for from his town shall not be returned, he shall forfeit and pay a fine at the discretion of the court, not exceeding the sum of five pounds; and if any person appointed and returned to serve on the petit jury, shall unnecessarily fail of attending, he shall, if he is an inhabitant of Boston, Salem or Newburyport, pay a fine of five pounds, and if an inhabitant of any other town, he shall pay a fine of forty shillings; which fines shall be equally divided amongst the jurors who attend their duty.

**Sect. 8.** **And it is further enacted by the authority aforesaid,** That the justices of the respective courts aforesaid, shall, upon motion from either party in suit, put any juror upon oath, whether he is any way related to either party, or hath directly or indirectly formed or given any opinion, or is sensible of any prejudice in the cause; and if it shall then appear to the court that any juror does stand indifferent in the cause, he shall be set aside from the trial of that cause and another called in his stead. And the sheriff of each county, as soon as he shall receive the *reverie* for jurors from the clerk of either court, shall forward them without any delay, to the constables of the several towns wherein they are directed.

**Sect. 9.** **And it is further enacted,** That in all cases relating to the reality, either party may have a jury to view the place in question, if the court shall be of opinion that such view is necessary to the justice of the trial. *Provided,* The party moving therefor shall advance such reasonable sum to the jury as the court shall order to be taxed against the adverse party, if he who advances the same shall

When there is a deficiency of juror, writs of *reverie facias* to be issued.

**1807, ch. 140, § 7.**

When from challenges, &c. there shall not be a jury, *judges* de *talibus circumstansibus* to be returned.

**1807, ch. 140, § 17.**

Penalty for neglect of duty in constables, selectmen, town-clerks, or persons returned to serve on the petit jury.

**1802, ch. 92.**

Courts, upon motion of either party, shall put juror upon oath.

**1807, ch. 140, § 4.**

In causes relating to the reality, either party may have a jury to view the place in question.
An Act directing the Proceedings against forcible Entry and Detainer. *

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That two Justices of the Peace, quorum usus, shall have authority to inquire by a jury, as is herein hereafter directed, as well against those who make unlawful and forcible entry into lands or tenements, and with a strong hand detain the same, as against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hand, or that the same after a lawful entry are held unlawfully and with force and a strong hand; then that such justices shall cause the party complaining to have restitution thereof.

SECT. 2. And be it further enacted, That when complaint shall be formally made in writing to any two Justices of the Peace, quorum usus, of any unlawful and forcible entry into any lands or tenements, and detainer as aforesaid, or of any unlawful and forcible detainer of the same after a peaceable entry, they shall make out their warrant under their hands and seal, directed to the sheriff of the same county, commanding him in the behalf of the Commonwealth, to cause to come before them twelve good and lawful men of the same county, each one of whom having freehold lands or tenements of the yearly value of forty shillings, and they shall be empannelled to inquire into the forcible entry or forcible detainer complained of; which warrant shall be in the form following, viz.

Commonwealth of Massachusetts.

[L. S.] S——, ss.

To the Sheriff of the County of S——,

Greeting.

WHEREAS complaint is made to us the subscribers, two of the Justices of the Peace for and within the county of S quorum usus, by A. B. of D. in the same county, gentleman, that E. F. of yeoman, upon the day of at D. aforesaid, with force and arms, and with a strong hand, did unlawfully and forcibly enter into and upon a tract of land of him, the said A. B. in D. aforesaid, containing acres, bounded as follows, viz. (or into the message or tenement of him, the said A. B. as the case may be) and him, the said A. B. with force and a strong hand as aforesaid, did expel and unlawfully put out of the possession of the same. [Or if it is a forcible detainer only, then the entry shall be described and the detainer inserted as follows:] and him, the said A. B. does unlawfully, unjustly, and with a strong hand, deforce and still keep out of the

*See Colony Law, entitled "An Act as to judgment respecting real estate."
possession of the same. You are therefore commanded, in behalf of the said Commonwealth, to cause to come before us upon the day of at in the said county, twelve good and lawful men of your county, each one of whom having a freehold of the yearly value of forty shillings, to be empannelled and sworn to inquire into the forcible entry and detainer (or the detainer) aforesaid. Given under our hands and seals the day of in the year of our Lord

R. S. \{ Justices of the Peace, quorum usus.
N. O. \}

And the said justices shall make out their summons to the party complained against, in form following, viz.

COMMONWEALTH OF MASSACHUSETTS.

[L. s.] S——, ss.
To the Sheriff of the county of S——,

GREETING.

WE command you, that you summon E. F. of to appear before the subscribers, two of our Justices of the Peace, within and for our said county of S. quorum usus, at a place called in D in the said county, at o'clock in the noon; then and there to answer to and defend against the complaint of A. B. to them exhibited, wherein he complains that [Here the complaint shall be recited] and you are to make a return of this writ, with your doings therein, unto our said justices, upon or before the said day

Witness our said justices, the day of in the year of our Lord

R. S.
N. O.

Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of abode, seven days exclusively before the day appointed by the justices for the trial; and if, after the service of such summons, the party does not appear to defend, the justices shall proceed to the inquiry in the same manner as if he was present; and when the jury shall appear, the justices shall lay before the jury the exhibited complaint, and shall administer the following oath to them, viz.

Foreman's Oath.

"You as foreman of this jury, do solemnly swear, that you will well and truly try whether the complaint of A. B. now laid before you, is true according to your evidence. So help you God."

The other Jurors' Oath.

"THE same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep. So help you God."

And if the jury shall find the same true, then they shall return their verdict in form following:

AT a Court of Inquiry held before R. S. and N. O. Esquires, two of the Justices of the Peace, within and for the said county of S. quorum usus, at D. in the said county of S. upon the
day of in the year of our Lord the jury upon their oaths do find, that the lands or tenements in D. aforesaid, bounded (or described) as follows, as in the complaint upon the day of in the year of our Lord

was in the lawful and rightful possession of the said A. B. and that the said E. F. did upon the same day unlawfully with force and arms, and with a strong hand, enter forcibly upon the same (or being lawfully upon the same, did unlawfully with force and a strong hand) expel and drive out the said A. B. and that he doth still continue wrongfully to detain the possession from him, the said A. B. Wherefore the jury find upon their oaths aforesaid, that the said A. B. ought to have restitution thereof without delay.

And if by accident or challenge there shall happen not to be a full jury, the sheriff shall fill the panel de talibus circumstantibus, as in other cases. And if the jury, after a full hearing of the cause, shall find the complaint laid before them supported by evidence, they shall all sign their verdict in form aforesaid, otherwise the defendant shall be allowed his legal cost, and have his execution therefor.

Sect. 3. And it is further enacted, That if the jury shall return their verdict, signed by the whole pannel, that the complaint is supported, the justices shall enter up judgment for the complainant to have restitution of the premises, and shall award their writ of restitution accordingly; and no appeal shall be allowed from the judgment of the justices. Provided nevertheless, That the proceedings may be removed by certiorari into the Supreme Judicial Court holden in such county, and be there quashed for irregularity, if any such there may be, nor shall such judgment be a bar to any after action brought by either party. Which writ of restitution shall be in form following:

COMMONWEALTH OF MASSACHUSETTS.

[LS.] S——, ss.

To the Sheriff of our county of S——,

GREETING.

WHEREAS at a Court of Inquiry of forcible entry and detainer, held at D. in our county of S. upon the day of in the year of our Lord, before R. S. and N. O. Esquires, two Justices of the Peace for our said county of S. quorum unus, the jurors empanelled and sworn by our said justices, did return their verdict in writing, signed by each of them, that A. B. was upon the day of in the rightful possession of a certain messuage or tract of land (as in the verdict returned) and that, &c. (as in the verdict) whereupon it was considered by our said justices, that the said A. B. should have restitution of the same. We therefore command you, that taking with you the force of the county if necessary, you cause the said E. F. to be forthwith removed from the premises, and the said A. B. to have the peaceable restitution of the same; and also that you levy of the goods, chattels or lands of the said E. F. the sum of being costs taxed against him on the trial aforesaid, together with one shilling and four pence more for this writ and your own fees; and for want of such goods, chattels or lands, of the said E. F. by you found, you
are commanded to take the body of the said E. F. and him commit to our gaol, in L. in our said county of S. there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he is delivered by order of law, and make return of this writ, with your doings therein, within twenty days next coming. Witness our said justices, at D. aforesaid, the day of in the year of our Lord

R. S. N. O.

Provided nevertheless, That this Act shall not extend unto any person who hath had the occupation or been in the quiet possession of any lands or tenements by the space of three whole years together, next before, and whose estate therein is not ended or determined. [June 30, 1784.]

An Act against Duelling.

WHEREAS divers persons, from the want of a due regard to the life of man, and in contempt of the authority and government of the Supreme Giver and Disposer of life, a regard to which is essentially necessary to the preservation and happiness of a Republic, and in violation of the wise and righteous laws of civil society, have voluntarily and maliciously engaged in the detestable and infamous practice of duelling, whereby upon false notions of honour, that result from a want of moral sense and human feeling, many lives have been lost, and many families have been brought to distress and ruin:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whosoever shall, for private malice, displeasure, fury or revenge, voluntarily engage in a duel with rapier or small sword, back-sword, pistol, or any other dangerous weapon, to the hazard of life, although death doth not thereby ensue, and shall, in due course of law before the Supreme Judicial Court in any county of this Commonwealth, be convicted thereof, shall be carried publicly in a cart to the gallows with a rope about his neck, and sit thereon for the space of one hour, with a rope about his neck as aforesaid, and be committed to the common gaol of the county, without bail or mainprize, for the space of twelve months, and find sureties for the peace and good behaviour for the space of one year after the expiration of the said twelve months, or in lieu of the said imprisonment shall be publicly whipt, not exceeding thirty-nine stripes.

Sect. 2. And be it further enacted by the authority aforesaid, That any person who shall, by word, message or any other way, challenge another to fight a duel, or shall accept a challenge, although no duel be fought, or shall any ways abet, prompt, encourage or seduce any person to fight a duel, or to challenge another to fight, and be convicted thereof in manner as aforesaid, shall be fined to the use of the Commonwealth in a sum not exceeding three hundred pounds, shall suffer six months' imprisonment, find sureties for the peace and good behaviour for the term of one year, and be incapable of sustaining any office under the government for the term of three years next following the time of such conviction, or shall be liable to any or all those punishments, at the discretion of the court.

Sect. 3. And be it further enacted, That when it shall appear by the coroner's inquest, that any person hath been killed in fighting a duel, the coroner of the county where the fact was committed, shall be, and he hereby is directed and empowered to take effectual care, that the body of such person so killed be immediately secured and buried without a coffin, with a stake drove through the body at or near the usual place of execution, or shall deliver the body to any surgeon or surgeons, to be dissected and anatomized, that shall request the same and engage to apply the said place to that use; but in case the body shall not be delivered to any surgeon or surgeons as aforesaid, it shall be buried as before directed. Provided, The said place of execution shall be within ten miles of the town or place where the person was killed, otherwise the body shall in like manner be buried in the most public road in the town or place where the fact was committed; and the charge of the coroner's inquest, as well as of the burial of the body, (if the same shall be buried) shall be defrayed out of the estate of the deceased (if any there be to be found) by warrant of distress, to be awarded by the Supreme Judicial Court, upon the coroner's presenting a bill of charge therefor; and if no estate be found, then the charge shall be paid out of the treasury of the county where the fact was committed.

Sect. 4. And be it further enacted by the authority aforesaid, That any person who shall slay or kill any other in a duel, or fight as aforesaid, and shall, upon conviction thereof on an indictment for murder, receive sentence of death, part of the judgment of the court upon such conviction shall be, that the body be delivered

Dissection to be part of the sentence against any
person convicted of killing another in a duel.

to any surgeon or surgeons, to be dissected and anatomized, that shall appear in a reasonable time after execution to take the body and engage to apply it to that purpose; but if none shall appear as aforesaid, then the sheriff who shall have execution done on the malefactor, shall bury the body without a coffin, in the same manner as the coroner in this Act is directed to bury the body of a person killed in a duel. [June 30, 1784.] Repealed 1805 ch. 88.

Chap. 10.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,

That where bail is given on mesne process in any civil action for the appearance of the party to answer the suit, and to abide the order and judgment of the court thereon, every such person or persons who shall thus become bail, shall be obliged to satisfy the judgment out of his or their own estate, in case of the principal's avoidance and the return of non est inventus upon the execution.

Provided nevertheless, That the bail may at any time before final judgment upon the original suit, bring the principal into court, and deliver him into the custody thereof, and be thereby discharged of their sureties.

And be it further enacted, That when the principal shall avoid, so that his goods, lands or chattels cannot be found to satisfy the execution, nor his body found to be taken therewith, the person for whom judgment was given shall be entitled to his writ of scire facias from the same court against the bail:

And in case no just cause is shewn, judgment shall be given against them for the damages and cost recovered against the principal, with additional damages and costs, and execution shall be awarded against them accordingly. Provided nevertheless, That if the bail shall bring their principal into court before judgment is given upon the scire facias, and there deliver him to the order of the court, and shall pay the cost which may have then arisen upon the scire facias, then the bail shall be discharged; and the principal shall be committed to gaol, there to remain for the space of thirty days, in order to his being taken in execution. And if the creditor shall not, within thirty days next after the surrender of the principal, take him in execution, the sheriff shall discharge him upon his paying the legal prisoners.

Sect. 3. And it is further enacted, That no scire facias shall be served upon the bail, unless it be done within one year next after the entering up final judgment against the principal.

Sect. 4. And it is further enacted, That the bail may have their remedy by action on the case against their principal, for all damages sustained by their becoming his sureties. [June 30, 1784.] Add. acts—1803 ch. 132: 1817 ch. 146.

Chap. 11.

An Act for naturalizing Thomas Robinson. [June 30, 1784.]

Chap. 12.

An Act to enable the inhabitants of the Town of Long-Branch, to lay out and confirm Highways in the said Town, at any legal meeting before the sixth day of November, seventeen hundred and eighty-four. [July 1, 1784.]

Chap. 13.

An Act in addition to, and for the Explanation of an Act, entitled, "An Act laying Duties of Import and Excise on certain goods, wares and merchandize therein described; and for repealing the several Laws heretofore made for that purpose." [July 1, 1784.] Add. acts—1785 ch. 17: 1786 ch. 28. All repealed—1786 ch. 43, 49.
An Act establishing Naval-Offices in this Commonwealth, and for the repealing Laws made for that purpose. [July 1, 1784.] Repealed 1789 ch. 59.

An Act vesting certain Powers in Congress. [For the Regulation of Foreign Commerce.] [July 1, 1784.]

An Act for obtaining a just and accurate Account of the Quantity of Land within this Commonwealth, granted to or surveyed for any person, the number of buildings thereon, and of its inhabitants, pursuant to a resolve of Congress, passed the seventeenth day of February, one thousand seven hundred and eighty three. [July 2, 1784.]

An Act, granting to Simon Willard the exclusive Privilege of making and vending Clock-Jacks for five years. [July 2, 1784.] Expired.

An Act in addition to an Act passed the twenty second day of October, in the year of our Lord, One thousand seven hundred and eighty three, entitled, "An Act making Provision for the Support and Maintenance of Light-Houses on the Sea-Coasts of this Commonwealth." [July 2, 1784.] Add. acts—1786 ch. 27. 62. All repealed—1790 ch. 31.

An Act for the regulation of Scamen. [July 5, 1784.]

An Act to incorporate the Church and Congregation in the District of Orange, in the County of Hampshire, whereof the Reverend Mr. Emerson Foster is the present minister, into a society, by the name of The Congregational Society in Orange. [July 5, 1784.] Repealed—1790 ch. 41.

An Act for erecting a District within the County of Suffolk, by the name of Dover. [July 7, 1784.] Repealed in part—1789 ch. 53. Add. act—1790 ch. 28.

An Act for regulating the Fees and Forms in the Naval-Offices within this Commonwealth. [July 7, 1784.] Repealed as to fees—1797 ch. 4: as to forms—1789 ch. 30.

An Act for inquiring into the Ratable Property of this Commonwealth. [July 8, 1784.]

An Act to empower the Treasurer of this Commonwealth to receive certificates from the Commissioner of Loans in this State, in part of the taxes granted in compliance with the requisition of Congress, of October thirtieth, one thousand seven hundred and eighty-one, for this State's Proportion of Eight Millions of Dollars; and to apply a part of the said taxes for the payment of the debts of this Commonwealth. [July 9, 1784.]

An Act for apportioning and assessing a Tax of one hundred and forty thousand pounds, for the sole purpose of redeeming the Army Notes, issued pursuant to an Act of this State, passed the fifth day of July, 1781, and payable in the years 1784, and 1785; and for raising the further sum of eleven thousand and thirty-five pounds six shillings and six pence, for the purpose of replacing the same sum which hath been paid out of the Treasury to the Representatives, for their attendance on the five last Sessions of the General Court, viz. From November, one thousand seven hundred and eighty two, to March, one thousand seven hundred and eighty-four. [July 9, 1784.]

An Act ascertaining the Rates at which coined Silver and Gold, and English half-pence and farthings, may pass within this Commonwealth. [October 26, 1784.]

An Act for incorporating the Congregational Church in the Town of Charlton, with certain other inhabitants of the said town, into a distinct Parish. [October 26, 1784.] Add. act—1789 ch. 50. Both repealed—1797 ch. 79.

An Act prescribing Forms of Writs in Civil Causes, and directing the mode of proceeding therein.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all civil actions, the original process in the following cases betwixt party and party, shall be made out in the forms following, that is to say,

[Summons.]
Commonwealth of Massachusetts.

[Seal.] S———, ss.

To the Sheriff of our County of S———, or his Deputy.

Greeting.

WE command you, that you summon A. B. of C. [addition] (if he may be found in your precinct) to appear before our Justices of our Court of to be holden at B. within and for our said county of S. on the Tuesday of then and there in our said Court to answer to D. E. of R. within our county of M. [addition] in a plea of to the damage of the said D. E. (as he saith) the sum of pounds,* which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witness E. H. Esq. at B. the day of in the year of our Lord

A. D. Clerk.

[Capias, or Attachment.] Commonwealth of Massachusetts.

[Seal.] S———, ss.

To the Sheriff of our County of S———, or his Deputy.

Greeting.

WE command you to attach the goods or estate of R. F. of B. within our county of S. [addition] to the value of pounds, and for want thereof to take the body of the said R. F. (if he may be found within your precinct) and him safely keep, so that you have him before our Justices of our Court of next to be holden at B. within and for our said county of S. on the Tuesday of then and there in our said court to answer unto D. S. of R. within our county of M. [addition] in a plea of to the damage of the said D. S. (as he saith) the sum of pounds, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witness E. H. Esq. at B. the day of in the year of our Lord

A. D. Clerk.

[Summons when goods are attached.] Commonwealth of Massachusetts.

[Seal.] S———, ss.

To A. B. of B. within our county of S———, [addition.] Greeting.

WE command you, that you appear at our next Court of to be holden at B. within and for our county of S. aforesaid, on the Tuesday of then and there to answer to C. D. of R. within our county of M. [addition] in a plea of which plea the said C. D. hath commenced against you, to be heard and tried at the said court; and your goods or estate are attached to the value of pounds, for security to satisfy the judgment which the said C. D. may recover upon the aforesaid trial. Fail not of appearance at your

* Form of writs, &c. in courts and public offices, to be altered so as to conform to the federal money account—1794 ch. 42.
peril. Witness E. H. Esq. at B. the day of in the year of our Lord

A. D. Clerk.

[Execution.]

COMMONWEALTH OF MASSACHUSETTS.

[Seal.] S——, ss.

To the Sheriff of our county of S——, or his Deputy,

GREETING.

WHEREAS C. L. of R. within our county of S. [addition] by the consideration of our Justices of our Court of holden at B. for and within our county of S. aforesaid, on the Tuesday of recovered judgment against D. T. of B. in the county of M. [addition] for the sum of pounds shillings and pence, debt or damage, and pounds shillings and pence, costs of suit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels or lands of the said D. T. within your precinct, you cause to be paid and satisfied unto the said C. L. at the value thereof in money, the aforesaid sum, being pounds shillings and pence, in the whole, with shillings more for this writ, and thereof also, to satisfy yourself for your own fees. And for want of goods, chattels or lands of the said D. T. to be by him shewn unto you, or found within your precinct, to the acceptance of the said C. L. to satisfy the sums aforesaid, we command you to take the body of the said D. T. and him commit unto our gaol in B. in our county of S. aforesaid, and detain in your custody within our said gaol, until he pay the full sums abovementioned, with your fees, or that he be discharged by the said C. L. the creditor, or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein. Witness E. H. Esq. at B. the day of in the year of our Lord

A. D. Clerk.

SECT. 2. And be it enacted by the authority aforesaid, That the writ for putting such into possession of any land or tenements as shall recover judgment for the same, and for levying the cost and damages recovered upon such suit, commonly called a writ of facias habere possessionem, and writ of fieri facias; as also the writ of scire facias, to be issued out of the Supreme Judicial Court, or Court of Common Pleas, respectively, shall be from time to time granted and issued in the form following, that is to say,

[Writ of Facias habere Possessionem, and Fieri Facias.]

COMMONWEALTH OF MASSACHUSETTS.

[Seal.] S——, ss.

To the Sheriff of our county of S——, or his Deputy,

GREETING.

WHEREAS A. B. of C. [addition] before our Justices of our Court of holden for or within our county of S. aforesaid, at B. upon the day of by the consideration of our said court. recovered judgment for his title and

A. D. Clerk.

1787 ch. 29, § 4. 1784 ch. 59.
possession of and in a certain messuage or tenement, with the appurtenances, or acres of land, with the appurtenances and privileges, lying and being in the town of D. against E. F. of G. [addition] who had unjustly withheld, put out or removed the said A. B. from his possession thereof; and also at the said court recovered judgment for pounds shillings and pence, for costs and damages, which he sustained by reason of the same, as to us hath been made to appear of record: We command you, therefore, that without delay, you cause the said A. B. to have possession of and in the said messuage or tenement, with the appurtenances; or the said acres of land, with the appurtenances and privileges: We also command you, that of the goods, chattels or lands of the said E. F. within your precinct, at the value thereof in money, you cause the said A. B. to be paid and satisfied the aforesaid sum of pounds shillings and pence, which to the said A. B. was adjudged for his costs and damages, with shillings more for this writ, and thereof also to satisfy yourself for your own fees. And for want of such goods, chattels or lands of the said E. F. to be by him shewn unto you or found within your precinct to the acceptance of the said A. B. to satisfy the aforesaid sum: We command you to take the body of the said E. F. and him commit unto our gaol, in B. in our county of S. aforesaid, and detain in your custody within our said gaol, until he pay the full sum abovementioned with your fees; or that he be discharged by the said A. B. or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein. Witness E. H. Esq. at B. the day of in the year of our Lord

A. D. Clerk.

[Writ of Scire Facias.]

COMMONWEALTH OF MASSACHUSETTS.

[Seal.] S———, SS.
To the Sheriff of our county of S———, or his Deputy,
GREETING.

WHEREAS C. D. of B. [addition] before our Justices of our Court of holden for or within our said county of S. at B. on the day of in the year of our Lord by the consideration of our said justices, recovered against A. B. of E. [addition] the sum of pounds shillings and pence, debt or damage; and also pounds shillings and pence, for costs and charges by him about his suit in that behalf expended, whereof the said A. B. is convict, as to us appears of record; and although judgment be thereof rendered, yet the execution for the said debt or damage and costs doth yet remain to be made, whereof the said C. D. hath made application to us to provide remedy for him in that behalf: Now to the end that justice be done, we command you, that you make known unto the said A. B. that he be before our justices of our said Court of to be holden within or for our said county of S. at B. on the of to shew cause (if any he hath) wherefore the said
C. D. ought not to have his execution against him, the said A. B. for his debt or damage and costs aforesaid; and further to do and receive that which our said court shall then consider; and there and then have you this writ, with your doings therein. 

Herein fail not. Witness E. H. Esq. at B. the day of in the year of our Lord

A. D. Clerk.

Sect. 3. And be it enacted, That the several forms of writs and processes hereunderwritten, shall be, and hereby are established to be the forms to be granted and used in civil causes triable before a Justice of the Peace, that is to say,

[Summons for Appearance.]

[Seal.] S——— ss.
To the Sheriff of the said county of S———, or either of his Deputies, or the Constables of the town of B. within the said county, or to any or either of them,

Greeting.

IN the name of the Commonwealth of Massachusetts, you are required to summon and give notice unto T. P. of B. aforesaid, [addition] (if he may be found in your precinct) that he appear before me, J. D. Esq. one of the Justices of the Peace for the county aforesaid, at my dwelling-house in B. on the day of at of the clock in the noon; then and there to answer to E. L. of M. [addition] in a plea of to the damage of the said E. L. (as he saith) the sum of as shall then and there appear with other due damages. And of this writ, with your doings therein, you are to make true return unto myself, at or before the said day of .

Dated at B. aforesaid. the day of in the year of our Lord

J. D.

[Capias. or Attachment.]

[Seal.] S——— ss.
To the Sheriff of the said county of S———, or either of his Deputies, or the Constables of the town of B. within the said county, or to any or either of them,

Greeting.

IN the name of the Commonwealth of Massachusetts, you are required to attach the goods or estate of T. P. of B. aforesaid, [addition] to the value of and for want thereof, to take the body of the said T. P. (if he may be found in your precinct) and him safely keep, so that he may be had before me, J. D. Esq. one of the Justices of the Peace for the county aforesaid, at my dwelling-house in B. on the day of at of the clock in the noon; then and there to answer to E. L. of M. [addition] in a plea of to the damage of the said E. L. (as he saith) the sum of as shall then and there appear, with other due damages. Hereof fail not, and make due return of this writ, and of your doings therein, unto myself, at or before the said day of .

Dated at B. aforesaid. the day of in the year of our Lord

J. D.
[Summons when goods are attached.]

[Seal.] S———, ss.

To T. P. of D. in the county of S———, [addition]

GREETING.

IN the name of the Commonwealth of Massachusetts, you are commanded to appear before me, J. D. Esq. one of the Justices of the Peace for the county aforesaid, at my dwelling-house in B. on the day of at of the clock in the noon, to answer unto E. L. of M. [addition] in a plea of which plea the said E. L. hath commenced to be heard and tried before me; and your goods or estate are attached to the value of for security, to satisfy the judgment which the said E. L. may recover upon the aforesaid trial. Fail not of appearance at your peril. Dated at B. aforesaid, the day of in the year of our Lord

J. D.

[Execution.]

COMMONWEALTH OF MASSACHUSETTS.

[Seal.] S———, ss.

To the Sheriff of our said county of S———, or either of his Deputies, or the Constables of the town of B. within our said county, or any or either of them,

GREETING.

WHEREAS E. L. of M. [addition] on the day before J. D. Esq. one of our Justices of the Peace for our county aforesaid, recovered judgment against T. P. of B. [addition] for the sum of debt or damage, and shillings and pence for charges of suit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the money of the said T. P. or of his goods or chattels within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied unto the said E. L. the aforesaid sums, being pounds shillings and pence in the whole; and also that out of the money, goods or chattels of the said T. P. you levy more for this writ, together with your own fees. And for want of such money, goods or chattels of the said T. P. to be by him shewn unto you, or found within your precinct, to the acceptance of the said E. L. for satisfying the aforesaid sums: We command you to take the body of the said T. P. and him commit unto our gaol in B. and we command the keeper thereof accordingly, to receive the said T. P. into our said gaol, and him safely to keep, until he pay the full sums abovementioned, with your fees, or that he be discharged by the said E. L. the creditor, or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein, unto our said Justice, within sixty days next coming. Witness our said Justice, at B. the day of in the year of our Lord

J. D.

Sect. 4. And be it further enacted, That the form of the writ of SCIRE FACIAS aforesaid, shall be the form of a writ of SCIRE FACIAS upon a judgment recovered before a Justice of the Peace.

mutatis mutandis.
Sect. 5. And be it further enacted by the authority aforesaid, That the clerk of each town respectively, within this Commonwealth, as well as the clerks of the several courts aforesaid, may, and are hereby respectively empowered to grant summons for witness in civil causes, directed to the person to be summoned for witness; which summons shall be made out in the form following, that is to say,

Subpæna for witnesses.

Greeting.

You are hereby required, in the name of the Commonwealth of Massachusetts, to make your appearance before the Justices of the next to be holden at B. within and for the county of S. on the Tuesday of to give evidence of what you know relating to an action or plea of then and there to be heard and tried betwixt A. B. of C. [addition] plaintiff, and D. E. of E. (addition) defendant. Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided. Dated at B. the day of in the year of our Lord A. D. Clerk.

Sect. 6. And be it further enacted, That every Justice of the Peace may, and hereby is empowered to grant summons for witnesses in civil causes triable before himself, such summons to be directed as, and similar to, the summons for witnesses in civil causes aforesaid, mutatis mutandis. And if any person or persons who shall be served with lawful process or summons to testify, depose, or give evidence concerning any cause or matter depending in any of the courts aforesaid, or before any Justice of the Peace as aforesaid, and having tendered unto him or them such reasonable sum or sums of money for his or their costs and charges, as, having regard to the distance of the places, is necessary to be allowed in that behalf, do not appear according to the tenor of the process or summons, having no reasonable let or impediment to the contrary; then the person so making default shall be liable to the action of the aggrieved party for all damages by him sustained by such default; and the court or Justice of the Peace shall have power by attachment to bring such contemptuous witness into court or before him, and to fine him at discretion, not exceeding the sum of six pounds, and shall order him to pay the cost of such attachment.

Sect. 7. And it is further enacted, That when any defendant shall be duly served with process, and return thereof shall be made into the court where the same is returnable, and he shall not appear by himself, or his attorney, his default shall be recorded, and the charge in the declaration shall be taken and deemed to be true, and the court shall thereupon give such damages as they shall find upon inquiry that the plaintiff shall have sustained, unless the plaintiff shall move to have a jury to inquire into the damages, in which case the court shall enter

4 W. & M.—

Subpæna for witnesses.

13 W. III. ch. 15.

1783 ch. 42, § 5.

5 Eliz. ch. 9. § 12.

Persons making default, liable to the action of the aggrieved party.

Defendants served with process, and they not appearing, the default to be recorded.
up judgment for such damages as the jury shall assess. Provided nevertheless, That if the defendant shall come into court at any time before the jury is dismissed, and shall pay down to the adverse party the costs he has been at thus far, or so much thereof as the court shall judge reasonable, then the court may admit the defendant to have the same day in court as if his default had never been recorded.

Sect. 8. And it is also enacted, That when any person in whose favour a judgment is given at the Court of Common Pleas shall appeal therefrom because the damages given are too small, he shall be entitled to a jury at the Supreme Judicial Court to inquire into the damages without any further notice to the appellee. And when in the Common Pleas judgment shall be given either upon abatement or demurrer, the party against whom judgment is given shall have the privilege of appealing, without any further proceedings had in the Common Pleas. And all agreements for waving pleas, and for amendments, and for making new pleas at the Supreme Judicial Court, made and entered upon the records of the Common Pleas, shall be binding to the parties throughout the whole process of the suit.

Sect. 9. And it is also enacted, That when any plaintiff shall, in any stage of his action, become nonsuit, or discontinue his suit, the defendant shall recover his cost against him, and that in all actions, as well those of qui tam as others, the party prevailing shall be entitled to his legal costs against the other.

Sect. 10. And it is further enacted, That no person imprisoned upon mesne process shall be held in prison upon such process above the space of thirty days next after the entering up final judgment upon the writ whereby he is committed; unless he shall be continued there by having his body taken in execution, nor shall the prison-keeper discharge any such prisoner unless judgment is given in his favour, until thirty days next after the said judgment is entered up, unless the party at whose suit he was committed, shall give order, in writing, for his discharge, and shall pay the legal fees of the gaoler.

Sect. 11. And it is further enacted, That all original writs issuing out of the Supreme Judicial Court, or Court of Common Pleas, shall, before they are served, be indorsed on the back thereof by the plaintiff or plaintiffs, or one of them, with his christian and surname, if he or they are inhabitants of this Commonwealth, or by his or their agent or attorney, being an inhabitant thereof, and where the plaintiff is not an inhabitant of this Commonwealth, then his writ shall be indorsed in manner aforesaid, by some responsible person who is an inhabitant of this Commonwealth, provided that the court may, upon motion, in consideration that the agent or attorney who indorsed the writ is not of ability for the purposes hereafter mentioned, order that the plaintiff shall procure a new indorser; and such new indorser shall be held in the same manner as if the indorsement had been made before the writ was served, and unless the plaintiff shall procure such new indorser when directed thereof, he shall become nonsuit, but no costs shall
be awarded against him. And the plaintiff's agent or attorney who shall so indisoe his name upon an original writ, shall be liable, in case of the avoidance or inability of the plaintiff, to pay the defendant all such costs as he shall recover, and to pay all prison-charges that may happen, where the plaintiff shall not support his action. And all goods and estate attached upon mesne process, for the security of the debt or damages sued for, shall be held for the space of thirty days* after final judgment, to be taken in execution. And if the creditor shall not take them in execution within thirty days after judgment, the attachment shall be void.

Sect. 12. And be it further enacted, That when an action shall be brought to recover a debt due on book accounts, an account stated by the parties, a quantum meruit, quantum valebat, or for services done upon an agreed price, the defendant may file any account he hath in the clerk's office seven days before the sitting of the Court of Common Pleas where the action is brought, or, if the suit is before a Justice of the Peace, the account shall be filed before the justice four days before the day of trial, and, upon the general issue, give the same in evidence against the plaintiff's demand. And if upon the trial it shall appear that there is a balance due to the defendant, he shall recover the same in the same manner as if he had brought his action therefor; and where a plaintiff shall, at the same court, bring divers actions upon demands which might have been joined in one, he shall recover no more costs than in one action only.

Sect. 13. And be it also enacted, That when the plaintiff and defendant both live within the Commonwealth, all personal or transitory actions shall be brought in the county where one of the parties lives. And when an action shall be commenced in any other county than as above directed, the writ shall be abated and the defendant allowed double costs.

Sect. 14. And be it further enacted by the authority aforesaid, That no summons, writ, declaration, process, judgment or other proceedings in the courts, or course of justice, shall be abated, arrested, quashed or reversed for any kind of circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor through defect or want of form only; and the court, on motion made, may order amendments.

Sect. 15. And be it further enacted, That execution shall not issue in any case, until the expiration of twenty-four hours after the entering up of judgment. [Oct. 30, 1784.] Add. act—1784 ch. 59.

An Act empowering the inhabitants of the County of Lincoln, eastward of Union-River, to choose a Register of Deeds, and for the establishing a Court of Probate, to be held within and for all that part of the said County, which lies to the eastward of the said River. [Nov. 6, 1784]

Col. L. 1659.

When actions are brought to recover debts, the defendants may file their accounts.

1793 ch. 75, § 4.
16 Geo. II.—

Transitory actions to be brought where one of the parties lives.

23 Geo. II. ch. 2.

Writs, &c. not to abate for circumstantial errors.

Col. L. 1641. 44, 47, 51.
13 W. III. ch. 15.

Executions not to issue until—

* Sixty days in Nantucket—1806 ch. 107.
An Act regulating the Exportation of Flax-Seed, Pot-Ash, Pearl-Ash, Beef, Pork, barrelled Fish, and dried Fish.*

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the twentieth day of December next, no flax-seed shall be shipped or exported out of this Commonwealth, but such as shall have been surveyed and found to be well cleansed and in good order, and in casks, each cask containing seven bushels and one peck, or in casks containing one half the said quantity each.

Sect. 2. And be it further enacted, That the Governor, by and with the advice and consent of the Council, be, and is hereby empowered to appoint, in such sea-port towns within this Commonwealth as there shall be occasion, one or more skilful and disinterested person or persons, to be surveyors, for the surveying and proving flax-seed, who shall be sworn to the due and impartial execution of their trust: And their duty shall be to inspect and survey all flax-seed that shall be intended to be laden on board of any vessel for foreign exportation; and every such surveyor is hereby authorized to open the casks containing the said commodity, intended to be exported as aforesaid, and if need be, measure and shift the same into other casks, so as thoroughly to examine the whole, and see that it be clear from mixture of wild or other seed, or dirt, and of the measure aforesaid. And every cask containing the said quantity, which by such survey and examination shall, according to the surveyor's best judgment, appear to be cleansed as aforesaid, he shall mark or imprint with a burning-iron, the following mark or letters, A P. with the name of the town where it shall be thus approved, the name of the said surveyor at large, and the letter S. at the end thereof, denoting that the same has been surveyed and approved.

Sect. 3. And be it further enacted, That from and after the twentieth day of December next, no pot-ash or pearl-ash, shall be shipped or exported out of this Commonwealth, but such as shall have been assayed and found to be of sufficient strength and purity, and to have those qualities in such degree of perfection as shall be ascertained and fixed by the Governor, with the advice and consent of the Council, as the standard of such pot-ash and pearl-ash as shall be deemed merchantable, and fit for exportation.

Sect. 4. And be it further enacted, That the Governor and Council be, and they are hereby empowered to appoint, in such sea-port towns within this Commonwealth as there shall be occasion, one or more skilful and disinterested person or persons, to be assay-masters, for the proving and assaying pot-ash and pearl-ash, who shall be sworn to the due and impartial execution of their trust; and their duty shall be to inspect and assay all pot-ash and pearl-ash, that shall be brought to any such sea-port town to be shipped; and every such assay-master is hereby authorized to open the casks of vessels containing those commodities, and to take out so much thereof as may discover the quality of the whole; and every cask or other vessel of pot-ash or pearl-ash, which by such assay shall be found to be good and merchantable, according to the rule or standard that shall be established as aforesaid, he shall mark or imprint with a burning iron, the following mark or letters, A S. D. with the name of the town where the same shall have been thus assayed, and the assayer's name at large, and the letter A. at the end thereof, denoting that the same has been assayed and approved.

Sect. 5. And be it further enacted, That if the owner of any flax-seed, [pot-ash or pearl-ash.] or other person employed by

* Repealed as to the inspection and assay of pot and pearl ashes, 1791 ch. 8— as to the inspection of beef, 1799 ch. 69— as to the inspection of pork, 1801 ch. 78— as to barrelled fish, 1803 ch. 55.
him, shall presume to lade, or put on board any vessel, bound out of the Commonwealth, any flax-seed, [pot-ash or pearl-ash,] other than such as shall have been approved by a surveyor [or assay-master, respectively,] or shall be contained in any cask or other vessel that shall not have their marks, stamps or brands upon it; or if any master of a ship or other vessel, or other officer or mariner, shall receive on board any such, the offender or offenders shall incur the penalty of five pounds for each cask or other vessel so shipped, to be sued for and recovered in any court of record within this Commonwealth, proper to try the same; and all such flax-seed, [pot-ash and pearl-ash,] (laden or received on board as aforesaid) shall be forfeited. And it shall be lawful for any Justice of the Peace, upon information given of any flax-seed, [pot-ash or pearl-ash,] put on board any such ship or other vessel, as aforesaid, not marked as aforesaid, to issue his warrant, directed to the sheriff or his deputy, or constable, requiring them respectively to make seizure of any such flax-seed, [pot-ash and pearl-ash,] shipped and not marked as aforesaid, and to secure the same in order for trial, and such officers are hereby respectively empowered and required to execute the same.

Sect. 6. And be it further enacted, That if, after any such cask or other vessel, containing flax-seed, [or pot-ash, or pearl-ash,] shall have been approved and stamped with the surveyor's [or assay-master's] marks, stamps or brands, any cooper or other person shall presume to shift the contents of such cask or other vessel, and to put therein any flax-seed, [pot-ash or pearl-ash,] that has not been duly surveyed [or assayed,] and approved as aforesaid, such cooper or other person offending therein, shall forfeit and pay the sum of ten pounds for every cask so shifted, to be recovered in manner aforesaid.

Sect. 7. And be it further enacted, That in case any surveyor [or assay-master,] appointed and sworn as aforesaid, shall be guilty of any neglect or fraud in [assaying] or surveying any flax-seed, [pot-ash or pearl-ash,] contrary to the true intent and meaning of this Act, or shall mark with their respective brands, stamps or marks, any cask containing flax-seed, [or pot-ash, or pearl-ash,] which they had not actually and thoroughly surveyed [or assayed,] and which may be intended for exportation out of this State, he or they shall forfeit and pay the sum of ten pounds for every such neglect, or for every cask falsely marked, to be recovered as aforesaid.

Sect. 8. Be it further enacted by the authority aforesaid, That each cask, before any pot-ash or pearl-ash are put therein, shall be weighed by the manufacturer of such pot-ash or pearl-ash, who shall, with a marking-iron, mark on one of the heads thereof the full weight of the cask, and the initial letters of his name; and in case he shall falsely mark the same, such manufacturer, upon conviction thereof, shall forfeit and pay the sum of forty shillings, for each cask so falsely marked.

Sect. 9. And be it further enacted, That the respective surveyors [and assay-masters] shall be paid for every cask of flax-seed, [pot-ash or pearl-ash,] that they shall survey [or assay,] the sum of six pence, provided the number does not exceed ten, and four pence for each cask exceeding that number, exclusive of cooperage, to be paid by the shipper.
Selectmen to choose annually fit persons to be searchers and packers of harrelled beef, &c.

Duty of such searchers and packers.

Penalty for shipping such provisions not approved.

Penalty for shifting fish or flesh, after being stamped, &c. by the packer.

No vessel having on board flux-seed, &c. to be cleared out by the naval-officer, until—

Sect. 10. Be it further enacted by the authority aforesaid, That the selectmen, or the major part of them, in every town in the Commonwealth where there may be occasion, be, and they are hereby empowered and directed, to choose and appoint annually a fit person or persons to be searchers and packers of harrelled beef, pork and fish, who shall be sworn to the faithful execution of their trust, by the town-clerk of the said town, and the said town-clerk shall record the same in the town books; whose duty shall be to pack and search all the fish, beef and pork which shall be packed in the same, designed for exportation out of this State; and they shall not pack any fish, beef or pork, in any cask which shall be of unseasoned stuff, or which shall be under the assize established by law, under the penalty of ten shillings for every cask so packed.

Sect. 11. And be it further enacted, That in every town where such commodities are packed up for sale, the searcher and packer of such town, or of the town where they are put to sale or shipped, shall, previously thereto, see that they be properly repacked, and that there be good salt in each cask, sufficient to preserve the fish, beef or pork from damage, to any part or place to which they are designed to be shipped; and it shall be his business to see that the beef and pork in cask is of the whole, half and quarter, and so proportionally, that the best be not left out; and that each barrel of pork shall weigh two hundred pounds weight, and each barrel of beef two hundred and twenty pounds weight, each cask to be well seasoned, and bound with not less than twelve sufficient hoops; and that packerel and other harrelled fish be packed all of one kind, and in casks well season'd; Casks shall be branded with the marks of the said packers, and that all casks so packed be full, and the fish sound and well seasoned; on all which casks of beef, pork and fish, so searched, examined and approved, the said packer shall brand or imprint, with a burning-iron, the following brand or mark, MASS, RPD. with the initial letters of his christian name and his surname at large, and the letter P. at the end thereof, denoting that the same is merchantable, and in good order for exportation; and all such other provision as the packer shall find wholesome and useful, though for its quality it be not merchantable, he shall cause to be well packed, salted and fined, and the same mark with the word REFUSE; for which he shall receive from the owner six pence for each barrel, and so in proportion for a larger or smaller cask. And if any such provisions be put to sale, or shipped off, without having been approved by a packer, and the casks in which they are contained not have the said packer’s stamp, mark or brand upon them, or if any master of any ship or other vessel, officer or mariner, shall receive on board any such, the offender or offenders shall incur the penalty of ten pounds for each cask so shipped, to be sued for and recovered in any court of record within this Commonwealth, proper to try the same; and all such fish, beef or pork (laid or received on board as aforesaid) shall be forfeited.

Sect. 12. And be it further enacted, That if any cooper, packer or other person shall shift any fish or flesh, either on board any ship or other vessel, or on shore, after the same hath been so branded, stamped or marked by the packer, and ship and export the same, and anew brand, stamp or mark the cask whereunto such provisions are shifted, all persons acting, ordering or assisting therein, and being there-of convicted, shall forfeit and pay a sum not exceeding fifty pounds, nor less than ten pounds, and pay a fine for each cask so shifted, ten pounds. And if any person or persons other than the proper officer shall presume to mark, stamp or brand any cask of flux-seed, pot-ash, pearl-ash, beef, pork or harrelled fish, with the stamping or branding instrument belonging to such officer, or other instrument made in imitation thereof, such person or persons on conviction thereof, shall forfeit and pay a sum not less than ten pounds, nor more than fifty pounds, for each cask so marked, stamped or branded, to be recovered in manner aforesaid.

Sect. 13. And be it further enacted by the authority aforesaid, That no vessel on board of which any cask of flux-seed, [pot-ash, pearl-ash, harrelled pork, beef or fish.] is shipped for exportation, shall be cleared out by the naval officer until the master or owner thereof shall have produced a certificate or certificates from some person or persons duly appointed for the purpose of surveying, assaying, proving or packing the said articles, that the same have been surveyed. assayed, proved, packed, or re-packed, as by this Act is required, which certificate or certificates shall be granted free from any expense.

And whereas great inconvenience and damage to merchants, and much loss to the interests of the Commonwealth, arise for want of proper persons being appointed in the seaport towns to cull dry fish:

Sect. 14. Be it therefore enacted by the authority aforesaid,
That there shall be annually chosen, in every sea-port town within this Commonwealth, where fish is made and cured, or sold, at the annual March meeting, a suitable number of skilful and disinterested persons, inhabitants of such town, to be cullers of fish; and any person who shall cull fish without being chosen and sworn, shall forfeit the sum of five pounds for every quintal of fish by him culled, and such cullers in culling fish shall have regard to the contract between the buyer and seller, with respect to the season of the year wherein such fish is cured.

Sect. 15. And be it further enacted, That every master or commanding officer of any ship or other vessel, who shall take on board any fish, in order to transport the same beyond sea, without having the same first surveyed or culled by a person duly appointed and under oath, shall forfeit and pay a fine of six shillings for each and every quintal so received or taken on board; and every person chosen into the office of a culler of fish, shall, before he enter on the duties of his office, be sworn as other town officers are, to the faithful discharge of his trust, and shall be allowed and paid one penny half-penny for every quintal of fish which he shall survey or cull, by the purchaser thereof. Provided nevertheless, When it shall so happen that the sworn cullers cannot be obtained, that then it shall and may be lawful for the buyer and seller to agree upon some met person to be a culler in such case—Provided, he be first sworn faithfully to discharge the trust.

Sect. 16. And be it enacted by the authority aforesaid, That the cullers of fish already chosen in the several towns in this Commonwealth, be continued in office until their next March meetings respectively.

Sect. 17. And be it further enacted, That this Act, so far as it regulates and respects the exportation of barrel pork and beef, shall not be in force until the twentieth day of December next; and so far as this Act regulates and respects the exportation of barreled fish, it shall not be in force until the first day of April next.

Sect. 18. And be it further enacted, That penalties and forfeitures arising by force and virtue of this Act, shall be one half to the use of the Commonwealth, and the other half to him or them who shall inform and sue for the same.

Sect. 19. And it is enacted, That all laws heretofore made, so far as they respect the commodities by this Act regulated, be, and they are hereby repealed. [Nov. 9, 1784.] Add. acts as to flax-seed—1786 ch. 35 : 1789 ch. 20.

An Act, in addition to an Act, made and passed the present year, entitled, "An Act for repealing two Laws of this State, and for asserting the Right of this free and sovereign Commonwealth to expel such Aliens as may be dangerous to the peace and good order of government."

WHEREAS in the last paragraph of the Act aforesaid, provision is made as follows: "Provided, such claimers are not included in the Act aforesaid, made in the year one thousand seven hundred and seventy eight."

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of
Proviso repealed.

Substitute:

the same, That the proviso above recited, be, and hereby is repealed. And in lieu thereof,

 Sect. 2. Be it enacted, That provided such claimers are not included in the Act aforesaid, entitled, "An Act to confiscate the estates of certain notorious conspirators against the government and liberties of the inhabitants of the late Province, now State of Massachusetts-Bay."

And whereas by the Act aforesaid, made and passed in the present year, no provision is made respecting the real estates of such absentee as have been mortgaged or leased by order of Government:

 Sect. 3. Be it therefore enacted by the authority aforesaid, That all those real estates, which on the 19th day of April, in the year one thousand seven hundred and seventy-five, were the property of any person or persons who are mentioned, intended or described, in an Act passed in the year one thousand seven hundred and seventy-nine, entitled, "An Act for confiscating the estates of certain persons, commonly called absentee," and which estates have been mortgaged by order of Government, shall be considered as having been confiscated, saving only the right of redemption in the legal claimers, or in the Commonwealth where no legal claimant shall appear, upon paying and discharging the mortgage, according to the true intent and spirit of the same, which such claimants are authorized to do in the same manner as the Commonwealth might; and where such estate hath been leased by order of Government, the income and profit, use and improvement thereof, shall be considered as confiscated for the term of which the same is leased; and the tenants shall hold the same accordingly, till the end of the term, when the claimants shall have the same; and that all doings and proceedings of agents, and committees on any real estate of an absentee, or a real British subject, which has not been confiscated, done and had according to the laws and resolutions of Government, or which has been done by any other person under orders of any military commander, shall be good and valid to all intents and purposes.

 Sect. 4. And be it further enacted by the authority aforesaid, That all the personal estate of the persons aforesaid, who left this State, or any other of the United States, or any of the provinces or colonies of America, since the fifth day of October, in the year one thousand seven hundred and seventy-four; and before the making of the present Constitution or frame of government of this Commonwealth, and went off to, and took the protection of the government, fleet or army of Great-Britain, and which personal estate hath been taken, sold, used or disposed of, by order of Government, shall be held, deemed and taken to have been confiscated; and that no person or persons of the descriptions aforesaid, shall have or maintain any action against any committee, agent or any person whatsoever, who has disposed of the same in consequence of any law, resolve or order of Government, or of the Provincial Congress, formerly holden in this then province, or of any order or resolve of the United States, or taken by the order of any military comman-
Chap. 32.

An Act for establishing a School in the North Parish of Hingham, by the name of Derby-School, and for appointing and incorporating Trustees of the said school. [Nov. 11, 1784.] Made an Academy—1797 ch. 9.

Chap. 33.

An Act empowering the Delegates of this Commonwealth, in the United States in Congress assembled, to relinquish to the United States certain lands, the property of this Commonwealth.

WHEREAS several of the States in the Union have at present no interest in the great and extensive tract of uncultivated country, lying in the westerly part of the United States, and it may be reasonable that the States abovementioned shall be interested in the aforesaid country:

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the delegates of this Commonwealth, in the United States in Congress assembled, or any three of the said delegates, be, and they hereby are authorized and empowered, for and in behalf of this Commonwealth, to cede or relinquish, by authentic conveyance or conveyances, to the United States, to be disposed of for the common benefit of the same, agreeably to a Resolve of Congress of October the tenth, one thousand seven hundred and eighty, such part of that tract of land belonging to this Commonwealth, which lies between the rivers Hudson and Mississippi, as they may think proper; and to make the said cession in such manner and on such conditions as shall appear to them to be most suitable. [Nov. 13, 1784.] Add. act—1784 ch. 73.

Chap. 34.

An Act for incorporating a Grant of Land, formerly made to Mr. Cornelius Jones, of ten thousand acres, called by the name of Myrisfield, in the County of Hampshire, together with other lands adjoining, and the inhabitants thereon, into a separate Town, by the name of Rowe. [Feb. 9, 1785.]

Chap. 35.

An Act limiting the Times within which Accounts or Demands against this Commonwealth shall be exhibited for liquidation and allowance.

WHEREAS for the speedy and uniform settlement of public accounts, and for the prevention of fraud, it is expedient that accounts or demands against the Commonwealth, not liquidated, settled and allowed by Government, should be seasonably exhibited for liquidation and allowance:

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all accounts or demands against this Commonwealth, which accrued to any individuals or private corporations previous to or during the late war, which have not been exhibited, liquidated and allowed by Government, be presented for liquidation and allowance, on or before the first day of January, one thousand seven hundred and eighty six; and that all accounts or demands which have arisen or accrued since the close of the late war, or that shall hereafter accrue as aforesaid, which have not or may not be liquidated and allowed by Government, be presented for liquidation and allowance, within two years after the time of passing this Act, or otherwise within two years after the same
An Act to set off Samuel Luce, Jonathan Snow, Edward Wing, Admiral Potter and Reuben Hous, from the Town of Conway, in the County of Hampshire, and annex them to the Town of Goshen, in the said County. [Feb. 9, 1785.]

An Act for repealing one Act of this Commonwealth, made and passed in the year of our Lord one thousand seven hundred and eighty-four, entitled, "An Act for regulating the Market in Boston," [Feb. 11, 1785.]

An Act making an additional Allowance to the Justices of the Supreme Judicial Court, for their support. [Feb. 11, 1785.] Expired.

An Act for incorporating a certain Tract of Land, lying in the County of Hampshire, into a Town, by the name of Heath. [Feb. 14, 1785.]

An Act against Adultery, Polygamy and Lewdness.

WHEREAS chastity of behaviour, and the due observance of the marriage covenant, are highly conducive to the peace, good order and welfare of the community, and the violation of them productive of great evils to individuals and the public:

SECT. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any man or woman shall commit adultery, and be thereof convicted, every person so convicted, shall be set upon the gallows with a rope about his or her neck, and the other end of it cast over the gallows, for the space of one hour, be publicly whipped, not exceeding thirty nine stripes, be imprisoned or fined, and bound to the good behaviour; and, or any of these punishments, according to the aggravation of the offence.

SECT. 2. And be it further enacted by the authority aforesaid, That if any person within this Commonwealth, being married, or who hereafter shall marry, shall marry any person, the former husband or wife being alive, or who shall continue to live so married, and being thereof convicted, shall be sentenced to be set on the gallows for the space of one hour, with a rope about his or her neck, and the other end thereof cast over the gallows, be publicly whipped not exceeding thirty stripes, be imprisoned, fined and bound to the good behaviour; and, or any of these punishments, according to the aggravation of the offence; and, the party or parties so offending, may receive such and the like proceeding, trial and execution in such county where such person or persons shall be apprehended, as if the offence had been committed in the same county. Provided always, That this Act or any thing therein contained, shall not extend to any person whose husband or wife shall be continually remaining beyond sea by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other, by the space of seven years together; the one of them, in either case, not knowing the other to be living within that time. Provided also, That this Act or any thing therein contained, shall not extend to the wife of any married man who shall willingly absent himself from his said wife, by the space of seven years together, without making suitable provision for her support and maintenance in the mean
time, if it shall be in his power so to do. Provided also, That
this Act, or any thing therein contained, shall not extend to
any person that is or shall be at the time of such marriage dis-
vorced, by sentence of any court whatsoever, which has or
may have legal jurisdiction for that purpose, unless such per-
son is the guilty cause of such divorce; nor to any person for
or by reason of any former marriage had or made, or herea-
ter to be had or made within the age of consent.

Sect. 3. And be it further enacted by the authority aforesaid,
That if any man and woman, either or both of whom being
then married, shall lewdly and lasciviously associate and co-
habit together, or if any man or woman, married or unmarried,
shall be guilty of open gross lewdness and lascivious behaviour,
and being thereof convicted before the Justices of the Supreme
Judicial Court, shall be punished by sitting in the pillory, whipp-
ning, fining, imprisonment and binding to the good behaviour;
all or any of these punishments, according to the aggravation
of the offence. [February 17, 1785.]

An Act for providing and regulating of Prisons.

Sect. 1. BE it enacted by the Senate and House of Repre-
sentatives, in General Court assembled, and by the authority of
the same, That the Justices of the Court of General Sessions of
the Peace shall, from time to time, assess the polls and estates
within their several counties, in such sums as may be necessary
to erect and keep in repair a good and sufficient gaol in each
town where a court by law is to be holden; and to direct and
order the building and repairing such gaols, according to their
discretion. Provided nevertheless, That the Courts of Sessions
shall not assess any greater sum of money to defray county
charges, than they shall be authorized by the General Court to
assess; and where the escape of any prisoner shall happen
through the insufficiency of the gaol, or the negligence of the
sheriff or gaoler, the sheriff of the county in which the escape
happens shall stand chargeable to the plaintiff, creditor or oth-
er person, at whose suit or for whose debt he was committed,
and to whose use any forfeiture was adjudged against such pris-
oner; and in case the escape shall happen through the insuffi-
ciency of the gaol, the Court of General Sessions of the Peace
in the county shall have power and authority to assess the sum
or sums upon the polls and estates of the county, and to order
the county treasurer to pay the same over to the sheriff of the
county; and if the Court of General Sessions of the Peace shall
not make such assessment, and if the treasurer shall not pay
such sum or sums within six months next after the demand
shall be laid before the Sessions, then the sheriff of
the county may bring his action against the inhabitants of such
county, to be heard and tried, either in that or one of the next
adjoining counties, at his election; and an attested copy of the
writ being left thirty days before the sitting of the court, with
the county treasurer, by the coroner of the same county, shall
be held and adjudged to be sufficient notice of the suit; and
the Justices of the Court of General Sessions of the Peace shall
have full power to appoint an agent or agents to appear and defend against such action; and when it shall so happen that the suit shall be commenced in another county, and no Court of Sessions shall be holden within the county sued, between the time of the service of the writ, and the sitting of the Court before which the action is brought, the cause shall be continued one term; and all advantages shall be saved to the defendants as though they had appeared at the first term; and if judgment shall be given against the county, the debt may be levied by execution upon the goods, chattels or lands of any inhabitant or inhabitants of the county, who shall thereupon have his or their action jointly or severally in like manner against the county, to recover the monies so levied of him or them.

Sect. 2. And be it further enacted, That if any person shall, directly or indirectly, by any ways or means howsoever, without the knowledge or privity of the keeper, convey any instrument, tool, or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison, or work himself unlawfully out of the same, every person so offending shall forfeit and pay such fine as by the discretion of the Court shall be imposed, not exceeding one hundred pounds, according to the nature of the cause of the prisoner's commitment, or suffer such corporal punishment, not exceeding forty stripes, as the court shall inflict; and if it shall so happen, that any prisoner shall make his escape by means of any instrument, tool or other thing so conveyed, without the knowledge and privity of the keeper, the person so conveying the same shall be liable to pay all such sums of money as the prisoner stood committed for, and shall have inflicted upon him all such punishment as the escaped prisoner would be liable unto, if he had been convicted of the charge for which he stood committed, unless such prisoner would have been liable to capital punishment, in which case, the person assisting in such escape shall be punished by fine, imprisonment, whipping, pillory, or sitting on the gallows with a rope about his neck, or any one or more of the said punishments, as the court shall think proper to inflict.

Sect. 3. And be it further enacted, That every gaoler or prison-keeper that shall voluntarily suffer any prisoner committed unto him to escape, shall suffer and undergo the like pains, punishment and penalties, as the prisoner so escaping should by law, for the crime or crimes wherewith he stood charged, if he had been convicted thereof; and if any gaoler or prison-keeper shall, through negligence, suffer any prisoner accused of any crime to escape, he shall pay such fine as the Justices of the Court before whom he is convicted shall in their discretion inflict, according to the nature of the offence for which the escaped prisoner stood committed. Provided nevertheless, That if any person who stands committed for debt, shall escape from prison, and the sheriff, the gaoler or prison-keeper shall, within three months next after such escape, recover the prisoner so escaped, and return him back to prison again, then the sheriff shall be liable to nothing further than the cost of any action.
that may have been commenced against him for such escape; and all fines arising upon the breach of this Act, shall be applied to the use of building and repairing the gaol or gaols in the county where the offence is committed, and shall be paid to the treasurer of the county for that purpose.

Sect. 4. And be it further enacted by the authority aforesaid, That the sheriffs of the respective counties, from and after the passing this Act, shall keep a true and exact calendar or register of all prisoners committed to any prison under his care, and that the same shall be kept in a large bound book provided and kept for that only purpose; and in the same book shall be distinctly and fairly registered the names of all prisoners who shall from time to time be committed to prison (beginning with the names of those who may be prisoners when this law shall take place) with their names, places of abode, additions, the time of their commitment, for what cause, and by what authority committed; and of such as are committed for criminal offences, a description of their persons; and also from time to time, as any prisoner shall be liberated, the sheriff shall also register in the same book the name and description of the person aforesaid, the time when, and the authority by which such liberation took place, and if any prisoner escapes, the time and manner of the escape shall be noted in the said book.

Sect. 5. And it is further enacted, That every gaoler or prison-keeper, at the opening of the Supreme Judicial Court, or the Court of General Sessions of the Peace within the county where he keeps the gaol, shall return a list of prisoners in his custody, therein certifying the cause for which, and the persons by whom they were committed, and the names of all persons who shall be committed during the sitting of either of the said courts, with the cause of their commitment, that the justices of the same courts respectively may take cognizance thereof, and, as well for the Commonwealth as the parties, may proceed to make deliverance of such prisoners according to law, for the crimes proper to the jurisdiction of the same courts respectively; and also shall have the said calendar or register of prisoners ready to be inspected by the said courts; and if any gaoler shall make default herein, he shall be fined at the discretion of the court.

Sect. 6. And be it enacted by the authority aforesaid, That all warrants, mittimusses, writs and instruments of any kind, or the attested copies of them, by which any prisoner shall be committed, enlarged or liberated, shall be safely kept regularly filed in their order of time, and together with the said calendar or register, shall be safely kept in a suitable box for that purpose, and upon the death or removal of any sheriff, shall be delivered to his successor in the office, on the penalty of fifty pounds, to be paid by the sheriff removed, or his executors or administrators, in case of the death of the sheriff, to be recovered by any person who shall prosecute therefor, in any court proper to try the same.

Sect. 7. And it is further enacted, That in the prisons within the several counties of this State, there shall be provided
by the Justices of the Court of General Sessions of the Peace, and at the expense of each county respectively, sufficient and convenient apartments for receiving and lodging prisoners for debt, separate and distinct from felons and other criminals; and it shall be the duty of the said justices, at the beginning of every quarter sessions, to inquire into the state of the prisons in their respective counties, with respect to the security of such prisons from escape, the condition and accommodation of the prisoners, and shall, from time to time, take such measures as may best tend to secure them from escape, sickness and infection.

Sect. 8. And be it further enacted, That any person imprisoned for debt, either upon mesne process or execution, shall be permitted and allowed to have a chamber and lodging in any of the houses or apartments belonging to such prisons, and liberty of the yard within the same in the day time, but not to pass without the limits of the prison, upon reasonable payment to be made for chamber room, to be set and established once in every year by the Court of Sessions, and not to exceed two shillings a week. Provided, That such prisoner shall give bond, with sufficient surety or sureties within the county, to the creditor or creditors, in double the sum for which he is imprisoned, conditioned, that from the time of executing such bond, he will continue a true prisoner in the custody of the gaoler, and within the limits of the said prison, until he shall be lawfully discharged, without committing any manner of escape; and in order to prevent any oppression under pretence of the surety or sureties being insufficient, two disinterested Justices of the Peace, quorum umus, shall be called to approve of the surety or sureties, and the same being approved by them, shall be deemed sufficient; and if the creditor or creditors shall refuse to take the bond, the same shall be left with the sheriff until the creditor or creditors shall demand the same; and upon putting such bond in suit, when the condition shall be broken, judgment shall be entered up for the whole of the penalty, and no chancery shall be allowed therein; and the Court of General Sessions of the Peace shall fix and determine the boundaries of the gaol-yards to the several gaols appertaining, in their respective counties, as soon as may be after the publication of this Act.

Whereas it may at some times happen, that the gaoler or prison-keeper may demand an unreasonable compensation for articles provided for a prisoner, while in prison, under his custody:

Sect. 9. Therefore be it further enacted by the authority aforesaid, That whenever any dispute about the price of such articles shall arise, the Court of General Sessions of the Peace for the county in which such gaol stands, shall be, and hereby are fully authorized to hear and finally to determine all such disputes.

Whereas many lewd and dissolute women, being pregnant with bastard children, who, regardless of natural affection.
and to avoid shame and escape punishment, do conceal their pregnancy, and the birth and death of such children, by means whereof many of them perish for want of necessary and usual assistance, and it cannot be known that they were not murdered.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any woman shall conceal her pregnancy, and shall willingly be delivered in secret by herself of any issue of her body, male or female, which shall, by law, be a bastard, every such woman so offending, shall pay a fine not exceeding the sum of fifty pounds, to the use of this Commonwealth, to be recovered by information or indictment in any court proper to try the said offence, or imprisoned not exceeding three months, at the discretion of the court.

Sect. 2. And be it further enacted by the authority aforesaid, That if any woman shall endeavour privately, either by herself or the procurement of others, to conceal the death of any such issue of her body, which, if it were born alive, would, by law, be a bastard, so that it may not come to light whether it were born alive or not, or whether it was murdered or not, in every such case, the mother so offending, shall be set on the gallows, with a rope about her neck, for the space of one hour, and be further punished by being bound to the good behaviour, at the discretion of the court.

Sect. 3. And be it further enacted by the authority aforesaid, That if the grand jury shall, in the same indictment, charge any woman with the wilful murder of her infant bastard child, as well as with either or both the offences aforesaid, and it appear to the jury of trials that she is guilty of the murder charged, she shall be thereupon convicted of murder, and suffer the pains of death as in case of murder; but if it doth not appear to the same jury that she is guilty of the murder charged in the indictment, but only of either or both the offences first herein mentioned, then the same jury may acquit her of the charge of murder, and find her guilty of the said first mentioned offences, or either of them, as the case may be. [Feb. 26, 1785.]

An Act for naturalizing Nicholas Rousset and George Smith. [February 28, 1785.]

An Act against Murder and Manslaughter.

Sect. 1. BE it declared and enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whosoever shall commit wilful murder, of malice aforethought, and being thereof convicted before the Justices of the Supreme Judicial Court, shall suffer the pains of death.

Sect. 2. And be it further enacted by the authority aforesaid, That whosoever shall commit manslaughter, and being thereof convicted before the Justices of the Supreme Judicial Court, shall be liable to be set on the gallows for the space of one hour, with a halter about his neck, and one end thereof cast over the gallows; to be branded in the forehead with the letter M; to be imprisoned, not more than twelve months; and to be bound to the good behaviour: And the same justices shall sentence the said convict to suffer all or part of these punishments, according to the aggravation of the offence. [February 28, 1785.] Repealed 1805 ch. 36.

An Act altering the name of the town of Richmond, in the County of Berkshire. [March 3, 1785.]
Chap. 46.  

Persons convicted, to suffer death.

1784.  

Chap. 47.  

An Act for incorporating the Plantation of Shapleigh in the County of York, into a Town by the name of Shapleigh; and for annexing certain lands to Lebanon.  

Chap. 48.  

Burglary to be punished capitaly.

Chap. 49.  

An Act for directing the Use and Appropriation of a Charitable Donation, made in a certain clause in the last will and testament of Ephraim Williams, Esq. for the support and maintenance of a Free-School, in Williams and, in the County of Berkshire; and incorporating certain persons as Trustees, in order more efficiently to execute the intention of the testator expressed in the same.

Chap. 50.  

An Act against selling unwholesome Provisions.

Chap. 51.  

An Act against Perjury, and Subornation of Perjury.

Chap. 52.  

An Act against Sodomy.

Sect. 1.  BE it enacted by the Senate and House of Representatives, in General Court assembled and by the authority of the same, That if any man shall lay with mankind as he layeth with a woman; or any man or woman shall have carnal copulation with any beast or brute creature, and be thereof duly convicted, the offender, in either of those cases, shall be adjudged guilty of felony, shall be sentenced to suffer the pains of death, and the beast shall be slain, and every part thereof burned.

Sect. 2.  And be it further enacted by the authority aforesaid, That such order and form of process shall be had and used, in trial of such offenders, and such judgment given, and execution done, upon the offender, as in cases of murder.  

An Act for incorporating the Plantation of Shapleigh in the County of York, into a Town by the name of Shapleigh; and for annexing certain lands to Lebanon.  

An Act against Burglary.

An Act for directing the Use and Appropriation of a Charitable Donation, made in a certain clause in the last will and testament of Ephraim Williams, Esq. for the support and maintenance of a Free-School, in Williams and, in the County of Berkshire; and incorporating certain persons as Trustees, in order more efficiently to execute the intention of the testator expressed in the same.

An Act against selling unwholesome Provisions.

Chap. 51.  

Punishment of perjury.

WHEREAS some evilly disposed persons, from motives of avarice and filthy lucre, have been induced to sell diseased, corrupted, contagious or unwholesome provisions, to the great nuisance of public health and peace:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person shall sell any such diseased, corrupted, contagious or unwholesome provisions, whether for meat or drink, knowing the same, without making it known to the buyer, and being thereof convicted before the Justices of the General Sessions of the Peace, in the county where such offence shall be committed, or the Justices of the Supreme Judicial Court, he shall be punished by fine, imprisonment, standing in the pillory, and binding to the good behaviour, or one or more of these punishments, to be inflicted according to the degree and aggravation of the offence.  

Chap. 51.  

Punishment of perjury.

An Act against Perjury, and Subornation of Perjury.

Sect. 1.  BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person being lawfully required to depose the truth in any proceeding in a course of justice, shall commit any manner of wilful perjury, every person so offending, and being thereof convicted before the Justices of the Supreme Judicial Court, shall forfeit and pay a fine not exceeding three hundred pounds, or be set in the pillory not more than two hours, nor less than one hour at a time, and at diverse times and places, or shall be whipped at the public whipping-post, not exceeding thirty-nine stripes, on the naked back, at one or more times and places, not exceeding three times or three places, and shall suffer all or part of these punishments, according to the aggravation of the perjury, as affecting life, liberty, reputation or property; and the oath of such person so offending, and thereof duly convicted as aforesaid, shall not be received in any court of record, until such time as the judgment given against such person shall be reversed.
Sect. 2. And be it further enacted by the authority aforesaid, That if any person shall commit subornation of perjury, by procuring another person to commit wilful and corrupt perjury as aforesaid, every person guilty of such subornation of perjury, and being thereof duly convicted, shall be liable to, and suffer the same forfeitures, pains, penalties and disabilities, in all respects, as aforesaid, according to the aggravation of his offence.

Sect. 3. And be it further enacted by the authority aforesaid, That if any person shall wilfully and corruptly endeavour to incite, or to procure another person to commit wilful and corrupt perjury as aforesaid, and the person so incited do not commit such perjury, the person so corruptly endeavouring to incite and procure the committing of perjury, shall be punished by fine, not exceeding one hundred pounds, or imprisonment, not exceeding two years, or both, according to the aggravation of the offence, and binding to the good behaviour, at the discretion of the court before whom the same is tried. [March 9, 1785.] Repealed—1812 ch. 144.

An Act for the Punishment of Robbery.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every person who shall feloniously assault, rob and take from the person of another, any money, goods, chattels or other property that may be the subject of theft, and shall be thereof convicted, shall be adjudged guilty of felony, and shall suffer the pains of death.

Sect. 2. And be it further enacted by the authority aforesaid, That if any person shall, with any offensive weapon, or by menaces, or in any forible or violent manner, assault any person, and demand of him any goods, money or other property that may be the subject of theft, with a felonious intent to rob him, and being thereof convicted, shall be punished by fine, not exceeding one thousand pounds, imprisonment, sitting in the pillory, whipping, sitting on the gallows with a rope about his neck, and the other end thereof thrown over the gallows, confinement to hard labour, not exceeding three years, or either of these punishments, according to the degree and aggravation of the offence. [March 9, 1785.] Repealed 1803 ch. 88.


An Act for incorporating a certain Tract of Land, situate between the rivers of Great and Little Ossipee, in the County of York, which was settled by Thomas Parsons and his associates. [March 9, 1785.]

An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that purpose. [March 10, 1785.] Add. acts—1785 ch. 36. 75: 1786 ch. 80. All repealed—1781 ch. 64.

An Act for taking away the Benefit of Clergy in all cases whatsoever, and directing adequate Punishment for the Crimes where the same used to be allowed.

WHEREAS the plea of benefit of clergy, though it was originally founded in superstition and injustice, yet by long usage and the humanity of criminal law is so interwoven with it, as to become very essential in its present system; but forasmuch as the operation of it consists only in the mitigation of the punishment for those crimes where it is allowed, which in most cases operates very inadequately and disproportionately, and for which more adequate remedies may be provided:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the publication of this Law, the plea of benefit of clergy shall not be used or allowed in any cause whatsoever, unless in the prosecution for crimes committed before the passing this Act, for which the said plea of benefit of clergy would have then been allowed.

Sect. 2. And be it further enacted by the authority aforesaid, That if any person shall be convicted of any crime wherein by law the plea of benefit of clergy was heretofore allowed, and for which, without such benefit of clergy, he must have been ad-
judged to suffer the pains of death, such person shall be set upon the gallows for the space of one hour, with a rope about his neck, and the other end thereof cast over the gallows, pay a fine, not exceeding five hundred pounds, be whipped, not exceeding thirty-nine stripes, and be bound to the good behaviour, or suffer one or more of the above punishments, according to the aggravation of the offence; and so often as he shall be convicted of the same crime, shall suffer the punishments above mentioned, or any one or more of them, unless some other punishment shall be, or may have been, by the laws of this Commonwealth, assigned for such crime, in which case the offender shall suffer as by such law is or shall be directed. [March 11, 1785.]

Chap. 57.

An Act for the Relief of, and to prevent Debtors being obliged to pay interest on debts now due, where a legal Tender of the same has been made to the creditor, before the first day of January, one thousand seven hundred and seventy-seven, in the then circulating currency. [March 11, 1785.]

Chap. 58.

An Act against Arson, and other malicious Burning.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person, between sun-setting and sun-rising, wilfully and maliciously shall burn the dwelling-house of another, or any out-building adjoining thereto, or any other building by means of which a dwelling-house shall be burnt, and be thereof convicted, such offender shall be adjudged guilty of felony, and shall suffer the pains of death.

Sect. 2. And be it further enacted by the authority aforesaid, That if any person shall wilfully and maliciously, between sun-rising and sun-setting, burn the dwelling-house of another, or any out-building adjoining thereto, or any other building by means of which a dwelling-house shall be burnt; or that shall wilfully and maliciously, by night or by day, burn any barn, warehouse, shop, mill, malt-house, out-house, any public building, or other building whatsoever, or any ship or vessel laying within the body of the county, and be thereof convicted before the Justices of the Supreme Judicial Court, such offender shall be sentenced to hard labour for term of life or years, be set in the pillory at one or more times or places, not exceeding three, be whipped at one or more times or places, not exceeding four times, be imprisoned, bound to the good behaviour, or fined, or to any or all of these punishments, according to the nature and aggravation of the offence.

Sect. 3. And be it further enacted by the authority aforesaid, That if any person shall wilfully and maliciously burn any stacks of corn, hay, grain, straw, corn-stalks, flax, fences, piles of wood, boards or other lumber, and be thereof convicted as aforesaid, such offender shall be sentenced to be whipped, fined, stand in the pillory, to be confined to hard labour, and be bound to the good behaviour, or to all or any of them, according to the nature and aggravation of the offence.

Sect. 4. And be it further enacted by the authority aforesaid, That if any person shall wilfully and maliciously make a fire with design to communicate the same to the soil, grass, trees, poles or under-brush of any other, or shall wilfully and maliciously suffer any fire so to communicate, as that by means thereof damage to the amount of ten pounds shall be done to the owner or owners of the soil on which such damage is done, and be thereof convicted as aforesaid, he shall be sentenced to be fined, imprisoned, confined to hard labour, or bound to the good behaviour, or to all or either of the said punishments, according to the nature and aggravation of the offence. [March 11, 1785.] Repealed—1805 ch. 88.

Chap. 59.

An Act in addition to an Act prescribing Forms of Writs in civil Causes, and directing the mode of proceeding therein.

WHEREAS in the form of executions in civil causes, prescribed in the said Act, no provision is made for ascertaining the times at which the said executions are to be returned:

Sect. 1. Therefore be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all executions issued upon any judgments in civil causes shall be made returnable at such times as are provided by the several laws of this Commonwealth, any thing in the said form to the contrary notwithstanding.


**Chap. 60—65.**

**Sect. 2.** And be it enacted by the authority aforesaid, That in all cases where a writ of execution shall issue after the first day of May next, there shall be expressed therein the time and place when and where the same shall be returnable. Provided nevertheless, That all executions already issued since the passing of the said Act, or which may be issued within thirty days after the first day of April next, agreeable to the said form, shall be good and valid in the law, to all intents and purposes. [March 14, 1785.]

**An Act for empowering and commissioning Agents, in behalf of the Commonwealth of Massachusetts, to conduct and prosecute the Claims of the said Commonwealth to certain lands therein mentioned.** [March 14, 1785.]

**An Act to authorize the Treasurer to issue certificates in certain cases.** [March 14, 1785.]

**An Act for opening Sluice-Ways in the Mill-Dam or Dams which have or may be erected on Presumpscot River, in the County of Cumberland, and upon any stream or streams which fall into the same river.** [March 14, 1785.] Repealed—1786 ch. 22.

**An Act providing a Place of Confinement for Thieves and other Convicts to hard labour.** [March 14, 1785.] This act became inoperative by the cession of Castle-Island to the United States—1798 ch. 13.

**An Act empowering the Selectmen of such Towns in this Commonwealth as are already, or may hereafter be provided with a fire-engine or engines, to nominate and appoint Engine-Men.** [March 15, 1785.] Repealed—1793 ch. 42.

**An Act against Accessaries to Crimes and felonious Assaulters.**

**Sect. 1.** BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person shall aid, assist, abet, counsel, hire, command or procure any person to commit the crime of murder or [rape,] sodomy, arson, robbery [or burglary,] he is and shall be considered as an accessory before the fact to the principal offender or offenders, and being thereof convicted shall suffer the like punishment as is by law assigned for the crime to the commission of which he shall be so accessory.

**Sect. 2.** And be it further enacted by the authority aforesaid, That whosoever shall knowingly receive, harbour, conceal, maintain, assist, or relieve any person or persons, who have committed any of the crimes before named, he is and shall be considered as an accessory after the fact, and being convicted thereof, he shall be punished by sitting on the gallows the space of one hour, with a rope about his neck, and the other end thereof thrown over the gallows, by fine, imprisonment, by sitting in the pillory, by confinement to hard labour, and binding to the good behaviour, or to one or more of these punishments, according to the nature and aggravation of the offence.

**Sect. 3.** And be it further enacted by the authority aforesaid, That whosoever shall make an assault with an intent to commit murder, [rape] or sodomy, and be thereof convicted, shall be sen-

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*The first and third sections repealed, as to rape—1805 ch. 97, § 4; the first section repealed, as to burglary—1805 ch. 101, § 3. The punishment for an assault with intent to murder, and of accessories to the crime of murder, both before and after the fact, is provided by the Act of 1804 ch. 123. The punishment of accessories before the fact is provided, as to the crime of robbery—1804 ch. 143: 1818 ch. 144: and as to arson—1804 ch. 131; but this Act is not expressly repealed.*

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tenced to be set on the gallows with a rope about his or her neck, and the other end thereof cast over the gallows, to be set in the pillory at one or more times or places, not exceeding three, to be whipped not exceeding thirty-nine stripes, be fined, suffer imprisonment, and binding to the good behaviour, or to any one or more of these punishments, according to the nature and aggravation of the offence. [March 15, 1785.]

An Act for the punishing and preventing of Larcenies.

SEC. 1. BE it enacted by the Senate and House of Representatitives, in General Court assembled, and by the authority of the same, That whenever any person shall feloniously steal any money, goods or chattels, and the owner of the same is not capable of discovering the same, or of procuring the same to be discovered, the court before whom such theft shall be tried, shall be empowered to dispose of the goods so stolen, or the value thereof, to any person who shall be the owner of such goods, and shall be paid to the person so paid, and may also sentence such person to be whipped, according to the nature and aggravation of the offence.

Persons convicted of stealing, and able to make restitution, to be whipped.

Persons convicted of stealing, and unable to make restitution, to be imprisoned.

Persons convicted of trying to extort restitution, to be whipped, or imprisoned.

Persons convicted of any theft, or of any theft of the value of forty shillings, to be imprisoned.

Justices of the Peace authorized to determine offences; Provision for persons apprehended upon a charge of such offence, and admitted to bail, to be released.

Persons convicted of a second theft to the value of forty shillings, to be whipped, or imprisoned.

Persons convicted of a third theft, or of any theft of the value of forty shillings, to be whipped, or imprisoned.

Punishment for felony.

Punishment for theft.

Punishment for stealing goods or chattels, and the owner not capable of discovering the same, or procuring the same to be discovered.

Punishment for attempting to extort restitution for any theft.

Punishment for any theft, or of any theft of the value of forty shillings.

Punishment for persons apprehended upon a charge of such theft, and admitted to bail, to be released.
Punishment.

When the second theft amounts to three pounds.

Punishment.

Persons convicted of breaking up any dwelling-house in the day time, or any shop, &c., by night or day, with an intent to steal, &c.

Punishment.

1834 ch. 143, § 5, 6.

Persons twice convicted.

Punishment.

Punishment for aiding or abetting persons in committing offences, or receiving stolen goods, &c.

1834 ch. 143, § 10.

No person convicted of theft to be held in prison on account of treble damages, more than thirty days, unless—

1834 ch. 143, § 16.
Persons indicted for any high crime, &c. by the grand jury, not found guilty of the whole charge, directions in this case.

Sect. 11. And be it further enacted, That when any person shall be indicted for any high and aggravated crime or misdemeanor by the grand jury, and, upon trial of the issue, it shall appear to the petit jury that the person accused is not guilty of the whole charge in the indictment, but is guilty of so much thereof as shall substantially amount to a crime of a lower nature, the petit jury may find the indicted person guilty of such part only, and not guilty of the whole indictment; and the court shall proceed to sentence such convict for the crime of which he is found guilty, according to law.

Sect. 12. And be it further enacted, That the punishment of hard labour mentioned in this or any other law assigning the same, shall be carried into execution at such place and in such manner as may be provided by the law of this Commonwealth. [March 15, 1785.] Repealed 1803 ch. 88.

Chap. 67.
Persons guilty of forgery,
1785 ch. 21, § 3.
1800 ch. 64.
1804 ch. 120.
1815 ch. 110.
An Act to prevent Forgery, and for the Punishment of those who are guilty of the same.
BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person shall willingly and deceitfully forge, make or alter, or writing or deceitfully cause or procure, aid, abet or command the forging, making or altering any matter of record, or any other matter of a public nature, any false deed, last will or testament, obligation or writing sealed, or any promissory note, bill of exchange, acceptance, assignment or indorsement on them, acquittance or receipt for money or goods, or any warrant, order or request for the payment of money, or delivery of goods or chattels of any kind, any certificate or accountable receipt for money or other things, any lottery-ticket, or any assurance of money or other property whatsoever, with intent to defraud any person, or who shall utter or publish, or cause, procure or abet to be uttered and published as true, any of the above false, forged or altered matters as above specified and described, knowing the same to be false, altered and forged, with intent to deceive and defraud any person, upon conviction thereof shall be punished by setting in the pillory, at one or more times or places, cropping one ear, whipping, imprisoning, fining, and binding to the good behaviour, all or any of these punishments, according to the nature and aggravation of the offence. [March 16, 1785.] Repealed—1805 ch. 97.

Chap. 68.
Rape punished with death.
An Act for the Punishment of Rape.
BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any man shall ravish and carnally know any woman, committing carnal copulation with her by force against her will, or if any man shall unlawfully and carnally know and abuse any woman child under the age of ten years, every person offending in either of those cases before mentioned, being thereof convicted, shall be adjudged guilty of felony, and shall be sentenced to suffer the pains of death. [March 16, 1785.] Repealed—1805 ch. 97.

Chap. 69.
An Act for annulling the Distinction between the crimes of Murder and Petit-Treason.
WHEREAS it does not appear reasonable any longer to continue the distinction between the crimes of murder and petit-treason:
BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing this Act, in all cases wherein herefore any person or persons would have been deemed or taken to have committed the crime of petit-treason, such person or persons shall be deemed and taken to have committed the crime of murder only, and indicted and prosecuted to final judgment accordingly; and the same punishment only shall be inflicted as in the case of murder. [March 16, 1785.]

Chap. 70.
An Act for incorporating the northerly part of the Town of Cummington into a District by the name of Plainfield. [March 16, 1785.]

Chap. 71.
1783 ch. 63.
An Act in addition to, and for repealing certain parts of an Act, entitled, "An Act in addition to, and for repealing certain parts of an Act, made and passed the third day of July, Anno Domini one thousand seven hundred and eighty-two, entitled, "An Act to remove the obstructions and open passage-ways for the Fish called Alewives, Shad, and other Fish, up Neponset River" and for making more effectual provision for the passage of the said fish. [March 16, 1785.] Repealed—1790 ch. 45.
An Act directing the Process in Habeas Corpus.

WHEREAS the writ commonly called the writ of habeas corpus is a writ of right to which the citizens of this Commonwealth are, by Constitution and the law of the land, at all times entitled, to obtain relief from every wrongful imprisonment, or unlawful restraint of personal liberty:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any person imprisoned in any common gaol, or otherwise restrained of his personal liberty, by any officer or officers, or any other person or persons, for any cause or upon any pretence whatever, he or any person in his behalf may complain, in writing, to the Supreme Judicial Court of this Commonwealth in term-time in any county, or to any one or more of the judges thereof in the vacation time of the said court; and upon such complaint, and upon view of the copy of the warrant (if any there be) by which such person stands committed, or upon his affidavit certified by a Justice of the Peace, or on the oath of the person applying on his behalf, or any other credible witness, or upon the affidavit of such witness certified as aforesaid, if he lives more than twenty miles from the court or judge applied to, that a copy of such warrant has been demanded and denied; the said court in term-time, and the said judge in the vacation, hereby are respectively authorized and required to award a writ of habeas corpus, directed to the officer or person imprisoning or restraining the complainant, returnable forthwith to such court or judge who awarded the same, except the complaint be in favour of persons committed for treason or felony, or for suspicion thereof, or as accessory to the latter before the fact, plainly and specially expressed in the warrant of commitment, or persons convict or in execution by legal process, criminal or civil, or committed by mesne process in any civil action for want of reasonable bail, and persons with regard to whom the benefit of the said writ shall be suspended by the Legislature, agreeable to the Constitution.

Sect. 2. And be it further enacted, That such writ, when awarded by the said court, shall be signed by the clerk, tested by the first justice who is not party thereto, and sealed with the seal thereof; but when awarded by any judge in the vacation, shall only be under the hand and seal of such judge, and shall direct the place to which the complainant shall be brought; and the form of such writ, when awarded by the said Supreme Judicial Court, shall be as follows, viz.

Commonwealth of Massachusetts.

[Seal.] S———, ss.

To

Greeting.

WE command you that the body of A. B. of in our prison, under your custody, (or by you imprisoned and restrained of his liberty, as the case may be) as it is said, together with the day and cause of his taking and detaining, by whatsoever name the said A. B. shall be called or charged, you have before our Justices of our Supreme Judicial Court, holden at
1784.——Chap. 72.

B. within and for the county of S. immediately after the receipt of this writ, to do and receive what our said justices shall then and there consider concerning him (or her) in this behalf; and have there this writ. Witness, W. C. Esq. at B. this day of in the year of our Lord 17

Clerk.

And the like form shall be used by the judge, mutatis mutandis, when such writ shall be awarded by him: Provided, That nothing in this Act contained shall be construed to hinder or restrain the said Supreme Judicial Court, in term-time, or any one or more judges thereof, in the vacation, from bailing persons for any offence whatsoever.

Exception.

Officer or person to whom the writ is directed, upon payment or tender of charges, to have the body of the complainant before the court or judge awarding the writ, within a fixed time.

Writs awarded by any judge in the vacation, not returned before the sitting of the court, may be returned, etc. by the judge.

Persons brought before the court or any judge, by writ of habeas corpus, what proceedings shall be had.
to his quality and circumstances, and the nature of the offence, to appear at such court as shall have cognizance of the offence; and shall certify the recognizance into such court, if committed upon mesne process in any civil action for want of bail, and the bail required shall appear excessive, it shall be ascertained what bail is reasonable, and he shall be discharged on giving the same: But if it shall appear that the complainant is imprisoned or restrained without due order of law, or sufficient cause, he shall be discharged from such commitment or restraint.

Sect. 6. And be it further enacted. That if any officer, in whose custody any prisoner shall be, shall not, within six hours after demand made, deliver such prisoner a true copy of the warrant or process by which he stands committed, such officer shall forfeit, to the party grieved, the sum of fifty pounds.

Sect. 7. And be it further enacted. That if any officer or person, to whom any writ of habeas corpus shall be directed, shall refuse to receive the same, or, after receipt thereof, shall refuse or neglect to yield such obedience thereto as this Act requires (the complainant performing the conditions required) unless prevented by the sickness of the prisoner, or other necessity, he, for such refusal or neglect in each and every particular, shall forfeit to the party grieved, the sum of one hundred pounds; and for any false return to such writ, shall be further liable to the action of the party.

Sect. 8. And it is further enacted, That the court or judge respectively may further punish every disobedience to such writs as for a contempt, and compel obedience thereto, by process of attachment.

And in order to prevent any attempts that might be made to deprive any prisoner of the benefit of his habeas corpus, by shifting the custody of such prisoner from one officer or person to another, or sending him away:

Sect. 9. Be it enacted by the authority aforesaid, That every person, duly ordered to be committed for any criminal or supposed criminal matter, shall be carried, as soon as may be, and confined in some common gaol, and not elsewhere (except persons sent to the work-house or house of correction for due cause) and shall not be delivered from one officer to another, except for the more easy and speedy conveyance of the prisoner to such gaol, nor be removed, without his consent, from one county to another, unless by habeas corpus, or some other legal writ, under the penalty of forfeiting, for every offence, to the party grieved, the sum of one hundred pounds.

Sect. 10. And be it further enacted, That if any person shall transport, or carry, or cause to be transported or carried, any subject of this Commonwealth, or other person lawfully residing and inhabiting therein, to any part or place without the limits of the same, by land or water, without his consent or voluntary agreement; or in order to remove such person from one part of the State to another part of the same, except for the purpose of defending the same in time of war, agreeable to the Constitution, or except such person be sent by due course of law, to answer for some criminal offence committed in some other of the United States of America, every person so offend-
ing, and every person aiding and abetting the same, being duly convicted thereof before the Supreme Judicial Court, shall be punished by fine not exceeding five hundred pounds, by whipping not exceeding thirty-nine stripes, and imprisonment not exceeding two years, or any one or more of those punishments, at the discretion of the said court, and be further liable to the action of the party grieved.

Sect. 11. And be it further enacted by the authority aforesaid, That every master or commander of any outward-bound ship or vessel, that shall hereafter carry or transport out of this Government any person under the age of twenty-one years, or any apprentice, or any indented servant, to any parts beyond sea, without the consent of his parents, master, or guardian, shall forfeit and pay the sum of fifty pounds; one moiety to the use of this Government, and the other moiety to him or them that shall sue for the same; and be further liable for the damages sustained by the parent, master, or guardian, in a special action of the case.

Sect. 12. And be it further enacted by the authority aforesaid, That no person enlarged by habeas corpus shall be again imprisoned or restrained of his liberty for the same cause, unless he shall be indicted therefor, or convicted thereof, or shall neglect to find bail when ordered thereunto by some court of record. Provided, That no penalty established by this Act shall be construed to bar any action at common law for false imprisonment or unlawful restraint. And when any person shall be unlawfully carried out of the Government, or imprisoned in a secret place, any other person shall be permitted to appear for him in any action brought in his name; provided such person shall stipulate for the payment of costs, as the court shall direct.

Sect. 13. And be it further enacted, That any person, who shall be held in prison upon suspicion of having committed a crime for which he may have sentence of death passed upon him, shall be bailed or discharged, if he is not indicted at the second term of the sitting of the Supreme Judicial Court in the county where the crime is alleged to have been committed, when there are two terms a year in such county: And in such counties as have but one Supreme Judicial Court in a year, the defendant shall be bailed or discharged, if he is not indicted at the first term; provided such person shall have been held in prison for the space of six months next preceding the day of the court's sitting. And when any person shall be held in prison under indictment, he shall be tried or bailed at the first term next after his indictment, if he demands the same.

Persons held in prison under indictment, shall be tried or bailed at the first term, if they demand the same.

An Act in addition to an Act, entitled, "An Act empowering the Delegates of this Commonwealth, in the United States in Congress assembled, to relinquish to the United States certain lands, the property of this Commonwealth."

WHEREAS by the Act aforesaid, three delegates repre-
senting this State in Congress, are necessary to make the cession aforesaid, and it may be necessary that the said business should be performed by a less number of the said delegates:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any two delegates representing this Commonwealth in Congress, be, and hereby are authorized and empowered, to do and perform all matters and things which by the Act aforesaid might be done and performed by any three delegates as aforesaid, any thing in the aforesaid Act notwithstanding. [March 17, 1785.]

An Act for dividing the town of Granville into three separate Parishes. [March 17, 1785.]


An Act for preventing common Nuisances.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the selectmen of Boston, Salem, Newburyport and Charleston, respectively, and of every other town in this Commonwealth, where the selectmen thereof, together with any two Justices of the Peace in the same county, shall judge such regulation to be necessary, shall from time to time, as occasion shall be, assign some certain places for the exercising of any of the trades or employments of killing creatures for meat, distilling of spirits, trying of tallow or oil, currying of leather, and making earthen-ware, and forbid and restrain the exercise of either of them in other places not so approved and allowed; and all assignments of such houses or places by selectmen, with the assent of two or more justices, for the exercise of any of the occupations aforesaid, shall be entered in the town book where such selectmen respectively belong, and also made known by having notifications thereof posted up in some public places in the same town.

Sect. 2. And be it further enacted, That when any house assigned for the exercising of either of the aforesaid trades or employments becomes a nuisance by reason of offensive and ill stences proceeding from the same, or becomes otherways hurtful or dangerous to the neighbourhood or travellers, it shall and may be lawful to and for the Court of General Sessions of the Peace, within the county, to cause inquiry to be made thereinto by a jury, and to suppress such nuisance by prohibiting and restraining the further use thereof for the exercise of either of the aforesaid trades or employments, under a fine not exceeding three pounds a month, to the use of the poor of the town; or by causing such nuisance to be removed or prevented, as the said Justices in Sessions, in their discretion, shall think expedient and necessary.

Sect. 3. And be it further enacted, That if any distiller, tallow-chandler, manufacturer of oil, currier, butcher or potter, shall make use of any house or place, other than such as are or

When any house assigned becomes a nuisance, Court of Sessions to cause inquiry to be made thereunto, and to suppress such nuisance. 1799 ch. 75. 1901 ch. 16.

Penalty for making use of houses, &c. other than such as are or may be assigned.
may be assigned and permitted in consequence of this Act, for the exercise of the employments aforesaid, or any of them, the person so offending shall forfeit and pay a fine of five pounds, one half thereof for the use of this Commonwealth, and the other half part for the use of him or them that shall prosecute and sue therefor, by action of debt, in the Court of Common Pleas; and if convicted on the presentment of a grand jury in the Court of Sessions or Supreme Judicial Court, the whole penalty shall enure to the use of the Commonwealth; and in either case the offender shall also enter into recognizance in such sum as the same court shall order, not to improve such building for either of the said purposes for the term of three years then next; and in default of entering into such recognizance, to be committed to the common gaol; or such building may be taken down by the order of the same court, as being a common nuisance, and the materials, or such part of them as may be necessary, sold at public auction, to defray the expense and charges; and in case the materials shall be insufficient, the residue of the charges to be levied by distress and sale of the offender's goods and chattels.

**SECT. 4.** And be it further enacted by the authority aforesaid, That all fences or buildings set up and erected on lands now used and improved as public landing places, or such as may be hereafter laid out and appropriated to that use, without lawful permission thereof, shall be esteemed nuisances, and may be abated as such. [June 7, 1785.] Add. act—1795 ch. 75.

**An Act against Hawkers, Peddlars, and petty Chapmen.**

WHEREAS inconveniences arise to trade by hawkers, peddlars and petty chapmen, passing from, and through the country, to vend goods, wares and merchandise:

Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That every hawker, pedlar, petty chapman or other person going from town to town on foot, or with a horse or horses, or otherwise, carrying to sell, or exposing to sale, any wares, goods or merchandize, within this Commonwealth, shall forfeit a sum not exceeding four pounds, nor shall such a person sell twenty shillings; also one quart part of all such goods, wares or merchandize by him or them exposed to sale, or so conveyed or transported as aforesaid, to him or them that shall prosecute therefor, by information or complaint before the Court of General Sessions of the Peace in the same county. Provided, nevertheless, That nothing herein shall prohibit or hinder any person, who is the real worker or maker of any goods or wares, or his servants or agents, from carrying abroad, exposing to sale, or selling any of the said goods or wares of his own making, or other articles manufactured within this Commonwealth, in any fair, market or elsewhere, or from selling any fish, fruits or provisions; or any tinker, cooper, glazier, or mender, or other person, from going about and carrying with him proper materials for mending the things usually made or mended in the exercise of his trade. And any Justice of the Peace, upon complaint to him made of any such offence, may arrest or summon before him the person or persons complained against, and order them to appear and answer the complaint or information that may be exhibited against him; and if he be the next Court of Sessions of the Peace in the county where the offence is said to be committed; and for want of sufficient surety, to commit such offender or offenders to the common gaol of the county; and also to secure and detain all such goods, wares and merchandize until the trial. Provided, The complaint will enter into recognizance with surety before the same justice, to the supposed offender, in a sufficient sum, to pay cost in case the complaint shall fail of prosecuting or convicting the offender; and the Court of General Sessions of the Peace may assess costs upon the trial for or against the complainant, as the case may require; and all taverners, ale-house keepers, common victuallers or retailers, that shall knowingly entertain any hawker, pedlar or petty chapman, or other trading person aforesaid, for the space of twelve hours, shall forfeit and pay the sum of twenty shillings for every six hours after the first twelve (unless the departure of such hawker, pedlar or petty chapman shall be prevented by means of
Chap. 3—11.

An Act to prevent Damage being done by Neat-Cattle and Horses on Pocha-Beach, (in the Town of Eastham) and Meadow thereunto adjoining. [June 14, 1785.]

An Act for annexing a Gore of Land lying between the Towns of Worcester and Sutton, to the Town of Worcester. [June 14, 1785.]

An Act for granting a Lottery for the repairing of Leicester Academy, and making additional buildings thereto. [June 14, 1785.]

An Act providing a speedy Method for doing Justice, when, through mistake, Executions are levied on real estate not belonging to the debtors.

WHEREAS it has happened that executions have been or may be extended and levied on real estate for the purpose of satisfying judgments of courts, and after the levying such executions, it may appear that the real estate levied upon did not at the time of extending and levying such execution belong to the debtor, and thereby the creditor may be deprived of his just debt, or be at great expense in recovering it: Therefore,

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in such cases, upon the application of the creditor to the justices of the court from whence such execution issued, such justices may order a writ of scire facias to issue against such debtor, requiring him to appear before said court, and show cause, if any he has, why an alias execution should not issue against him for debt and costs; and if such debtor, being duly summoned, shall neglect to appear in obedience to such writ, or appearing, shall not shew sufficient cause why an alias execution should not issue against him, the court shall thereupon order an alias execution against such debtor for debt and costs; and the doings by virtue of the former execution shall be considered as void and of no effect in law; but if it shall appear to the said court that the creditor had no just cause for such application, the debtor shall recover against the creditor double costs, and the court shall award execution accordingly.

Provided nevertheless, That no application by any creditor shall be sustained after the expiration of two years from the time of extending and levying execution as aforesaid. [June 14, 1785.]

An Act for incorporating a certain Tract of Land lying in the County of Hampshire, being part of the Towns of Northampton and Southampton, into a District, by the name of Easthampton. [June 17, 1785.]

An Act for the Regulation of Navigation and Commerce. [June 23, 1785.] Repealed in part—1785 ch. 31. Suspected—1786 ch. 16, until the other States in the Union should pass similar acts.

An Act for erecting the westerly part of the town of Westminster, the south-westerly part of Ashburnham, the south-easterly part of Winchendon, and the easterly part of Templeton, in the County of Worcester, into a Town, by the name of Gardner. [June 27, 1785.]

An Act for incorporating certain Lands belonging to a number of inhabitants of the town of Springfield, lying on the Pine-Plain, in said town. [June 27, 1785.]

An Act to authorize the United States, in Congress assembled, to appoint Commissioners to complete the running the Line of Jurisdiction between the Commonwealth of Massachusetts and the State of New-York, on the easterly part of the State of New-York. [June 29, 1785.] Further time given to the Commissioners—1786 ch. 78.
An ACT for the filing and recording of Wills proved without this Government, and for taking Affidavits in writing for the Probate of Wills in certain cases.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That where the copy of any will which has been proved and allowed in any Probate Court in any of the United States, or in any foreign state or kingdom, shall be directed to be filed and recorded in any Probate Court in this Government pursuant to this Act, the filing and recording thereof shall be of the same force and effect as the filing and recording of an original will proved and allowed in the same Court of Probate; and the said judge may thereupon proceed to take bonds of the executor, or grant administration of the said testator's estate lying in this Government, with the will annexed, and settle the said estate in the same way and manner as by law he may or can upon the estates of testators, whose wills have been duly proved before him.

Sect. 2. And be it further enacted, That when the executor or any other person interested in a will that has been proved and allowed in a Court of Probate in any of the United States, or in a Court of Probate in any other state or kingdom, pursuant to the laws of such state or kingdom, shall produce a copy of such will, with a copy of the probate thereof, under the seal of the court where the same will has been proved and allowed, unto any Judge of Probate in any county in this Government, where the testator had estate, real or personal, wherein the same will may operate, and shall, in writing, desire the same may be filed and recorded in the probate office in the same county pursuant to this statute, the said judge shall assign a time and place for taking the same into consideration, and shall cause notice thereof to be made in some public newspaper, three weeks successively, thirty days at the least before the time assigned, to the end that any person may appear and shew cause against the filing and recording the same; and if at the time assigned no objection is made, or none in the judgment of the said judge sufficient to prevent it, the same judge may cause the same copy to be filed in the registry of the said Court of Probate, and direct the same to be also there recorded: Saving always, an appeal to any person apprehending himself injured thereby to the Supreme Court of Probate, as in other probate matters.

Sect. 3. And be it further enacted, That when an original will shall be offered for probate before any Court of Probate in this Government, and the witnesses thereunto live out of the Government, or more than thirty miles distant, or by reason of age or indisposition of body are unable to appear and give evidence before the court, in every such case, the deposition of such witness in writing, taken before any person or persons duly authorized by de pluribus potestatem from such Probate Court, shall have the same force and effect as though the witness was present, and testified visa viva before the court. Provided always however. Before the probate of any will shall be allowed from the evidence of affidavits, such proceedings shall be had
in all respects as in this Act are provided respecting wills previously proved and allowed in a Court of Probate without this Commonwealth; and appeals in all such cases shall be allowed, as is provided for in other probate matters. And it is further provided, That nothing in this Act shall be construed to make valid any will or codicil that is not attested and subscribed in the manner the laws of this Commonwealth direct, nor to give operation and effect to the will of an alien different from that which such will would have had before the passing this Act. [June 29, 1785.]

An Act determining the times and places for holding Judicial Courts in the county of Berkshire at a limited term. [June 29, 1785.]

An Act in addition to, and for repealing certain parts of an Act passed in the year of our Lord one thousand seven hundred and eighty-three, entitled, "An Act to regulate the catching Salmon, Shad, and Alewives, and to remove and prevent obstructions in Merrimack River, and in the other Rivers and Streams running into the same, within this Commonwealth, and for repealing several Acts heretofore made for that purpose." [June 30, 1785.] Add. act—1787 ch. 57. Repealed—1789 ch. 51.

An Act to prevent Damage from Fire being communicated from Chocolate-Mills and Machines for roasting cocoa, in the town of Boston. [June 30, 1785.]

An Act authorizing and empowering the Delegates representing this Commonwealth in the United States in Congress assembled, to subscribe and ratify an Alteration of Part of the eighth article of the Confederation and Perpetual Union of the United States of America. [July 2, 1785.]

An Act in addition to an Act passed the tenth day of July, Anno Domini, one thousand seven hundred and eighty-three, entitled, "An Act laying Duties of Impost and Excise on certain goods, wares and merchandise, therein described, and for repealing the several Laws heretofore made for that purpose;" and also another Act passed the first day of July, one thousand seven hundred and eighty-four, entitled, "An Act in addition to, and for the explanation of an Act, entitled, "An Act laying Duties of Impost and Excise on certain goods, wares and merchandise, therein described, and for repealing the several Laws heretofore made for that purpose," and for the Encouragement of Agriculture and Manufactures, and for promoting Industry, Frugality and Economy. [July 2, 1785.]

Add. act—1786 ch. 28. Both repealed—1786 ch. 48. 49.


Repealed by add. acts—1786 ch. 21; 1787 ch. 51; and by 1785 ch. 80.

An Act for reviving and continuing sundry Laws that are expired and near expiring. [July 2, 1785.] The acts, hereby revived, &c. were continued till Nov. 1, 1797.

An Act incorporating certain Lands in West-Springfield, into a Common Field. [October 28, 1785.]

An Act making additional provision for the Punishment of Frauds and Misdeemors.

WHEREAS offenders, convicted of certain offences, may by law be committed to hard labour, in the house of correction; and the several gaols in the several counties, where no other place or places are specially provided, are declared to be the houses of correction; which are by experience found inconvenient for the purpose; and whereas Castle-Island, in the harbour of Boston, is by law appointed a place for the employment of persons sentenced to hard labour, for larcenies in certain cases:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all persons who are now under sentence to be confined to hard labour, for a term of one year or more in the house of correction, shall be removed to Castle-Island, in the harbour of Boston, there to be employed in hard labour, and kept as the law directs, during the residue of the term for which they are sentenced as aforesaid; by a process issuing from the same court which passed such sentence: Provided, Such resi-
Supreme Court authorized to sentence at discretion, in certain cases.

Sect. 1. And be it further enacted by the authority aforesaid, That in all such cases where the Justices of the Supreme Judicial Court are authorized by the laws of this Government now in force, to sentence any persons convicted before them of any offence, to hard labour in the house of correction aforesaid, it shall and may be lawful for the Justices of the same Court, at their discretion, to sentence all such convicts to hard labour generally, for and during the term only for which they might have been sentenced to be confined to hard labour in the house of correction, before the making of this Act, and for that purpose to order them to be removed to Castle-Island, in the harbour of Boston, or such other place as shall be by law provided.

Sect. 3. And be it further enacted by the authority aforesaid, That when any person shall be hereafter convicted before the Supreme Judicial Court, of any of the offences mentioned or described in an Act, entitled, "An Act to prevent forgery, and for the punishment of those who are guilty of the same," passed the sixteenth of March, one thousand seven hundred and eighty-five, the justices of the same court may, in addition to, or in lieu of the pains and penalties mentioned in the same Act, sentence such offenders to hard labour, for a term not exceeding seven years upon the first conviction, fourteen years upon the second conviction, and during life upon the third conviction.

Whereas idleness is often the parent of fraud and cheating, and confinement to hard labour may be a means of reclaiming such offenders, as well as a proper punishment for such offences:

Sect. 4. Be it therefore enacted by the authority aforesaid, That whenever any person shall be hereafter convicted before the Justices of the Supreme Judicial Court, of any gross frauds or cheats, other than those herein before mentioned or referred to, the said justices may, at their discretion, in addition to, or in lieu of such pains and penalties as they may by law award and order to be inflicted upon such offenders, sentence them to be confined to hard labour for a term not exceeding seven years.

And whereas, in and by an Act, entitled, "An Act for the establishment of a National Bank," &c. passed March the eighth, one thousand seven hundred and eighty-two, the offences therein described are made felony of death without benefit of clergy:

Sect. 5. Be it therefore enacted by the authority aforesaid, That if any person shall be hereafter convicted of any of the offences therein mentioned, the court before whom such conviction shall be had, shall not proceed to pass sentence of death upon such convict; but in lieu thereof, sentence him to hard labour for term of life, or years, to stand in the pillory, at one or more times or places, not exceeding three; to have one ear cut off; to be whipped at one or more times or places, not exceeding four times, and thirty-nine stripes at a time; to sit upon the gallows with a rope about his neck; to be branded in the forehead with the letter F; to be imprisoned not exceeding one year; to be fined at the discretion of the court; to be bound to the good behaviour; or to any one or more of them, according to the nature and aggravation of the offence. [Nov. 1. 1785.]
An Act giving Remedies in Equity.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all causes brought before the Supreme Judicial Court of this Commonwealth, or before any Court of Common Pleas, to recover the forfeiture annexed to any articles of agreement, covenant, contract, or charter-party, bond, obligation or other specialty, or for forfeiture of real estate upon condition, by deed of mortgage or bargain and sale with defeasance, when the forfeiture, breach, or non-performance, shall be found by jury, by the default, or the confession of the defendant, or upon demurrer, the court before which the action is shall make up judgment therein for the plaintiff, to recover so much as is due according to equity and good conscience; but in real actions on mortgage, or bargain and sale with defeasance, the judgment shall be conditional, that f the mortgagor or vender, his heirs, executors or administrators, shall pay unto the mortgagor or vendee, his executors or administrators, such sum as the court shall adjudge due, within two months from the time of entering up judgment, with interest, then the same mortgage, or deed of bargain and sale shall be void and discharged, otherwise that the plaintiff shall have his writ of possession.

Sect. 2. And be it further enacted, That all real estates conveyed or pledged by mortgage, or bargain and sale with defeasance, shall be redeemable by the mortgagor or vender, his heirs, executors, administrators or assigns, on paying the monies borrowed thereon, with interest, or performing the condition on which the same was mortgaged or conveyed, deducting the rents and profits, the mortgagor, or any under him, may have received over and above the repairs and improvements made by him, unless the mortgagor, or person claiming under him, hath by process of law, or by open and peaceable entry, made in the presence of two witnesses, taken actual possession thereof, and continued that possession peaceably three years.


An Act regulating the Admission of Attorneys.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person shall be admitted an attorney of any court in this Commonwealth, unless he is a person of good moral character, and well affected to the Constitution and Government of this Commonwealth, and hath had opportunity to qualify himself for the office, and hath made such proficiency as will render him useful therein; and no person shall be admitted to practise as an attorney in any court of justice within this State, until he shall in open court have taken and subscribed the declaration prescribed in the Constitution of this Commonwealth, and an oath, in tenor following:

You solemnly swear, that you will do no falsehood, nor consent to the doing of any in court; and if you know of an intention to commit any, you will give knowledge thereof.
to the justices of the court or some of them, that it may be prevented: you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same: you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts as your clients. So help you God.

Sect. 2. And it is enacted, That the parties may plead and manage their own causes personally, or by the assistance of such counsel as they shall see fit to engage; but the plaintiff or plaintiffs in any suit shall not be allowed to manage their cause by more than two attornies, nor shall any defendant be allowed to employ a greater number. [Nov. 4, 1785]

An Act for the Suppression of Lotteries.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person or persons shall undertake, or set up any lottery for money, or expose to sale, or dispose of any estate, real or personal, by way of lottery, within this Government, whether the estate so proposed to be disposed of be in this Commonwealth, or any other place, every person so offending shall forfeit and pay the sum of two hundred pounds.

Sect. 2. And be it further enacted by the authority aforesaid, That if any person or persons shall be aiding or assisting in any such lottery, by printing, writing, or in any other manner publishing an account thereof, or where the tickets may be had, every such person shall forfeit and pay the sum of one hundred pounds.

Sect. 3. And be it further enacted by the authority aforesaid, That every person who shall sell, give, or otherwise dispose of any such lottery ticket, shall forfeit and pay the sum of fifty pounds for each ticket so sold, given or disposed of; and every person who shall receive or purchase any such lottery ticket, shall forfeit and pay the sum of twenty pounds, for every ticket so received, or purchased.—The said several forfeitures to be and ensue, one moiety to the use of this Government, and the other moiety to the use of him or them that will sue for the same, by action of debt in any Court of Common Pleas within the Government. Provided nevertheless, That nothing in this Act shall be construed to extend to any lottery, or the tickets of any lottery, established, permitted or allowed, or that hereafter may be established or allowed by the Legislature of this State, or of any of the United States, or by the United States in Congress assembled. [Nov. 8, 1785.] Another act—1800 ch. 57.

Chap. 25. An Act for regulating the Exportation of Tobacco and Butter, and the weight of Onions in Bunches, and the size of Lime-Casks.*

WHEREAS considerable quantities of tobacco are or may be raised in this Commonwealth, which if examined and subjected to proper regulations, might be made an article of export:

* Repealed as to butter, 1799 ch. 94—as to lime-casks, 1809 ch. 62, § 11.
Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of January next, no tobacco shall be shipped or exported from this Commonwealth, but such only as shall have been inspected, and found to be well cured, and fit for foreign markets, and packed in straight casks:—said casks shall be four feet, four inches in length, and two feet seven inches diameter at the head, containing not less than nine hundred, and not more than fourteen hundred pounds weight each; or if packed in half casks, to contain not less than four hundred, nor more than six hundred pounds weight in each, unless such casks of tobacco shall appear to have been inspected and marked agreeably to the laws of some other State.

Sect. 2. And be it further enacted, That the Governor, by and with the advice of Council, be, and is hereby empowered to appoint in such seaport, and other exporting towns within this Commonwealth, as there shall be occasion, one or more skilful and disinterested person or persons, to be inspectors of tobacco that shall be exported from this Commonwealth, who shall be sworn to the due and impartial execution of their trust; and their duty shall be to inspect all tobacco that shall be intended to be laden on board of any vessel for foreign exportation, or that shall be intended to be transported by land or water, to either of the United States; and every such inspector is hereby required and authorized to open the casks containing the said commodity, intended to be exported as aforesaid, and inspect it, in four equal divisions; that is to say, they shall take the cask from the tobacco, and with an iron bar, or other instrument, lift one quarter, and then go through the whole, until it shall be examined in four different parts, and see that it be properly dry, well cured, not rotten or damaged, and of the weight, and packed in such casks, as are before mentioned; and such part as appears to be damaged or rotten, or unfit for exportation, shall be burned; and on every cask containing the said quantity, which by such inspection shall, according to the inspector’s best judgment, appear to be well cured and not rotten or damaged as aforesaid, he shall mark or impress with a burning-iron the letters A. P. with the name of the town where it shall be thus approved, the name of said inspector at large, and the letter I. at the end thereof, denoting that the same has been inspected and approved.

And whereas large quantities of butter are made in and exported from this Commonwealth, which for want of due examination, and proof of its fitness, is diminished in its value at foreign markets:

Sect. 3. Be it therefore enacted by the authority aforesaid, That from and after the first day of January next, no butter shall be shipped or exported out of this Commonwealth, but such as shall have been proved, and found to be well wrought, of a good quality and fit for foreign exportation, and packed in well seasoned casks or firkins, containing fifty pounds each, or in half firkins, containing twenty-five pounds each.

Sect. 4. And be it further enacted, That the Governor, by and with the advice and consent of Council, be, and be hereby empowered, to appoint in such seaport towns, within this Commonwealth, as there shall be occasion, one or more skilful and disinterested person or persons, to be provers of butter in firkins, who shall be sworn to the due and impartial execution of their trust: and their duty shall be to inspect and prove all butter in firkins, that shall be intended to be laden

No tobacco to be exported, but such as shall be inspected.

Governor and Council to appoint inspectors.

Inspector’s duty.

No butter to be exported unless proved and found to be of a good quality.

Governor and Council to appoint provers of butter.

Their duty.
on board any vessel for foreign exportation; and every such prover is hereby authorized to open the casks or firkins, containing the said commodity, intended to be exported as aforesaid, and with an hollow iron-searcher, shall from one side of the head of said casks or firkins, perforate diagonally to the other head, and thereby draw out so much butter as shall determine the quality of the whole; and see that it be preserved with a due proportion of good fine salt, sweet and in all respects fit to be exported, without danger of spoiling, to any foreign market. And every firkin containing the said quantity, which by such proof and inspection shall, according to the prover's best judgment, appear to be good and merchantable as aforesaid, shall by him be marked or impressed with a burning iron, with the letters A. P. and with the name of the town where it shall be thus approved, and the name of the prover at large.

Sect. 5. And be it further enacted, That if the owner of any tobacco [or butter,] or any other person employed by him, shall presume to lade or put on board any vessel bound to any port without the Commonwealth, any tobacco [or firkin butter,] other than such as shall have been approved by an inspector [or prover,] and contained in casks [or firkins] not having the aforesaid marks, stamps or brands; or if any master of a ship or other vessel, or other officer or mariner, shall receive on board any such, the offender or offenders shall incur the penalty of ten pounds for each cask of tobacco, [and two pounds for each firkin of butter] so shipped, to be sued for, and recovered in any court of record within this Commonwealth, proper to try the same; and all such tobacco [and butter,] laden or received on board as aforesaid, shall be forfeited. And it shall be lawful for any Justice of the Peace, upon information given of any tobacco [or butter,] put on board any such ship or other vessel as aforesaid, not duly marked or branded, to issue his warrant, directed to the sheriff, his deputy, or a constable, requiring them respectively to make seizure of any such tobacco [or butter,] shipped and not marked as aforesaid, and to secure the same in order for trial; and such officers are hereby respectively directed and empowered to execute the same.

Sect. 6. And be it further enacted, That if after any cask [or firkin] containing tobacco [or butter,] shall have been approved and stamped with the inspector's [or prover's] marks, stamps or brands as aforesaid, any cooper or other person shall presume to shift the contents of such casks [or firkins,] and put therein any tobacco [or butter,] that hath not been duly inspected, [proved] and approved as aforesaid, such cooper, or other person so offending, shall forfeit and pay the sum of five pounds for every cask of tobacco, [and twenty shillings for every firkin of butter] so shifted, to be recovered in manner as aforesaid.

Sect. 7. And be it further enacted, That in case any inspector [or prover,] appointed and sworn as aforesaid, shall be guilty of any neglect or fraud, in inspecting [or proving] any tobacco [or butter,] contrary to the true intent and meaning of this Act, or shall mark, with their respective brands or stamps, any cask containing tobacco [or butter,] which they have not actually and thoroughly inspected [or proved,] and which may be intended for exportation out of this State, he or they shall forfeit and pay the sum of five pounds for every such neglect, or for every cask so falsely marked, to be recovered as aforesaid.

Sect. 8. And be it further enacted, That if any person or persons, not appointed and sworn as aforesaid, shall presume to mark or brand any casks of tobacco [or butter,] as above de-
scribed, he shall incur the abovesaid penalty of five pounds, for every cask so marked or branded, to be recovered as aforesaid.

Sect. 9. And be it further enacted, That each cask [or firkin.] before any tobacco [or butter] be packed therein, shall be weighed by the owner of such tobacco [or butter.] who shall, with a marking-iron, mark on one of the heads thereof the full weight of the cask and the initial letters of his name; and in case he shall falsely mark the same, such owner upon conviction thereof, shall forfeit and pay the sum of three pounds, for each cask so falsely marked.

Sect. 10. And be it further enacted, That the respective inspectors shall be paid for every cask of tobacco they shall inspect [and prove] as before directed one shilling and six pence, provided the number do not exceed four, and one shilling for each cask exceeding that number. And the respective provers shall, for every firkin by them examined and proved as before directed, be paid four pence, provided the number do not exceed six; and two pence for each exceeding that number; both inspectors [and provers'] fees to be exclusive of cooperage, and to be paid by the shippers.

Sect. 11. And be it further enacted, That no vessel on board which any tobacco in casks, [or butter in firkins.] shall be shipped for exportation, shall be cleared out by the naval-officer, until the master or owner shall have produced a certificate or certificates, from an inspector [or prover] appointed and sworn as aforesaid, that said articles have been by him inspected [and proved] as this Act directs; which certificates shall be granted free from any expense; and the said master shall swear that the manifest by him presented, to the best of his knowledge, contains the whole of the cargo on board of his vessel, and that he will not take any more on board without clearing the same.

Sect. 12. And be it further enacted, That all penalties and forfeitures, arising by force and virtue of this act, shall be one moiety thereof to the use of this Commonwealth, and the other moiety to him or them who shall inform and sue for the same.

And whereas great quantities of onions are raised in and exported from this Commonwealth, in bunches; to prevent frauds by diminishing the usual weight of said bunches of onions:

Sect. 13. Be it therefore enacted by the authority aforesaid, That from and after the first day of August next, no onions, in bunches, shall be shipped or exported out of this Commonwealth, unless they weigh as follows, viz. rare-ripen (so called) two and half pounds, and onions from the seed, three and half pounds per bunch.

Sect. 14. And be it further enacted, That the selectmen of each town where such onions shall be shipped, are hereby authorized and directed to appoint some suitable person or persons to weigh the same, and give certificates of the weight; which person or persons so appointed, shall be sworn to the faithful performance of his or their duty, and shall receive, as fees, eight pence for every hundred bunches so weighed and certified, for any quantity not exceeding five hundred bunches, and four pence for a greater quantity; said fees to be paid by the purchaser.
Sect. 15. And be it further enacted, That if any person or persons shall, after the passing of this Act, presume to expose for sale within this Commonwealth any onions in bunches, without first having them weighed as aforesaid, and having obtained a certificate of the same, according to the true intent and meaning of this Act, he shall forfeit the same; one moiety thereof to and for the use of the poor of the town where they may be exposed to sale, the other moiety to him or them who shall inform of the same; and the selectmen of such town, or the major part of them, are hereby authorized and empowered to seize the same and sell them at public auction, and to account with the overseers of the poor of such towns for the net proceeds of one moiety thereof, and the other to said informant.

And to prevent frauds by reducing the size of lime-casks,

Sect. 16. Be it therefore enacted by the authority aforesaid, That from and after the first day of March next, no casks of lime offered for sale within this Commonwealth shall contain less than one hundred gallons of merchantable lime; and whoever shall sell or offer for sale, any casks of lime, containing less than one hundred gallons of merchantable lime as aforesaid, shall, upon information, be convicted before any court of record proper to try the same, and thereupon forfeit the whole of said property, one moiety thereof to and for the use of the poor of the town where such property was exposed for sale, the other moiety to and for the use of him or them who shall inform of the same. [Nov. 8, 1785.]

Chap. 26.
An Act to prevent the Destruction of th. Fish called Alewives, in their Passage up the Rivers and Streams in the town of Kingston, in the County of Plymouth. [Nov. 5, 1785.] Repealed—1801 ch. 59.

Chap. 27.
An Act for naturalizing Paul Bellombreux. [Nov. 22, 1785.]

Chap. 23.
10 W. 3. ch. 5.
2 Geo. I. ch. 2.
12 Geo. I. ch. 5.
13 Geo. I. ch. 7.
1 Geo. II. ch. 4.

WHEREAS evil minded persons, in various instances, have committed trespasses upon the property and possessions of others: And whereas the remedy provided, and penalties annexed by the common law, to the commission of such offences, have been found insufficient to prevent them:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person shall cut down, destroy or carry away any tree or trees whatever, placed or growing for use, shade or ornament; or any timber, wood or underwater, standing, lying or growing on land not his own, not having the consent of the owner thereof; or shall throw down or open any bars or gates, fence or fences, and leave the same down or open; or shall injure, mar or deface any fence or fences, belonging to, or inclosing lands, not his own; or shall dig up or carry away any stones, ore, gravel, clay, sand, turf or mould, roots, fruit, or plants; or cut down or carry away any sedge, grass, hay or corn, wherein he hath no interest, standing, lying, or being on any land not his own; or shall take or carry away from any wharf or landing place, whereof he is not a proprietor or owner, any goods whatever, wherein he hath no interest, without the leave of some person who has interest therein; or shall break the glass, or any part of it, in any building not his own; the person so offending, shall forfeit and pay for each tree or stick of timber so cut down, destroyed or carried away, and for each and every other offence, a fine not less than five, nor more than forty shillings, to the use of the Commonwealth, to
be recovered on complaint before any Justice of the Peace in the county where the offence shall be committed, and shall be liable to answer in damages to the party injured.

Sect. 2. And be it enacted by the authority aforesaid, That if any person shall wilfully break, deface or destroy any mile-stone or public monument, unless properly authorized so to do, the person so offending shall forfeit and pay for each offence, a fine not less than forty shillings, nor more than fifteen pounds, to the use aforesaid, to be recovered on indictment before the Court of General Sessions of the Peace in the county where the offence shall be committed, and be further liable to answer in damages as aforesaid.

Sect. 3. And be it further enacted, That any person who shall commit any of the offences above mentioned, secretly, in the night time, or in disguise, shall forfeit and pay a fine to the use of the Commonwealth, not less than three pounds, nor more than twenty pounds, for each offence, to be recovered on indictment in manner above provided, and be liable to answer damages as aforesaid; and if any person, on being indicted and sentenced to pay any of the fines aforesaid, shall be unable to pay the same, the court passing sentence, may order such person to be publicly whipped, not exceeding twenty stripes, or be imprisoned not exceeding ninety days, and to find sureties for his good behaviour for the term of one year.

Sect. 4. And be it enacted by the authority aforesaid, That when any trespasses shall be committed on any buildings or inclosures belonging to any county, town or parish, the county, town and parish treasurer, for the time being, shall be and hereby are severally authorized to sue for the damage done to the public buildings or inclosures of their county, town or parish, respectively; and where any public buildings are owned partly by the town and partly by the county, in that case, the county or town treasurer, whoever may first institute an action, may prosecute for damages thus sustained. Provided nevertheless, That nothing in this Act shall prohibit any surveyor of highways moving any incumbrances in any public way, nor be construed to prevent any prosecution for theft, where a theft is committed. [Nov. 23, 1785.] Add. act—1818 ch. 3.

An Act for repealing certain Parts of an Act, intitled, "An Act for regulating Pilotage in several ports in this Commonwealth," and for otherwise regulating the Pilotage of the port of Newbury-Port.

WHEREAS the provisions made for regulating the pilotage for the port of Newbury-Port, have been found insufficient to answer the purposes intended:

Sect. 1. Be it enacted by the Senate and House of Representa- tives, in General Court assembled, and by the authority of the same, That so much of an Act passed the eleventh day of July, one thousand seven hundred and eighty-three, entitled, "An Act for regulating Pilotage in several ports in this Commonwealth," as relates to the appointing and regulating of pilots and pilot-boats for the port of Newbury-Port, be, and it is hereby repealed.
Sect. 2. Be it further enacted by the authority aforesaid, That from and after the first day of January, one thousand seven hundred and eighty-six, no person shall undertake to pilot any vessel into or out of the river Merrimack, drawing nine feet of water or more, (coasters and fishing vessels excepted) without having first obtained a commission or branch, as is herein after provided.

Sect. 3. Be it further enacted, That whenever any person shall obtain from the Marine Society of Newbury-Port, a certificate signed by their clerk, that in their opinion, or in the opinion of the major part of the members of said Marine Society, he is capable and suitable to undertake the business of piloting into and out of the river Merrimack, the Governor, with advice of Council, be, and he is hereby empowered to grant to such person a commission or branch for him to exercise said business as aforesaid, and the same to demand and recall whenever said Marine Society, or the major part of them, shall certify by their clerk that the said person is rendered incapable or improper to be continued in said business.

Sect. 4. Be it further enacted by the authority aforesaid, That before any person shall receive such commission or branch, he shall give bond, with sufficient surety, to the Treasurer of this Commonwealth, in the sum of one hundred pounds, conditioned that he will give up said commission or branch whenever it shall be demanded as aforesaid.

Sect. 5. Be it further enacted, That if any person other than one having obtained a commission or branch, as is herein before provided, shall presume to pilot a vessel contrary to the meaning of this Act, he shall not be entitled to any fee for the same, and shall further be liable to pay any damages that may accrue in consequence of his undertaking so to pilot such vessel, to be recovered by the owner, assignee or master of said vessel, in an action on the case, to be brought before any court proper to try the same. [Nov. 23, 1785.]

An Act for naturalizing William Bond. [Nov. 23, 1785.]


An Act declaring void certain pretended Judgments given in the Town of Boston, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the seventeenth day of March next following.

WHEREAS between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the seventeenth day of March next following, and whilst the town of Boston was in the possession of the British troops, and the impartial administration of justice was obstructed, certain pretended judgments were rendered against divers persons who had left the said town, and sought the protection of their country; and such proceedings have been had thereon as may greatly vex and injure many good citizens of this Commonwealth, unless the same be declared null and void:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That
all such pretended judgments rendered in the town of Boston between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the seventeenth day of March next following, by any persons pretending to constitute any Superior Court of Judicature, Court of Assize, or Court of General Gaol Delivery, or Inferior Court of Common Pleas for the county of Suffolk, and which have not been heretofore provided against by law, and all proceedings had thereon, or by the authority of the same, be, and hereby are declared to be null and void, and shall be so deemed, taken and known. [Nov. 29, 1785.]


An Act to set off Part of the Town of Ipswich, and to annex it to the Town of Rowley. [Nov. 29, 1785.]

An Act for establishing a Toll for the purposes of repairing and maintaining the Great Bridge over the River Parker, in the Town of Newbury, and County of Essex. [Nov. 29, 1785. Expired. Another act—1797 ch. 47.

An Act in addition to, and for repealing certain clauses of an Act, passed the present year, entitled, "An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that purpose." [Nov. 29, 1785. Add. acts—1785 ch. 73: 1786 ch. 80. All repealed—1791 ch. 64.

An Act for incorporating certain lands in West-Springfield, in the County of Hampshire, into a Common Fri. [Nov. 30, 1785.]

An Act for incorporating into a distinct and separate Field a tract of land called Ballard's Swamp, lying in the Great Field, on the west side of Connecticut River, in the ancient Town of Springfield, and bounding southerly and easterly on Agawam River, northerly on the Brow of a Hill, and westerly on Fere's Land, so called. [Nov. 30, 1785.]

An Act for incorporating a Common and general Field, in the Town of Deerfield, in the County of Hampshire. [Nov. 50, 1785.]

An Act for incorporating the Plantation called Pearsontown, in the County of Cumberland, into a Town by the name of Standish. [Nov. 30, 1785.]

An Act for encouraging the Manufacture of Loaf-Sugar within this Commonwealth. [Nov. 30, 1785.] Repealed—1786 ch. 48.

An Act empowering the Selectmen of such Towns where there may be Fire-Engines, to appoint Engine-Men; and repealing the Laws heretofore made for that purpose.

WHEREAS it is of importance that provision should be made to render the use of engines for extinguishing fires as beneficial as possible:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the selectmen of such towns in this Commonwealth as are or may be provided with a fire-engine, or engines, be, and they are hereby empowered, if they judge it expedient, as soon as may be after the passing of this Act, to nominate and appoint a number of suitable persons (not exceeding fifteen* to one engine) for engine-men; who shall continue in said office, during the pleasure of such selectmen; which engine-men shall be, and they are hereby authorized and empowered to meet together some time in the month of May annually; at which

*Twenty-one—1805 ch. 32.]
meeting, they shall have authority to choose a master, or director and clerk of the said engine; and establish such rules and regulations, respecting their duty as engine-men, as shall be approved of by the selectmen, and to annex penalties to the same, which may be recovered by the clerk of said engine-men, before any Justice of the Peace in the same county: Provided, No penalty shall exceed forty shillings, and that such rules and regulations shall not be repugnant to the laws of this Commonwealth.

Sect. 2. And be it enacted by the authority aforesaid, That the respective companies of enginemen, who may be nominated and appointed, in pursuance of this Act, shall be held and obliged to meet together once a month, and oftener if necessary, for the purpose of examining the state of the engine to which they belong, and the appendages belonging to the same, and seeing that the said engine is in good repair, and ready to proceed on any emergency to the relief of any part of the community that may be invaded by the calamity of fire; and the said enginemen appointed as aforesaid, shall be held and obliged to go forward, either by night or by day, under the direction of the firewards in the same town, and to use their best endeavours to extinguish any fire that may happen in the same town, or the vicinity thereof, and shall come to their knowledge, without delay.

And whereas there may, in some towns, be an engine or engines, the property of individuals, who would incline the same might be employed for the benefit of the said town, subject to the like regulations and privileges as though the said engine or engines appertained to the said town:

Sect. 3. Be it enacted by the authority aforesaid, That whenever the proprietor or proprietors of any engine or engines shall apply to the selectmen of any town in which the said engine or engines may be, setting forth, that they have such engine or engines which they are desirous should be employed for the benefit of the said town, the selectmen of such town, upon application as aforesaid, may appoint enginemen in the same manner, with the same privileges, and subject to the same regulations, as though the said engine or engines were the property of the said town.

Sect. 4. And be it further enacted, That the persons who may be appointed enginemen in pursuance of this Act, shall be, and they are hereby exempted from common and ordinary military duty, and from serving as jurors, or in the office of a constable, during the time they may be employed in the service aforesaid.

Sect. 5. Be it enacted by the authority aforesaid, That if any person, being appointed in manner herein before directed, shall, in the opinion of the said selectmen, be negligent and remiss in the duties required of him, as an engineman, by this Act, it shall be the duty of the selectmen in the same town, upon sufficient evidence thereof, to discharge him from said company, and proceed to appoint another engineman in his room, in the manner herein before directed.
Sect. 6. And be it further enacted, That all the acts here-fore made, providing for the appointment of enginemen, be, and they are hereby repealed. [Feb. 7, 1786.] Add. acts—1794 ch. 43: 1805 ch. 82.

An Act for naturalizing Michael Walsh. [Feb. 7, 1786.]

An Act for naturalizing William Ewing, Esq., and John Dubellet. [Feb. 3, 1786.]

An Act for the holding a Supreme Judicial Court in the County of Lincoln. [Feb. 13, 1786.]

An Act for enforcing the speedy Payment of Rates and Taxes, and directing the Process against deficient Constables and Collectors.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Treasurer and Receiver-General shall send such warrants as he shall, from time to time, be ordered to issue, for the assessing any rate or tax, included to the sheriff of each respective county, who is required immediately to dispose of and transmit the same unto the assessors of the several towns, districts and plantations within such county, according to the directions thereof; for disposing of which he shall have a reasonable allowance ordered him by the Court of Sessions of the same county, to be paid out of the county treasury, upon his laying the account thereof before the said court.

Provided always, and it hereby is enacted, That no allowance shall be made to any sheriff for transmitting any such warrants, unless he shall produce a certificate from one of the assessors, or the clerk of each town, district or plantation, in the county to which such sheriff belongs, or other satisfactory evidence of their having respectively received such warrant as aforesaid.

Sect. 3. And be it further enacted, That if the Treasurer of this Commonwealth, for the time being, shall not receive a certificate of the assessment of any tax from the assessors of any town, district or plantation, within sixty days from the time appointed in the warrant for certifying the same, the Treasurer of the Commonwealth, for the time being, shall send a certificate of such deficiency to the clerk of the Court of General Sessions of the Peace, for the county whereby the deficient town or district belongs, who shall lay the same before the said Court of Sessions at their next sitting; whereupon the said court shall forthwith proceed to appoint assessors to assess and apportion the rates and assessments granted as aforesaid; and if any person appointed an assessor as aforesaid by the Court of Sessions shall refuse to serve, he shall forfeit the sum of six pounds to the use of this Commonwealth, to be recovered by complaint in the same court, by such person as the said court may appoint to be agent or attorney in behalf of the Commonwealth for that purpose, who shall proceed to recover the same to the Treasurer of the Commonwealth; and after such refusal, the said Court of Sessions shall, as soon as may be, proceed to appoint other assessors.

Sect. 4. And be it further enacted, That if any constable or collector to whom any tax or assessment shall be committed to collect, shall be remiss and negligent of his duty in not levying acts repealed. 1784 ch. 64.

Chap. 43.

Chap. 44.

Chap. 45.

Chap. 46.

Col. L. 1649. 46. 47. 51. 57. 4 W. & M. ch. 13. 9 W. III. ch. 1.
6 An. ch. 1. 9 An. ch. 5. 4 Geo. II. ch. 1.
16 Geo. II.—11 Geo. II. ch. 1. 2 19 Geo. II. ch. 1. 24 Geo. II. ch. 5.
30 Geo. II. ch. 1. 13 Geo. III.—

Proviso.

Treasurer to send a certificate of any deficiency in towns, to the clerk of the court. 1785 ch. 50, § 1, 3, 6. 1799 ch. 31, § 1, 2.

Court to appoint assessors. Forfeiture for refusing to serve.
and paying unto the Treasurer and Receiver-General such sum and sums of money as he shall from time to time have received, and as ought by him to have been paid within the respective times set and limited by the assessors' warrant, pursuant to law, the Treasurer and Receiver-General is hereby empowered, after the expiration of the time so set, by warrant under his hand and seal, directed to the sheriff or his deputy, to cause such sum and sums of money to be levied by distress and sale of such deficient constable or collector's estate, real and personal, returning the overplus, if any there be; and for want of such estate, to take the body of such constable or collector, and to imprison him until he shall pay the same; which warrant the sheriff or his deputy is hereby empowered and required to execute accordingly.

SECT. 5. And be it further enacted, That if any constable or collector, so failing as aforesaid, have no estate to be found whereon to make distress, and his person cannot be taken within the space of three months from the time a warrant of distress shall issue from the Treasurer and Receiver-General as aforesaid, or being taken and committed to gaol shall not within three months satisfy the same, in such case the town, district or plantation, whose constable or collector so fails of his duty, shall, within three months from the expiration of the said three months first mentioned, make good to the treasury the sum or sums due or owing to the same, from such deficient constable or collector; and the assessors of such town, district or plantation, having notice in writing from the treasurer of the failure of any constable or collector as aforesaid, shall forthwith thereupon, without any other or further warrant, assess the sum the said deficient constable or collector is deficient, upon the inhabitants and estates of such town, district or plantation, in manner as the sum so committed to such deficient constable or collector was assessed, and commit the same to some other constable or collector, with warrant to collect; and in default thereof, the Treasurer of this Commonwealth is directed and empowered to issue a warrant of distress against such deficient assessors for the whole sum which may remain due from such deficient constable or collector, which shall be executed in the same manner as is prescribed in this Act for serving other warrants of distress, which may be issued by such treasurer. Provided always, That such constable or collector failing of his duty as aforesaid, for whose default the town, district or plantation is answerable, as before expressed, shall, at all times afterwards, be liable to the action or suit of the inhabitants, in their corporate capacity, for all such sum and sums as were assessed upon the same through his defect, and for other damages occurring to them thereby. And in case of the decease of any constable or collector in any town, district, plantation, precinct or parish, before his having adjusted the accounts of his assessment to him committed to collect, for such town, district, plantation, parish or precinct, the executors or administrators of such constable or collector, shall, within two months after his
decease, settle and make up accounts with the assessors of the
said town, district or plantation, precinct or parish, of such part
of the assessment as was received and collected by the deceased constable or collector, in his life time, with which such
executors or administrators shall be chargeable, in like manner
as the deceased constable or collector should be, if living; and
such assessors shall thereupon* procure and appoint, in writing,
some suitable person, a collector to perfect such collection;
and the person so appointed is accordingly hereby empowered
and required to execute all such powers as were granted to the
deceased constable or collector: And if the executors or administartors of any constable or collector so deceased, not hav-
ing fully collected the assessment committed, shall fail of mak-
ing up and settling the account of what was received by the
deceased as aforesaid, before the expiration of the time afores-
said, such executors or administrators shall be chargeable with
the whole sum committed to their testator or intestate, in case
there be sufficient assets, in the same manner the deceased con-
table or collector should be if living.

SECT. 6. And be it further enacted, That if the constable
or collector of any town, district, plantation, precinct or parish,
within this Commonwealth, to whom any county, town, district,
plantation, precinct or parish rates or assessments shall have
been committed to collect, shall be remiss in his duty, by ne-
eglecting to collect and pay in the same to the treasurer or re-
ceiver of such county, town, district, plantation, precinct or
parish, by the time fixed in the warrant to him directed, such
treasurer or receiver is hereby empowered to issue his warrant,
returnable in ninety days, under his hand and seal, directed to
the sheriff of the county, or his deputy (who are hereby re-
spectively directed and empowered to execute the same) to
cause such sum or sums of money as such constable or collec-
tor hath not paid in, to be levied by distress and sale of his
estate real or personal, returning the overplus, if any there be;
and for want of such estate, to take the body of such constable
or collector, and him imprison until he pay the same; and the
warrant shall be in substance as follows:

[1.*]

Greeting.

WHEREAS C. D. of B. aforesaid [addition] on the
day of being a of rates and taxes granted and agreed
on by the aforesaid, had a list of assessments, duly made by
the assessors of the aforesaid, amounting to the sum of
committed to him, with a warrant under their hands and seals,
directing and empowering him to collect the several sums in
the said assessment mentioned, and pay the same to the trea-
surer of aforesaid, by the day of ; but the said C. D.
hath been remiss in his duty, by law required, and hath neg-
lected to collect the several sums aforesaid, and pay the same
to the treasurer of the aforesaid; and there still remains
due thereof the sum of and the said C. D. still neglects to

* or in case of the incapacity of a collector—
1791 ch. 22.

1785 ch. 70, § 1—75, § 4.

1817 ch. 69.

1791 ch. 22, § 3.
pay the same: You are hereby, in the name of the Commonwealth of Massachusetts, required forthwith to levy the aforesaid sum of by distress and sale of the estate, real or personal, of the said C. D., and pay the same unto the treasurer of the said returning the overplus, if any there be, to the said C. D., and for want of such estate to take the body of the said C. D., and him commit to the gaol in the county aforesaid, there to remain until he has paid the sum of with two shillings for this warrant, together with your fees, or that he be otherwise therefrom discharged by order of law; and make return of this warrant to myself or my successor, as treasurer of the said within ninety days from this time, with your doings therein.

Given under my hand and seal, this day of in the year of our Lord one thousand seven hundred and

Sect. 7. And it is further enacted, That all executions or warrants of distress, that have been, or may hereafter be issued by the Treasurer and Receiver-General, or by the treasurer of any county, town, district, plantation, precinct or parish, against any constable or collector, which hath been or may be hereafter delivered to the sheriff of any county within this Commonwealth, or his deputy, such sheriff or deputy shall make return of his doings thereon unto the treasurer who issued the same execution or warrant of distress, within a reasonable time after the return day, in the same mentioned, with the money, if any, that he hath received and collected by virtue thereof; and where the same shall necessarily be returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for such sum as may remain due on the return of the first, and so toties quoties; which reasonable time after the return day shall be computed at the rate of forty-eight hours for every ten miles' distance from the dwelling-house of the sheriff or his deputy, to the place where the warrant may be returnable; and any sheriff or deputy-sheriff, that shall make default in accounting for, and paying in, the monies he may have collected and received of any deficient constable or collector, by execution or warrant of distress as aforesaid, or in making return of his doings within reasonable time as aforesaid, shall be liable to pay the whole sum in such execution or warrant of distress mentioned; and the Treasurer and Receiver-General of this Commonwealth, and the treasurers of the counties, towns, districts, precincts and parishes respectively, are hereby authorized and empowered to make out their warrants respectively, directed to the coroner of such county, where any sheriff or his deputy is deficient as aforesaid, requiring them respectively as aforesaid, to distrain for the same upon the estate, real or personal, of such deficient sheriff or his deputy, as is before directed herein, with respect to the sheriff or his deputy making distress upon the estate of deficient constables or collectors; which warrant, the coroner of any county respectively is hereby empowered and required to execute.

Sect. 8. And be it further enacted, That when any execution or warrant of distress issued by the treasurer of the state,
or treasurer of any county, town, district, plantation, precinct or parish, to the sheriff or his deputy, or to the coroner, shall be levied on the lands, tenements, or hereditaments of any deficient constable, sheriff or deputy, in every such case, the officer executing such warrant of distress, shall make sale thereof at public vendue, to the highest bidder, and execute a good deed or deeds of bargain and sale thereof, to the purchaser, having first given notice of the time and place of sale, by posting up advertisements, at least fourteen days previous thereto, in two or more public places in the town or place where such lands or tenements lie, as also in the two adjacent towns; and all deeds and conveyances of any such lands or tenements duly executed as aforesaid, shall be good and effectual in law unto the purchaser, his heirs and assigns forever, to all intents and purposes, as though executed by the deficient constable, sheriff or deputy; and in case the produce of such lands and tenements shall not satisfy the sum or sums, mentioned in the said warrant or warrants of distress, together with reasonable charges arising thereon, then the treasurer issuing such warrant, shall issue an alias execution or warrant of distress for such remaining sum or sums, and the officer executing the same, for want of estate, shall take the body of such deficient constable, collector or deputy-sheriff, and him commit unto the common gaol of the county whereunto he belongs, until he shall pay the same. Provided always, That when any constable, collector, or deputy-sheriff, shall be committed to gaol for default in payment of any taxes committed to him to collect, such constable, collector, or deputy-sheriff, shall be admitted to the liberty of the gaol-yard, they procuring sufficient bonds in the same manner as by law is prescribed for other debtors.

Sect. 9. Provided always, and be it further enacted, That in no case whatever, any distress shall be made or taken from any person, of his arms or household utensils, necessary for upholding life; nor of tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved land; nor of bedding or apparel necessary for him and his family; any law, usage, or custom to the contrary notwithstanding.

Sect. 10. And be it further enacted, That when any part or proportion of any state or county tax shall be laid on any plantation not incorporated, the treasurer of the state, or of such county respectively, shall issue his precept to some Justice of the Peace, dwelling near to such plantation, requiring him forthwith to grant his warrant, directed to some principal inhabitant of such plantation, requiring him to notify and warn the inhabitants of such plantation, being freeholders, to meet at such time and place within the same, as in such warrant shall be specified, in order to choose needful officers for the purposes hereafter mentioned, and such principal inhabitant is hereby obliged to observe and obey the warrant that he shall receive from such justice, on the penalty of forfeiting and paying the whole sum that shall be ordered to be levied on such plantation, to be recovered by action of debt by said respective treasurers,
in any court of record within this Commonwealth proper to try the same. And such principal inhabitant shall make return of the justice's warrant to the justice who issued it, with his doing therein, and the doings of the plantation in consequence of it, within the time limited in such warrant; and the justice shall thereupon certify such doings to the state or county treasurer respectively: And such of said inhabitants as shall then assemble, shall have power, and they are hereby required to choose a moderator and clerk, as also assessors and collectors, for assessing and collecting such plantation's proportion of such state and county tax as shall be ordered to be assessed, to be duly paid, when collected by such collectors, to the state or county treasurers respectively; and such clerk, assessors and collectors shall be under oath, to be administered by the moderator of such meeting, for the faithful discharge of their respective trusts, and shall have the same allowance from such plantations as such officers are entitled unto by law in towns corporate.

Sect. 11. And be it further enacted, That the assessors so chosen and sworn, shall thereupon take a list of the ratable polls, and a valuation of the estates and faculties of the inhabitants of such plantation, for a rule by which to make such assessment, and by which to judge of the qualification of voters in meetings of the said inhabitants thereafter to be holden, until another valuation shall be made.

Sect. 12. And be it further enacted, That the assessors, who shall from time to time be chosen or appointed for such plantation, shall have power, and they are required to issue their warrants for calling meetings of the inhabitants there, in the month of March annually, for choosing such officers as aforesaid, who shall be sworn by the moderator or some Justice of the Peace as aforesaid.

Sect. 13. And be it further enacted, That every moderator of a plantation meeting, shall be held and obliged to notify the plantation officers to appear either before himself or some Justice of the Peace, within seven days from the time of their being chosen, and take the necessary oaths; and in case of neglect, shall forfeit and pay the sum of three pounds for the use of the plantation, to be recovered by any inhabitant thereof, before any Justice of the Peace within the same county.

Sect. 14. And be it further enacted, That whenever a constable or collector of any town, district, plantation, parish or precinct, shall be taken on execution, as constable or collector aforesaid, he had in his hands unsettled, at the time of being taken as aforesaid, with the whole evidence of all payments on the assessments demanded as aforesaid; and in case the said constable or collector, taken as aforesaid, shall upon being demanded thereto, deliver up the said as-
Chap. 46.

Sessors, all the assessments, which he as constable or collector as aforesaid shall have in his hands unsettled, together with the whole evidence of all payments on the assessments demanded as aforesaid, then the said constable or collector shall receive such credit as the said assessors, from an inspection of his assessments, shall adjudge him entitled to; and the said collector or constable taken as aforesaid, shall be holden for the payment for such sum or sums of money as he shall be found deficient, after being credited as aforesaid; and the same town, district, plantation, parish or precinct may proceed to the choice of another collector at any other time besides the annual meeting in March, to finish the collections on the same assessments, who shall be sworn to the faithful discharge of his office; or if he shall refuse or neglect to accept the said office, or refuse to be sworn as aforesaid, he shall incur the penalty which constables by law will incur for refusing or neglecting to be sworn or serve in the office of a constable; and the assessors for the time being, respectively, on receiving the assessment as aforesaid, shall make and deliver to the same collector, chosen and sworn as aforesaid, a warrant or warrants for finishing the collections last aforesaid, in the form by law prescribed (mutatis mutandis) and the same collector shall proceed to finish such collections in the same manner as constables or other collectors are to proceed in collecting like species of rates or taxes; and if any constable or collector taken as aforesaid, shall, on demand as aforesaid, refuse to exhibit and deliver up his assessments with the evidence as aforesaid, he shall be forthwith, either by the officer taking him as aforesaid, or by warrant from some Justice of the Peace, committed to the common gaol of the county, there to remain until he shall exhibit the same for the purpose aforesaid: And the assessors of such town, district, plantation, parish or precinct, are hereby empowered to take the duplicate, or copies of the records of such assessments, if the same are recorded, and the same copies to deliver to the collector, chosen as last aforesaid, who having received the same, and a warrant therefor, shall proceed to finish the collection of the rates and taxes in the same assessments mentioned, of the persons who did not pay the same to the constable or collector, taken as aforesaid. Provided always, That the collectors chosen to finish the collections aforesaid, on averment of payment, by the person or persons assessed, to the constable or collector taken as aforesaid, and denial of payment to the collector for finishing the said collections, shall not proceed to distrain or imprison any person, unless a vote of such town, district, plantation, parish or precinct, is first had therefor, and certified to the same collector by the clerk of such town, district, plantation, parish or precinct.

Sect. 15. And be it further enacted, That if any constable or collector of any town, district, plantation, parish or precinct, shall abscond or secrete himself for the space of one month, having assessments in his hands unsettled, the selectmen or assessors of such town, district, plantation, parish or precinct, are hereby empowered to charge such constable therewith, by
1782 ch. 10.

Provido.

Further proviso.


Declaration filed in the Supreme Judicial Court, and thereupon to proceed to judgment of outlawry against such constable or collector; and the same town, district, plantation, parish or precinct, are hereby empowered to choose a new collector to finish the collections which such absconding constable or collector should have finished and completed; and the same collections may be finished in the same manner as is provided for finishing collections where the constable or collector is taken on execution, and refuses to exhibit or show his assessment as aforesaid; the said selectmen, assessors and collector observing the rules and directions therein expressed. Provided always. That if such constable or collector, during the aforesaid process of outlawry, shall surrender himself and confess the aforesaid charge, or settle the assessments, and pay the rates and taxes in his hands as aforesaid, no further process shall be had against him, except judgment for costs, which he shall be holden to pay. Provided also, That if, after judgment of outlawry rendered against him, such constable or collector shall surrender himself, and settle the same assessments, and pay the rates and taxes, and all costs of the process last aforesaid; and if the same settlement, payment and satisfaction shall be recorded in the Supreme Judicial Court, such record shall be construed to operate and be a full and effectual reversal of the aforesaid judgment of outlawry; and such town, district, plantation, parish or precinct, shall have all other remedies against such constable or collector as they would have been entitled to, had no such process of outlawry ever been commenced. [Feb. 16, 1786.] Add. acts—1791 ch. 22: 1799 ch. 51: 1815 ch. 130: 1817 ch. 69.

Chap. 47.

An Act for raising and forming a Regiment of Cavalry in the County of Worcester. [Feb. 17, 1786.] Embraced in subsequent militia laws.

Chap. 48.

Preamble.

Defendant may appeal from interlocutory judgment.

Appeal from final judgment shall not open the question of bailiff or not bailiff.

WHEREAS the proceedings on actions of account are prolix, and require amendment:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That upon a judgment rendered in any Court of Common Pleas, that the defendant shall account, it shall be in the power of the party against whom such judgment shall hereafter be given, to appeal therefrom, if such party shall think proper, before the same court proceed to the appointing of auditors; and in case no appeal shall be made from the first judgment, that the defendant shall account, an appeal from the final judgment, after the cause has been before auditors, shall not entitle the original defendant to try the issue of bailiff or not bailiff before the Supreme Judicial Court; but the first judgment that the defendant shall account shall remain in full force, and he shall account accordingly; and in case the defendant shall not enter and prosecute his appeal from the first judgment, the same upon complaint may be affirmed; and auditors may thereupon be appointed in the same manner they would have been in the Court of Common Pleas, had no appeal been made from the first judgment.
Sect. 2. And be it further enacted, That when any person against whom judgment shall be given, that he shall account, shall unreasonably refuse or neglect to appear at the time and place assigned by the auditors, or after appearing, shall refuse or neglect to render an account, the auditors may certify such refusal or neglect to the court from which their appointment issued; and the same court may thereupon cause damages to be assessed by a jury, and enter up judgment for the damages so assessed, with reasonable costs, and award execution thereof; any law, usage or custom to the contrary notwithstanding. [Feb. 17, 1786.]

An Act for naturalizing James Wakefield, Ann Wakefield, his Wife, and Benjamin Wakefield, Ann Wakefield, Terence Wakefield, and Mary Wakefield, his children. [Feb. 17, 1786.]

An Act for the Choice and Appointment of Assessors, and for assigning their Powers and Authority.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in the month of March,* annually, at the same meeting when other town and district officers are chosen by the respective towns and districts in this Commonwealth, there shall be chosen, by the qualified voters then present and voting, or the major part of them, three, five, seven or nine meet persons, to be assessors of all such rates and taxes as the General Court shall order and appoint such town or district to pay, towards the charges of the Government, within the space of one year from the choice of such assessors, unless the warrant for the assessment shall not be by them received before the first day of March succeeding; and in case of its being received afterwards, it shall be delivered to their successors in office, who shall be under the same obligations to make the assessment as their predecessors would have been under if they had seasonably received the same, who shall also be the assessors of county, town and district taxes; and each assessor so chosen shall, within the space of seven days next after being notified thereof, be sworn before a Justice of the Peace or before the town or district clerk, to the faithful discharge of his duty, in the form hereafter prescribed; and the assessors so chosen and sworn, shall assess the polls of, and estates within such town or district, their due proportion of any tax, according to the rules set down in the Act for raising the same, and make perfect lists thereof under their hands or the hands of the major part of them, and commit the same to the constable or constables, collector or collectors of their town or district, if any there be, otherwise to the sheriff, or his deputy, with a warrant under their hands and seals, in the form herein after directed, and return a certificate thereof to the Treasurer or Receiver-General of this Commonwealth, for the time being, with the name of the constable or constables, collector or collectors, sheriff or his deputy, to whom they shall have committed the same assessment, with a warrant as aforesaid to collect; and the said assessors shall also have their assessment recorded in the town

If defendant neglect to appear after interlocutory judgment, damages to be assessed by a jury.

Chap. 49.

Chap. 50. [See the colony and province laws referred to at the beginning of 1763 ch. 48.]

As to the choice annually in the month of March.

Assessors to be sworn.

To assess, and commit lists to collector, &c.
[1799 ch. 83, new warrant in case of loss of the original.]

To record assessments, or file copy there-of.
To lodge invoice in clerk's office.

Penalty for neglecting to appear, or refusing to be sworn.

To be recovered by complaint.

Form of complaint.

To the Justices of the Court of General Sessions* of the Peace for the county of to be held at within and for the county aforesaid, on the Tuesday of next. Complains A. B. treasurer of the of that C. D. of [addition] on the day of last, was duly and legally chosen by the qualified voters of the said to serve as an assessor thereof; and that the said C. D. was notified to take the oath of that office as the law directs; yet the said C. D. has, for the space of seven days after being notified as aforesaid, neglected and still neglects to take the said oath, whereby he hath forfeited the sum of five pounds for the use of the poor of the said wherefore your complainant prays that a warrant of distress may be issued against the said C. D. for the forfeiture aforesaid, in form and manner as the law directs. Dated at the day of Anno Domini, 178

A. B. Treasurer.

And the same form, mutatis mutandis, may be used in the recovery of any penalty which may be incurred by any person chosen as a town, district, plantation, parish or precinct officer, who shall neglect to take the oath of office as required by law; and the selectmen of every such town or district, when any one or more of the assessors so chosen shall refuse as aforesaid, shall forthwith, after notice thereof, summon a meeting of the qualified voters of such town or district, to choose an assessor or assessors in the room of such assessor or assessors so refusing; which voters, so assembled, shall accordingly choose so many assessors as shall be wanting to complete the number which the town or district, at the time of the first choice, voted should be elected. Provided always, That it shall be in the power of the Court of General Sessions of the Peace,* for the same county, upon reasonable excuse made to them by any assessor that shall refuse to accept as aforesaid, to remit, if they see cause, the penalty aforesaid.

* See 1803 ch. 154, § 3.
Sect. 2. And be it further enacted, That if any town or district shall not choose assessors as aforesaid, or if so many of them so chosen shall refuse to accept, as that there shall not be such a number of them as any town or district shall vote to be the assessors thereof, then the selectmen of such town or district shall be and hereby are declared and appointed the assessors thereof; and every one of them shall be duly sworn to the discharge of the trust; and each assessor shall be paid out of the town or district treasury four shillings for each whole day he shall be necessarily employed in that service.

Sect. 3. And be it further enacted, That if any town or district shall neglect to make choice of selectmen or assessors, the said default being made known unto the Court of General Sessions of the Peace* within the same county, such town or district shall forfeit and pay a sum not exceeding one hundred pounds nor less than thirty pounds, as the Court of Sessions* shall order, for the use of this Commonwealth; and in such case, as also where neither the selectmen nor assessors chosen by any town or district shall accept the trust, or having accepted the trust shall not perform their duty, the Court of General Sessions of the Peace* in the same county, shall be and hereby are empowered to nominate and appoint three or more sufficient freeholders within such county, to be assessors of the rates or taxes in such town or district as aforesaid, which assessors, so appointed, after being duly sworn, shall assess the polls and estates within such town or district their due proportion to any tax, according to the rules set down in the Act for raising the same, together with the aforesaid penalty, where the town or district makes default as aforesaid, and such additional sum as shall answer their own reasonable charges for time and expense in the said service, not exceeding ten shillings per day for each man so employed; and having made such assessment, shall issue a warrant under their hands and seals for collecting the same, and transmit a certificate thereof to the treasurer, with the name of the constable, collector, sheriff, or his deputy, to whom they shall commit the same to be collected; and such assessors shall be paid their charges as aforesaid, the same being adjusted and certified by two or more justices of the court by whom they were appointed assessors, under their hands, out of the public treasury, by warrant from the Governor, with the advice and consent of Council.

Sect. 4. And be it further enacted, That all assessors chosen or appointed as aforesaid shall duly observe all such warrants as during the time of their office they shall receive from the Treasurer or Receiver-General, pursuant to an Act or Acts made and passed by the General Court of this Commonwealth, for the assessing and apportioning any rate or tax upon the inhabitants or estates within the town or district whereof they are assessors, on pain that the assessors of any town or district, failing of their duty required by such warrant of the treasurer, shall forfeit and pay the full sum in such warrant mentioned.

* See 1803 ch. 154, § 3.
To be levied by distress.

Court to appoint other meet persons to be assessors.

Form of assessors' oath.

13 W. III. ch. 18.

Form of selectmen or assessors' warrant for the collection of state taxes.

You A. B., one of the assessors for the year ensuing, do swear, that you will proceed equally and impartially, according to your best skill and judgment, in assessing and apportioning all such rates and taxes as you may, according to law, be directed to assess and apportion during that time. So help you God.

Sect. 6. And be it further enacted, That the warrant to be issued by the selectmen or assessors, for the collecting and gathering in of the state rates or assessments, shall be in substance as follows:

[L. S.] ss. To A. B. Constable or Collector of the town of A. within the county of S. Greeting.

In the name of the Commonwealth of Massachusetts, you are required to levy and collect of the several persons named in the list herewith committed unto you, each one his respective proportion, therein set down, of the sum total of such list, it being this town's proportion of a tax or assessment of pounds shillings and pence, granted and agreed upon by the General Court of said Commonwealth, at their session, begun and held at B. on the day of for defraying the necessary charges of securing, protecting and defending the same; and you are to transmit and pay in the same unto T. I. Treasurer and Receiver-General of this Commonwealth, or to his successor in that office, and to complete and make up an account of your collections of the whole sum.

* See 1803 ch. 154, § 3.
on or before the day of ; and if any person shall refuse or neglect to pay the sum he is assessed in the said list, to distress the goods or chattels of such person to the value thereof; and the distress so taken, to keep for the space of four days, at the cost and charge of the owner; and if he shall not pay the sum so assessed within the said four days, then you are to sell at public vendue the distress so taken, for the payment thereof, with charges; first giving forty-eight hours' notice of such sale, by posting up advertisements thereof in some public place in the town, district or plantation (as the case may be;) and the overplus arising by such sale, if any there be, besides the sum assessed, and the necessary charges of taking and keeping the distress, you are immediately to restore to the owner; and for want of goods or chattels, whereon to make distress (besides tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved lands, arms, utensils for house-keeping necessary for upholding life, bedding and apparel necessary for himself and family) for the space of twelve days, you are to take the body of such person, so refusing or neglecting, and him commit unto the common gaol of the county, there to remain until he pay the same, or such part thereof as shall not be abated by the assessors, for the time being, or the Court of General Sessions of the Peace, for the said county.

Given under our hands and seals, by virtue of a warrant from the treasurer aforesaid, this day of 178
A. B. } Assessor.
C. D. }

And the certificate of the assessment of any state tax shall be in substance as follows:

PURSUANT to a warrant from the Treasurer of the Commonwealth of Massachusetts, dated the day of Anno Domini We have assessed the polls and estates of the of the sum of and have committed lists thereof to the of said viz. to with warrants in due form of law, for collecting and paying in the same to Treasurer of said Commonwealth, or his successor in office, on or before the day of next ensuing.

In witness whereof, we have hereunto set our hands at this day of Anno Domini
A. B. } Assessors.
C. D. }

Sect. 7. And be it further enacted, That the warrant to be issued for collecting county, town, district, plantation, precinct or parish rates or assessments, shall also be made out by the assessors thereof in the same tenor, mutatis mutandis.

Sect. 8. And be it further enacted, That all county, town, district, precinct, plantation and parish rates and taxes, shall be assessed and apportioned by the assessors of the several towns, districts, plantations, precincts and parishes within this Commonwealth, upon the polls of, and estates within the same, accord-
ing to the rules that shall from time to time be prescribed and set, in and by the then last tax-act of the General Court; and such assessors shall cause attested copies of such assessments and valuations to be lodged in the clerk's office of the place where the same are made, or file the same in their own office, if any such they have.

Sect. 9. And be it further enacted by the authority aforesaid, That the assessors of each town, district, plantation, precinct and parish respectively, in convenient time, before they proceed to make any assessment, shall give seasonable warning to the inhabitants, at any of their respective meetings, or by posting up notifications in some public place in said town, district, plantation, precinct or parish, as the case may be, or notify the respective inhabitants in some other way, to make and bring in to them, the said assessors, true and perfect lists of their polls, and of all their estates, both real and personal (saving such estate as is or may by law, from time to time, be exempted from taxation) which they were possessed of, at such periods as the General Court may from time to time order and direct; and if any person or persons shall not bring in a list of their estates, as aforesaid, to the assessors, he, she, or they so neglecting or refusing, shall not be admitted to make application to the Court of General Sessions of the Peace,* for any abatement of the assessment so laid on him, her or them; unless such person or persons shall make it to appear to the said court, that it was not within the power of him, her, or them, to deliver to the assessors, respectively, a list of his, her or their ratable estate, at the time appointed for that purpose. And if the assessors suspect any falsehood in the list to them presented, of polls or estate, as aforesaid, then the said assessors, or either of them, shall require the person presenting such list, to make solemn oath that the same is true, which oath the assessors, or either of them, are hereby empowered to administer; and such list being exhibited on oath, shall be a rule for that person's proportion of the tax, who presented the same, which the assessors may not exceed, unless they shall discover any error therein; in which case, the assessors are hereby authorized and directed to assess such articles as appear to be kept back.

Sect. 10. And be it further enacted, That if any person or persons shall, at any time, be aggrieved at the sum or sums set and apportioned upon him or them, by the assessors of any town, district, plantation or parish, and shall make it appear unto the assessors, for the time being, of such town, district, plantation or parish, that he or they are rated more than his or their proportion, according to the rules given in the Act or Acts of the General Court, for making the said assessment, in such case the said assessors, for the time being, shall make a reasonable abatement to the person or persons so aggrieved; and if they shall refuse so to do, such person or persons complaining, in writing, unto the next Court of General Sessions of the Peace,* within that county, and making it appear that he or they are

* See 1803 ch. 154, § 3.
overrated as aforesaid, he or they shall be relieved by the said court, and shall be reimbursed out of the treasury of the town, district, plantation or parish where such assessment was made, so much as the said court or assessors respectively shall see cause to abate him or them, with the charges; and the said Court of General Sessions of the Peace* are empowered, on such complaint being made, to require the assessors or clerk to produce the valuation by which the assessment is made, or a copy thereof.

Sect. 11. Be it further enacted, That the assessors for any town, district, plantation, precinct or parish, from time to time may, and are hereby authorized and empowered to apportion on the polls and estates, according to law, such additional sum over and above the precise sum to them committed to assess, as any fractional divisions of such precise sum may render convenient in the apportionment thereof; not exceeding five per centum on the sum taxed: Provided the whole excess shall in no case amount to more than the sum of forty pounds, the surplus sum shall be paid into the treasury of such town, district, plantation, precinct or parish, and shall be subject to the order and disposal of such town, plantation, precinct, district or parish; and it shall be the duty of such assessors to certify such town, district, plantation, precinct or parish treasurer thereof.

Sect. 12. And it is further enacted, That all plantations which shall, from time to time, be ordered by the General Court to pay any part or proportion of the public taxes, shall be and they hereby are fully vested with all the powers that towns in this Commonwealth by law are, so far as relates to the choice of assessors of taxes; and any person who shall be chosen to the office of an assessor of taxes, in any of the aforesaid plantations, and shall refuse to accept of the office to which he shall have been elected, or neglect to take the oath by law required to be taken by assessors of taxes in towns, shall be liable to the same penalties, to be recovered in the same way and manner, as by this Act is provided in the case of assessors refusing to accept such office, when chosen by towns.

Sect. 13. And it is further enacted, That if any of the plantations aforesaid shall neglect to choose assessors as aforesaid, or if the assessors chosen by any such plantation, and accepting such trust, shall be remiss or neglect their duty; in every such case, such plantation shall be subject to the same penalties and be proceeded with in the same manner as by this Act is provided, in the case of deficient towns; and such deficient assessors shall be and hereby are made liable to the same penalties, to be recovered by the same process as by this Act is provided, in the case of deficient assessors chosen by towns.

And whereas, the county tax may often be so small as that it would be inconvenient to make a separate list of each person's proportion of it:

Sect. 14. Be it therefore enacted, That in such case it shall and may be lawful for the assessors of any town, district or

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* See 1903 ch. 151, § 9.
plantation, to add their proportion of the county tax to any of their other taxes, and make out warrants and certificates accordingly.

**Sect. 15. And be it further enacted,** That in the month of March annually, at the time other precinct and parish officers are chosen by the respective precincts and parishes in this Commonwealth, there shall be chosen, by the qualified voters then present and voting, or the major part of them, three or five meet persons, to be assessors of all such rates and taxes as shall be agreed upon and granted by their respective precincts and parishes at their meetings regularly warned for that purpose, who shall be sworn to the faithful discharge of their trust in the form before prescribed in this Act.

**Sect. 16. Be it further enacted,** That where any warrant, by virtue of this Act, is to be directed to the sheriff of any county or his deputy, and the person, or any one of the persons against whom such warrant may be granted, shall be a sheriff or deputy-sheriff for such county, in such case the warrant shall be directed to and served by a coroner of the same county. [February 20, 1786.]

**Chap. 51.**

An Act for the better securing, and rendering more effectual, Grants and Donations to pious and Charitable Uses.

**WHEREAS** many grants and donations have heretofore been made by sundry well disposed persons, in and by such expressions and terms as plainly show it was the intent and expectation of such grantors and donors, that their several grants and donations should take effect, so as that the estates granted should go in succession; but doubts have arisen in what cases such donations and grants may operate so as to go in succession: for ascertaining whereof,

**Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,** That the deacons of all the several protestant churches, not being episcopal churches, and the church wardens of the several episcopal churches are, and shall be deemed so far bodies corporate, as to take in succession all grants and donations, whether real or personal, made either to their several churches, the poor of their churches, or to them and their successors, and to sue and defend in all actions touching the same; and wherever the ministers, elders or vestry, shall in such original grants or donations have been joined with such deacons or church-wardens as donees, or grantees in succession; in such cases, such officers and their successors, together with the deacons or church-wardens, shall be deemed the corporation for such purposes as aforesaid; and the minister or ministers of the several protestant churches, of whatever denomination, are and shall be deemed capable of taking in succession any parsonage land or lands, granted to the minister and his successors, or to the use of the ministers, and of suing and defending all actions touching the same; saving that nothing in this Act shall be construed to make void any final judgment of any court of common law or probate; saving also that no alienation of any lands be-
longing to churches hereafter made by the deacons, without the consent of the church, or a committee of the church for that purpose appointed, or by church-wardens, without the consent of the vestry, shall be sufficient to pass the same; and that no alienation hereafter made by ministers, of lands by them held in succession, shall be valid any longer than during such alienors continuing ministers, unless such ministers be ministers of particular towns, districts or precints, and make such alienation with their consent respectively, or unless such ministers so aliening be ministers of episcopal churches, and the same be done with the consent of the vestry; and the several churches in this Commonwealth, not being episcopal churches, are hereby empowered to choose a committee to call the deacons or other church officers to an account; and if need be, commence and prosecute any suits touching the same, and also to advise and assist such deacons in the administration of the affairs aforesaid.

Sect. 2. And be it further enacted, That the income of the grants made, or to be made to any such body politic, for pious and charitable uses, shall not exceed the sum of three hundred pounds per annum. [Feb. 20, 1786.]

An Act for regulating Fences.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in every town and district within this Government, there shall be chosen annually by the inhabitants thereof, at the time of their meeting for the choice of town officers, two or more judicious and discreet freeholders, being inhabitants of the same town or district, to be fence-viewers, to be sworn as other town officers are sworn to the faithful discharge of the duties of their office, each of whom, in case of refusal, after seven days' notice, shall pay a fine of thirty shillings, and another person shall be forthwith chosen in his stead; the fine to be to the use of the same town or district.

Sect. 2. And be it further enacted by the authority aforesaid, That all fences of four feet high, and in good repair, consisting of rails, timber, boards or stone walls; and also brooks, rivers, ponds, creeks, ditches and hedges, or other matter or thing equivalent thereto, in the judgment of the fence-viewers, within whose jurisdiction the same shall lie, shall be accounted legal and sufficient fences; and the respective occupants of lands inclosed with fence, shall keep up and maintain partition fences between their and the next adjoining inclosures, in equal halves, so long as both parties continue to improve the same, and in case either party shall neglect or refuse to repair or rebuild the fence which of right he ought to maintain, the aggrieved party may forthwith apply to two or more fence-viewers of such town, duly chosen and sworn, to survey the same; and upon their determination that the fence is insufficient, they shall signify the same, in writing, to the occupant of the land, and direct him to repair or rebuild the same within six days; and if the same fence shall not be repaired or rebuilt within the said term of six days, it shall be lawful for the complainant

Deacons not to alien without consent of the church.

Nor ministers.

Churches may choose committees to call deacons to account.

Income of grants not to exceed 300£ per annum.

Chap. 52.
Col. 1. 1642-43. 46. 47. 53. 5 W. & M. ch. 9. 10 W. Ill. ch. 9. 10 Geo. Ill, ch. 5. 27 Geo. III.—Fence-viewers to be chosen annually and sworn.

In case of refusal, penalty.

Fences of four feet high to be accounted legal and sufficient.

Partition fences to be maintained by the occupants in equal halves.

And in case of neglect—

1783 ch. 53. § 1. 2. 12. 1794 ch. 38. 1796 ch. 13.
that improves the lands adjoining, to make up, amend or repair the deficiency; and when the same shall be completed and adjudged sufficient by two or more of the fence-viewers and the value thereof, together with the fence-viewers' fees ascertained in writing, the complainant shall have a right to demand and receive of the occupant, lessor or freeholder of the land where the fence was deficient as aforesaid, at his election, double the sum thus ascertained as aforesaid, for the expense of amending, surveying and viewing the fence; and in case of neglect or refusal to make payment thereof, for the space of one calendar month after demand made of the person against whom he shall make his election, he may sue for and recover the same, by a special action of the case in any court proper to try the same, and interest, one per cent. per month, until judgment shall be rendered therefor.

Sect. 3. And be it further enacted, That when any dispute shall arise about the respective occupants' right in partition fences, and his or their obligation to maintain the same, upon application made by either party to two or more fence-viewers of such town where the lands lie, they are hereby empowered after due notice to each party, to attend at time and place, if they see cause, to assign to each party his share thereof, in writing: which assignment being recorded in the town-clerk's office, shall be binding upon such persons, and the succeeding occupiers of the respective lands, and they obliged always thereafter to maintain their part of said fence; and in case any of the parties shall refuse, or neglect to erect, keep up and maintain the part to such party assigned, the same may be done by the aggrieved party, in the manner before in this Act provided, and for which he shall be entitled to double the sum ascertained, in manner as aforesaid, and to be recovered in like manner. And all divisional fences between man and man shall be kept in good repair throughout the year, unless the occupiers of the lands on both sides shall otherwise agree.

Sect. 4. And be it further enacted by the authority aforesaid, That when lands belonging to, or occupied by different persons, and subjected to be fenced, are bounded upon by each other by any brook, pond or creek, which of itself is not a sufficient fence in the judgment of the fence-viewers, and it is in their opinion impracticable without unreasonable expense for the partition fence to be made in the middle or other part thereof, being the true boundary line between them; if, in such case, the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side in making a partition fence on one side or the other, or shall disagree respecting the same, then two or more fence-viewers of the town or towns wherein such lands lie, on application to them made, shall forthwith view such brook, river, pond or creek; and if they shall determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence at the true boundary line, they shall judge and determine how, or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on
the other side, as to them shall appear just, and reduce such their determination to writing, having first given notice to the parties to be present at such assignment; and if either of the parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the fence-viewers' determination in writing, as aforesaid, the same may be done and performed, as in this Act is before provided, and the delinquent party subject to the same costs and charges, and to be recovered in like manner.

Sect. 5. And be it further enacted, That where any lands belonging to two persons in severalty shall have been improved in common without a partition fence between them, and one of the occupants shall be desirous to improve his part in severalty, and the other occupant shall refuse or neglect on demand, to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, it shall be in the power of the party desiring it, to have the same divided and assigned by two or more of the fence-viewers of the same town, in the way and manner in this Act provided; and the same fence-viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making up the fence; and if the occupant complained of shall not build and erect his part of the fence within the time so assigned, it shall and may be lawful for the other party, after having made up his own part of the fence, to make up the other's part, and recover therefor double the sum it shall cost, with the fees of the fence-viewers, in the way and manner in this Act before provided.

Sect. 6. And be it further enacted, That when one party shall cease to improve his land, or shall lay his inclosure, before under improvement, in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next inclosure that is improved: Provided the party continuing to improve will allow and pay therefor, so much as two or more fence-viewers shall, in writing, determine the reasonable value thereof. And whenever any lands, which have laid unimproved, and in common, shall be afterwards inclosed or improved by depasturing, the occupant, lessor or freeholder thereof shall pay for the one half of each partition fence standing upon the divisional line between the same land and the land of the inclosures of any other occupant or proprietor, the value and part thereof to be ascertained, in writing, in case they shall not agree between themselves, by two or more of the fence-viewers of the same town wherein such line lies; and in case such occupant, lessor, or proprietor as aforesaid, shall neglect or refuse to pay for a moiety of the partition fences, for the space of thirty days after demand made (the value having been ascertained as aforesaid) the proprietor of the fence may have and maintain in form aforesaid, an action of the case for such value and the costs of ascertaining the same. And in all cases where the line upon which partition fence is to be made or divided is the boundary line of one or more towns,
or partly in one town and partly in another town, a fence-viewer shall be taken from each town.

Sect. 7. And be it further enacted, That when a water fence, or fence running into the water is necessary to be made, the same shall be done in equal halves, unless by the parties otherwise agreed; and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall be had, as in other cases of the like kind respecting fences out of the water, in this Act mentioned. Provided, That nothing in this Act contained shall extend to house lots, the contents of which do not exceed half an acre; but if the owner or owners of such lots shall improve, his neighbour shall be compellable to make and maintain one half of the fence between them, whether he improve or not; or to make void any written agreement respecting the making or maintaining partition fences.

Sect. 8. And be it further enacted, That any fence-viewer duly chosen and sworn, who, on due notice given him, and being requested by any person interested to view any fence complained of as insufficient, shall neglect forthwith to attend the same, shall forfeit and pay the sum of twenty shillings, to him or them who shall sue for the same, within forty days after such neglect; and each fence-viewer shall be paid five shillings a day, two shillings and eight pence for half a day, and under that on shilling and six pence, for the time he shall be engaged in the business of his office, by the person employing him. And in case the complainant shall neglect to pay the fence-viewers their legal fees within thirty days after the service done, they may severally recover by an action of the case, double the amount of such fees; and each fence-viewer may be a witness, for or against his companion in such suit. And all laws heretofore made respecting partition fences, so far as they relate to lands held or improved in severalty, shall be, and hereby are repealed. [Feb. 21, 1786.]

An Act concerning general and common Fields.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in any and every town or plantation in this Commonwealth where several allotments of land are inclosed and fenced in one general field, or where they have been so inclosed, fenced and improved, or where all the proprietors of any land shall hereafter see cause to inclose, fence and improve the same in such manner, such proprietors may, some time in March, annually, and from time to time as they judge proper, meet together to make such rules and adopt such modes of improvement as they shall think just and equitable and most for the general benefit; and the proprietor or proprietors of each lot respectively, during the time of his or their pasturing, planting, mowing, or otherwise improving his or their part in such general field, shall make and maintain his or their respective part of the whole fence, according to the quantity of acres of land contained in his or their allotment, until the major part of the propriety, at a meeting of such proprietors legally warned
for that purpose, shall see cause to alter the form of their improvement. And for the better enabling such proprietors to call a meeting for the ends aforesaid, it shall be in the power of any Justice of the Peace for the county where such lands lie, upon application to him made by any two of the proprietors of such general fields, to issue out a warrant for such meeting; which warrant, and also the notification of the meeting, shall express the business thereof, and shall be conducted in the same manner as those for calling a meeting of proprietors of common lands prescribed by "An Act relating to lands, wharves and other real estate undivided and lying in common," passed March 10, 1784. And the whole general fence shall be measured, and each proprietor's part set out and apportioned by two or three discreet indifferent persons appointed and sworn for that purpose by any Justice of the Peace for the said county, unless the major part of the propriety agree and proportion the same among themselves. And when the proportion of each proprietor in such general fence is adjusted and determined, the same shall be entered upon record by the clerk of the propriety; and where there is no such clerk, by the clerk of the town wherein the land lies, any law, usage or custom to the contrary notwithstanding.

SECT. 2. And be it further enacted by the authority aforesaid, That the charge arising by dividing and setting off the several parts of such fence to and among the proprietors of lands inclosed and fenced in one general field, and also the charge of making and maintaining of such fence as cannot justly be set off to any particular proprietor or proprietors, as his or their part, shall be borne by the several proprietors in proportion to their respective interests in such field.

SECT. 3. And be it further enacted by the authority aforesaid, That the proprietors of such general fields respectively shall be and are hereby fully authorized and empowered, in a proprietors' meeting for that purpose regularly convened by a major vote of the proprietors then present (the vote to be collected according to the interest of the proprietors) to agree upon and pass one or more votes for the raising and collecting such sum or sums of money from time to time as they shall judge necessary for defraying the charges aforesaid, and for carrying on, or managing any common affairs relating to such proprietors; and that they be alike empowered to choose three or five assessors for the assessing and apportioning such sum or sums so agreed on and voted upon the proprietors of such fields, according to their several interests therein; and to appoint a collector or collectors to gather in and collect the same; which collector or collectors shall be and are hereby fully empowered to levy and collect the sum or sums so set and apportioned for such proprietors to pay, in the same manner as constables of towns within this Commonwealth are empowered to levy and collect the public rates or taxes; and to pay in the same to the proprietors or their clerk, who is hereby empowered to grant warrants, for the levying and collecting such assessment at such time as shall be by them appointed for the whole fence until, &c.

Charges of dividing, &c. how borne.

To choose assessors and collectors.

1785 ch. 70.

Proprietors' clerk empowered to grant warrants for
Tenders and collecting assessments.

Assessors and collectors to be under oath. 1785 ch. 75.

Proprietors aggrieved or overrated, at liberty to apply for relief to the court. 1803 ch. 154, c. 3.

Hay-wards or field-drivers may be chosen.

Proprietors trespassing, shall be proceeded with as if they owned no land in the field. 1788 ch. 65, sect. 3. 4.

Trespasses

Done by reason of the insufficiency of fences adjoining, damages shall be assessed according to appraisement.

Each proprietor shall once in two years run lines, &c. 1785 W. & M. ch. 13.

payment thereof; and such clerk shall be accountable to the proprietors thereof; the person or persons so assessing the said proprietors, and the collector or collectors that shall be so appointed for the gathering and collecting the sum or sums so granted and agreed upon by the said proprietors to be assessed and collected as aforesaid, shall be under oath for the true and faithful performance of their services respectively; which oath shall be administered to them as the law provides for swearing town officers. Provided nevertheless, That any such proprietor who apprehends himself aggrieved, or over rated in the making or appor tioning such assessment, shall have liberty to apply to the Justices of the General Sessions of the Peace in the respective counties where such fields lie, for relief; and in such case the said justices are hereby fully empowered to grant relief accordingly; and their judgment shall be final.

Sect. 4. And be it further enacted by the authority aforesaid, That the proprietors aforesaid, or the major part of such of them as shall be present at a meeting legally warned for that purpose, may choose hay-wards or field-drivers, who shall be under oath, and shall have the same powers as if they had been chosen by a town.

Sect. 5. And be it further enacted, That if any proprietor in any common or general field shall put, or cause to be put therein any horse, cattle, sheep, or other creature over and above the number allowed him, or before the day agreed upon, or keep them longer than the time set and limited by a major vote of the proprietors, he shall be deemed a trespasser; and his creatures so put in shall be proceeded with by any of the proprietors as creatures taken damage feasant, to all intents and purposes, as much as if he owned no land within such general field.

Sect. 6. And be it further enacted by the authority aforesaid, That when and so often as any trespass or trespasses shall be done in any common or general field, by reason of the insufficiency of the fence belonging to any person owning the adjoining land, the party or parties injured shall forthwith procure two sufficient persons of good repute to view and adjudge of the damage done, giving notice of such trespass to the owner or claimer of the horse, cattle, sheep or other creature that did the same (if he be known and resident in the same town or near thereto) that he may be present, and nominate one of the appraisers of such damage, if he see cause; and the damage shall be answered according to such appraisement. And where damage happens through the insufficiency of the fence, the owner or occupant of the land to which the defective fence belongs, shall be liable to answer and make good all such damage.

Sect. 7. And be it further enacted, That each proprietor of lands lying unfenced, or in any common field, shall, once in two years, on six or more days' warning, previously given him by the proprietor or proprietors of the land next adjoining, run the lines, and make or keep up the boundaries between their
respective lands by sufficient meen-stones, on pain that every party so neglecting or refusing shall forfeit the sum of ten shillings to the party moving or requesting to run the line; the conviction of such neglect or refusal being had before any Justice of the Peace within the same county, who is hereby empowered to hear and determine the case.

Sect. 8. And be it further enacted, That it shall and may be lawful to and for the proprietors who own the major part of the interest or property in any common or general field, at a legal meeting to be warned for that purpose, to dissolve and discontinue such field; six months being allowed to elapse before such discontinuation.

Sect. 9. Provided always, and be it further enacted, That nothing contained in this Act shall prevent or hinder the proprietors of any such common field already fenced from making and maintaining their fences according to rules and orders formerly agreed on by them at any meeting legally warned.

Sect. 10. And be it further enacted by the authority aforesaid, That at every meeting of such proprietors the votes shall, by the moderator, be collected and counted according to the interests of the proprietors present, where such interests are known.

And whereas it often happens that horses, cattle, and other creatures are clandestinely turned into general fields, or, being unruly, break into the same in places where the fence is good and sufficient according to law; and when, in such cases, proprietors of general fields impound horses, cattle or other creatures, the owners replevy them because the fence inclosing the general field is deficient in some distant place from that where the horses, cattle or other creatures entered the same, and in consideration of such deficiency judgment is unreasonably recovered against such proprietors:

Sect. 11. Be it therefore further enacted by the authority aforesaid, That whenever horses, cattle, or other creatures, shall be clandestinely turned into any general field, or, being unruly, break into the same, and shall be taken and impounded by a proprietor thereof, and a writ of replevin shall be purchased by the owner of the horses, cattle, or other creatures so impounded, for the purpose of replevying them, it shall be in the power of the court or justice before whom the action shall be brought, to give judgment in favour of the proprietor of the general field, upon his producing satisfactory evidence to the said court or justice, that the horses, cattle, or other creatures repleived as aforesaid were either clandestinely turned into the general field, or broke into the same in a part thereof where the fence was good and sufficient according to law, some other parts of the fence inclosing the general field being deficient notwithstanding.

And whereas it often happens in fencing general fields, for the conveniency of fencing, considerable quantities of rocky and barren land, not capable of tillage, are taken into such fields, the owners of which may be obliged to make fence, and also pay taxes equally with the other proprietors whenever an as-

Forfeiture for neglect.
1788 ch. 12.

Proprietors may dissolve and discon-tinue their general field.

Proviso.

Votes to be collected and counted according to the interest of the proprietors present at meetings.

When horses, cattle, &c., are clandestinely turned into any general field, and are impounded—and are repleived by the owner, judgment may be given in favour of the proprietor of the field.
27 Geo. II. — 1788 ch. 65, § 5.
Owners of rocky or barren lands, not obliged to make any part of the fence, &c. Not to be taxed until they make improvement.

Manner of proceeding, when any three or more proprietors are desirous of a partition into two or more fields.

Sect. 12. Be it therefore further enacted, That all lands now lying in general fields, or that hereafter may be taken into the same, that are so rocky or barren that the owners thereof have never improved them, either by mowing, ploughing, or feeding, such owners shall not be obliged to make, on account of such lands, any part of the fence in compassing such general fields; nor shall they be taxed for them in any rate or tax, raised by the proprietors of such field, until they shall make improvement thereon.

And whereas the minor part of the owners or proprietors of common fields, in some instances, have been and may be desirous of a partition of such field into two or more distinct fields, from a persuasion that their shares or lots might (if separated and fenced off from the rest) be improved much more to their advantage in some manner different from that agreed on by the majority: To the end therefore that such of the owners as are or may be so minded, may not be unreasonably restrained by the rest from having such partition:

Sect. 13. Be it enacted by the authority aforesaid, That when any three or more of the owners or proprietors of lots in any common or general field lying within one general fence or inclosure, shall make application, in writing, under their hands to the proprietors of such field (at any meeting legally warned for that purpose) to have the lots or shares of the owners or proprietors so applying, or theirs with other lots or shares (taken together) to make one entire field, to be separated from the rest by one common fence, and to be improved as a distinct and separate, but common field; in such case, if the proprietors who have the greater part of the interest among those who are present at such meeting, shall withhold or refuse their assent to such division or partition, it shall and may be lawful for the Justices of the Court of General Sessions of the Peace* for the said county, upon application made to them, to appoint a committee of five freeholders within the said county (under oath) to make the partition prayed for, if it shall appear to such committee to be expedient, and to assign to each field its part or proportion of the divisional fence in consequence of such partition, to be made, kept up and maintained by the proprietors of the respective common fields; and the return being made under the hand of the major part of such committee, and accepted by the said Court of Sessions,* the fields so separated shall be considered as distinct and separate common fields, and the owners or proprietors of each field a distinct and separate propriety, as fully to all intents and purposes whatsoever, as the owners or proprietors of such general field were considered before such partition was made. Provided, That no order for partition be made, or committee appointed, until the rest of the proprietors have been duly notified of such application, and opportunity given them to make their objections thereunto;

*See 1803 ch. 154, § 3.
which notice shall be given by serving the clerk of such proprietors with a copy of such written application, thirty days at least before such order or appointment be made; and every committee that shall be appointed and employed as aforesaid, shall make return of their doings, in writing, under their hands, unto the said court, as soon after as may be, for acceptance and confirmation; and the proprietors whose interest shall be so set off, as well as the remaining proprietors, shall have and enjoy all the powers and privileges which the proprietors of general fields are by law vested with. [Feb. 24. 1786.] Add. acts—1794 ch. 38: 1796 ch. 13: 1813 ch. 11: 1820 ch. 1.

An Act to set off Jonathan Pearson from the South Parish in Ipswich, in the county of Essex, and to annex him to the first Parish in Rowley. [February 25, 1786.]

An Act for incorporating the northerly Parish in the town of Shrewsbury, in the county of Worcester, into a separate town, by the name of Boylston. [March 1, 1786.]

An Act for annexing that part of the Plantation, called Flints-Town, which lies in the county of York, to the county of Cumberland. [March 3, 1786.]

An Act repealing one clause of an Act passed in the year one thousand seven hundred and eighty, entitled, “An Act for incorporating the easterly part of the town of Sudbury, in the county of Middlesex, into a separate town, by the name of East-Sudbury,” and for prescribing the manner in which the Bridges and long Causeways in the town of East-Sudbury, pointed out in the said Act, shall be supported and maintained. [March 3, 1786.]

An Act to prevent Gaming for Money or other Property.

WHEREAS the practice of gaming for money or other property is not only injurious in a high degree to the individuals concerned therein, but also in its tendency ruinous and destructive to the State:

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all notes, bills, bonds, judgments, mortgages or other securities or conveyances whatsoever, given, granted, drawn, entered into, or executed by any person or persons whatsoever, where the whole, or any part of the consideration of such conveyances or securities shall be for any money or other valuable thing whatsoever, won by gaming or playing at cards, dice or any other game or games whatsoever, or by betting on the side or hands of any person gaming, or for the reimbursing, or repaying any money knowingly lent, or advanced for any gaming or betting, or lent and advanced at the time and place of such play, to any person or persons, so gaming or betting, or that shall, during such play, so play or bet, shall be void and of no effect; and that where such mortgages, securities or other conveyances shall be of lands, tenements or hereditaments, or shall be such as incumber or affect the same; such mortgages, securities or other conveyance, shall enure, and be to the sole use and benefit of such person or persons as should, or might have, or be entitled to such lands, tenements or hereditaments, in case the said grantor or grantees thereof, or the person or persons so incumbering the same, had been naturally dead; and that all grants or conveyances so to be made
for the preventing of such lands, tenements or hereditaments from coming to, or devolving upon such person or persons, hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent, void, and of no effect or purpose whatever.

Sect. 2. And be it further enacted, That any person or persons, who shall at any time, or sitting, by playing at cards, dice, or any other game or games whatsoever, or by betting on the sides or hands of such as do game, lose to any one or more person or persons, so playing or betting, any sum or sums of money, or any other valuable thing whatsoever, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty to sue for and recover the money or goods so lost and paid or delivered, or any part thereof, or damages to the full value of the same, from the respective winner or winners thereof, with costs of suit, by action to be commenced within three months next after the losing, paying or delivering the same, in which it shall be sufficient for the plaintiff to allege, in an action of assumpsit, that the defendant had received to the plaintiff's use the money so lost and paid; and in an action of trover for the goods so lost and delivered, that they came to the hands of the defendant, without mentioning in the declaration the particular manner and occasion of the goods or monies being lost; and in case the person or persons, who shall lose such money or other thing as aforesaid, shall not within the time aforesaid really and truly, without coven or collusion, sue and with effect prosecute for the money or other thing so by him or them lost and paid or delivered as aforesaid, it shall and may be lawful to and for any person or persons to sue for and recover treble the value of the money, goods or chattels, with full costs of suit, by action of debt upon this statute, against such winner or winners as aforesaid, one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the poor of the town where the offence shall be committed.

Sect. 3. And be it further enacted, That any person who shall be convicted, on an indictment of the grand jury, before the Court of General Sessions of the Peace or the Supreme Judicial Court, of winning at any one time or sitting, of any person or persons, by gaming or betting as aforesaid, in money, goods or chattels, to the value of twenty shillings, or upwards, and of receiving the same or security therefor, shall, besides forfeiting double the amount or value of the money, goods or chattels so won and received, to the poor of the town where the offence is committed, be adjudged incapable of holding, keeping or sustaining, directly or indirectly, any office of honour or profit in this Commonwealth, for the term of twelve months from the time of such conviction: Provided always, such indictment be found within eighteen months next after the offence committed.

Sect. 4. And be it further enacted, That in suits hereafter brought by the person losing money, goods or chattels, against the person winning the same, when it shall appear from the
declaration, that the goods said to be lost came to the hands of the defendant, by gaming, or the money he had received was by gaming, then, and in such case, if the plaintiff shall offer to make oath, and if required by the court where the trial is, shall actually swear to the losing the money, goods or chattels by gaming with the defendant, at the time and place alleged, judgment shall be rendered for the plaintiff to recover damage, to the amount of the goods or money the defendant has received of the plaintiff by gaming, with costs of suit, unless the defendant will swear that he did not receive of the plaintiff the money, goods or chattels for which he is sued, or any part of them, by gaming; and when the defendant discharges himself on oath as aforesaid, he shall recover of the plaintiff his reasonable costs. *Provided nevertheless.* That nothing in this Act shall be so construed as to prevent the supporting and proving any declarations on the aforesaid actions, in the same manner as other declarations are proved, but it shall be considered as optional with the plaintiff either to proceed in proving his declaration in the way specially provided in this Act, or in the same way other declarations are proved; anything herein to the contrary notwithstanding.

**Sect. 5. And be it further enacted,** That if any person shall play at cards, dice or billiards, or with any other implements used in gaming, in any tavern or house of entertainment or place licensed for retailing spirituous liquors, or in any of the out-houses, yards, gardens or appendages of the same, or shall, in any of the houses or licensed places aforesaid, expose to view any of the implements aforesaid, or shall be seen sitting at any table therein with any of the said implements before him, and shall be convicted thereof before any Justice of the Peace, or any Court of General Sessions of the Peace, on the presentment of a grand jury, the person so offending shall forfeit and pay a sum not less than five, nor more than sixty shillings, to the use of the poor of the town where the offence shall be committed. [March 4, 1786.] Further act—1793 ch. 20.

An Act for adjourning Northampton Court, and to authorize any two of the Justices of the Supreme Judicial Court to do and perform the business of the said court, in the Counties of Plymouth and Barnstable respectively, at the next session of the said court in the said Counties, in the month of May, one thousand seven hundred and eighty-six. [March 6, 1786.]

An Act to set off Daniel Fay, Elisha Bemis, Phineas Bemis, John Leonard and Lydia Peirce, from the Town of Framingham, in the County of Middlesex, and to annex them to the Town of Southborough, in the County of Worcester. [March 7, 1786.]

An Act for establishing the Times and Place of holding the Court of Common Pleas and the Court of General Sessions of the Peace, in the County of Berkshire. [March 9, 1786.]

An Act to prevent Tenants in Common, Joint Tenants and Coparceners, from committing Waste, and for making Partition of their Interests, and also directing how Joint Tenancies shall be created.

**Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,** That if any person holding any lands in common and undivided, shall cut down. destroy or carry away any trees, timber, wood or un-
derwood whatsoever, standing or lying on such lands, or shall dig up or carry off any stone or ore, or any other valuable matter, or make any other strip or waste thereon, without first giving notice, in writing, under his or their hands, unto all the persons interested therein, or to their agents, factors or attorneys, forty days beforehand, setting forth that he or they have occasion for, and shall enter upon and improve such lot or lots of land lying in common as aforesaid, he shall forfeit and pay the sum of forty shillings for every tree measuring one foot diameter, at the distance of two feet from the ground, and for all trees of greater dimensions three times the value thereof, besides forty shillings as aforesaid, and twenty shillings for every tree or pole under the dimensions of one foot diameter, and for other wood or underwood so cut down, destroyed or carried away, treble the value thereof, and treble damages for any other strip or waste. The said forfeitures may be recovered by any one or more of the persons interested in the same lands who may prosecute and sue for the same in an action of trespass in his or their own names, as well on the behalf of the other co-tenants, except the defendant, without being held to name them in the writ, as of him or themselves; one moiety of the aforesaid penalties to be for the use of such person or persons who shall sue for the same, and the other to and for the use of all the co-tenants, excepting the defendant, in proportion to their respective interests in the land where the trespass hath been committed.

Sect. 2. And it is further enacted by the authority aforesaid, That all persons having or holding, or that hereafter shall have or hold any lands, tenements or hereditaments, as tenants in common, joint tenants or coparceners, may be compelled by writ of partition at the common law, to divide the same. And when any writ shall be brought and served at the suit of any one or more persons so interested in any lot or lots of land, tenements or hereditaments, or a petition shall be pending in court for a partition of the same, no person or persons whatsoever, having a right or interest in any such lands, tenements or hereditaments, or holding any part or share of the same in common as aforesaid, while such suit or petition is depending, shall or may cut down, destroy or carry away any trees, timber, wood or underwood, stone or ore, or other valuable matter whatsoever, standing, growing or lying on or belonging to such lands, or shall otherwise hurt or damage any such lands, tenements or hereditaments, until partition can be made of the same according to law, on pain that every person or persons so offending shall incur the like forfeitures and penalties as are before in this Act mentioned, to be recovered in like manner as before named; and for such uses as are before mentioned and declared.

And to prevent any doubts respecting the manner heirs are to prosecute in the courts of law, for possession of inheritance descended to them from a common ancestor:

Sect. 3. Be it further enacted by the authority aforesaid, That in actions of waste, ejectment, or other real actions, where possession of the inheritance alleged to have descended is the
object of the suit, they may all, or any two or more of them, join therein, or each one may prosecute for his particular share of such inheritance, and the same rule shall extend to joint tenants who are or may be disseized.

And whereas it often happens that estates in joint tenancy, are created against the intentions of the parties to gifts, grants, feoffments and other conveyances, and also of testators, through the want of the knowledge of the proper terms to create estates in common, and the latter estates are more beneficial to the Commonwealth, and consonant to the genius of Republics:

Sect. 4. Be it further enacted by the authority aforesaid, That all gifts, grants, feoffments, devises, and other conveyances of any lands, tenements, and hereditaments, which have been or shall be made to two or more persons, whether for years, for life, in tail or in fee, shall be taken, deemed and adjudged, to be estates in common, and not in joint tenancy, unless it has been or shall be therein said, that the grantee,feoffees or devisors, shall have or hold the same lands, tenements or hereditaments jointly, or as joint-tenants, or in joint tenancy, or to them and the survivor or survivors of them, or unless other words be therein used, clearly and manifestly showing it to be the intention of the parties to such gifts, grants, feoffments, devisors or other conveyances, that such lands, tenements and hereditaments shall vest, and be held as joint estates, and not as estates in common. Provided nevertheless, Where any estate has already vested in the survivor or survivors, upon the principle of joint tenancy, it shall be held in like manner, as it would have been held if this Act had never been passed; any thing therein to the contrary notwithstanding.

Sect. 5. And be it further enacted by the authority aforesaid, That the Act entitled, “An Act to prevent coparceners, joint tenants and tenants in common, from committing waste, and for making partition of their interest, and for abolishing the principle of survivorship in joint-tenancy,” passed March sixteenth, one thousand seven hundred and eighty-four, be and hereby is repealed.—This Act to be in force from and after the first day of June, Anno Domini one thousand seven hundred and eighty-six. [March 9, 1786.]

An Act for altering the Place of holding one Term of the Court of Common Pleas and Court of General Sessions of the Peace, in the county of Lincoln; and for establishing an additional term of the said courts within the same county. [March 11, 1786.]

An Act for annexing a certain triangular Piece or parcel of Land to the town of Sanford, which Nathaniel Conant purchased of this Commonwealth. [March 11, 1786.]


An Act for the Punishment of Fornication, and for the Maintenance of Bastard Children.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any man commit fornication with any single woman, upon due conviction thereof, he shall be fined to the

How gifts, grants and other conveyances of lands, &c. made to two or more persons, shall be construed.

Provise.

Former act repealed, &c.

1785 ch. 52.

Chap. 63.

Chap. 64.

Chap. 65.

Chap. 66.

Col. L.1642.65.

4 W. & M.ch.6.

4 Anne ch. 6.
Penalty for committing fornication.

use of the county where the crime may be committed, not exceeding the sum of five pounds, nor less than thirty shillings; and if he declare himself unable, or shall neglect, for the space of twenty-four hours after passing the sentence, to pay the fine and costs, then he shall be whipped, not exceeding ten stripes, at the discretion of the Justices of the Sessions,* before whom the matter shall be tried; and the woman so offending, upon due conviction thereof, shall be fined to the use of the county where the crime may be committed, not exceeding the sum of three pounds, nor less than six shillings; and if she shall declare herself unable, or shall neglect, for the space of twenty-four hours, to pay the fine and costs, then for the first offence she shall be committed to prison, or to the house of correction, there to remain not more than ten days, nor less than twenty-four hours; and for each offence after the first, she shall pay a fine not exceeding six pounds, nor less than twelve shillings; and if she shall declare herself unable, or shall neglect, for the space of twenty-four hours, to pay the fine and costs, then she shall be committed to prison, or to the house of correction, there to remain not more than thirty days, nor less than forty-eight hours. Provided nevertheless, If any woman guilty of the crime aforesaid, shall appear before any Justice of the Peace within the county where such offence may be committed, and confess herself to be guilty as aforesaid, and offer to pay into the hands of the said justice, for the first offence, the sum of six shillings, and for any offence after the first, the sum of twelve shillings, it shall be the duty of such justice to receive said fine, or to bind her over to the next Court of General Sessions of the Peace,* to be holden within and for said county, at his discretion; and a certificate of the payment of the said fine, signed by the same justice, and filed in the clerk’s office of the Court of the General Sessions of the Peace,* shall be a full bar to any process against her for the same offence, unless such process be commenced previous to the filing of the said certificate in the clerk’s office as aforesaid.

Sect. 2. And be it further enacted by the authority aforesaid, That whenever any woman who hath been delivered of a bastard child, or being pregnant with a child which, if born alive, may be a bastard, shall accuse any man of being the father thereof, before any Justice of the Peace, upon examination on oath, and being put upon the discovery of the truth respecting the same accusation in the time of her travail, shall thereupon accuse the same person of being the father of the child of which she is about to be delivered, and shall continue constant in such accusation, and shall prosecute him as the father of such child before the Court of the General Sessions* of the Peace, in the manner herein after prescribed (in which prosecution she shall be admitted as a competent witness, and her credibility be left to the jury) he shall be adjudged the reputed father of such child, notwithstanding his denial, and stand charged with the maintenance thereof, with the assistance of

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* See 1803 ch. 154, § 3.
the mother, as the Justices of the same Court* shall order; and shall give security to perform the said order, and to save the town or place, which might be otherwise chargeable with the maintenance of such child, free from charge for its maintenance; and may be committed to prison until he find sureties for the same, unless the pleas and proofs made and produced on the behalf of the man so accused, and other circumstances, be such as the jury, by whom the issue, whether he is guilty or not guilty, shall be tried, shall find him not guilty; in which case the justices of the said court shall acquit him thereof; and the verdict of the jury of the same court, whether guilty or not guilty, shall be final respecting such issue. Provided, That no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime, which would by law disqualify her from being a witness in any other cause. And every Justice of the Peace, to whom complaint is made by any woman, that she hath been delivered, or is pregnant as aforesaid, and desires a prosecution against the man whom she accuses of being the father of the child, the justice shall then proceed to take her accusation and examination, in writing, under oath, respecting the man so accused, and the time and place where she was begotten with child, with such other circumstances as he shall judge necessary for the discovery of the truth of such accusation; which examination shall be given in evidence on the trial of the issue; and at his discretion may bind him that is so accused to the next General Sessions of the Peace,* with sufficient surety or sureties, to answer to such accusation, and abide the order of court thereon. And if the woman be not then delivered, or be unable personally to attend the said court, may order the continuance or renewal of his and her bond, that they may be forth coming at the next Court of General Sessions of the Peace* after the birth of the child; and the continuance of such bonds aforesaid to the next Court of General Sessions of the Peace,* entered thereon by order of the said court (unless the surety or sureties shall object thereto) shall have the same force and effect as a recognizance taken in court for the next term.

Sect. 3. And be it further enacted by the authority aforesaid, that all laws heretofore in force respecting the subject matter of this Act, be and they are hereby declared to be repealed; touching all cases, that may happen after the passing of this Act. [March 15, 1786.]

An Act for incorporating certain persons by the name of The Scots Charitable Society. [March 16, 1786.]

An Act to ratify certain Assessments made by the Proprietors of Shapleigh, so called, in the County of York. [March 16, 1786.]

An Act for regulating Marriage and Divorce.

Sect. 1. BE it enacted by the Senate and House of Representa-tives, in General Court assembled, and by the authority of

* See 1803 ch. 154, § 3.
the same, That no man or woman shall intermarry within the
 degrees hereafter named, that is to say:—

No man shall marry his
Mother,
Grandmother,
Daughter,
Son’s Daughter,
Daughter’s Daughter,
Step-Mother,
Grandfather’s Wife,
Son’s Wife,
Son’s Son’s Wife,
Daughter’s Son’s Wife,
Wife’s Mother,
Wife’s Grandmother,
Wife’s Daughter,
Wife’s Son’s Daughter,
Wife’s Daughter’s Daughter,
Sister,
Brother’s Daughter,
Sister’s Daughter,
Father’s Sister,
Mother’s Sister.

No woman shall marry her
Father,
Grandfather,
Son,
Son’s Son,
Daughter’s Son,
Step-Father,
Grandmother’s Husband,
Daughter’s Husband,
Son’s Daughter’s Husband,
Daughter’s Daughter’s Husband,
Husband’s Father,
Husband’s Grandfather,
Husband’s Son,
Husband’s Son’s Son,
Husband’s Daughter’s Son,
Brother,
Brother’s Son,
Sister’s Son,
Father’s Brother,
Mother’s Brother.

And if any man or woman shall intermarry within the
degrees aforesaid, every such marriage shall be deemed, taken
and adjudged incestuous, and shall be null and void; and the
issue of all such incestuous marriages shall be deemed, taken
and adjudged illegitimate, and be subjected to all the legal
disabilities of such issue.

Sect. 2. And be it further enacted by the authority aforesaid,
That all marriages, where either of the parties shall have a
former wife or husband living at the time of such marriage,
shall be absolutely void, and no dower shall be assigned any
widow in consequence of such marriage; and the issue thereof
shall be deemed, taken and adjudged illegitimate, and be subject
to all the legal disabilities of such issue.

Sect. 3. And it is further enacted by the authority aforesaid,
That divorces from the bond of matrimony shall be decreed,
in case the parties are within the degrees aforesaid, or either
of them had a former wife or husband alive at the time of so-
lemnizing such second marriage, or for impotency or adultery
in either of the parties, and for no other cause; and that di-
 vorce from bed and board may and shall be granted for the
cause of extreme cruelty in either of the parties.*

Sect. 4. And be it further enacted by the authority aforesaid,
That when it shall appear that the adultery or cruelty complain-
ed of is occasioned by the collusion of the parties, and done
with an intention to procure a divorce, or that both parties
have been guilty of adultery, in such case, no divorce shall be
decreed.

Sect. 5. And be it further enacted, That when a divorce
shall be had for the causes of affinity, consanguinity, or of in-
potency of either of the parties, the wife shall have restored to her all her lands, tenements and hereditaments; and a judgment may be passed for a restoration to her of all or such part of the personal estate specifically, or the value thereof, which hath come to her husband's hands by force of the marriage, as the Justices of the Supreme Judicial Court, from all the circumstances of the case, shall determine equitable; and they may make use of such kind of process to carry their judgment into effect, as shall be necessary; and the court, in case they think proper, may compel the husband to disclose, on oath, what personal estate he hath received in right of his wife, and how the same hath been disposed of, and what proportion thereof remained in his hands at the time of such divorce; and when the divorce shall be for the cause of adultery committed by the husband, the wife shall have her dower assigned her in the lands of the husband, in the same manner as if such husband was naturally dead; and where the divorce shall be occasioned by adultery committed by the wife, the husband shall hold her personal estate forever, and her real estate during his natural life, in case they have had issue born alive of her body during the marriage, otherwise during her natural life only, if she shall survive her. Provided nevertheless, That the court may allow her for her subsistence so much of such personal or real estate as they shall judge necessary.

And whenever a decree of divorce from bed and board shall be made because of the cruelty of the husband, the wife, if there be no issue living at the time of the divorce, shall be restored to all her lands, tenements and hereditaments, and be allowed out of his personal estate such alimony as the court shall think reasonable, having regard to the personal property that came to the husband by the marriage, and his ability; but if there be issue living at the time of the divorce, then the court, with respect to ordering restoration, or granting alimony as aforesaid, may do as they shall judge the circumstances of the case may require; and upon application from either party, may, from time to time, make such alterations therein as may be necessary. And in case a divorce shall be decreed for cruelty in the wife, whether there shall be issue or not of the marriage at the time of the divorce, the court may order to her a restoration of the whole or such part of her lands, tenements and hereditaments, and may also assign alimony, as they may judge proper.

SECT. 6. And be it further enacted by the authority aforesaid, if any persons who shall be divorced for the cause either of affinity or consanguinity, shall, after such divorce, cohabit together, such persons so offending shall be liable to all the pains and penalties provided by the laws then in being against incest; and if any persons shall cohabit or live together in the same house, after a divorce for the cause of prior marriage or adultery, such persons shall be liable to all the pains and penalties provided by the laws then in being against adultery. Provided always, That no decree of divorce for or on account of adultery shall bar the issue of such marriage from inheriting, but the question of the right of such child or children to inherit shall...
be tried and settled upon the principles of common law, in the same manner as though this Act had never been made.

And whereas it is a great expense to the people of this State to be obliged to attend at Boston upon all questions of divorce, when the same might be done within the counties where the parties live, and where the truth might be better discerned, by having the witnesses present in court:

Sect. 7. *Be it therefore enacted by the authority aforesaid,* That all questions of divorce and alimony shall be heard and tried by the Supreme Judicial Court holden for the county where the parties live, and that the decree of the same court shall be final.

Sect. 8. *And be it further enacted,* That no cause of divorce or alimony shall be brought before the same court, unless the party suing or complaining shall file his or her libel in the office of the clerk of the said court, wherein setting forth the cause of his or her complaint specially, and shall cause the other party, if in this State, to be served with an attested copy of the same, and with a summons to appear at the court fourteen days at least before the sitting of said court where the cause is to be tried, otherwise in such manner as the said court shall direct; and the said court shall have all the powers necessary to the conducting and finally issuing such causes, according to the true intendment of this Act. [*March 16, 1786.*]

Add. acts—1805 ch. 57: 1810 ch. 119: 1820 ch. 56.

An Act for the Choice and Appointment of Collectors of Rates and Taxes, and for ascertaining their Power and Duty.

Sect. 1. *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That the qualified voters of any town or district, at the same time they choose constables, may, if they see cause, likewise choose some meet person or persons to be collector or collectors of the rates or taxes that shall be assessed upon such town or district, and agree upon what sum shall be allowed and paid unto such collector or collectors for his or their services; but if such collector or collectors so to be chosen shall refuse to serve, or if no collector shall be chosen, then the constable or constables of such town or district shall collect and gather such rates and taxes; and every collector of taxes, or constable, shall have a warrant from the selectmen or assessors, empowering him to collect such rates or taxes as shall be committed to him to collect, and he shall pay in the same according to the directions in such warrant; and in case any constable or collector of taxes decease* before his perfecting the collection of any assessment committed to him to collect and pay into the state treasury, the assessors for the time being, of such town, district or plantation, shall nominate and appoint, at the charge of such town, district, or plantation, some other fit person or persons to perfect the same collection, and enable and empower such person or persons to collect the same, by granting a warrant to him or them for that purpose.

Sect. 2. *And be it further enacted,* That if any person shall refuse to pay the sum or sums which he shall be assessed as his
proportion of any rate or tax, in the list committed to any constable or collector, under the hands of the assessors of such town, district, plantation, precinct or parish, or the major part of them, upon demand thereof made by such constable or collector, by virtue of the warrant to him given, it shall and may be lawful to and for such constable or collector, and he is hereby authorized and required, in such case, to distress the person so refusing by his goods or chattels, and the distress so taken to keep the space of four days at the cost and charge of the owner thereof; and if the owner do not pay the sum or sums of money so assessed on him within the space of four days, then the said distress shall be openly sold at public auction, by the said officer, for the payment of the said money, notice of such sale being posted up in some public place in the same town, district, plantation, precinct or parish, forty-eight hours before the sale, and after the expiration of the four days aforesaid,* and the overplus arising by such sale, if any, over and above the charge of taking and keeping the said distress, to be immediately restored to the former owner, with an account, in writing, of the sale and charges; and if any person assessed as aforesaid to the state or other tax, shall refuse or neglect to pay the sum or sums so assessed, by the space of twelve days after demand thereof, and shall neglect to shew the constable or collector sufficient goods or chattels whereby the same may be levied, in every such case, he may take the body of the person so refusing, and him commit unto the common gaol of the county, there to remain until the same be paid, or he therefrom discharged by due order of law. _Provided nevertheless, That in all cases where there are, in the opinion of the assessors, or a major part of them, just grounds to fear that any person or persons, assessed as aforesaid, may abscond before the expiration of the said twelve days, in such cases, it shall be in the power of the constable or collector to demand immediate payment._

Sect. 3. _And be it further enacted, That where any town or district shall neglect to choose a constable or collector, or if any plantation shall neglect to choose a collector to gather the rates or taxes granted by the General Court, that in such case the sheriff of the county, or his deputy, shall be and hereby is empowered and directed to collect such rates or taxes, having received an assessment made of the proportion of the several persons ratable in such town, district or plantation, together with a warrant under the hands of such assessors as shall be appointed by the Court of General Sessions of the Peace, in the county where such deficient town, district or plantation lies, or under the hands of the assessors of such town, district or plantation, duly chosen by them respectively._

Sect. 4. _And be it further enacted, That the sheriff or his deputy, upon the receiving such assessment and warrant for collecting it, shall forthwith post in some public place of the town, district or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, till after thirty days from his posting it up;_
and any person or persons paying the sum or sums respectively assessed on him or them to the sheriff, before the expiration of the aforesaid thirty days, shall pay at the rate of five per centum over and above the sum assessed, to the sheriff, for his fees, and no more; but all such as shall neglect to pay the sum or sums assessed beyond the thirty days after posting up the copy of the assessment as aforesaid, shall be proceeded against by the sheriff, by way of distress or commitment to gaol, in the manner collectors are by this Act directed and empowered to distress or commit to gaol; and the said sheriff, or his deputy, may require suitable aid for that purpose, and they shall each one pay the fees for the sheriff's service and travel, as in other cases where distress is made, or the person committed.

Sect. 5. And be it further enacted, That when any person shall remove from any town or place where he lived, or had his residence, at the time of making the list of any state, town, county, precinct, plantation, or parish tax or assessment, not having before paid the respective sum or sums set upon him by such lists, it shall and may be lawful for the constable or collector, to whom such tax or assessment shall be committed, with a warrant to collect, and he is hereby authorized and empowered to demand the sum or sums assessed upon such person, in what town or place soever, within this Commonwealth, he may be found, and upon refusal or neglect to pay the same, to distress the said person by his goods or chattels as aforesaid; and for want of such distress, to commit the party to the common gaol of the county where he shall be found, there to remain until payment be made.

Sect. 6. Be it enacted by the authority aforesaid, That if any owner or proprietor of land or other real estate shall remove out of the town, district, plantation, precinct, or parish, where said land, or other real estate lays, after the same is assessed, to some other place within this Commonwealth, or out of the limits thereof, and shall neglect or refuse to pay the said assessment by the space of three months, from and after the time of such removal; and if the collector or collectors, to whom such assessments shall be legally committed, cannot, within the said three months, find any personal estate belonging to such person so removed sufficient to pay the same, then such collector or collectors shall proceed to sell so much of the said land or other real estate as will amount to the assessment aforesaid, together with the charges of such sale, in the same manner as is herein after provided for the sale of lands belonging to non-resident proprietors for the payment of taxes.

Sect. 7. And be it further enacted, That where no person appears to discharge the taxes on the unimproved lands of non-resident proprietors, or improved lands of proprietors living out of the limits of this Commonwealth, to the collector thereof, he shall advertise in the public newspapers of the printer to the General Court for the time being, three weeks successively, the names of all such proprietors, where they are by him known, with the sum of the taxes assessed on their lands respectively, and also the time and place of sale; and where they
are not known, he shall, in the same manner, publish the sum of the taxes on the several rights, numbers of lots, or divisions; and where the name of the place in which such lands lay, may have been altered by any Act of this Commonwealth, within three years next preceding such advertisement, he shall express not only the present name, but the name by which the same was last known; and in either case shall post the same in some convenient and conspicuous place in the same town or plantation, as the case may be, where the said lands lay, and in three of the adjoining towns, at least, for the term of three weeks previous to the time appointed for such sale; and if no person shall appear thereupon to discharge the said taxes, and all necessary intervening charges, then the collector aforesaid shall proceed to sell at public auction to the highest bidder (after waiting two hours from the time appointed for said sale) so much only of the said lands as shall be sufficient to discharge said taxes, and the necessary intervening charges, having first given notice of the intended sale thereof, and the time and place when and where the same will be made as aforesaid; and shall have power to adjourn from day to day (if necessary) to complete the said sale, not to exceed three days (waiting as aforesaid) and shall give and execute a deed or deeds to the purchaser or purchasers, his or their heirs and assigns, expressing therein the cause of such sale, and saving to the aforesaid proprietor or proprietors, the right of redemption of any lands so sold, within any time for the space of two years from the time of such sale; and the same shall be reconveyed to him or them, the said proprietor or proprietors, on paying within two years as aforesaid, the sum such land sold for, with interest at the rate of ten per cent. per annum on said sum, together with all necessary intervening charges. Provided nevertheless, That the purchaser or purchasers as aforesaid shall not make any strip or waste on the premises until the time of redemption shall have expired; and if the said purchaser or purchasers shall make any strip or waste on the premises, as aforesaid, he or they shall be liable to pay all damages to the original owner or owners, in as full and ample a manner as if he or they had not purchased the same.

Sect. 8. And be it further enacted, That when any state or other rate or tax shall be made payable at two or more several times, or days of payment, and any person, being an inhabitant or dweller in any town, district or plantation, within this Commonwealth, at the time of making such rate or tax, and being assessed thereunto, shall be about to remove from thence before the time that shall be prefixed for payment of the same, it shall and may be lawful for the constable or collector of the same town, district or plantation, to demand and levy the whole sum which such person may be assessed in his list or lists, notwithstanding the time for collecting the second part of such rate or tax may not then have arrived, and in default of payment to distrain for the same, or to take such other course for the obtaining thereof as is herein before provided; and when the constables or collectors be anew chosen and sworn, in any

When no person appears to discharge taxes, after being notified, collectors to proceed to sell so much land as will discharge the same.

Empowered to execute a deed to the purchaser.

Provido.

When taxes are made payable at two or more times of payment, and persons are about to remove, collectors may demand and levy the whole sum.

In default of payment, to distrain for the same.
of the former constables or collectors are hereby fully empowered and required to perfect all such collections, and shall and may exercise the same powers and authority for the collecting and enforcing the payment thereof, as by this Act they might have done before other constables or collectors were chosen and sworn.

Sect. 9. And be it further enacted, That if any of the collectors of the state, county, town, district, precinct or parish, when in the execution of their office, shall be hindered, or impeded in collecting the rates and taxes committed to them, it shall be lawful for such collectors to require some person or persons to aid and assist them therein; and that all persons so required, who shall refuse their aid and assistance, shall severally pay a fine to the poor of the town, district, or plantation where the offence may arise, not exceeding forty shillings, at the discretion of the justice before whom the conviction may be had, by complaint or information, in writing, according to the circumstances of the offence; Provided that it appears to the justice, that the aid so demanded as aforesaid was necessary; and on default of payment of the fine imposed, the justice may order the offender to be committed to the common gaol of the county for the space of forty-eight hours.

Sect. 10. And be it further enacted, That where the owner or tenant of any improved lands, liable to pay taxes, shall not reside, or be an inhabitant of the town, district, plantation, precinct, or parish in which such lands lie, and no stock, corn or hay, can be found upon the said lands, whereof the constable or collector may make distress to satisfy such sum or sums, as from time to time such lands shall be assessed, either to the state, county, town, district, plantation, precinct, or parish, in such case any Justice of the Peace in the county where the owner or tenant of any such lands lives, upon application to him made, in writing, by the constable or collector, to whom the list, wherein such lands shall be assessed, shall be committed, and upon sight of the same, or an authenticated copy thereof, may and hereby is empowered and required to grant a warrant unto the constable of the town or place where such occupant dwells or resides, to distrain such owner or occupant, by his goods or chattels, the full sum at which the said lands are set in such list or assessment, with the charges occasioned by making such distress; and to satisfy the same by sale thereof, returning the overplus, if any there be, to the owner; and in case no goods or chattels can be found, whereon to distrain, to commit the party to the common gaol of the county, there to remain until he pay and satisfy the sum or sums so assessed, with the charges.

Sect. 11. And be it further enacted, That when any officer appointed for collecting any rates or assessments, by virtue of any warrant, shall, for want of goods or chattels, whereof to
make distress, take the body of any person and commit him to prison, he shall give an attested copy of his warrant unto the keeper of the prison, and thereupon certify under his hand the sum such person is to pay as his proportion to the assessment, with the cost of taking and committing; and that for want of goods or chattels, whereon to make distress, he has taken his body; and such attested copy, with the certificate thereon under the hand of the officer, shall be a sufficient warrant to require the prison-keeper to receive and keep such person in custody until he shall pay his rate or assessment as aforesaid, and charges of imprisonment, with two shillings for the copy of the warrant. Provided nevertheless, Any person committed to gaol for his taxes, shall have the liberty of the gaol-yard, upon his procuring sufficient bonds as is by law directed for other debtors.

Sect. 12. And be it further enacted, That all plantations, which shall from time to time be ordered by the General Court to pay any part or proportion of the public taxes, shall be and they hereby are fully vested with all the powers that towns in this Commonwealth by law are vested with, so far as relates to the choice of collectors of taxes; and any person who shall be chosen to the office of a collector of taxes in any of the aforesaid plantations, and shall refuse to accept of the office, to which he shall have been elected, or neglect to take the oath by law required to be taken by collectors of taxes in towns, shall be liable to the same penalties, to be recovered by the clerk of the plantation for the use thereof, in the same way and manner as by this Act are provided in the case of collectors refusing to accept such office when chosen by parishes or precincts.

Sect. 13. And be it further enacted, That if any of the plantations aforesaid shall neglect to choose collectors as aforesaid, or if the collectors chosen by any such plantation, and accepting such trust, shall be remiss or neglect their duty, in every such case, such plantation shall be proceeded with in the same manner as by this Act is provided in the case of deficient towns, and such deficient collectors shall be and hereby are made liable to the same penalties, to be recovered by the same process as by this Act is provided in the case of deficient collectors chosen by towns.

Sect. 14. And be it further enacted, That in all cases where any person or persons who may be taxed for any real estate in their possession, may not be owners or proprietors of such estate, it shall be the duty of every collector on whose rate-bill the name or names of any such person or persons shall be borne, to demand, as soon as may be after such bill shall be regularly committed to him, the full amount of the taxes that may be therein assessed upon such person or persons respectively; and that all cattle, sheep, horses, swine or other stock, and also all the produce of any such estate which then, or within nine months from the time such assessment shall be committed as aforesaid, shall or may be found on the premises belonging to the owner or proprietor of such estate, or to any tenant thereof taxed as aforesaid, shall be liable to be taken and disposed

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officer shall give a copy of the warrant to the keeper.

13 W. Ill. ch. 18.

1790 ch. 42.

Proviso.

1784 ch. 41.
1806 ch. 92, &c.

Plantations that pay taxes, vested with the powers of towns, relating to the choice of collectors.

1785 ch. 46, § 10.

To be proceeded with, in case of neglect, in the same manner as deficient towns.

When persons are taxed for real estate in their possession and are not owners, duty of collectors in such case.
of by public auction, in manner as is provided by law, in case of distress taken for taxes in discharge in part or in whole of any sum or sums assessed, upon any such person or persons as aforesaid.

Sect. 15. And be it further enacted, That if any stock or produce which may be taken and disposed of as aforesaid, shall be the property of the proprietor or owner of the land assessed as aforesaid, in every such case such person or persons assessed as aforesaid shall be held to make full satisfaction to the owner or proprietor of such stock or produce, and the collector making distress shall not be chargeable with the same. Provided always, That if the person or persons assessed as aforesaid shall remain on such estate, or in the town, district, parish, precinct or plantation, where the same may lay, for the space of nine months next after the rate-bill shall be committed to any such collector as aforesaid, the said collector shall have no other remedy than against the person or property of the person or persons assessed as aforesaid, unless it shall appear that there was no sufficient distress to be found upon the premises within that time, and that such collector was unable to collect the sum or sums due from the person or persons assessed as aforesaid within the like term; in which case it shall and may be lawful for such collector or collectors to proceed to sell so much of said real estate as may be necessary to discharge the said assessment and charges, in the same manner as is hereinafter provided for the sale of lands belonging to non-resident proprietors for the non-payment of taxes. Provided such sale shall be made within the term of one year from the time such tax shall be committed to such collector or collectors, and not afterwards.

Sect. 16. And be it further enacted, That it shall be in the power of any precinct or parish, within this Commonwealth, some time in the month of March,* annually, at the time they choose other precinct or parish officers, to choose one or more person or persons to serve as collector or collectors of all such rates or assessments as shall be granted or agreed upon by such precinct or parish, who shall be duly sworn to the faithful discharge of the trust reposed in him or them; and any person that shall be chosen into the office of a collector as aforesaid, and shall refuse to accept thereof, or deny or neglect to take the oath by law required, shall forfeit and pay unto the treasurer of such precinct or parish, for the use of such precinct or parish, the sum of five pounds, to be sued for and recovered in the same manner fines are recovered from persons refusing to serve in the office of a constable in any town or district; Provided no person in commission for any office, civil or military, church officer, or member of the Council, Senate or House of Representatives, selectmen, town-clerk, town-treasurer or assessors, for the time being, nor any other person, that has served as constable or collector for himself or his own turn, within the space of seven years, shall be obliged to serve in the office of collector.

Proviso.

Proviso, when persons are assessed for estates in their possession and are not owners.

Precincts and parishes empowered to choose collectors annually.

1786 ch. 10, § 1.

Penalty for refusing to serve.
1785 ch. 75, § 3.

Proviso.


**Sect. 17.** Be it further enacted, That the oath to be administered to the constable in any town or district, shall be in the form following:

WHEREAS you, A. B. are chosen constable within the town of C. for one year now following and until other be chosen and sworn in your place, do swear, that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same; that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend all such directions in the laws and orders of court, as are or shall be committed to your care; that you will faithfully and with what speed you can, collect and levy all such fines, distresses, rates, assessments, and sums of money, for which you shall have sufficient warrants according to law; rendering an account thereof, and paying the same according to the direction in your warrant; and with like faithfulness, speed and diligence, you will serve all writs, executions and distresses in private causes betwixt party and party, and make return thereof duly in the same court where they are returnable; and in all these things you shall deal faithfully whilst you shall be in office, without any sinister respects of favour or displeasure. So help you God.

And the oath to such as may be collectors only, shall be in the following form:

YOU, A. B. being appointed a collector of taxes within the of for one year next following, do swear, that you will levy and collect, with what speed you can, all such rates and assessments, for which you shall have sufficient warrants according to law: rendering an account thereof, and paying the same, according to the direction in your warrant. So help you God.

**Sect. 18.** And be it further enacted, That in case of distress or commitment for the non-payment of taxes, the officer concerned therein shall be entitled to the same fees which sheriffs by law are or may be entitled to for levying executions, saving that the travel in case of distress shall be computed only from the dwelling-house of the officer making such distress to the place where the distress may be made. [March 16, 1786.]

Add. acts—1787 ch. 50: 1789 ch. 4.

**An Act** for setting off Peter Noyes, Esq. and others, inhabitants of the first Parish in Falmouth, in the County of Cumberland, and annexing them and their estates to the third Parish in said Falmouth. [March 20, 1786.]

**An Act** for reviving and continuing sundry Laws that are expired and near expiring. [March 20, 1786.] Continued till Nov. 1, 1787.

**An Act** in addition to an Act, entitled, "An Act in addition to, and for repealing certain Clauses of an Act, passed the present year, entitled, "An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that purpose." [March 20, 1786.] Add. act—1786 ch. 30. All repealed—1791 ch. 64.

**An Act** for apportioning and assessing a Tax of three hundred thousand, four hundred and thirty nine pounds, one shilling and three pence, viz. one hundred and forty five thousand, six hundred and fifty five pounds, for the purpose of comply-
An Act for regulating Towns, setting forth their Power, and for the choice of Town Officers, and for repealing all Laws heretofore made for that purpose.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the bounds of all townships shall be, and remain as heretofore granted, settled and established. And to prevent an interference of jurisdiction, the lines between towns shall be run, and the marks renewed within three years from the last day of March instant, and once every five years forever after, by two or more of the selectmen of each town, or such other persons as they shall, in writing, appoint to run and renew the same; and their proceedings, after every such renewal of boundaries, shall be recorded in the respective town books. The selectmen of the most ancient town to give notice, in writing, unto the selectmen of the adjoining town, of the time and place of meeting for such perambulation, ten days beforehand; and the selectmen who shall neglect their duty in notifying or attending, either personally or by their substitutes, to perambulate the line, at the time and place assigned as aforesaid, shall severally forfeit and pay the sum of five pounds, two thirds to the use of the town which shall comply with their duty as aforesaid, and the other third part unto any two or more of the selectmen of the town so complying, who are hereby empowered to inform to or sue therefor, in the Court of Common Pleas for the same county, at any time within two years after the forfeiture shall be incurred, and not afterwards.

Sect. 2. And be it further enacted by the authority aforesaid, That the freeholders and other inhabitants of each town in this government, who shall pay to one single tax, besides the poll or polls, a sum equal to two-thirds of a single poll-tax, shall, in the month of March or April annually, meet and assemble at such time and place in the same town, as they shall be notified to attend by the constable or constables of the town, or such others as the selectmen shall appoint to notify the same; and the said freeholders, and other inhabitants, shall then and there by a major vote, choose a clerk (who shall be under oath truly to record all votes passed in such and other town meetings during the year, and until another clerk shall be chosen and sworn in his stead, and also faithfully to discharge all the other duties of his said office) three, five, seven or nine able and discreet persons of good conversation, inhabiting in the town, to be selectmen, or townsmen, and overseers of the poor, where other persons shall not be particularly chosen to that office (which
any town may do if they shall think it necessary and convenient) three or more assessors, two or more judicious persons for fence-viewers, treasurer, surveyors of highways, surveyors of lumber, wardens, tything-men, sealers of leather, measurers of wood, clerks of the market, constables, and other usual town-officers; the said officers to be chosen by ballot or such other method as the voters agree upon. And the town-clerk, or two of the selectmen, shall forthwith make out a list of the names of all those who shall be then chosen into office, of whom an oath is by law required, and deliver the same to some constable or constables of the same town, together with a warrant to him or them directed, who is hereby required, within three days after receiving such warrant, to notify and summon each of the said persons to appear before the town-clerk within seven days from the time of such notice, to take the oath by law prescribed to the office into which they are severally chosen; and every person who shall neglect to appear before the town-clerk, within the said seven days, and take the oath of office unto which he is chosen and summoned as aforesaid, which oath the town-clerk is hereby authorized to administer (unless such person is by law exempted from serving in the office) shall forfeit and pay to him or them that will inform or prosecute therefor, the sum of thirty shillings, except constables and such other officers, for whose neglect a different penalty is provided, two thirds for the use of the town, and the other third to the use of the prosecutor. Provided always, That any person who shall take the oath of office before a Justice of the Peace, and file a certificate thereof with the town-clerk within the said ten days, shall be exempted from the said fine; and every constable shall, at the expiration of the term of ten days from the time of receiving such warrant, make a return into the clerk's office of the same town of the warrant to him committed as aforesaid, with his doings thereon, for a neglect of which, he shall forfeit and pay the sum of forty shillings, to be to the use of the town: the constable to be allowed such reasonable sum for his services upon this and other town business as the inhabitants shall agree upon.

Sect. 3. And be it further enacted, That no person shall be obliged to serve in any town office two years successively; nor shall any person in commission for any office, civil or military, church officer, member of the Council, Senate or House of Representatives, for the time being, nor any one who has served in the office of a constable or collector of any town, district, parish or precinct, within seven years, be obliged to serve in the office of constable; and every person chosen to the office of constable, and not exempted as aforesaid, who shall refuse to take the oath to that office prescribed, and to serve therein, if he be able in person to execute the same, shall forfeit and pay to the use of the town, the sum of five pounds, and if in Boston, Salem, or Newburyport, ten pounds, and shall, if present, forthwith declare his acceptance or refusal; and in case he shall not declare his acceptance, the town shall proceed to a new choice, and so from time to time until one shall accept and

1811 ch. 9, § 2. Persons chosen into office to be summoned to appear before the town clerk to take the oath prescribed by law.

12 & 13 W. III. ch. 2.

Forfeiture for neglecting to appear.

1785 ch. 12, 1793 ch. 43, § 4.

Proviso for oaths before a Justice.

Persons exempted from serving as constables.

1785 ch. 42, § 4.

Persons not exempted, refusing to serve.

Forfeiture.
be sworn; and any person who shall be present and declare his refusal to serve in the office of constable, or who shall neglect, after being summoned as aforesaid, to take the oath of office, for the space of seven days next after such summons, and shall also neglect to pay the fine aforesaid, shall, upon the application of the town-treasurer, be summoned before the Court of General Sessions of the Peace in the county in which such town lieth; and a certificate under the hand of the clerk, or two of the selectmen, certifying that such person was legally chosen to the office of constable, shall be admitted as evidence of the fact; and if the person summoned shall make default, or appearing, shall not show sufficient cause to the court for his refusal, the court shall order a warrant under the seal thereof, directed to any of the constables of the same town then in office, to levy the fine by distress and sale of the offender's goods and chattels, returning the overplus (if any be) together with the costs arising on such prosecution; and for want of goods and chattels, to commit the delinquent to prison until the same shall be paid. And the town-clerk shall make a record of such persons as shall, from time to time, be sworn into office before him, or of such as shall file certificates of their being sworn as aforesaid.

Sect. 4. And be it further enacted, That when by reason of non-acceptance, death or removal of any person chosen to office in any town, at the annual meeting for the choice of town officers, or at any other time, or by reason of a person's becoming non-compos, there is a vacancy, or want of such officers, the town, being orderly assembled in the manner this Act directs, may proceed to a new choice of officers to supply and fill up such vacancy; and the person or persons thus chosen and sworn before the town-clerk, or a Justice of the Peace (in case an oath of office is by law required) shall have the same power and authority to discharge the duties of the office, as though chosen at the annual meeting for the choice of town-officers.

Sect. 5. And be it further enacted by the authority aforesaid, That when there shall be occasion of a town-meeting, the constable or constables, or such other person as shall be appointed for the purpose, by warrant from the selectmen, or the major part of them, shall summon and notify the inhabitants of such town to assemble at such time and place, in the same town as the selectmen shall order, the manner of summoning the inhabitants to be such as the town shall agree upon; and when ten or more of the freeholders of a town shall signify, in writing, their desire to have any matter or thing inserted in a warrant for calling a meeting, the selectmen are hereby required to insert the same in the next warrant they shall issue for a meeting, or call a meeting for the express purpose of considering thereof; and no matter or thing shall be acted upon in such a manner as to have any legal operation whatever, unless the subject matter thereof be inserted in the warrant for calling the meeting; and in case the selectmen shall unreasonably deny to call a meeting upon any public occasion, any ten or more of the freeholders of such town may apply to a Justice of the
Peace within and for the same county, who is hereby authorized and empowered to issue his warrant under his hand and seal, directed to the constable or constables of the town, if any such there be, otherwise to any of the freeholders applying therefor, directing him or them to notify and warn the inhabitants qualified to vote in town affairs, to assemble at such time and place in the same town as the said justice shall in his said warrant direct, and for the purpose in the same warrant expressed. And when by reason of death, removal or resignation of selectmen, a major part of the number originally chosen shall not remain in office within any town; in every such case, a major part of the survivors, or of such as remain in office, shall have the same power to call a town-meeting as a major part of the whole number first chosen.

Sect. 6. And be it further enacted by the authority aforesaid, That at every town-meeting, a moderator shall be first chosen by a majority of votes, who shall be thereby empowered to manage and regulate the business of the meeting; and when a vote, declared by the moderator, shall, immediately after such declaration, be scrupled or questioned by seven or more of the voters present, the moderator shall make the vote certain, by polling the voters, or such other way, as the meeting shall desire. And no person shall speak in the meeting before leave first had and obtained from the moderator, nor when any other person is orderly speaking; and all persons shall be silent at the desire of the moderator on pain of forfeiting five shillings for the breach of every such order, to the use of the town; and if any person shall, after notice from the moderator, persist in his disorderly behaviour, then it shall be lawful for the moderator to direct such disorderly person to withdraw from the meeting; and such disorderly person, upon his refusal or neglect to withdraw, shall forfeit and pay a fine of twenty shillings, to the use of the same town; and may also, by direction of the moderator, be carried out of the meeting by some constable of said town, and put into the stocks, cage, or some other place of confinement, and there be detained for the space of three hours, unless the town-meeting shall sooner adjourn or dissolve. And all suits and informations for fines incurred by a breach of this Act, not exceeding forty shillings, may be heard and determined before any Justice of the Peace in the same county, not an inhabitant of the same town, unto whom the penalty or any part thereof is given, who, upon conviction, may enforce the payment thereof by a similar process, as is herein prescribed in the Court of General Sessions of the Peace for persons who refuse to serve in the office of constable. Provided always, That town-meetings for the choice of Governor, Lieutenant-Governor, and Senators, shall be regulated as the Constitution directs, and for the choice of Representatives as is otherwise by law prescribed; any thing in this Act contained to the contrary notwithstanding. And the moderator of any town-meeting, chosen as aforesaid, is hereby authorized, in case no Justice of the Peace be present, to administer to the clerk, in open town-meeting, the oath by law prescribed to the same office.
Sect. 7. *And be it further enacted by the authority aforesaid, That the freeholders, and other inhabitants of each respective town, qualified as aforesaid, at the annual meeting for the choice of town-officers, or at any other town-meeting, regularly warned, may grant and vote such sum or sums of money, as they shall judge necessary for the settlement, maintenance and support of the ministry, schools, the poor, and other necessary charges, arising within the same town; to be assessed upon the polls and property within the same, as by law provided; and they are also hereby empowered to make and agree upon such necessary rules, orders and by-laws, for the directing, managing and ordering the prudential affairs of such town, as they shall judge most conducive to the peace, welfare and good order thereof; and to annex penalties for the observance of the same, not exceeding thirty shillings for one offence; to ensure to such uses as they shall therein direct: *Provided* they be not repugnant to the general laws of the Government; and provided also, such orders and by-laws shall have the approbation of the Court of General Sessions of the Peace of the same county: And may also allow and approve of any town or private way laid out by the selectmen of the same town; or alter or discontinue any town or private way, heretofore laid out and improved as such, when it shall appear that the same is unnecessary for the inhabitants of such town. *Saving always, to any person aggrieved, or who thinks himself injured, liberty of applying for remedy to the Court of General Sessions of the Peace in the same county, who are hereby empowered and directed to inquire into and determine the matter by a jury, thereunto appointed, as well with respect to the necessity and convenience, by such discontinuance, laying out, or alteration, as to the damage, that may happen or accrue, to any particular person or persons thereby; and thereupon to assess damages for the party injured, to be paid by such town; unless it appears, that the person on whose behalf application has been made, had no just cause of complaint; in which case the complainant shall pay all such costs and charge as may arise by such application to the Court of Sessions. And the verdict of a jury, being received and recorded, shall be final and conclusive. *Provided,* such application be made to the Court of General Sessions of the Peace within twelve months after such way is approved, altered, or discontinued as aforesaid, and not otherwise.*

Sect. 8. *And be it further enacted by the authority aforesaid, That the inhabitants of every town within this Government are hereby declared to be a body politic and corporate; and as such, may commence and prosecute any suit or action in any court proper to try the same; and may also defend any suit or action commenced against them, and for this purpose, the said inhabitants, qualified and convened in manner aforesaid, may nominate and appoint one or more agents or attorneys. The choice of the agent or attorney, certified by the town-clerk, shall be deemed and taken sufficient evidence of such appointment. And when any suit shall be commenced against any town (or other body corporate) a copy of the writ or original*
summons, or such other legal process as may issue against them, shall be left with the clerk of such town, or with one or more principal inhabitants thereof (or with the clerk or some principal member of the body corporate) thirty days at least before the day of the sitting of the court, unto which the same shall be returnable.

Sect. 9. And be it further enacted by the authority aforesaid, That all places incorporated by the name of districts, before the first day of January, one thousand seven hundred and seventy-seven, are hereby declared to be towns, to every intent and purpose whatever; and places incorporated by the name of districts since the same first day of January, one thousand seven hundred and seventy-seven, or such places as may hereafter be incorporated by the name of district, are and shall be entitled to all the privileges, and vested with all the powers in this Act expressed, as amply to every intent and purpose as they could have been if expressly named herein.

And whereas, in divers laws, provision is made relating to the annual meetings in March, which it is necessary should be extended to the meetings holden in the month of April, in case the annual meeting of any town should be holden in that month:

Sect. 10. Be it therefore enacted by the authority aforesaid, That all matters and things, which by any law or resolve of this Commonwealth, are directed to be done and transacted at the town-meetings in March, may hereafter be done, and transacted at a town-meeting in April; any thing in such law or resolve to the contrary notwithstanding.

Sect. 11. And be it further enacted by the authority aforesaid, That all laws heretofore made for the purposes mentioned in this Act, be and they hereby are repealed and rendered null and void. [March 23, 1786.] Add. act—1809 ch. 26. Repealed—1809 ch. 40.

An Act directing the Time and Manner of appointing County-Treasurers.

Sect. 1. BE it enacted by the Senate and House of Representat- eatives, in General Court assembled, and by the authority of the same, That there shall be annually chosen in each county within this Commonwealth, in the month of March or April, by the written votes of such persons as are by the Constitution qualified to vote for Representatives in the several towns or districts, a discreet suitable person, being a freeholder and resident in the same county, for a county-treasurer; the votes to be counted and sorted in the town or district meeting by the moderator thereof and town-clerk; the names of the persons voted for and the number each person had, shall be recorded by the clerk in the town or district book, and an attested copy of such record shall be transmitted under seal to the next Court of General Sessions of the Peace, to be held within and for the same county, on the first day of the court's sitting; there to be opened and compared with the like returns from the several towns and districts in such county: and the person having the majority of the said votes, and accepting of the said office, after
being sworn to the faithful discharge of the trust before the said court, or any two justices thereof, quorum ausus, and giving bond for the faithful discharge of the trust, with sufficient sureties, in such penal sum as the court shall direct, to the clerk of the peace for the same county, for the time being, and his successor in that office, shall continue in the said office for the term of one year, and until some other person shall be chosen and qualified as aforesaid in his room.

And in case, upon comparing the votes returned as aforesaid, no one person shall have a majority of the whole number of votes returned, or the person chosen shall decline accepting the office, or after accepting, shall die or resign, or remove out of the county within the year; then, and in such case, it shall be lawful for the justices of the same court to appoint, by ballot, a suitable person, being a freeholder in the same county, to that office; and the person thus appointed by the Justices of the General Sessions of the Peace, and accepting the office, and being sworn to the faithful discharge of the trust, and giving bond as before directed, shall be treasurer of said county for the remainder of the year, and until some other person shall be chosen and qualified in manner as aforesaid.

Sect. 2. And be it further enacted by the authority aforesaid, That all monies received by the county-treasurer, for the use of the county, shall be improved and employed by him for the defraying county charges, as the Court of General Sessions of the Peace shall, from time to time by their order, in writing, direct and appoint, except that the travel and attendance of the grand jury at the Supreme Judicial Court, and the travel of the petit jurors, with the fees for venires, and the legal fees to the clerk for examining and certifying the same, may be paid by order of the Supreme Judicial Court; and each county treasurer shall account with the Court of General Sessions of the Peace, for the same county of which he is treasurer, for all his receipts and payments; which court shall make him such allowance for his executing the duties of his office, as to them shall seem reasonable.

Sect. 3. And be it further enacted, That each county-treasurer, respectively, be and hereby is authorized and empowered to draw in and enforce the payment of all county rates and taxes, assessed agreeable to the directions of law, by the same rules and methods prescribed for the Treasurer and Receiver-General of the Commonwealth to gather in the rates and taxes assessed for the use of the Commonwealth, and shall annually lay before the General Court an account of all monies that shall have been raised in the county to which he belongs, by assessments, on the several towns and places therein, or by any other way or manner by him received as county-treasurer, and how the same have been disposed of; and no further assessment shall be made on the several towns and places in the county to which he belongs, until the said account has been offered to the General Court and allowed by them.

Sect. 4. And be it further enacted by the authority aforesaid,
That this Act shall be in force from and after the first day of December next, and not sooner. [March 23, 1786.]

An Act incorporating a Society by the name of The Massachusetts Congregational Charitable Society. [March 24, 1786.]

An Act for naturalizing Robert Morris and James Alexander. [June 5, 1786.]

An Act in addition to an Act, entitled, “An Act to prevent Incumbrances about the Doors of the Court-House in Boston.” [June 13, 1786.]

An Act for the orderly Solemnization of Marriages.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every Justice of the Peace, within the county where he resides, and every stated and ordained minister of the gospel in the town, district, parish or plantation, where he resides, shall be and hereby is authorized and empowered to solemnize marriages between persons that may lawfully enter into that relation, when one or both of the persons to be married, belong to, or are residents in the county where such justice resides, or one or both of them are inhabitants of, or residents in the town, district, parish, or plantation where such minister resides.

Sect. 2. And be it further enacted by the authority aforesaid, That when any settled and ordained minister of the gospel is himself to be married, it shall be lawful for any other such minister within the same county, to marry the said minister. And also, when any religious society shall be destitute of a settled and ordained minister of the gospel, in case there shall not be such a minister within the town, district or plantation in which such religious society is, it shall be lawful for any such minister, within the same county, to join any person of such town, district or plantation, in marriage: Provided such marriage be solemnized in the town, district or plantation where one of the parties to be married shall reside.

Sect. 3. And be it further enacted by the authority aforesaid. That all persons desiring to be joined in marriage shall have such their intentions published at three public religious meetings, on different days, at three day’s distance exclusively at least from each other, in the town or district, wherein they respectively dwell, or shall have their intentions of marriage posted up, by the clerk of such town or district, by the space of fourteen days, in some public place, within the same town or district, fairly written, and shall also produce to the justice or minister, who shall be desired to marry them, a certificate of such publication, under the hand of the clerk of such town or district respectively; and also, that the intention of marriage hath been entered with him fourteen days, prior to the date of such certificate; and where a male, under twenty one years, or a female under eighteen years of age, is to be married, the consent of the parent, guardian or other person, whose immediate care and government such party is under, if within the Commonwealth, shall be first had to such marriage. And in case the parties or either of them live in a town, district or place where there shall be no clerk, then publication shall be made in the town or

When this Act to be in force.

Chap. 77.

Chap. 1.

Chap. 2.

16 Geo. II. ch. 2.

Chap. 3.

Col. I. 1639. 42. 43. 44. 46. 56. 4 W. & M. ch. 10. 7 W. & H. ch. 6. 3 Geo. I. ch. 4. 1 Geo. II. ch. 8. 3 Geo. III. ch. 11. 13 Geo. III.— Justices of the Peace and ministers licensed to marry. [1795 ch. 41— their fes.] Ministers and others, how to be married in certain cases.

1517 ch. 61. 1821 ch. 55.
Provided, That in regard to any plantation in the counties of Cumberland and Lincoln, where the parties, not under the respective ages aforesaid, shall have been inhabitants for the space of twelve months, and shall live twenty miles distant from such next adjoining town or district, any justice or ordained minister belonging to this Commonwealth, may join them in marriage without such certificate.

Sect. 4. And be it further enacted by the authority aforesaid, That if, at any time, the banns of matrimony betwixt any persons shall be forbidden, and the reasons thereof assigned, in writing, by the person so forbidding the same, left with the town or district clerk, he shall forbear issuing a certificate as aforesaid, until the matter shall have been duly inquired into, and determined before two justices of the same county, quorum unus: Provided, the person forbidding the banns shall, within seven days after filing the reasons as aforesaid, apply unto two justices as aforesaid, and procure their determination thereon; unless the said justices shall certify unto the said clerk, that a further time is necessary for their determination on the reasons filed; in which case the clerk shall forbear issuing a certificate, until the time then certified to be necessary shall expire, unless the justices shall sooner determine; according to whose determination, the clerk shall govern himself herein; and if the said justices shall determine, that the reasons assigned by the person forbidding the said banns, were not supported by the laws of the Commonwealth, then the person so forbidding shall pay all the cost that may have arisen in consequence of such objection; and the said justices shall make up judgment and issue execution accordingly.

Sect. 5. And be it further enacted by the authority aforesaid, That if any person shall deface or pull down any publication posted up, in writing, as aforesaid, before the expiration of the said fourteen days, he shall forfeit and pay the sum of twenty shillings, to the use of the town; and if unable to pay the said fine, may be set in the stocks for the space of one hour. And if any Justice of the Peace or minister shall, otherwise than is expressly allowed and authorized by this Act, join any persons in marriage, they shall severally forfeit and pay the sum of fifty pounds, two third parts thereof to and for the use of the county wherein the offence may be committed, and the residue to the prosecutor, to be sued for and recovered in the Court of Common Pleas, within the same county, by the treasurer thereof, who is hereby enjoined, upon due information thereof, to prosecute and sue for the said penalty, without delay, or by the parent, guardian or other person under whose immediate care and government either of the parties were at the time of such marriage; and every justice or minister, against whom such recovery shall be had, is hereby forbidden from joining persons in marriage forever after. And in case a person for-
bid as aforesaid, or any other person whatever, not authorized and empowered to solemnize marriages by this Act, shall join any persons in marriage, and be convicted thereof in the Supreme Judicial Court, upon presentment or indictment, he shall stand one hour in the pillory, and be subjected to pay a fine, at the discretion of the court, to the use of the Commonwealth, not exceeding one hundred pounds, nor less than eighty pounds.

Sect. 6. And be it further enacted, That every justice and minister shall make and keep a particular record of all marriages solemnized before them respectively; and in the month of April, yearly, and every year, shall make a return to the clerk of the town, district or plantation in which he lives, certifying the names (both christian names and surnames) of all the persons who have been by them respectively joined together in marriage within the year then last past, if any such have been by them so joined together.

And if it shall so happen, that any one or more of the said justices or ministers shall not have joined together in marriage any persons during the course of the year then last past, it shall be the duty of such justice or minister, also to certify to the said town-clerk, in writing, under his hand, that he has not joined any persons in marriage within the course of the said year:

And if any justice or minister shall neglect to make such return, within the month of April, annually, the clerk of the town, district or plantation, where such delinquent justice or minister lives, shall, without delay, certify such neglect to the clerk of the Court of General Sessions of the Peace of the same county, who shall lay the same before the said court at their next session; and the person so neglecting shall be cited to appear before the said court, to answer for such neglect; and if no sufficient reason shall be assigned therefor, he shall be considered and adjudged disqualified for joining persons in marriage for a term of time, not exceeding ten years, at the discretion of the justices of the said court. And every town and district clerk shall duly and seasonably record all marriages, so certified to him, as aforesaid:

And shall also return a list or copy thereof to the clerk of the Court of General Sessions of the Peace of the same county, some time in the month of May, yearly and every year, to be there recorded, upon penalty of forfeiting twenty shillings for each neglect: And it shall be the duty of each clerk of the sessions to prosecute for every such neglect, in the county to which he belongs. And every clerk of the sessions shall record all such returns of marriages at large in a book to be kept for that purpose, and no other, under the same penalty for each neglect.

Sect. 7. And be it further enacted, That no person by this Act authorized to marry, shall join in marriage any white person with any negro, indian or mulatto, on penalty of the sum of fifty pounds, two third parts thereof to the use of the county wherein such offence shall be committed, and the residue to the prosecutor, to be recovered by the treasurer of the same county, in manner as aforesaid; and all such marriages shall be absolutely null and void.

Sect. 8. And be it further enacted by the authority aforesaid, That any marriages which have been or hereafter may be had and solemnized, among the people called Quakers, or Friends, in the manner and form used and practised in their societies, shall be good and valid in law, any thing in this Act to the
contrary notwithstanding: And the clerk, or keeper of the records of the meeting wherein such marriage shall be had and solemnized, shall once a year make a certificate, under his hand, of all marriages had and solemnized in the society, or meeting, to which he belongs, and shall deliver the same to the clerk of the Court of General Sessions of the Peace of the county wherein the marriages have been had and solemnized. Under the penalty of twenty shillings for each neglect. All fines, not particularly appropriated, shall be to the use of the prosecutor. And all former laws relating to the solemnization of marriages, are hereby repealed.

This Act to be in force from and after the last day of December, one thousand seven hundred and eighty-six, and not sooner. [June 22, 1786.] Add. acts—1795 ch. 7: 1817 ch. 61, 141: 1820 ch. 55.

Chap. 4.

An Act to prevent the Destruction of the Fish called Shad and Alewives, in their passage up the rivers and streams in the Town of Rochoboth, in the County of Bristol. [June 27, 1786.] Add. act—1795 ch. 1. Repealed—1805 ch. 110.

Chap. 5.

An Act authorizing Executors and Administrators, to make Sale of Real Estate, mortgaged to their Testators or Intestates, and such as they shall take in execution, in certain cases.

WHEREAS doubts have arisen, and may arise, with respect to the extent of the right, interest, title and estate, which executors or administrators may have, in houses, lands, and tenements mortgaged to their respective testators or intestates, and also the right, interest, title and estate, which executors or administrators may have, in houses, lands, and tenements, set off by execution at the suit of executors or administrators, for debts due to the estates of persons deceased; for the better defining and declaring the law in those respects:

SECT. 1. When persons to whom lands are mortgaged shall decree before recovery, the debt due on such mortgage shall be considered assets in the hands of the executors, &c.

When executors shall recover seizin, &c. proceedings in such case.

1783 ch. 32.

Lands, &c. set off, to be to the use of heirs, &c. and to be sold in case—
tor or administrator shall be seized and possessed of the whole estate, in the lands, tenements or hereditaments, so set off, to the sole use and behoof of the heirs of the deceased intestate, or of the residuary legatee, or legatees of the testator, as the case may be: provided however, that in case the lands, tenements, and hereditaments, so set off on the said execution shall be necessary for the payment of debts, legacies, annuities or charges of administration, the same being certified from the Court of Probate, the said executor or administrator shall have full power and authority, and they are hereby fully authorized and empowered to sell and dispose of the same, for the purposes aforesaid, with the saving of the right of redemption; and it shall be lawful for the said executor or administrator to sell the same as aforesaid, at private sale, to any person who shall pay therefor the money at which they shall have been appraised and set off, in satisfaction of the execution, in whole or in part; provided the Court of Probate shall give leave therefor; or otherwise the said premises shall be made at public auction, in like manner as is herein before directed for the sale of mortgaged lands, tenements and hereditaments.

SEC. 4. Be it further enacted by the authority aforesaid, That after executors or administrators shall recover seisin, or possession of any lands, tenements, or hereditaments, mortgaged as aforesaid, and before conveyance or assignment thereof, in manner aforesaid, if any mortgage, his heirs, executors, administrators, or assigns, shall within the time limited for the equity of redemption, redeem the said mortgaged premises, the executors or administrators shall, in every instance, be entitled to receive the said redemption money, and are hereby authorized, empowered, and directed to discharge the said mortgaged premises, by release, quitclaim, or other legal conveyance.

SEC. 5. Be it further enacted by the authority aforesaid, That nothing in this Act contained shall be construed to control any last will and testament, or any part thereof. [June 27, 1786.] Repealed—1788 ch. 51.

An Act to enable the inhabitants of the first Parish in the Town of Falmouth, in the County of Cumberland, to sell the Ministerial Lands there, towards raising a Fund for the Support of the Ministry, and to tax the Pews in the Meeting-House, in said Parish, until such fund be raised. [June 27, 1786.]

An Act to prevent the Destruction of Salmon, Shad, and Alewives, and other Fish in Agawam or Westfield-River. [June 27, 1786.] Altered—1787 ch. 49. See 1721 ch. 52.

An Act for appointing and empowering Agents on the part of this Commonwealth to assist in running and ascertaining the Line of Jurisdiction between this Commonwealth and the State of New-York, on the easterly part of the said State of New-York. [June 27, 1786.]

An Act for incorporating the easterly part of Pelham, and the southwest part of New-Salem, in the County of Hampshire, and the inhabitants thereof, into a separate Parish, by the name of The Second Parish in Pelham. [June 28, 1786.]

An Act regulating Parishes and Precincts, and the Officers thereof.

SEC. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That the bounds and limits of precincts and parishes, as they have been formerly settled, be and hereby are confirmed and established, until they shall be otherwise ordered by the General Court. And the inhabitants of each respective parish and precinct, who shall pay in one tax, exclusive of the poll or polls, a sum equal to two thirds of a single poll-tax, shall, in the month of March or April, annually, meet and assemble together at such time and place, in the same parish or precinct, as they shall be notified to attend by the collector thereof, or such other person as the assessors thereof shall appoint to notify the same; and the said inhabitants shall then and there, by a major vote, by ballot, or such other method as they may determine convenient, choose a clerk, who shall be under oath truly to record all votes passed in the same, or any other regular meeting of the corporation, during the time he shall remain in office; two or more able and judicious persons for assessors, a treasurer, collector and other usual parish or precinct officers. And
no person in commission for any office, civil or military, church officer, member of the Council, Senate, or House of Representatives for the time being, nor any one who has served in the office of constable or collector of any town, district, parish or precinct within the term of seven years, shall be obliged to serve in the office of collector. And every person chosen to the office of collector, and not exempted as aforesaid, if he be able in person to execute the same, and of the same denomination of christians as those of the major part of the parish or precinct who shall choose him, who shall refuse to take the oath to that office prescribed, and to serve therein, shall forfeit and pay to the use of the same precinct or parish, the sum of three pounds. And the person chosen collector shall, if present, forthwith declare his acceptance or refusal, and in case of non-acceptance, the parish or precinct shall proceed to a new choice, and so from time to time until one shall accept and be sworn; and any person so chosen, who shall be present, and shall not declare his acceptance of the office of collector, or who shall neglect, after being summoned by a constable or any other person whom the clerk or assessors may appoint for that purpose, before the clerk, to take the oaths of office, for the space of seven days next after being notified or summoned, as aforesaid, (which oath, as well as the oath of all other parish or precinct officers, the clerk for the time being is hereby authorized and empowered to administer) and shall neglect to pay the fine aforesaid, may be compelled to pay the same by the same mode of process, in the Court of General Sessions of the Peace, that fines may by law be recovered of persons refusing to serve in the office of constable.

Sect. 2. And be it further enacted by the authority aforesaid, that assessors of precincts or parishes shall be empowered to manage their prudentials, unless a committee shall be appointed for that purpose, which any precinct or parish is empowered to choose if they think proper; and the said committee, where any such shall be chosen, and the assessors where no such committee shall be appointed, shall have like power and authority in all respects for calling parish or precinct-meetings as selectmen by law have for calling town-meetings; and in case of a vacancy in any parish or precinct office chosen in March or April, the same vacancy may be filled at a parish or precinct-meeting regularly notified, at any other season of the year. And the moderator of a parish or precinct-meeting shall have the like power and authority in governing the meeting as the like officer by law has in a town-meeting; and persons misbehaving in parish or precinct-meetings shall be subjected to similar punishments, to the use of the parish or precinct, as persons misbehaving in town-meetings; and the penalties to be recovered in the same manner. And the moderator, in case no Justice of the Peace is present, may also administer, in open meeting, the oath of office to the clerk thereof. And when ten or more of the qualified voters of any precinct or parish shall signify, in writing, their desire to have any matter or thing inserted in a warrant for calling a meeting, it shall be the duty of
the assessors to insert the same in the next warrant they shall issue for that purpose; and no matter or thing shall be acted
upon in such a manner as to have any legal operation whatever
unless the subject matter thereof shall be inserted in the warrant
for calling the meeting. And in case the assessors shall
unreasonably refuse to call a meeting, or a parish or precinct
shall have no assessors within it to call one, or not a major part
of the assessors or committee which any parish may agree upon
to be chosen, any Justice of the Peace for the same county,
upon the application of ten or more of the voters in the parish
or precinct, may call a meeting, in the same manner as a Justice of the Peace is by law authorized to call a
town-meeting.

Sect. 3. And be it further enacted by the authority aforesaid,
That the qualified voters aforesaid of any parish or precinct,
at the annual meeting in March or April, or at any other parish
or precinct-meeting regularly notified, at least seven days be-
fore the holding thereof, may grant and vote such sum or sums
of money as they shall judge necessary for the settlement, main-
tenance, and support of ministers or public teachers of religion;
for the building or repairing of houses of public worship, and
all other necessary parish or precinct charges, to be assessed
on the polls and property within the same as by law provided.
And the inhabitants of each respective parish and precinct are
hereby declared to be a body corporate, and as such may com-
cence and prosecute any action or suit to final judgment and
execution, in any court proper to hear and determine the same,
and may also defend any suit or action that may be brought
against them; for which purposes they may constitute one or
more agents or attorneys, in the same manner as towns may
constitute and appoint agents; and the evidence of their ap-
pointment may be ascertained in the same manner.

Sect. 4. And be it further enacted by the authority aforesaid,
That where any town or district consisting of but one parish
only, has been or hereafter shall be divided or made into two
or more precincts or parishes, any engagements or contracts
entered into by such town or district, before such division, of
a precinct or parochial nature solely, shall not by such division
be considered as released, cancelled, or extinguished; but the
same shall remain in full force, and be obligatory on the in-
habitants residing, and the estates lying within the limits of the
first parish or precinct of the same town or district, who shall
be deemed and taken as successors to the town or district, so far
as relates to precinct or parochial agreements and contracts, to
every intent and purpose whatever. Provided always, That all
debts of a precinct or parochial nature, that are or shall be in
fact due and owing from any town or district, before a division
thereof into precincts or parishes, for services or other matters
actually done and performed, for the general benefit of the
persons who shall after be included in each of the precincts or
parishes, shall in no respect be altered or devolved upon the
first parish or precinct, as the successors of the said town or
district, in its precinct or parochial capacity, any thing herein
contained to the contrary notwithstanding.
Sect. 5. And be it further enacted by the authority aforesaid, That in all such towns or districts where one or more parishes or precincts shall be regularly set off from such towns or districts, the remaining part of such town or district is hereby deemed, declared and constituted an entire, perfect and distinct parish or precinct, and shall be considered as the principal or first parish or precinct. [June 28, 1786.] Add. acts—1807 ch. 63 : 1817 ch. 134 : 1821 ch. 67.

Chap. 11.

An Act for regulating the Salmon, Shad and Alewife Fishery in Saco-River, and the branches thereof, within this Commonwealth. [June 28, 1786.]

Chap. 12.

An Act to prevent Damage being done to the Harbour of Cape-Cod, by Cattle, Sheep and Horse-Kind, feeding on Province-Town Lands, and for the Preservation of the same. [June 28, 1786.]

Chap. 13.

An Act for the Limitation of Real Actions.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person shall hereafter sue or maintain any writ of right, or make any prescription, title or claim to any lands, tenements or hereditaments, or to any rents, annuities or portions issuing therefrom, upon the possession or seizure of his or their ancestor, or predecessor, beyond the term of three score years next before the test of the same writ.

Sect. 2. And be it further enacted by the authority aforesaid, That no person shall sue, have, or maintain any writ of entry upon disseizin done to any of his ancestors or predecessors; or any action possessory upon the possession of any of his ancestors or predecessors, for any lands, tenements or hereditaments, unless the ancestor or predecessor under whom the demandant shall claim, should have been seized or possessed of the lands, tenements or hereditaments demanded, within fifty years next before the test of the same writ, or bringing such action.

Sect. 3. And be it further enacted by the authority aforesaid, That no person or body corporate or politic shall sue for, have or maintain any action for any lands, tenements or hereditaments, upon his or their own seizing or possession therein, above thirty years next before the test of the same writ.

Sect. 4. And be it further enacted by the authority aforesaid, That all writs of formedin descender, formedin in remainder, formedin in reverter of any lands, tenements or hereditaments whatsoever, hereafter to be sued or brought, shall be commenced within twenty years next after the title or cause of action first descended, and at no time after the said twenty years. And no person, unless by judgment of law, shall at any time hereafter make any entry into any lands, tenements or hereditaments, but within twenty years next after his right or title first descended or accrued to the same; and in default thereof such person so not entering, and his heirs, shall be utterly excluded and disabled from making such entry thereunto. Provided always. That when any person that is or shall be entitled to any of the writs of formedin aforesaid, or to make an entry into lands, tenements or hereditaments, shall, at the time the said right or title first descended, accrued or fell, be within the age of twenty-one years, feme covert, non compos, imprisoned, or beyond seas, or without the limits of the United States, that then such person shall and may bring such suit or make such entry at any time within ten years after the expiration of the said twenty years aforesaid, and not afterwards. [July 4, 1786.] The two first sections of this act superseded 1807 ch. 75.
An ACT for erecting that Part of the town of Falmouth, in the county of Cumberland, commonly called the Neck, into a town by the name of Portland. [July 4, 1786.] Add. act—1789 ch. 59.

An ACT against Counterfeiting or uttering counterfeit Coin.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person shall forge or counterfeit any silver or gold money or coin, the currency of which is or shall be established and regulated by law, or shall forge or counterfeit any silver or gold money or coin that is or shall be current in this Commonwealth, he shall be fined herein, but no exceeding forty stripes, and shall then be sentenced to hard labour for a term of not more than seven years.

SECT. 2. And be it further enacted, That if any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing a colour resembling that of gold or silver, any coin resembling any money or coin, the currency of which is or shall be established and regulated by law, or which is or shall be current in this Commonwealth, or any pieces of coarse gold or of coarse silver, or of other metals, with an intent that it shall be coined into counterfeit milled money, resembling the established or current money or coin in this Commonwealth as aforesaid; or into pieces resembling the gold coin established or current in this Commonwealth as aforesaid; or that shall wash, gild or colour any lawful or counterfeit silver coin, with intent to make such silver coin resemble any gold coin established or current in this Commonwealth as aforesaid; or that shall wash, gild or colour, or in any way alter any copper coin, with an intent to make it resemble either the silver coin or the currency of which is or shall be current in this Commonwealth, being convicted thereof, such person shall be adjudged guilty of forging and counterfeiting the money or coin, established or current in this Commonwealth, and shall suffer the same punishments which are before in this Act assigned for such crime.

SECT. 3. And be it further enacted, That if any person shall utter any such false money, or coin, forged and counterfeited to the similitude of the silver or gold money, or coin, the currency of which is or shall be established and regulated by law, or which is or shall be current in this Commonwealth, knowing the same to be false, forged and counterfeit, such person being thereof convicted, shall be punished by fine, not exceeding one hundred pounds, be set in the pillory one hour, be whipped, not exceeding twenty stripes, have one ear cut off, be bound to the good behaviour, or confined to hard labour, not exceeding three years.

SECT. 4. And be it further enacted, That if any person shall bring into this Commonwealth any such false, forged and counterfeit money or coin, or be possessed of any such false, forged and counterfeit money or coin, as in this Act is before described, knowing the same to be false, forged and counterfeit, with an intent to utter and pass the same, such person shall be fined a sum not exceeding fifty pounds, be whipped not exceeding twenty stripes, and be bound to the good behaviour.

SECT. 5. And be it further enacted, That if any person shall knowingly make or mend, or begin to make or mend, any engine, press, stamp, mould, pattern, dye, puncher, or any tool whatsoever, used, adapted or designed for the coining, forging or counterfeiting gold or silver money, or coin, the currency of which is or shall be established and regulated by law, or which is or shall be current in this Commonwealth, with an intent to use, or with an intent or expectation that the same should be used and employed in forging and counterfeiting such silver or gold money or coin, and be thereof convicted, such person shall suffer the same punishment, as is herein before provided, for forging and counterfeiting silver or gold money or coin, current in this Commonwealth.

SECT. 6. And be it further enacted, That if any person shall have in his possession any such engine, press, stamp, mould, pattern, dye, puncher, or any tool or material whatsoever, used, adapted or designed for the coining, forging or counterfeiting such silver or gold money or coin, as is herein before described, with an intent to use and employ the same, or that they should be used and employed in coining, forging or counterfeiting such silver or gold money or coin, as aforesaid, being thereof convicted, such person shall suffer the same punishment as is herein before provided, for being knowingly possessed of such false and counterfeit money and coin, with an intent to utter the same.

SECT. 7. And be it further enacted, That if any person shall forge or counterfeit any copper money, or coin, to the similitude and appearance of the copper money or coin, the currency whereof is or shall be established and regulated by law, he shall be fined, not exceeding thirty pounds, be whipped, not exceeding twenty stripes, be bound to the good behaviour, and imprisoned, not exceeding three months.

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Penalty for bringing into this Commonwealth counterfeit copper money. 

Rewards for informing of offences. 

Sect. 8. And be it further enacted, That if any person shall knowingly bring into this Commonwealth any such false, forged and counterfeit copper money or coin, with an intent to utter the same, such person shall, upon conviction thereof, be punished by fine, not exceeding fifty pounds; by imprisonment, not exceeding six months; and shall be whipped, not exceeding twenty stripes, and be bound to the good behaviour. 

Sect. 9. And be it further enacted, That whoever shall inform of any of the foregoing offences, so as the offender may be convicted of the same, shall receive out of the public treasury the following rewards, viz. for informing of, and prosecuting to conviction, one or more persons guilty of the same forging or counterfeiting any silver or gold, or making or mending any engine or tool for forging and counterfeiting silver or gold money or coin, as described in this Act, the sum of twenty-five pounds; and for informing and bringing to conviction one or more persons guilty of uttering any false silver or gold coin or money, knowingly, or of bringing the same into this Commonwealth, with an intent to utter it, or of having any engine, press or tool whatsoever for coining the same, as before described, the sum of fifteen pounds; in order to which, two of the Justices of the Supreme Judicial Court shall give to such person as shall appear to them to be the informer, a certificate of the conviction and of the name of the prosecutor; and if any dispute shall arise between several persons, claiming to be prosecutors, the said justices shall determine to whom the reward shall be paid, and if to more than one, then in what proportion. 

Sect. 10. And be it further enacted, That the Justices of the Supreme Judicial Court, before whom all persons, charged with any of the offences before described, shall be tried, may and shall at their discretion, abate any part of the pains and penalties aforesaid, according to the circumstances of the offence. 

Sect. 11. And be it further enacted, That if any person shall be convicted a second time of any of the offences described in this Act, he may be punished as is hereafter mentioned herein for the first conviction of the same offence, and also by confinement to hard labour for life, or any term of years, according to the nature of the offence, at the discretion of the court. 

Sect. 12. And be it further enacted, That all other Acts against clipping, diminishing, or counterfeiting any coined money, established by law, or current in this Commonwealth, be and they hereby are repealed. [July 4, 1786.] Repealed 1785 ch. 63. 


An Act for granting to the United States a Tax upon the polls and estates within this Commonwealth, to operate as a supplementary Fund to the Continental Enlist, agreeably to the Recommendation of Congress, of the eighteenth of April, one thousand seven hundred and eighty-three. [July 5, 1786.] 

An Act empowering the Agents, appointed by this Government to defend the Territory on the west side of Hudson's River, against the Claims of the State of New-York, to settle the Controversy relative thereto, otherwise than by a Federal Court, if they shall judge it expedient. [July 5, 1786.] 

An Act for naturalizing Jonathan Curson and William Oliver. [July 7, 1786.] 

An Act to divide the second Parish of the Town of Springfield into two Parishes. [July 7, 1786.] 

An Act for rendering the Decision of Civil Causes as speedy and as little expensive as possible. 

WHEREAS it is the duty of the Legislature to provide means whereby the decision of civil causes should be as speedy, and attended with as little expense to the citizens of this Commonwealth, as the nature of things will admit: 

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any persons who may have a dispute, of what nature soever, shall agree to have the dispute determined by referees, mutually chosen by the parties for the purpose, it shall and may be lawful for the person or persons making the demand in the action, to make out a particular statement thereof, under his or their hands, in writing, and to lodge the same with some one Justice of the Peace of the county in which the person or per-
sons making the demand may dwell; and the said Justice of the Peace, upon application of the parties for the purpose, shall make out an agreement to be annexed to the aforesaid demand, and to be by them, or their lawful agents or attorneys, subscribed and acknowledged, in substance as follows:

Town of A——, in the county of S——, 178

KNOW all men, that A. B. of ______ in the county of [addition] and C. D. of ______ in the county of [addition] have agreed to submit the demand made by the said A. B. against the said C. D. which is hereunto annexed (and all other demands, as the case may be) to the determination of E. F. G. H. and I. K. the report of whom, or the major part of whom being made as soon as may be to any Court of Common Pleas, to be holden in and for the said county of S———, judgment thereon to be final: And if either of the parties shall neglect to appear before the referees, after proper notice being given them of the time and place appointed by the referees for hearing the parties in this action, the referees shall have power to proceed ex parte.  

A. B.  
C. D.  

S. ss. 178 Then the above named A. B. and C. D. personally appeared and acknowledged the above instrument by them subscribed to be their free act. Before me,  
L. M. Justice of the Peace.

Sect. 2. And be it further enacted, That there shall be paid by the person or persons making the demand in the action, two shillings unto the Justice of the Peace that may make out the agreement, and take the acknowledgment thereof, as aforesaid, which sum shall be added to the costs that may arise in the action, for the determination of which the agreement and acknowledgment were made as aforesaid.

Sect. 3. And be it further enacted by the authority aforesaid, That the determination of the referees who may be appointed, agreeably to this Act, shall be made to the next Court of Common Pleas, to be holden in and for the county in which the Justice of the Peace may have lived at the time he issued the agreement as aforesaid; and the Court of Common Pleas, to whom the report of the referees may be made as aforesaid, shall have cognizance thereof, in the same way and manner, and the same doings shall be had thereon, as though the same had been made by referees appointed by a rule of the same court. And the justices of said court to which a report shall be made by referees appointed agreeably to this Act, shall be entitled to three shillings for each report so made; and the clerk of said court, for recording the same, shall receive eight pence.

Sect. 4. And be it further enacted by the authority aforesaid, That where the parties shall agree that the determination of the referees may be made known, prior to its being made to the Court of Common Pleas as aforesaid, it shall and may be lawful for the referees to make known the determination to the parties, without its affecting in any degree the validity thereof; and it
the determination shall be so made known to the parties, it shall
and may be lawful for the party who may be found indebted
agreeably to the determination aforesaid, to discharge him or
themselves therefrom, and thereby prevent any further process
thereon, by paying the same unto the person or persons to whom
it may be so awarded, and having his or their receipt therefor
on the back of the determination aforesaid; in which case the
determination and papers accompanying the same, shall be re-
turned to the Court of Common Pleas, to be recorded by the
clerk of said court, in the same manner as though the money
had not been paid as above mentioned.

Sect. 5. And be it further enacted, That the referees that
may be appointed in pursuance of this Act, shall be vested with
all the authority and power that referees have been, or may
hereafter be vested with, who have been, or shall be appointed
by a rule of court. And witnesses shall be summoned to ap-
pear before them and sworn, in the same manner as is or may
be prescribed by law for summoning witnesses before referees
appointed by a rule of court as aforesaid. [July 7, 1786.]

Chap. 22. An Act to prevent the Destruction, and to regulate the Catching of the Fish called
Saltman, Shad and Alewives in Kennebec-River, and several other Rivers and
Streams in the Counties of Cumberland and Lincoln. [July 7, 1786.] Repealed—1787 ch. 76.

Chap. 23. An Act to incorporate the Plantation called Sylvester, into a Town by the name of
Turner. [July 7, 1786.]

Chap. 24. An Act in addition to, and for repealing certain Parts of an Act, passed July the
second, one thousand seven hundred and eighty-five, entitled, "An Act for re-
pealing a Law of this Commonwealth, entitled, An Act imposing Duties on li-
censed Vellum, Parchment and Paper, and for imposing other Duties on certain
Papers, Commissions, Instruments and Processes." [July 7, 1786.] Further
add. act—1757 ch. 51—Both repealed—1795 ch. 30.

Chap. 25. An Act granting leave to Samuel Barnard, jun. Jonathan Hoyt and John Williams,
to erect a Bridge over Deerfield-River, between Deerfield and Greenfield, in the
County of Hampshire. [July 7, 1786.]

Chap. 26. An Act in addition to an Act, entitled, "An Act to prevent damages being done
upon the improved Lands adjoining to Connecticut-River, by reason of Timber
being left therein by the spring floods; and for fixing a fine for the owners to
remove it," made in the year one thousand seven hundred and eighty-one.

WHEREAS Captain Asahel Gunn hath represented to this
Court, that he sustains great damage by timber which is
brought on to his land in an island, in Connecticut-River, lying
between Deerfield and Montague, commonly known by the
name of Smead's-Island:

Be it therefore enacted by the Senate and House of Representat-
es, in General Court assembled, and by the authority of the same, That
the aforesaid Act, and every clause and thing therein contain-
ed, shall be extended to the aforesaid island, commonly called
Smead's-Island, the owner or owners thereof observing the in-
junctions contained in said Act, and causing the marks on the
timber to be recorded in the book of records of the town of
Montague. [July 7, 1786.] Further add. act—1803 ch. 77.

Chap. 27. An Act making further Provision for the Support of the several Light-Houses in
this Commonwealth. [July 8, 1786.] Add. act—1786 ch. 62. Both re-
pealed—1787 ch. 31.
An Act for continuing in Force an Act made in the year of our Lord one thousand seven hundred and eighty-three, entitled, "An Act laying Duties on Imports and Exports of certain Goods, Wares, and Merchandize, therein described, and for repealing the several Laws herefore made for that Purpose," and also for continuing in Force all other Acts made in addition to, or for the explanation of the said recited Act. [July 8, 1786.] Repealed—1786 ch. 48, 49.

An Act to enable the Citizens of this Commonwealth to discharge the Debts due from them to the citizens of certain other States, in the same manner as the citizens of those States are enabled by law to discharge Debts due from them to the citizens of this Commonwealth. [July 8, 1786.]

An Act in addition to an Act, entitled, "An Act for incorporating the Congregational Church in the Town of Chariton, with certain other inhabitants of the said Town, into a distinct Parish." [July 8, 1786.] Repealed—1797 ch. 79.

An Act confirming a Treaty made with the Penobscot Tribe of Indians. [Oct. 11, 1786.]


An Act for incorporating the Plantation called Sterlington, in the County of Lincoln, into a town by the name of Union. [Oct 20, 1786.]

An Act for incorporating a Part of Templeton and a Part of Athol, in the County of Worcester, into a Town by the name of Gerry. [Oct. 26, 1786.] Name altered to Phillipston—1813 ch. 95.

An Act for the altering of a certain clause in an Act, entitled, "An Act, regulating the Exportation of Flax-Seed, Pot-Ash, Pearl-Ash, Beef, Pork, barreled Fish, and dried Fish."

WHEREAS by said Act, no flax-seed can be shipped or exported out of this Commonwealth, but in casks containing seven bushels and one peck each, or half that quantity, which is found injurious to this Commonwealth: Therefore, BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the clause in said Act, respecting flax-seed, be so far altered, as that the casks in which flax-seed may be shipped or exported, shall contain seven bushels, or half that quantity; any thing in said Act to the contrary notwithstanding. [Oct. 20, 1786.] Add. act—1789 ch. 20.

An Act for the confirming of the Second Church in Boston, so called, in their Title to certain Lands. [Oct. 23, 1786.]

An Act for establishing Rules and Articles for governing the Troops stationed in Forts and Garrisons, within this Commonwealth; and also the Militia, or any part thereof, when called into actual Service.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the following rules and articles be and they hereby are established, and declared to be in force, for governing all troops stationed in forts and garrisons within this Commonwealth; and also the militia, or any part thereof, when called into actual service, viz.

Article first. All officers and soldiers shall diligently attend divine service: And all officers and soldiers, who shall unnecessarily absent themselves from, or behave indecently or irreverently at any place of divine worship, shall, if commissioned officers, be brought before a general court-martial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offend-
ing shall, for the first offence, forfeit one shilling; to be deducted out of his next pay; for the second offence, he shall not only forfeit a like sum, but be confined twenty-four hours; and for every like offence shall suffer and pay in like manner; which money, so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs.

Art. second. Whosoever non-commissioned officer or soldier shall use any profane oath or execration, shall incur the penalties expressed in the foregoing article: And if a commissioned officer be thus guilty of profane cursing or swearing, he shall forfeit and pay, for each and every such offence, four shillings.

Art. third. Whosoever officer or soldier shall presume to use traitorous or disrespectful words against the authority of the United States, in Congress assembled, or the Legislature of this Commonwealth; if a commissioned officer, he shall be cashiered; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

Art. fourth. Any officer or soldier who shall behave himself with contempt or disrespect towards the Commander in Chief, or any general or commanding officer of the troops or militia of this Commonwealth, or shall speak words tending to his hurt or dishonour, shall be punished according to the nature of his offence, by the judgment of a court-martial.

Art. fifth. Any officer or soldier who shall begin, excite, cause or join in any mutiny or sedition, in the troop, company or regiment to which he belongs, or in any other troop or company in the service of this Commonwealth, or in any party, post, detachment or guard, on any pretence whatsoever, shall suffer such punishment as by a court-martial shall be inflicted.

Art. sixth. Any officer, non-commissioned officer or soldier, who, being present at any mutiny or sedition, doth not use his utmost endeavours to suppress the same; or coming to the knowledge of any intended mutiny, doth not without delay give information thereof to his commanding officer, shall be punished by sentence of a court-martial, according to the nature of his offence.

Art. seventh. Any officer or soldier who shall strike his superior officer, or draw or lift up any weapon or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer such punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court-martial.

Art. eighth. Any non-commissioned officer or soldier, who shall desert, or, without leave from his commanding officer, absent himself from the troop or company to which he belongs, or from any detachment of the same, shall, upon conviction thereof, suffer death, or such other punishment as shall be inflicted by the sentence of a general court-martial.
Art. ninth. Whatever officer or soldier shall be convicted of having advised or persuaded any other officer or soldier to desert, shall suffer such punishment as shall be inflicted by the sentence of a court-martial.

Art. tenth. No officer or soldier shall use any reproachful or provoking speeches or gestures to another; nor shall any officer or soldier presume to send a challenge to any person to fight a duel, upon pain, if a commissioned officer, of being cashiered; if a non-commissioned officer or soldier, of suffering corporal punishment, at the discretion of a court-martial.

Art. eleventh. If any commissioned or non-commissioned officer commanding a guard, shall knowingly and willingly suffer any person whatsoever to go forth to fight a duel, he shall be punished as a challenger; and likewise all seconds, promoters and carriers of challenges, in order to duels, shall be deemed as principals, and be punished accordingly.

Art. twelfth. All officers of what condition soever shall have power to part and quell all quarrels, frays and disorders, though the persons concerned should belong to another regiment, troop or company; and either to order officers into arrest, or non-commissioned officers or soldiers to prison, till their proper superior officers shall be acquainted therewith; and whosoever shall refuse to obey such officer (though of an inferior rank) or shall draw his sword upon him shall be punished at the discretion of a general court-martial.

Art. thirteenth. Whosoever officer or soldier shall upbraid another for refusing a challenge, shall be considered as a challenger and punished accordingly.

Art. fourteenth. Every officer commanding in quarters, garrisons, or on a march, shall keep good order, and to the utmost of his power redress all such abuses or disorders as may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill treating any person, or of committing any kind of riots to the disquieting the good citizens of this or either of the United States, he shall refuse or omit to see justice done on the offender or offenders, and reparation made to the party or parties injured, so far as the offender's pay shall enable him or them, he shall, upon proof thereof, be punished by a general court-martial, as if he himself had committed the crimes or disorders complained of.

Art. fifteenth. If any officer shall think himself to be wronged by his colonel, or the commanding officer of the regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the general or Commander in Chief of the forces in service, in order to obtain justice, who shall examine into the complaint and see that justice be done.

Art. sixteenth. If any inferior officer or soldier shall think himself wronged by his captain, or other officer commanding the troop or company to which he belongs, he may complain thereof to the commanding officer of the regiment, who shall summon a regimental court-martial, for the doing justice to the complainant; from which regimental court-martial either party, if he
Punishment for selling or wasting ammunition.

for being found one mile from the camp without leave.

for being out of quarters or camp without leave.

Soldiers to retire to quarters at the beating of the retreat.

Punishment for not repairing to the place of parade at the time fixed.

for being found drunk on guard or other duty.

for sentinels found sleeping on their posts.

for occasioning false alarms.

— for quitting platoons, &c.

thinks himself still aggrieved, may appeal to a general court-martial. But if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the said general court-martial.

Art. seventeenth. Whosoever non-commissioned officer or soldier shall be convicted at a court-martial of having sold, or designedly, or through neglect, wasted the ammunition delivered out to him to be employed in the service of this Commonwealth, shall, if a non-commissioned officer, be reduced to a private sentinel, and if a soldier, shall suffer such punishment as shall be inflicted upon him by a court-martial.

Art. eighteenth. All non-commissioned officers and soldiers who shall be found one mile from the camp without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted on them by the sentence of a court-martial.

Art. nineteenth. No officer or soldier shall be out of his quarters or camp, without leave from his commanding officer, upon penalty of being punished according to the nature of his offence, by the sentence of a court-martial.

Art. twentieth. Every non-commissioned officer and soldier shall retire to his quarters or tent, at the beating of the retreat; in default of which he shall be punished according to the nature of his offence, by the sentence of a court-martial.

Art. twenty-first. No officer, non-commissioned officer or soldier shall fail to repair, at the time fixed, to the place of parade or exercise, or other rendezvous, appointed by his commanding officer, if not prevented by sickness or some other evident necessity; nor shall go from the said place of rendezvous or from the guard, without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of his offence, by the sentence of a court-martial.

Art. twenty-second. Whatever commissioned officer shall be found drunk on his guard, party or other duty, under arms, shall be cashiered for it; and any non-commissioned officer or soldier, so offending, shall suffer such punishment as shall be inflicted by the sentence of a court-martial.

Art. twenty-third. Whosoever sentinel shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer such punishment as shall be inflicted by the sentence of a general court-martial.

Art. twenty-fourth. Any person belonging to the forces employed in the service of this Commonwealth, who, by discharging of fire-arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison or quarters, shall suffer such punishment as shall be ordered by the sentence of a general court-martial.

Art. twenty-fifth. Any officer or soldier, who shall, without urgent necessity, or without the leave of his superior officer, quit his platoon or division, shall be punished according to the nature of his offence, by the sentence of a court-martial.
Art. twenty-sixth. No officer or soldier shall do violence or offer any insult or abuse to any person who shall bring provisions or other necessaries to the camp, garrison or quarters of the forces of this Commonwealth, on pain of suffering such punishment as a court-martial shall direct.

Art. twenty-seventh. Whatsoever officer or soldier shall abandon any post committed to his charge, or shall speak words inducing others to do the like in time of an engagement, shall suffer death, or such other punishment as shall be inflicted by the sentence of a general court-martial.

Art. twenty-eighth. Any person belonging to the forces in the service of this Commonwealth, who shall make known the watch-word to any person not entitled to receive it according to the rules and discipline of war, or shall presume to give the parole or watch-word different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court-martial.

Art. twenty-ninth. Whosoever belonging to the forces in the service of this Commonwealth shall relieve the enemy with money, victuals or ammunition; or shall knowingly harbour and protect an enemy, shall suffer such punishment as by the sentence of a court-martial shall be inflicted.

Art. thirtieth. Whosoever belonging to the Massachusetts forces shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer such punishment as by the sentence of a court-martial shall be inflicted.

Art. thirty-first. All public stores taken from the enemy by the forces in the service of this Commonwealth, shall be secured for the use of the Commonwealth.

Art. thirty-second. If any officer or soldier shall leave his post or colours to go in search of plunder, he shall, upon conviction thereof before a general court-martial, suffer such punishment as by the sentence of the said court-martial shall be inflicted.

Art. thirty-third. If any commander of any garrison, fortress or post shall be compelled, by the officers or soldiers under his command, to give up to the enemy or to abandon it, the commissioned officers, non-commissioned officers or soldiers who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court-martial.

Art. thirty-fourth. All sutlers and retailers to the camp, and all persons serving with the Massachusetts troops, in the field, shall be subject to orders according to the rules and discipline of war.

Art. thirty-fifth. If, upon marches, guards or in quarters, different corps shall happen to join or do duty together, the eldest officer by commission there, on duty or in quarters, shall command the whole, and give out orders for what is needful for the service, regard being always had to the several ranks of those corps, and the posts they usually occupy.
In detachments of horse, &c. are quartered with other troops, the eldest officer to command, without respect to corps. General courts martial to consist of not less than 13 officers.

Art. thirty-sixth. If any regiments, troops or detachments of horse or foot shall happen to march with, or be encamped or quartered with, any bodies or detachments of other troops, the eldest officer, without respect to corps, shall take upon him the command of the whole, and give the necessary orders to the service.

Art. thirty-seventh. A general court-martial shall not consist of less than thirteen commissioned officers, and the president of such court-martial shall not be the Commander in Chief, nor commanding officer of the troops in service or garrison, where the offender shall be tried, nor under the degree of a field-officer.

Art. thirty-eighth. The members of courts-martial shall, when belonging to different corps, take rank as is herein before directed when on other duty.

Art. thirty-ninth. Some person shall be appointed by the commanding officer, who shall order the court-martial, to prosecute in the name of the Commonwealth of Massachusetts; and in trials of offenders, such person shall administer to each member the following oath:

YOU swear, that you will well and truly try and determine, according to your evidence, the matter now before you, between the Commonwealth of Massachusetts, and the prisoner to be tried; that you will duly administer justice according to the rules and articles for governing the troops of the said Commonwealth, without partiality, favour or affection; and, if any doubt shall arise which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court until it shall be approved of by the commanding officer; and that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice, in a due course of law. So help you God.

Which oath being administered to the members of the court, the president shall administer the following oath to the person prosecuting as aforesaid.

YOU, A. B. do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice, in a due course of law.

So help you God.

Art. fortieth. All the members of a court-martial are to behave with calmness and decency; and in the giving their votes, are to begin with the youngest in commission.

Art. forty-first. All persons who give evidence before a court-martial, shall be examined upon oath, which oath shall be administered by the president of the court-martial in the form following:
YOU swear, the evidence you shall give in the cause now in hearing, shall be the truth, the whole truth and nothing but the truth. So help you God.

Art. forty-second. No sentence of death shall be given against any offender by any general court-martial, unless two thirds of the members shall concur therein.

Art. forty-third. All persons called to give evidence in any cause before a court-martial, who shall refuse to give evidence, shall be punished for such refusal at the discretion of such court-martial.

Art. forty-fourth. No field officer shall be tried by any person under the degree of a captain, nor shall any proceedings or trials be carried on excepting between the hours of eight in the morning and three in the afternoon, except in cases which require an immediate example.

Art. forty-fifth. No sentence of a court-martial shall be put in execution, until after report shall be made to the commanding officer where the court-martial shall be held, and his orders be issued for carrying such sentence into execution.

Art. forty-sixth. The commissioned officers in any regiment may, by the appointment of their colonel or commanding officer, hold regimental courts-martial for the inquiring into such disputes or criminal matters as may come before them, and for inflicting corporal punishment for small offences, and shall give judgment by the majority of voices; but no sentence shall be executed till the commanding officer (not being a member of the court-martial) shall have confirmed the same.

Art. forty-seventh. No regimental court-martial shall consist of less than five officers, excepting in cases where that number cannot be conveniently assembled, when three may be sufficient; who shall likewise determine upon the sentence by the majority of voices.

Art. forty-eighth. Any officer commanding in a fort, castle, barrack or elsewhere, where the corps under his command consists of detachments from different regiments, or of an independent company or companies, may assemble courts-martial for the trial of offenders in the same manner as if they were regimental, whose sentence shall not be executed until it shall be confirmed by the said commanding officer.

Art. forty-ninth. No person whatsoever shall use menacing words, signs or gestures in the presence of a court-martial then sitting, or shall cause any disorder or riot so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court-martial.

Art. fiftieth. To the end that offenders may be brought to justice, whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his commanding officer, if an officer, be put in arrest; if a non-commissioned officer or soldier, be imprisoned until he shall be either tried by a court-martial, or shall be lawfully discharged by proper authority.
Not to continue in confinement more than 8 days.

An account of crime to be given at the time of commitment.

Penalty for releasing prisoners without authority.

Provost-martials, &c., required to give in an account of the names, crimes, &c., of prisoners.

Art. fifty-first. No officer or soldier who shall be put in arrest or imprisonment, shall continue in his confinement more than eight days, or until such time as a court-martial can be conveniently assembled.

Art. fifty-second. No officer commanding a guard or provost-martial, shall refuse to receive or keep any prisoner committed to his charge by any officer belonging to the forces of this Commonwealth; which officer shall, at the time of commitment, deliver an account, in writing, signed by himself, of the crime with which the prisoner is charged.

Art. fifty-third. No officer commanding a guard or provost-martial, shall presume to release any prisoner committed to his charge without proper authority for so doing, nor shall he suffer any prisoner to escape, on the penalty of being punished for it by the sentence of a court-martial.

Art. fifty-fourth. Every officer or provost-martial to whose charge prisoners shall be committed, is hereby required, within twenty-four hours after such commitment, or as soon as he shall be released from his guard, to give, in writing, to the colonel of the regiment to which the prisoner belongs (where the prisoner is confined upon the guard belonging to the said regiment and his offence only relates to the neglect of duty in his own corps) or to the Commander in Chief, their names, their crimes, and the names of the officers who committed them, on the penalty of his being punished for his disobedience or neglect, at the discretion of a court-martial.

Art. fifty-fifth. If any officer under arrest, shall leave his confinement before he shall be set at liberty by the officer who confined him or by a superior power, he shall be cashiered for such his offence.

Art. fifty-sixth. Whosoever commissioned officer shall be convicted before a general court-martial of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from the service.

Art. fifty-seventh. All officers, conductors, gunners, matrosses, drivers, or any other person whatsoever, receiving pay or hire in the service of the Massachusetts artillery, shall be governed by the aforesaid rules and articles; and shall be subject to be tried by courts-martial in like manner with other officers and soldiers.

Art. fifty-eighth. For differences arising amongst themselves, or in matters relating to their own corps, the courts-martial may be composed of their own officers; but where a sufficient number cannot be assembled, or in matters wherein other corps are interested, the officers of artillery shall sit in courts-martial with the officers of other corps.

Art. fifty-ninth. No person shall be sentenced to suffer death, except in the cases expressly mentioned in the foregoing articles, nor shall more than thirty nine stripes be inflicted on any offender for any one offence.

Art. sixtieth. The field officers of each and every regiment shall appoint some suitable person belonging to such regiment to re-
receive such fines as may arise within the same for any breach of any of the foregoing articles; and shall direct the same to be properly applied to the relief of such sick, wounded or necessitous soldiers as belong to such regiment; and such person shall account with such officer for all fines received, and the application thereof.

Art. sixty-first. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offence, and be punished at their discretion.

Art. sixty-second. Whenever any officer or soldier shall be accused of a capital crime, or of having used violence or committed any offence against the person or property of the good people of this or either of the United States, such as is punishable by the known laws of the land, the commanding officer and officers of every regiment, troop or party to which the person or persons so accused shall belong, are hereby required, upon application duly made by or in behalf of the party or parties injured, to use his utmost endeavours to deliver over such accused person or persons to the civil magistrate, and likewise to be aiding and assisting to the officers of justice in apprehending and securing the person or persons so accused, in order to bring them to trial. And if any commanding officer or officers shall wilfully neglect, or shall refuse, upon the application aforesaid, to deliver over such accused person or persons to the civil magistrate, or to be aiding and assisting to the officers of justice in apprehending such person or persons, such officer or officers so offending shall be cashiered. [Oct. 24, 1786.]

An Act to prevent Routs, Riots, and tumultuous Assemblies, and the evil consequences thereof.

WHEREAS the provision already made by law for the preventing routs, riots and tumultuous assemblies and the evil consequences thereof has been found insufficient:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the publication of this Act, if any persons to the number of twelve, or more, being armed with clubs, or other weapons, or if any number of persons, consisting of thirty or more, shall be unlawfully, routously, riotously or tumultuously assembled, any Justice of the Peace, sheriff or deputy-sheriff of the county, or constable of the town, shall, among the rioters, or as near to them as he can safely come, command silence while proclamation is making, and shall openly make proclamation in these or the like words:

COMMONWEALTH OF MASSACHUSETTS.

BY virtue of an Act of this Commonwealth, made and passed in the year of our Lord one thousand seven hundred and eighty six, entitled, "An Act for supressing routs, riots...
and tumultuous assemblies and the evil consequences there
of." I am directed to charge and command, and I do ac
cordingly charge and command all persons, being here as
sembled, immediately to disperse themselves, and peace
ably to depart to their habitations, or to their lawful busi
ness, upon the pains inflicted by the said Act.

God save the Commonwealth.

And if such persons, assembled as aforesaid, shall not disperse
themselves within one hour after proclamation made, or at
ttempted to be made, as aforesaid, it shall be lawful for every
such officer to command sufficient aid, and he shall seize such
persons, who shall be had before a Justice of the Peace; and
the aforesaid Justice of the Peace, sheriff or deputy-sheriff is
hereby further empowered to require the aid of a sufficient
number of persons in arms, if any of the persons assembled as
aforesaid shall appear armed: And if any such person or per
sons shall be killed or wounded by reason of his or their resist-
ing the persons endeavouring to disperse or seize them, the said
justice, sheriff, deputy-sheriff, constable and their assistants,
shall be indemnified and held guiltless.

SEC. 2. And be it further enacted, That if any person be
ing commanded by such justice, sheriff, deputy-sheriff or con-
stable, as aforesaid, shall refuse or neglect to afford the assist-
tance required, and shall be convicted thereof upon the oath of
either of the said officers so commanding, or other legal evi-
dence, he shall forfeit and pay a sum not less than forty shil-
lings, nor exceeding ten pounds, to be recovered by indictment,
or presentment before the Supreme Judicial Court or any Court
of General Sessions of the Peace, according to the aggravation
of the offence; to be paid into the public treasury for the use
of the Commonwealth.

SEC. 3. And be it further enacted, That all persons who,
for the space of one hour after proclamation made or attempt-
ed to be made, as aforesaid, shall unlawfully, routously, riot-
ously and tumultuously continue together, or shall willfully let
or hinder any such officer, who shall be known or shall openly
declare himself to be such, from making the said proclamation,
shall forfeit all their lands, tenements, goods and chattels to
this Commonwealth, or such part thereof as shall be adjudged
by the justices, before whom such offence shall be tried, to be
applied towards the support of the government of this Com-
monwealth; and shall be whipped thirty-nine stripes on the
naked back at the public whipping-post, and suffer imprison-
ment for a term not exceeding twelve months nor less than six
months; and once every three months during the said im-
prisonment receive the same number of stripes on the naked
back at the public whipping-post as aforesaid. And if any
such person or persons, so riotously assembled, shall demolish
or pull down, or begin to demolish or pull down, any dwelling-
house or other house or parcel thereof; any house built for
public uses; any barn, mill, malt-house, store-house, shop or
ship, he or they shall suffer the same pains and penalties as are
before provided in this Act. Provided always, That where there shall appear any circumstances to mitigate or alleviate any of the offences against this Act, in the judgment of the court, before which such offence shall be tried, it shall and may be lawful for the justices of such court to abate the whole of the punishment of whipping, or such part thereof as they shall judge proper; any thing in this Act to the contrary notwithstanding.

Sect. 4. And be it further enacted, That this Act shall be read at the opening of every Court of General Sessions of the Peace, by the clerk of the said court, and at the anniversary meeting of each town within this Commonwealth by the town-clerk thereof in March or April annually: And no person shall be prosecuted for any offence contrary to this Act, unless prosecution be commenced within twelve months after the offence committed. [Oct. 28, 1786.]
An Act for the Limitation of Personal Actions, and for avoiding Suits at Law.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all actions of trespass quare clausum fregit, all actions of trespass, detinue, trover or replevin, for goods or cattle, all actions of account, and upon the case, other than such accounts as concern the trade of merchandize, between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract, without specialty, all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the first day of June next, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say, the said actions upon the case, other than for slander, and the said actions of account, and the said actions of trespass, debt, detinue and replevin, for goods or cattle, and the said actions of trespass quare clausum fregit, within four years from the first day of June, one thousand seven hundred and eighty-seven, or within six years next after the cause of such actions or suits, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within one year next after the first day of June aforesaid, or within three years next after the cause of such actions or suits, and not after; and the said actions upon the case for words, within one year next after the first day of June aforesaid, or within two years next after the words spoken, and not after. Provided always, That if, upon any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed by reason of error, or a verdict pass for the plaintiff, and for matter alleged in arrest of judgment, the judgment be given against the plaintiff that he take nothing by his plaint, writ or bill, that in all such cases, the party, plaintiff, his executor or administrator, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, and not after.

Sect. 2. AND BE IT FURTHER ENACTED by the authority aforesaid, That in all actions of trespass quare clausum fregit, hereafter brought, wherein the defendant shall, in his plea, disclaim all right, title and interest to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence, or involuntary, the defendant shall be admitted to plead a disclaimer, and that the trespass was done by negligence, or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, or the defendant may have leave to bring money into court to satisfy the damage the plaintiff has sustained; and in case the jury shall not assess larger damages for the trespass than the money tendered, or brought into court, the defendant shall recover of the plaintiff his reasonable costs.

Sect. 3. AND BE IT FURTHER ENACTED by the authority aforesaid, That in all actions of the case, for slanderous words, all actions
of assault and battery, all actions for imprisonment, and all actions for malicious prosecutions, hereafter prosecuted in any of the courts of record, within this Government, if the jury that inquire of the damages, do find or assess the damages under four pounds, then the plaintiff or plaintiffs, in such actions, shall have and recover only one half so much costs as the damages so found or assessed amount unto, without any further increase of the same; and in all other actions where the title to real estate does not come in question, in case the judgment for the debt or damage be under four pounds, the plaintiff shall be entitled to only one fourth part so much cost as the debt or damage, unless in the opinion of the court, where the same shall be determined, the plaintiff had a reasonable expectation of larger damages than four pounds. Provided always, That where judgment shall be rendered upon the report of referees, full cost shall be taxed for the party recovering, notwithstanding the judgment be under four pounds, unless a different adjudication respecting the costs shall be made from the report itself.

Sect. 4. And be it further enacted by the authority aforesaid, That this act shall not be understood to bar any infant, feme covert, person imprisoned, or beyond sea, without any of the United States, or non compos mentis, from bringing either of the actions before mentioned, within the term before set and limited for bringing such action, reckoning from the time that such impediment shall be removed: And if any person or persons, against whom there is, or hereafter shall be any cause of suit, for every and any of the species of action herein before enumerated, who, at the time the same accrued, was without the limits of this Commonwealth, and did not leave property or estate therein that could, by the common and ordinary process of law, be attached; that then, and in such case, the person that is entitled to bring such suit or action, shall be at liberty to commence the same within the respective periods before limited, after such persons return into this Government.

Sect. 5. Provided always, and be it further enacted by the authority aforesaid, That this Act shall not extend to bar any action hereafter brought upon any note, in writing, made and signed by any person or persons, and attested by one or more witnesses, whereby such person or persons has promised, or shall promise, to pay to any other person or persons, any sum of money mentioned in such note; but all actions upon such note or notes, brought by the original promisee, his executor or administrator, shall and may be maintained as if this Act had never been made, any thing herein contained to the contrary notwithstanding.

Sect. 6. And be it further enacted by the authority aforesaid, That all laws respecting the limitation of personal actions, made and passed prior to the first day of January, one thousand seven hundred and eighty-seven, be and hereby are repealed. [Feb. 13, 1737.] This act suspended in part—1790 ch. 20 : 1792 ch. 82. Add. act—1793 ch. 75.
An Act in Addition to the Act for the more easy Partition of Real Estate, passed March the eleventh, 1784.

WHEREAS no provision is made, by said Act, for determining the material facts set forth in the petition for partition, in case the same are controverted by any of the tenants in common:

SECT. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when the facts alleged in any petition for partition, hereafter to be preferred in consequence of the said Act, are controverted by any of the tenants in common, the answer or objection to the petition shall be made in writing, in the form of a plea, to which the petitioner may reply or demur, to the end the matter in dispute may be reduced to an issue in law or fact, and receive a determination by the court or a jury, in the manner other issues are determined: And in case the issue be determined in favour of the petitioner, judgment shall be entered up by the court, that partition be made by disinterested freeholders as the said law directs, and proceed to appoint them accordingly: And also that the petitioner recover against the adverse party the cost attending the trial, and may issue execution for said costs in the form prescribed by law as in other cases. But if on such pleading it be determined that the petitioner holds a less share or proportion in common and undivided than he has in his petition alleged, the adverse party shall recover against the petitioner his reasonable cost; notwithstanding judgment may be rendered in favour of the petitioner to have an assignment of such part of the real estate in severalty, as he, in fact, holds in common and undivided.

SECT. 2. And be it further enacted by the authority aforesaid, That either party may appeal from the judgment of the Court of Common Pleas, that partition shall be made, to the Supreme Judicial Court, before the appointment of freeholders to make partition: But if no appeal is made until after the return of the freeholders, and the judgment of the court thereon, the judgment, that partition shall be made, shall not, by such appeal, be again called in question. And the Supreme Judicial Court shall, upon the complaint of the appellee, (in case the appellant shall fail to enter or prosecute his appeal) affirm the former judgment, and cause such other proceedings to be had thereon as to have partition completed in the same way and manner as if the proceedings had been originally commenced in that court. Provided always, That the trial of the fact by a jury, whether the petitioner holds in common, in the same proportion he alleges in his petition, or in a lesser proportion, shall be determined in the county where the lands lie, unless the parties shall expressly agree to the contrary; in which case the trial by jury may be had in such county as the parties agree upon.

SECT. 3. And be it further enacted by the authority aforesaid, That in all actions of partition that shall be hereafter commenced, the same rule and regulations shall take place with respect to an appeal from an interlocutory judgment of the Court of Common Pleas, that partition shall be made, as is herein before.
prescribed, upon the like judgment upon a petition for partition; any former law, usage or custom to the contrary notwithstanding. [Feb. 14, 1787.]

An Act making perpetual an Act respecting the Grammar-School in Ipswich, in the county of Essex. [Feb. 14, 1787.]

An Act for regulating the Proceedings on Probate Bonds in the Courts of common Law; and directing their Form in the Supreme Court of Probate.

WHEREAS every Judge of the Probate Court, upon granting letters of administration upon the estate of any person deceased, is by law directed to take bond to himself and his successor in office; and, upon putting such bond in suit, judgment has been always given in the name of the Probate Judge of the county for the time being only; and the having such a judgment satisfied by levying execution issued thereon upon the real estate of the debtor, when personal property cannot be found sufficient to satisfy the same, is attended with manifest inconveniences:

SECT. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That when it shall satisfactorily appear, upon a hearing in chancery on an administration bond, for whose particular use and benefit the money for which execution issues is to ensue, the judgment shall be rendered, that the plaintiff in his said capacity (naming him) now have execution for being part of the penalty forfeited and costs taxed at for the use of A. B. of C. in the county of S. [addition] a creditor, or heir of E. F. deceased (as the case may be.) And the person to whose use judgment shall be rendered in the name of the Judge of Probate as aforesaid, may sue out execution thereon, and have the same levied on personal or real estate, as he may find it necessary and shall be deemed and taken to be the creditor, to every intent and purpose whatever. And when there are several persons to whose use the monies recovered on an administration bond are to ensue, there shall be as many separate and distinct judgments, in form aforesaid.

And as a directory for what sum execution ought to be awarded upon an administration bond, when it shall appear, upon confession, verdict, demurrer or otherways, that the penalty is forfeited; and also that administration bonds may not, upon frivolous pretences, be put in suit:

SECT. 2. Be it further enacted by the authority aforesaid. That when the suit is instituted at the desire of a creditor of the deceased, such creditor must first have his debt or damages ascertained by judgment of court (unless the estate is insolvent) and likewise make it appear that a demand has been made of the administrator therefor; and that the administrator has refused or neglected to satisfy the same, or to shew goods or estate of the deceased for that purpose. When the estate is insolvent, the creditor must produce a copy of the order of distribution of the estate of the deceased among the creditors, particularly specifying each creditor's claim, and the dividends they are sev-
Sect. 3. And be it further enacted by the authority aforesaid, That all suits hereafter brought in the name of any Probate Judge, upon a probate bond of any kind, shall be originally commenced in the Supreme Judicial Court held within or for the county unto which the said Probate Judges respectively belong.

Sect. 4. And be it further enacted by the authority aforesaid, That all bonds given in the Supreme Court of Probate by executors, administrators or guardians, for the faithful discharge of their respective trusts, shall be to the Commonwealth, for the use and benefit of the creditors, heirs, legatees, or wards, as the nature of the bond shall require. And all bonds already taken in the said Supreme Court of Probate, in that manner and form, are hereby declared to have been rightly taken. And when bonds taken in the Supreme Court of Probate, in form aforesaid, shall be put in suit, the permission of the said court shall be first had therefor: And all such suits shall be originally commenced in the Supreme Judicial Court, and the same species of judgment and modes of chancery shall be had thereon, as in this Act is prescribed and directed to be had, upon bonds given to the Judge of any Probate Court, in similar cases.

Sect. 5. And be it further enacted by the authority aforesaid, That when judgment shall be rendered upon any probate bond against the obligors, their executors or administrators, and the party or parties, against whom such judgment shall be rendered, shall by law be entitled to a review thereof, execution
shall be suspended or stayed in such counties as have but one Supreme Judicial Court annually, for the space of six calendar months, to commence on the day of rendering the judgment; and in such counties as have two Supreme Judicial Courts annually, execution shall be suspended until the next term or sitting thereof in the same county, to the end the said obligors, their executors or administrators may (if they see cause) review the same; and if a writ of review shall not be taken out and served for reversing the said judgment, within the time aforesaid, such obligors, their executors and administrators are hereby forever precluded and barred from taking out or prosecuting a writ of review upon such judgment afterwards, and execution may issue thereon, any thing contained in the Act granting to parties the privilege of reviewing within three years, notwithstanding. And when the judgment reviewed shall be in the name of the Commonwealth, the service of the writ of review shall be made by reading the same, or leaving a copy thereof with the party or parties unto whose use and benefit the same judgment ensues, if he or they reside within the Government; otherwise, with the agent or attorney who prosecuted the suit, fourteen days, at least, before the sitting of the court where the writ is returnable. [Feb. 15, 1787] Add. act—(1787 ch. 42, repealed by further add. act)—1788 ch. 20.

An Act describing the Disqualifications to which persons shall be subjected, who have been, or may be guilty of Treason, or giving Aid or Support to the present Rebellion, and to whom a pardon may be extended. [Feb. 16, 1787]

An Act for the more safe keeping the Records of the several Courts of Justice, and the Records of Deeds within this Government.

Sect. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same. That each clerk of the Supreme Judicial Court that may hereafter be appointed to that office, shall, before he enter upon the duties thereof, give bond to the Treasurer and Receiver-General of this Commonwealth, in a sum not less than one hundred, and not more than five hundred pounds, at the discretion of the said Supreme Judicial Court, with one or more sufficient sureties for the faithful discharge of that trust, and to keep up the records of the said court, or such part thereof as shall, by the said court, be assigned him, seasonably and in good order; and also to make and keep convenient and correct alphabets to the said records.

Sect. 2. And be it further enacted by the authority aforesaid, That the clerks of the several Courts of General Sessions of the Peace and of the several Courts of Common Pleas, and the registers of the several Probate Courts, the registers of the Maritime Court, or Court of Admiralty, within this Government, that may hereafter be appointed to that office, shall, before they enter upon the duties of their said respective offices, severally give bond to the treasurer of the county to which they severally belong, in a sum not less than fifty or more than three hundred pounds, at the discretion of the court to which they officiate, with one or more sufficient sureties for the faith-

party shall be entitled to a review, execution shall be suspended, &c. 7 & 8 Geo. II. ch. 5.

[Altered 1782 ch. 20, § 1.]

13W.III.ch.16. 1786 ch. 66. 1817 ch. 25.

Chap. 56.

Chap. 57.

3Geo.III. ch. 7.

Clerks of the Su. Jud. Court, hereafter appointed, shall give bond to the Treasurer or Receiver-General.

Clerks of the Courts of Sessions and Common Pleas, registers of probate, &c. shall give bond to the county-treasurer.
ful discharge of their trust; and for keeping up seasonably and in good order the records of the same court; and also to make and keep convenient and correct alphabets of the records of which they shall respectively be appointed officers and keepers.

Sect. 3. And be it further enacted by the authority aforesaid, That the clerks and registers of the several courts aforesaid, that have not given bond (if any such there be) agreeably to an Act passed in the year one thousand seven hundred and sixty-three, are hereby directed and enjoined to give bond, in manner as is herein before directed, at the first session of the court of which he is clerk or register, that shall be held after the passing this Act; and any clerk or register that shall neglect to give bond as aforesaid, or after giving such bond shall incur a forfeiture thereof, shall be and hereby is declared incapable of sustaining or holding the said office; and if either of the said clerks or registers shall have neglected to complete his records for more than six months, at any one time after the first day of June next (sickness or any extraordinary casualty excepted) such neglect shall be adjudged a forfeiture of the bond of such clerk or register.

And to render this Act more effectual for the said purposes:

Sect. 4. Be it further enacted by the authority aforesaid, That the justices and judges of the said several courts are hereby required and directed to inspect the conduct of their several clerks.

1783 ch. 60, 1. How court shall proceed in displacing any register of deeds for misconduct.

Clerks that have not given bond agreeably to a former law, to give bond in manner before directed.

Penalty for neglecting.

Justices and judges required to inspect the conduct of their several clerks.

Sect. 5. Be it therefore enacted by the authority aforesaid, That when any register of deeds, upon the presentment of the grand jury, or information of the attorney-general, or the person acting for the government in the same office, shall, by confession, demurrer, verdict, or by neglecting to appear and answer, after reasonable notice, be found guilty of misconduct or misbehaviour in discharging the duties of his said office, or that by reason of infirmity of body or mind, he is incapable of
An Act establishing the Right to, and the Form of the Writ De Homine Replegiando, or writ for replying a man.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every person within this Commonwealth, who shall be imprisoned, confined, or held in duress, shall be entitled, as of right, to the writ de homine replegiando, and to be thereby delivered; unless, while the writ of habeas corpus is suspended by the Legislature, he shall stand committed by the special order of the supreme executive power of the State, as dangerous to the public safety; or by the same, or by some subordinate authority of the government, for treason, the death of man, counterfeiting the common currency, house-burning, burglary, robbery, or some other offence, for which, if he is convicted, he may suffer death or banishment; or unless he is held in execution upon judgment of debt, forfeiture, withernam, or by distress for taxes, or under sentence, after conviction, for fine, costs or in punishment.

And where any person stands committed by lawful authority for any crime for which he may not suffer death, or otherwise than is above in this Act specified, the writ shall be in form following, viz.

Commonwealth of Massachusetts.

[L. S.] S—— ss. To the Sheriff of our county of S. Greeting.

We command you, that justly and without delay, you cause to be reprieved C. D. who (as it is said) is taken and detained in our gaol in N. within our said county of S. by the commitment of A. B. that he, the said C. D. may be at our Supreme Judicial Court, next to be holden at within our county aforesaid, upon the Tuesday of next, then and there in our said court to answer to all such things as shall be then and there objected against him, more especially for the offence for which he stands committed, unless, while the writ of habeas corpus is suspended by the Legislature, he stands committed by the supreme executive power of the State, as dangerous to the public safety; or by the the same or some subordinate authority of the government, for treason, the death of man, counterfeiting the common currency, house-burning, burglary, robbery, or some other offence, whereof if he is convicted, he may suffer death or banishment; or unless he is holden under
execution upon judgment for debt, forfeiture, or in withernam, or by distress for taxes, or under sentence, after conviction, for fine, or costs, or in punishment. Witness, W. C. Esq. at the day of in the year of our Lord

L. M. Clerk.

And where the plaintiff is held without order of law, the writ shall be in form following, viz.

Commonwealth of Massachusetts.

[S. ss.] To the Sheriff of our county of S. Greeting.

We command you, that justly and without delay you cause to be replevied, C. D. who (as it is said) is taken and detained in a place called N. within our said county of S. by the duress of G. H. that he, the said C. D. may appear at our Court of Common Pleas, next to be holden within and for our said county of S. upon the Tuesday of next, then and there in our said court to demand right and justice against the said G. H. for the duress and imprisonment aforesaid, and to prosecute his replevin as the law directs: Provided, That if he, the said C. D. is held by the said G. H. as his ward, infant, or one to whose service he is entitled, or as a principal, to whom the said G. H. is bail, and he shall make you secure by good and lawful mainpnrors for his appearing at our court aforesaid, to prosecute his replevin against the said G. H. and to have his body at the same court, ready to be re-delivered if ordered thereunto, and to pay all such damages and costs as shall be then and there awarded against him; then and not otherwise you are to deliver him; and if the said C. D. is by you delivered at any day before the sitting of our said court, you are to summon the said G. H. by serving him with an attested copy of this writ, that he may appear at our said court, to answer unto the said C. D. upon his replevin. Witness T. N. Esq. at B. the day of in the year of our Lord

X. Y. Clerk.

Sect. 2. And be it enacted. That if the plaintiff stands committed for any crime not before in this Act mentioned, or for any other offence, whereof, if he is convicted, he may not have sentence of death or banishment thereof passed upon him. he shall have his writ from the clerk of the Supreme Judicial Court fourteen days before the return day of the same, and the same writ shall be made returnable in the same county where the imprisonment happens, and unto the next Supreme Judicial Court, to be there holden; but if he is held by any person without due order of law, he shall have his writ from the clerk of the Court of Common Pleas of the county wherein he is held, returnable fourteen days at the least from the day of the date; and where the plaintiff is delivered by a writ, returnable into the Supreme Judicial Court, having been committed for any
offence, and from which commitment he is replevisable, he shall, before he is delivered, recognize before the sheriff of the county, in person, with sufficient surety or sureties, in a reasonable sum, for his appearance at the same court, to answer, abide and perform the order and sentence of the same; which recognition shall be returned into court by the sheriff; and when the plaintiff shall be delivered by a writ returnable into the Court of Common Pleas, he shall, before his deliverance, give bond to the use of the defendant, with sufficient surety or sureties, at the discretion of the sheriff, to appear at the court to which the writ is returnable, and there to prosecute his replevin against the defendant, to have his body there ready to be re-delivered, as the court shall order, and to pay all damages and costs that may be awarded against him; and the sheriff shall be answerable, if the sureties shall prove insufficient, unless they are such as the defendant agrees to.

Sect. 3. And it is further enacted, That if the plaintiff shall not prosecute, or in prosecuting, shall be unable to support his replevin, then the defendant shall recover his reasonable costs: And if it shall be found, upon the trial, that the plaintiff is the ward or infant of the defendant, or that he the said defendant is entitled to the service of the plaintiff, or that the defendant is bail to the plaintiff, then the defendant shall have judgment against the plaintiff for a re-delivery of his body, and for such damages as the jury shall assess against the plaintiff, with reasonable costs.

Sect. 4. And it is further enacted, That if the sheriff shall return upon the writ de homine replegiando, issuing from the Court of Common Pleas, that the defendant hath eloned the plaintiff's body, so that he cannot deliver him, then the plaintiff shall, on motion to the court, have a capias in withernam to take the defendant's body, and to keep the same until he shall produce the plaintiff, to be delivered according to the commandment of the original writ. Provided nevertheless, That if the defendant shall give full and sufficient bail for his appearance at the court whereunto the writ is returnable, then and there to traverse the return of the sheriff, upon the writ de homine replegiando, that the sheriff shall take such bail; or if the defendant cannot procure such bail, and is thereupon committed by the sheriff, he may nevertheless at the next term (and not afterwards) be allowed to traverse the sheriff's return of elongation, or to plead any matter of justification, in the same manner as he might have done to the original replevin: And if the jury shall not find that he is guilty of eloning the plaintiff as set forth in the return, or if they find that the justification is supported, the defendant shall be allowed his costs against the plaintiff, but if the defendant will not traverse the return, and put himself upon the country, or if, upon traversing the same, he shall be found guilty of the elongation of the plaintiff, or if, upon pleading a justification, he shall not support the same, then the court shall order him into the custody of the sheriff, and shall issue an alias writ of withernam to hold him, until he shall produce the body of the plaintiff, or until he can prove that the plaintiff is dead; which fact may be tried at any term of the same court, and in the same
county, by a jury, upon the information, and at the expense of the defendant.

Sect. 5. And it is further enacted, That the original writ of *withernam* shall be in form following, viz.

Commonwealth of Massachusetts.

[t. s.] S—— ss.

To the Sheriff of our county of S.

Greeting.

WHEREAS we have heretofore, by our writ *de homine repeligiando*, commanded you that justly and without delay [here the original writ *de homine repeligiando* shall be recited] and you having returned thereupon [here the sheriff’s return shall be recited] [here] We therefore command you, that without delay you take the body of the said G. H. if he may be found in your precinct, and him safely keep, so that he may be at our Court of Common Pleas, next to be helden at within and for our said county of S. on the Tuesday next, then and there in our said court to traverse the return aforesaid upon our original writ *de homine repeligiando*, and that if he shall be found guilty of the elongation of the said C. D. he may be held by our *alias* writ of *withernam*, until he shall produce the body of the said C. D. that he may be delivered as the law directs. Witness T. N. Esq. at B. the day of in the year of our Lord

X. Y. Clerk.

And the *alias* writ of *withernam* shall be in form following, viz.

Commonwealth of Massachusetts.

[t. s.] S—— ss.

To the Sheriff of our county of S.

Greeting.

WHEREAS we commanded you, by our original writ *de homine repeligiando*, that [here the original writ *de homine repeligiando* shall be recited] upon which writ a return was made, that [here the return shall be recited] whereupon our writ of *withernam* was duly issued, commanding you that [here the writ of *withernam* shall be recited] and at our said court, the said G. H. [here all the consequent proceedings shall be recited] whereupon it was considered and adjudged by our said court, that the body of the said G. H. should be taken and held, until he shall produce the body of the said C. D. and until he shall pay the sum taxed in costs against him: We therefore command you, that you take the body of the said G. H. into your custody, and him there to hold irreplevisably in one of our gaols in our said county of S. until he shall produce the body of the said C. D. or is discharged by order of law. Witness Esq. at B. the day of in the year of our Lord

Clerk.

Sect. 6. And be it further enacted, That in any stage of the proceedings upon process pursuant to this Act, any person shall be permitted to appear for the plaintiff, who will stipulate as the court shall direct for the payment of all costs and damages that
An Act for the more speedy and effectual Suppression of Tumults and Insurrections in the Commonwealth.

WHEREAS in a free government, where the people have a right to bear arms for the common defence, and the military power is held in subordination to the civil authority; it is necessary for the safety of the State that the virtuous citizens thereof should hold themselves in readiness, and when called upon, should exert their efforts to support the civil government, and oppose the attempts of factious and wicked men who may wish to subvert the laws and Constitution of their country; and whereas a delay in suppressing tumults and insurrections, in divers counties of the State, has been attended with alarming consequences, such tumults and insurrections having lately grown into the unnatural and dangerous rebellion, which now exists in the Commonwealth, for the prevention of like consequences in future:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever an insurrection shall have taken place in either of the counties of the Commonwealth, to obstruct the course of justice, or the due execution of the laws, or there is reason to apprehend that a dangerous insurrection for such purposes will be excited, it shall be the duty of the civil officers in such county, as well the sheriff as the justices of the several Courts of Judicature within such county, immediately to give information thereof to his Excellency the Governor, for the time being; who is hereby requested thereupon to exercise the powers vested in him by the Constitution, and to give immediate directions to the major-general or commanding officer of the division where such insurrection exists or is apprehended, and, if he shall think it necessary, to the major-general or commanding officer of any other division or divisions, to detach from his or their division or divisions, such part of the militia for the support of the civil authority, as he shall judge fully adequate for that purpose, and for the apprehension and safe keeping of those who may be concerned in such insurrection.

Sect. 2. And be it further enacted by the authority aforesaid, That if in the opinion of the sheriff or of any two of the justices, either of the Supreme Judicial Court, or the Court of Common Pleas in any of the counties of this Commonwealth, it shall be necessary, for the suppression of any insurrection existing or apprehended, as aforesaid, in such county, that a force shall be instantly raised and called forth for that purpose; and if, by reason of distance, the necessary aid cannot be obtained by order of the Commander in Chief, it shall be the duty of such sheriff or justices to certify the same, under his or their hand, to the major-general or commanding officer of the division wherein such county lies, or to the commanding officer of some regiment or corps in the vicinity, and to request him or them to detach the whole, or such number of the militia under the command of such officer for the support of the civil authority, as the said
justices or sheriff may think necessary to defeat the purposes of such insurgents, and to apprehend and safely keep them for trial, and, as soon as may be, to give notice of such application to the Commander in Chief, that he may take the necessary orders thereupon; and it shall be the duty of such major-general or commanding officer, upon such request being made, to detach such number of the militia, as shall be requested as aforesaid, armed and equipped according to law; and the militia so detached and collected shall afford their assistance to, and be under the direction of the civil officer or magistrate, unless in case of a rebellion declared by the Legislature.

Sect. 3. And be it further enacted by the authority aforesaid, That if any commissioned officer of the militia shall refuse or wilfully neglect to execute any orders he may receive from his superior officer, to make a detachment from the corps under his command, or to march for the support of the civil authority or the suppression of any insurrection as aforesaid; in addition to the punishment which may be inflicted by virtue of any Act for regulating the militia, if convicted thereof before the justices of the Supreme Judicial Court, he shall be subject to be fined in a sum not exceeding fifty pounds, and to be adjudged incapable of sustaining any office in this Commonwealth for a term not exceeding ten years; to either or both of the said penalties, according to the aggravation of the offence and circumstances of the offender, as to the justices of the said court shall seem meet.

Sect. 4. And be it further enacted, That if any person, whether non-commissioned officer or private, and belonging either to the train-band or the alarm-list, who shall be detached or ordered to march for the support of the civil authority, or the suppression of any insurrection existing or apprehended, as aforesaid, shall refuse or neglect to march, armed and equipped, in the manner and at the time which the officer, by whom he shall be detached, shall direct, or shall desert or leave the service before he shall be regularly discharged, if convicted thereof before the justices of the Supreme Judicial Court, he shall be subject to be fined, at the discretion of the said court, in a sum not exceeding ten pounds.

Sect. 5. And be it further enacted by the authority aforesaid, That if any person in public or private discourse or conversation, or by any ways or means, shall dissuade, or endeavour to prevent any military officer from performing the duty required of him by this Act, or any person or persons detached or ordered to march for the purposes aforesaid, from marching to the place of rendezvous, or from continuing in the service until regularly discharged, each person, so offending, being convicted thereof as aforesaid, shall pay a fine to the use of the Commonwealth not exceeding fifty pounds, and shall recognize for his good behaviour for a term not exceeding three years.

Sect. 6. And be it further enacted by the authority aforesaid, That compensation shall be made to such part of the militia as may at any time hereafter be detached or employed agreeably to, and for the purposes mentioned in this Act. [Feb. 20, 1787.] Add. act.—1809 ch. 123. See 1810 ch. 121.
An Act for incorporating the easterly Part of the Town of Dartmouth, in the County of Bristol, into a separate Town, by the name of New-Bedford. [Feb. 23, 1787.]

An Act for incorporating a certain Plantation in the County of Lincoln, called Majorbigwaduce, or Number-Three, into a Town by the name of Penobscot. [Feb. 23, 1787.] See 1785 ch. 39.

An Act in Addition to, and making Provision for the more duly collecting the Revenue arising from several Acts passed October the twenty-second, seventeen hundred and eighty-three, and July the eighth, seventeen hundred and eighty-six, for the Support of the Light-Houses in this Commonwealth. [Feb. 26, 1787.] Repealed—1787 ch. 31.

An Act for altering the time for holding the Supreme Judicial Court, at the next sessions of the same court, in the Counties of Hampshire and Berkshire, and for adjoining the courts next to be held in the Counties of Middlesex, Plymouth and Barnstable; and to authorize any Two of the Justices of the same court to do and perform the Business of the said courts at Plymouth and Barnstable, at the times to which they shall respectively be adjourned. [Feb. 26, 1787.]

An Act for repealing in part, a Clause in an Act passed the fifth day of March, one thousand seven hundred and eighty-six, entitled," An Act incorporating the Plantation of Shapleigh in the County of York, into a town by the name of Shapleigh, and for annexing several lands to Lebanon," [Feb. 26, 1787.] Further repealing Act—1792 ch. 34.

An Act for preventing Persons serving as Jurors, who, in consequence of having been concerned in the present Rebellion, are by law disqualified therefor. [Feb. 26, 1787.]

An Act granting the Privilege of Review in Civil Actions.
SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every party aggrieved at the judgment of the Supreme Judicial Court, where only one verdict hath been given against him in such action, may, at any time within two years, review the same cause and have one trial more; and there shall be no further pleadings, but the action shall be tried upon the review by the issue appearing upon the record to have been originally joined by the parties, but execution upon such judgment given in the Supreme Judicial Court shall not be stayed by such review, unless a bond shall be given as is in this Act provided. And the party bringing such action of review shall produce, in court, attested copies of the writ, judgment, and all papers used and filed in the former trial, and each party shall have the liberty to offer any further evidence. And it is also Provided, That any infant, feme covert, or person non compos mentis, imprisoned, in captivity, or out of the United States of America, shall have liberty to review their actions at any time within two years, exclusive of the time such impediment exists.

SECT. 2. And be it further enacted, That when either party shall bring an action of review, and enter the same, the whole cause shall be tried in the same manner as if no judgment had been given thereon; and the former judgment may be reversed in whole or in part, or greater damages or less, or no damages, may be given, as the merits of the cause upon law and the evidence shall appear to require, in the same manner as if both parties had brought their several writs of review.

SECT. 3. And it is further enacted, That when there are more than one original defendant against whom damages are recovered, and one or more, but not all of them shall review the cause, he or they shall purchase the writ therefor, in the name of all the original defendants; and if any of the original defendants shall not appear, their non-appearance shall be entered upon the court's record; and he or they who shall appear in support of the review, may prosecute the same to final judgment; and if he or they who shall prosecute the same, shall obtain a reversal of the former judgment in whole, he or they shall be entitled to costs, and a restoration of the damages by him or them respectively paid in satisfaction of the former judgment: And if he, or they who shall prosecute as aforesaid, shall obtain a reversal of the former judgment, in part only, he or they shall be entitled to costs, and a restoration of so much of the damages by him or them respectively paid in satisfaction of the former judgment, as the former judgment may have exceeded the judgment upon the review as aforesaid.

SECT. 4. And be it further enacted by the authority aforesaid, That when several damages are given against several defendants, either of them may review in the same manner as if there was no other original defendant in the cause; and if he shall obtain a reversal of the former judgment, in whole, as to him, he shall be entitled to a restoration of all damages and costs by him paid: And if he shall obtain a reversal of the former judgment, in part only, he shall be entitled to costs, and a restoration of so much of the damages by him paid in satisfaction of the
When any original defendant entitled to a review shall suppose there is danger of losing the sum given in damages, &c.—directions in this case.

Manner of serving writs, &c.

Bond when part of the defendants review.

Service of writ in real actions.

Chap. 67.
Col. L.1639,41. 47. 5 W. & M.ch.8, 12 Anne ch. 6. 1 Geo. II. ch.2. 10 Geo.II.ch.2. Selectmen empowered to lay out particular and private ways for the town and for individuals.

Proviso.

Court of Sessions may cause such former judgment, as the former judgment may have exceeded the judgment upon the review as aforesaid.

Sect. 5. And be it further enacted by the authority aforesaid, That when any original defendant or defendants entitled to, and intending to review, shall suppose that they will be in danger of losing the sum given in damages, or the goods or chattels recovered, if they are obliged to pay or deliver the same to the original plaintiff or plaintiffs, before a review, in all such cases such defendant or defendants, his or their agent or attorney, entering into bond at the time of making up the judgment, with sufficient surety or sureties, to be approved of by the court, with condition to prosecute a writ of review of the same action, with effect, at the next Supreme Judicial Court, to be helden for the same county, and to answer and pay to the original plaintiff or plaintiffs, for the damages, goods or chattels recovered, after the rate of twelve per cent, per annum, being double interest from the time of making up such judgment, with additional damages and double costs, in case the former judgment shall be affirmed in whole; and simple interest, if the same shall be affirmed in part, or if the judgment shall be upon demurrer or relievlin for any goods or chattels, then to pay all such damages as the jury shall assess for the detention, with double costs; if the former damages are affirmed, then execution shall be stayed upon the judgment whereon the review is had.

And when any party against whom any review is commenced, shall not be an inhabitant of this Commonwealth, the writ may be served upon such person as appeared for him in the former trial, or upon the agent of the said party, his attorney, or trustee, which shall be deemed a sufficient service; and in such case the court may, at their discretion, continue the cause for one or more terms, in order for the party to have personal notice, if they shall think that justice requires it.

Sect. 6. And it is further enacted, That when one or more, and not all the original defendants, against whom joint damages are goods, shall choose to review the cause, he or they shall be obliged to give bond, for the responding the whole sum given in damages, together with double interest and additional damages, as before provided; and no execution shall be issued against the other original defendants.

Sect. 7. And it is further enacted, That in all real actions, where the defendant or defendants in review live out of the Commonwealth, so that the writ of review cannot be served upon him or them, the service of such writ upon the tenant or person in possession, shall be deemed a good and sufficient service, and the defendant or defendants shall be held to answer thereupon accordingly. [Feb. 26, 1787.] Repealed—1817 ch. 85.

An Act directing the Method for laying out Highways.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the selectmen of the several towns in this Government, are hereby authorized and empowered, either personally, or by such other person or persons, as they shall appoint, to lay out, within their respective towns, particular and private ways, for the use of such town only, or for the use of one or more individuals thereof, or proprietors therein; and if any particular person or persons who are owners of the land, through which such private roads shall be laid out, be injured thereby, he or they shall receive such recompense as the party interested and the selectmen shall agree upon, to be paid by the town, or the individual person or persons, for whose use the road is laid out, or as shall be ordered by the Justices in their General Sessions of the Peace, upon an inquiry into the same, by a jury to be summoned for that purpose, or by a special committee, if the parties agree thereunto. Provided always, That no private way laid out by the selectmen, or their order, as aforesaid, shall be established as such, until the same has been reported to the town, at some public meeting of the inhabitants thereof, regularly notified and warned, and by them approved and allowed.

Sect. 2. And be it further enacted by the authority aforesaid, That if the selectmen shall unreasonably delay, or refuse to lay out, or cause to be laid out, any such private way, as before de-
scribed, being thereunto requested, in writing, by one or more of the inhabitants or proprietors of land in such town, then the Court of General Sessions of the Peace for the same county, at any session thereof, within one year, if the request appear to them reasonable, may cause the same private way to be laid out at the costs of the persons applying, by a committee of three disinterested freeholders; which committee shall estimate the damages occasioned thereby (if any there be) as well as ascertain the place and course of the said private way: The damages to be paid by the town, if it be of general benefit, otherwise by the individual or individuals for whose use and benefit the way is laid out. And the justices of the respective Courts of General Sessions of the Peace, upon application to them made by any party aggrieved at the continuance of any private way, may order and direct a discontinuance thereof, after notifying and hearing the parties interested therein, if they shall thereupon adjudge and determine such discontinuance reasonable.

Sect. 3. And be it further enacted by the authority aforesaid, That when any town shall unreasonably delay, or refuse to approve and allow of any private way laid out by the selectmen thereof, or their order, and put the same on record, any person or persons aggrieved by such delay or refusal, may apply to the Court of General Sessions of the Peace, for the same county, within twelve months after such refusal or delay; and the same court, after hearing the town thereof, may accept and approve of the said private way, as laid out by the selectmen, and direct the same to be recorded in the town book; or they may order the private way petitioned for, to be laid out by a committee of three disinterested freeholders, to be by them appointed for that purpose; which committee shall be under similar directions and obligations as to locating and estimating the damages occasioned thereby, as in this Act is prescribed for a committee of five, in locating or altering a county highway.

Sect. 4. And be it further enacted by the authority aforesaid, That when a new highway, or common road, from town to town or place to place shall be wanting, or where an highway or common road already laid out, stated and established, may or can with greater conveniency be turned or altered, upon application made to the Court of General Sessions of the Peace within the same county, and it being determined by them to be of common convenience or necessity to have such new way laid out, or old way altered, the said court are hereby authorized and empowered, by warrant under the seal thereof, to appoint a committee of five disinterested sufficient freeholders, in the same county, to lay out such highway or road; which committee shall give seasonable notice to all persons interested, of the time and place of their meeting; and they shall be under oath to perform the said service, according to their best skill and judgment, with most convenience to the public, and least prejudice or damage to private property. And they shall ascertain the place and course of said road, in the best way and private ways to be laid out, if select town refuse.

When towns unreasonably delay to approve or allow of any private way, &c. the persons aggrieved may apply to the Court of Sessions.

When a highway or common road from town to town shall be wanting, application may be made to the Court of Sessions.

To be laid out by five freeholders—
who shall give notice—
and be under oath—
and make return to the next court.

In case any person shall be damaged by the location of the road, he shall be indemnified.

Appeal to court—In case of dissatisfaction—

jury to revise—or new committee if agreed on.

1802 ch. 135.
1819 ch. 44.
1818 ch. 121.

Costs to follow the event.

Verdict of a jury, or report of a committee, as to damages, to be final.

Court may order the damages to be paid out of the treasury of the town.

What buildings and fences shall be considered as boundaries, and what as nuisances, &c.

manner they can; which having done, they, or the major part of them, shall make return thereof under their hands and seals, to the next Court of General Sessions of the Peace to be held in the same county, after the said service is performed; to the end the same may be accepted, allowed and recorded, and afterwards known for a public highway. Provided always, That if any person be damaged in his property, by the laying out or altering such highway, the town or district where the same is, shall make such person or persons reasonable satisfaction, according to the estimation of the committee, or the major part of them, who laid out the same; and said committee are empowered and required, under oath, to estimate the same, and make return thereof as aforesaid. And if any person find himself aggrieved by the doings of the said committee, in locating said way, or in estimating damages, he may apply to the Court of General Sessions of the Peace, provided such application be made to the said court that shall be held in the same county, next after the acceptance of such return; and said court is hereby empowered to hear and finally determine the same by a jury, under oath, to be summoned by the sheriff or his deputy for that purpose, if the person complaining desires the same; or by a new committee, if the person complaining and the agent for the town or district, in which the way is laid out, can agree thereon. And if the jury or committee agreed upon as aforesaid, who are to be under oath, shall not alter said way, or increase the damages, the person complaining shall be at all the costs incurred on that occasion, to be taxed against him by said court; otherwise such costs shall be paid by the county, and the increase of damages shall be paid by the town or district in which such way is located.

Sect. 5. And be it further enacted by the authority aforesaid, That the verdict of such jury, or the report of the committee agreed upon, as aforesaid, being made under their hands and seals to said court, and by them accepted and recorded, shall conclude the person or persons complaining, with respect to the damages, and also finally fix and determine the place of such road or highway.

Sect. 6. And be it further enacted, That the Court of General Sessions of the Peace may order the payment of such sum or sums of money as shall be assessed in damages, to be paid by any town or district, in consequence of this Act, out of the treasury thereof; and in default of payment, after a reasonable time, may levy the same by warrant of distress, upon the personal property of the inhabitants, to the use and benefit of the person or persons to whom the damages may be awarded.

Sect. 7. And be it further enacted by the authority aforesaid, That where buildings or fences have been erected, fronting upon, or against any training-field, burying-place, common landing place, highway, private way, street, lane, or alley, in any town, district, parish or precinct in this Government, where, from length of time, or otherwise, the breadth or quantity thereof is not known, or can be made certain by the records,
or by any other boundaries, and such buildings or fences have been upheld, maintained and continued for more than forty years; such fences or buildings shall be deemed and taken to be the true ancient boundaries thereof; but no length of time (under threescore years) shall justify the continuance of a fence or building on any town or private way, or on any public highway, a common training-field, burying-place, landing-place, or other piece of land appropriated for the general use, ease or convenience of the community at large, or for the inhabitants of any particular county, town, district, parish or precinct; but the same may be removed by order of the Court of General Sessions of the Peace, or the Supreme Judicial Court, as a nuisance, upon the presentment of a grand jury. [Feb. 27, 1787.] Add. acts—1796 ch. 58: 1797 ch. 30: 1802 ch. 135: 1812 ch. 121: 1813 ch. 121: 1819 ch. 44.

An Act for the due Regulation of licensed Houses.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person whosoever may presume to be a common victualler, innholder, taverner, or seller of wine, beer, ale, cider, brandy, rum, or any strong liquors, by retail, or in a less quantity than twenty-eight gallons, and that delivered and carried away all at one time, except such person be first duly licensed according to law by the Justices of the Peace of the same county where such person lives, in General Sessions assembled, according to the regulations hereafter expressed on pain of forfeiting the sum of twenty pounds; and if any person shall, at any time, sell any spirituous liquors, or any mixed liquors, part of which is spirituous, without license therefor duly had and obtained according to law, he shall forfeit and pay for each offence a sum not exceeding six pounds, nor less than forty shillings; which fine or forfeiture, as also the fine or forfeiture aforesaid, shall ensue one half thereof to the informer, the other half to the county where such offence is committed.

Sect. 2. Be it further enacted by the authority aforesaid, That all licenses shall be yearly renewed; and that the clerk of the peace in the respective counties, from time to time, annually, before the granting licenses, shall transmit to the selectmen of every town and district within the county, a list of the names of the persons in such town or district that were licensed the year before; and that licenses shall not be renewed to any person borne on such list, unless the selectmen of such town or district shall have considered the same, and made return thereof to the clerk of the peace of the county to which they respectively belong, certifying thereon as follows, viz.

WE, the subscribers, selectmen of the town (or district) of , do hereby certify, that we have maturely considered the returned list of such persons as were licensed the year past, and, to the best of our knowledge, the following persons named therein have maintained good rule and order in their respective houses or shops, and have conformed to the laws and regulations respecting licensed per-
sons, and are firmly attached to the Constitution and laws of this Commonwealth.

And no person shall have his license renewed unless his name be inserted in such certificate, or in another of the same tenor.

And no person, after the first day of June, one thousand seven hundred and eighty-seven, shall be licensed to be a victualler, innholder, taverner, or retailer of spirituous liquors, until he has taken an oath in the following words:

I, A. B. do swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and that I will, to the utmost of my power, defend the Constitution and Government thereof, against traitorous conspiracies, and all hostile and violent attempts whatsoever.

Which oath may be administered by the clerk of the Court of General Sessions of the Peace, or by any Justice of the Peace, or any town or district clerk, in such towns or districts wherein no Justice of the Peace dwells. And the justice or clerk who may administer such oath, shall make certificate thereof to the Court of General Sessions of the Peace; which certificate shall be filed by the clerk of the said court among the records of the same court; and a certificate that such oath has been taken, shall be made and filed as aforesaid, in cases where the clerk of the said court shall administer such oath; and no certificate, as aforesaid, shall be required afterwards, upon a renewal of such person’s license. And no person shall be firstly or originally licensed to be a victualler, innholder, taverner, or seller of wine, beer, ale, cider, brandy, rum, or other strong liquors, by retail, in the town or district where he lives, other than such as produce a certificate from the selectmen of the same town or district, recommending them as follows, viz.

WE, the subscribers, selectmen of the town (or district) of , do approve of (inserting the name of the person and the employment for which he or she is approbated) in the said town (or district) for the year ensuing; and we do hereby recommend the said as a person of sober life and conversation, suitably qualified and provided for the exercise of such an employment, and firmly attached to the Constitution and laws of this Commonwealth.

And it shall be the duty of the selectmen in the several towns, annually, to certify to the Court of the General Sessions of the Peace, at the beginning of their term for granting licenses, what number of innholders and retailers, in their respective towns, they judge to be necessary for the public good. And that no license be renewed to any person who shall have been before licensed, against whom any presentment, complaint, or information shall be made for misrule or disorder in such house, or for not being suitably provided, as the law in such case requires, to entertain strangers and travellers at bed and board, before the matter complained of and informed against be inquired into and judged of. Provided, Such presentment or
complaint be prosecuted to effect at or before the same court for granting such licenses; unless the prosecution be delayed at the motion of the person applying for the license.

Sect. 3. Be it further enacted by the authority aforesaid, That all innholders, taverners, and common victuallers, shall, at all times, be furnished with suitable provisions and lodging, for the refreshment and entertainment of strangers and travellers, pasturing and stable-room, hay and provender (saving that in populous sea-port towns, stable-room, hay and provender only are required) for their horses and cattle, on pain of being deprived of their license. And every licensed victualer, innholder, or taverner, shall, at all times, have a board or sign affixed to his or her house, or in some conspicuous place near the same, with his or her name at large thereon, and the particular employment for which he or she is licensed: And if any victualer, innholder, or taverner, enjoined by law to be suitably provided to receive and entertain strangers, travellers or others, as occasion may require, shall be convicted of refusing to make suitable provision when desired, for the receiving of strangers, travellers, and their horses and cattle, or for any public entertainment, such person, upon being convicted thereof before the Justices of the General Sessions of the Peace of the county to which such person belongs, shall, by the said justices, be deprived of his or her license; and the said justices shall be and they are hereby empowered and directed to order the sheriff of the same county or his deputy-sheriff to cause the sign of such convicted person to be taken down.

Sect. 4. And be it further enacted by the authority aforesaid, That no person except those who are licensed for common victuallers, taverners or innholders, may presume to sell any strong liquors as in this Act mentioned, nor any mixed liquors, part of which are spirituous, to be drunk in their houses or any of the parts or dependencies of the same; and that if any person licensed to sell wine, beer, ale, cider, brandy, rum or any strong liquors by retail only, shall be convicted of entertaining, or suffering any person or persons to drink such strong liquors, or mixed liquors, in their shops, houses, or parts or dependencies of such shops or houses, he shall incur and suffer the like penalties and forfeitures as are inflicted by this law upon persons selling without license, to be recovered and appropriated in the same manner.

Sect. 5. And be it enacted by the authority aforesaid, That no taverner, innholder, or victualler, shall have or keep in or about their houses, yards, gardens, or dependencies, any dice, cards, bowls, billiards, quoits, or any other implements used in gaming; nor shall suffer any person or persons resorting unto any of their houses, to use or exercise any of the said games or any other unlawful game or sport within their said houses or any of the dependencies, as aforesaid, or places to them belonging, on pain of forfeiting the sum of forty shillings for every such offence, upon due conviction thereof, to be disposed of as is herein directed; and every person convicted of playing, as
aforesaid, in any such house or dependencies thereof, shall forfeit the sum of twenty shillings, to be disposed of as aforesaid.

Sect. 6. And be it further enacted by the authority aforesaid, That no taverner, innholder, or victualler, shall suffer any dancing or revelling in his house or the dependencies thereof, as aforesaid, on penalty of thirty shillings, to be paid by the master or keeper of the said house who shall suffer the same, and the penalty of six shillings, to be paid by each person offending in any of the said particulars, to be disposed of as aforesaid.

Sect. 7. And be it further enacted by the authority aforesaid, That no taverner, innholder, or victualler, shall suffer any person to drink to drunkenness or excess in his or her house, or suffer any minor (travellers excepted) or servant to sit drinking there, or to have any strong drink there, without special allowance of their respective parents, guardians or masters, on pain of forfeiting the fine of twenty shillings for every offence of that kind, to be appropriated as aforesaid.

Sect. 8. And be it further enacted by the authority aforesaid, That if any person, after being duly convicted of any breach of this law, shall again break any part of this law, and thereof be duly convict, he shall, over and above suffering the penalty set to such breach of this law, recognize for his good behaviour in the sum of twenty pounds for one year, with two sufficient sureties, over and above his recognizance for good order, at taking out his license. And if any person convicted of a second breach of this law, as aforesaid, shall presume again to break any part of this law, over and above suffering the penalty of this law for such breach of it, he or she shall forfeit his or her license, not to be renewed again for the space of three years next following.

Sect. 9. And be it further enacted by the authority aforesaid, That if any person, being duly convicted of any breach of this law, shall be unable, or shall neglect to pay and satisfy the fine imposed, together with the costs of prosecution, and likewise give bond for his good behaviour, if it be on the second conviction, within twenty-four hours next after sentence declared in that respect, it shall and may be lawful for the court, before whom such conviction may be, to order such offender to be openly whipped, not exceeding fifteen stripes, for one offence, nor less than ten, and to restrain the offender in prison, until the said fine and charges are paid and bond given as aforesaid, or the order for corporal punishment be executed.

Sect. 10. And be it further enacted by the authority aforesaid, That before any person shall receive a license to be an innholder, taverner, victualler, or retailer of spirituous liquors, every such person shall become bound by recognizance to the Commonwealth in the sum of twenty pounds, as principal, with two sureties in ten pounds each, before one or more justices of the General Sessions of the Peace, on condition following, viz.

The condition of this recognizance is such. That whereas the above-bounden A. B. is admitted and allowed, by the Justices of the General Sessions of the Peace, to keep a
tavern, inn, or victualling-house, and to sell wine, beer, ale, cider, brandy, rum, and mixed liquors, and other strong liquors by retail, for the space of one whole year next ensuing, and no longer, in the now dwelling-house of the said A. B. and no other; if therefore, the said A. B. during the time aforesaid, shall keep and maintain good order and rule, and shall suffer no disorders nor unlawful games to be used in his said house, or in any of the dependencies thereof, and shall not break any of the laws for the regulation of such houses, then this recognizance to be void; otherwise, to remain in full force and virtue.

And before any person shall receive license to be a retailer of strong liquors, to be spent out of his house, and not otherwise, such person shall become bound by recognizance, as aforesaid, on condition following, viz.

The condition of this recognizance is such, That whereas the above-bounden A. B. is licensed and allowed by the Justices of the Court of General Sessions of the Peace, to retail strong liquors, to be spent out of his now dwelling-house or shop, for the space of one year next ensuing, and no longer, and not otherwise; if therefore, the said A. B. shall not break the laws made for the regulation of such retailers, and shall do and observe the directions of the law relating to such licenses, then this present recognizance to be void; otherwise, to remain in full force and virtue.

**Sect. 11. And be it further enacted by the authority aforesaid,** That upon default being made upon any such recognizance, a seire facias shall issue, and judgment and execution be had in the usual form: And that no recognizance for the keeping the laws respecting the abovementioned licenses shall be put in suit for any breach thereof made after the expiration of two years from the time of taking such recognizance.

**Sect. 12. And be it further enacted,** That every person to whom any license shall be granted, before the receiving or exercising the same, over and above the recognizance required for the due observation of the laws, and keeping good rule and order as aforesaid, shall also become bound to the Commonwealth, in a distinct recognizance, with sufficient sureties, in manner as aforesaid, on condition that the person so licensed shall duly and truly pay the duties of excise, according to the regulations that are, or during the time of such person’s license, may be established by law.

**Sect. 13. And be it further enacted by the authority aforesaid,** That the time of granting licenses to innholders and retailers, as aforesaid, shall be at the first General Sessions of the Peace that shall be held in course within the several counties on or next after the last Tuesday of June, annually; unless, upon application made to the General Sessions of the Peace, at any of the terms stated by law for holding said court, and on such day and time of the sitting of such court as the justices of the same are wont to give their more general attendance, for license to keep an inn, tavern, a house of public entertainment, or to retail strong liquors, it shall appear to the same court, that the person applying was unavoidably prevented from making application at the said first General Sessions of the Peace, or that

**Persons licensed to be retailers of strong liquors, shall become bound by recognizance.**

**Form.**

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**Persons licensed to be retailers of strong liquors, shall become bound by recognizance.**

**Form.**
If any innholder or retailer shall die, or remove from a licensed house, before the year is expired, the Court of Sessions, or two justices, quo warranto, may license.

Proviso.

Justices directed not to license more persons than are necessary for the public good.

Selectmen shall post the names of common drunkards, &c. in the houses and shops of taverners and retailers. 1818 ch. 65.

Penalty for suffering those, who are posted, to drink.

Selectmen shall forbid licensed per-

case, that the public good makes it necessary that the same should be granted; in which case the said justices are empowered to grant the same as though it was at the proper term for granting licenses, the person applying for such license paying therefor, for the use of the county, six shillings, over and above the usual fees and duties.

Sect. 14. And be it further enacted, That when it shall so happen, that any licensed innholder or retailer shall die before the year is expired for which license shall have been granted, and the widow of the deceased, if such there be, or children, or other representative, shall desire to exercise said employment, in such licensed house, the remainder of the year; and where any licensed innholder or retailer shall remove from a licensed house, and the purchaser or occupier of such house shall petition to be licensed to be an innholder or retailer in the same house for the remainder of the year; in every such case, it shall be lawful, and the Justices of the Court of General Sessions of the Peace are hereby empowered, at any of the terms appointed by law, for holding the same in such county; and any two Justices of the Peace, quo warranto, are also empowered to grant licenses to such person or petitioner applying therefor, the remainder of the year. Provided, such person be suitably qualified therefor, and recommended in manner as the law directs.

And the better to prevent intemperance, and nurseries of vice and debauchery:

Sect. 15. Be it further enacted, That the Justices of the General Sessions of the Peace, in each county, be and they are hereby directed not to license more persons in any town or district to keep houses for common entertainment, or to retail spirituous liquors, as aforesaid, than the justices shall judge necessary for the receiving and refreshment of travellers and strangers, and to serve the public occasions of such town or district, or are necessary for the public good: And all public houses shall be on or near the high streets, roads, and places of great resort.

Sect. 16. And be it further enacted by the authority aforesaid, That the selectmen in each town shall cause to be posted up in the houses and shops of all taverners, innholders and retailers, as aforesaid, within such towns or districts, a list of the names of all persons reputed common drunkards, or common tiplers, or common gamesters, mispending their time and estate in such houses. And every keeper of such house or shop, after notice given him, as aforesaid, that shall be convicted, before one or more Justices of the Peace, of entertaining or suffering any of the persons, in such list, to drink or tipple, or game, in his or her house, or any of the dependencies thereof, or of selling them spirituous liquor, as aforesaid, shall forfeit and pay the sum of thirty shillings.

Sect. 17. And be it further enacted by the authority aforesaid, That whenever any person shall, by idleness, or excessive drinking of spirituous liquors, so misspend, waste, or lessen his or her
1786. — Chap. 68. 303

estate, as thereby either to expose himself or herself, his or her family, to want or indigent circumstances, or the town, to which he or she belongs, to a charge or expense for the maintenance or support of him or her, or his or her family, or shall so indulge himself or herself in the use of spirituous liquors, as thereby greatly to injure his or her health, or endanger the loss of such selectmen shall, in writing, under their hands, forbid all licensed persons, in their respective towns and districts, to sell to any of the afore-described mispenders of time and estate, any spirituous or strong liquors, in this Act mentioned, for the space of one year, and shall, in like manner, forbid the licensed persons of any other town or district to which such mispender may resort for the same. And if any of the persons contained in the said prohibition shall not, in the opinion of the said selectmen, or the major part of them, have reformed during the said year; in such case, the selectmen of such town or district shall renew the prohibition in manner as aforesaid; and if any licensed victualler, taverner, innholder, or retailer of spirituous or strong liquors, shall, during any such prohibition, sell to any person contained therein, any spirituous liquors, in this Act mentioned, he shall forfeit and pay for each offence the sum of twenty shillings, to the use of the town or district where such mispender lives, to be sued for and recovered by the treasurer of such town or district.

And whereas the giving credit to the town inhabitants, and others, living near houses of public entertainment, very much tends to the destructive expense of time and money of many persons:

Sect. 18. Be it therefore enacted, That if any innholder, retailer, alehouse-keeper, or common victualler, trust or give credit to any person inhabiting in the same town where they are trusted, or to any person whose place of abode is within five miles' distance, for victuals or drink, for more than ten shillings, such innholder, retailer, alehouse-keeper, or common victualler, shall lose all such sums so trusted; and all actions hereafter brought for such debt or debts shall be utterly excluded and barred. And the defendant, in such action, may plead the matter specially, or under the general issue give the matter in evidence, any law, usage or custom to the contrary notwithstanding.

And for the better inspecting of licensed houses, and the discovery of such persons as shall presume to sell without license:

Sect. 19. Be it enacted by the authority aforesaid, That the selectmen in each town or district, respectively, shall take due care that tythingmen be annually chosen, at the general meeting for the choice of town-officers, as is by law provided; and upon any vacancy, to fill up the number at any other town-meeting; which tythingmen shall have power, and whose duty it shall be, carefully to inspect all licensed houses, and to inform of all disorders or misdemeanours which they shall discover, or know to be committed in them, or any of them, to a Justice of the Peace, or to the General Sessions, within the same county; as also of all such as shall sell spirituous liquors as

To renew the prohibition, in case—

Penalty for selling to such persons.

Innholders, &c., who shall trust or give credit to inhabitants of the town, for more than 10s. shall lose the sums so trusted.

7 Geo. I. ch. 8.
Fines and penalties, how disposed of.

1803 ch. 154, § 3.

Justices of the Peace empowered to hear and determine offences where the penalty doth not exceed 4l.

**Sect. 20.** And be it further enacted by the authority aforesaid, That all fines and penalties arising for any of the offences aforesaid, not otherwise appropriated, shall be disposed of, one half thereof to the use of the county where the offence is committed, and the other moiety to him or them who shall inform and prosecute for the same; except where the offence is prosecuted by a grand jury, before the Supreme Judicial Court, or Court of General Sessions of the Peace; in which case, the whole forfeiture to be to the use of the county.

And every Justice of the Peace is hereby empowered to hear and determine any of the offences above mentioned, committed within his county, where the penalty doth not exceed four pounds, and not otherwise. And every Justice of the Peace before whom such conviction shall be had, and where the party convicted doth not appeal, shall make a certificate of the same; and the justice before whom such conviction is, shall cause the same to be fairly written, and shall return the same to the then next General Sessions of the Peace for the county where the said offence is committed, there to be read over in open court, and filed among the records of the same court, to the end, among other things, that it may be known that the breakers of this law are duly prosecuted. [*February 28, 1787.*] Add. acts—1792 ch. 25: 1807 ch. 127: 1816 ch. 112: 1818 ch. 65.

**Chap. 69.** An Act for incorporating certain persons for the purpose of building a Bridge where Penny-Perry has been usually kept, and for supporting the same. [*March 1, 1787.*] See 1801 ch. 63.

**Chap. 70.** An Act for granting further Time to the Commissioners, appointed by Congress, for completing the running of the Line of Jurisdiction between the Commonwealth of Massachusetts and the State of New-York, on the easterly part of the State of New-York. [*March 1, 1787.*]

**Chap. 71.** An Act for dividing the County of Hampshire into three districts, for the purpose of choosing Registers of Deeds, and for determining the Places at which Courts of Probate shall in future be held in the said County. [*March 1, 1787.*] Become operative by the division of Hampshire into three counties—1811 ch. 61. 137. 141—and other Acts respecting the Probate Courts in those counties—1813 ch. 137: 1815 ch. 13: 1821 ch. 5.

**Chap. 72.** An Act to empower the Town of Lebanon, in the County of York, to assess and collect a Tax upon the lands lying within the same, for Ministerial Charges that have arisen since June the twenty-sixth, one thousand seven hundred and eighty-two, and such as may hereafter arise. [*March 1, 1787.*]

**Chap. 73.** An Act establishing and regulating the Fees of the several officers and other Persons hereafter mentioned, and for repealing the Laws heretofore made for that Purpose. [*February 26, 1787.*] Repealed—1797 ch. 65: 1795 ch. 41.

**Chap. 74.** An Act in addition to an Act, entitled, "An Act in addition to an Act passed in the Year of our Lord one thousand seven hundred and seventy-three, entitled, An Act to prevent the Destruction of Alewives and other Fish in Ipswich-River, and to encourage the increase of the same." [*March 2, 1787.*] Repealed—1797 ch. 60.
An Act for determining at what Times and Places the several Courts of General Sessions of the Peace and Courts of Common Pleas shall be held, within and for the several Counties within this Commonwealth, and for repealing all Laws heretofore made for that purpose. [March 2, 1787.] Repealed—1790 ch. 10.

An Act for setting off that Part of the home Farm of William Whitney, which lays in the Town of Gardner, to the Town of Winchendon. [March 2, 1787.]

An Act for naturalizing William Martin, and others. [March 2, 1787.]

An Act in addition to an Act, entitled, "An Act more effectually to prevent the Desertion of French Sailors." [March 2, 1787.]

An Act granting certain Privileges to the Proprietors of the Slitting-Mill in the Town of Taunton, in the County of Bristol. [March 2, 1788. Revised—March 2, 1798. Expired—March 2, 1798.]

An Act in addition to the several Laws now in force for regulating and governing the Militia of this Commonwealth. [March 2, 1787.] Repealed—1791 ch. 31.

An Act making Provision for the Repair and Amendment of Highways.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all highways, town-ways, causeways, and bridges, lying and being within the bounds of any town, shall be kept in repair and amended from time to time, that the same may be safe and convenient for travellers, with their horses, teams, carts, and carriages, at all seasons of the year, at the proper charge and expense of the inhabitants of such town (where other sufficient provision is not made therefor) and there shall be chosen two or more suitable persons in each town, at the annual meeting in March or April, who shall be denominated surveyors of highways, to be notified and sworn in like manner as other officers of the same town, and in case of refusal to serve, shall forfeit and pay the sum of three pounds, to the use of such town, district or plantation: Provided, no person shall be held and obliged to serve more than one year in three years; and the surveyors thus chosen and sworn, shall have full power and authority to cut down, lop off, dig up and remove all sorts of trees, bushes, stones, fences, rails, gates, bars, inclosures, or other matter or thing that shall any way straiten, hurt, hinder or incommodate the highway or town-way, and also to dig for stone, gravel, clay, marle, sand, or earth, in any land not planted or inclosed, and the materials thus dug up, to remove to such place or places in the highways, for the repair and amendment thereof, as they shall determine necessary. Provided always, That no surveyor of highways shall, cause any water-course, occasioned by the wash of any highway or town-way, to be so conveyed by the side of such highway as to incommodate any person's house, shop, store, or other building, or to obstruct any person or persons in the prosecution of his or her business or occupation, without the approbation and consent of the selectmen of such town or other place, signified, in writing, to such surveyor; and any person or persons, who may consider him or herself to be aggrieved by such water-course, may complain to the selectmen of such town or other place; and the selectmen, on receiving such complaint, shall proceed to view such water-course so complained of, and after attending to the circumstances of the same, shall, if they think it reasonable, direct

Chap. 75.

Chap. 76.

Chap. 77.

Chap. 78.

Chap. 79.

Chap. 80.

Chap. 75.

Chap. 76.

Chap. 77.

Chap. 78.

Chap. 79.

Chap. 80.

Chap. 31.

5 W. & M. ch. 3.
11 Geo. I. ch. 2.

Surveyors or highwavn shall be chosen annually.

1787 ch. 17.

Theiir power.

Provido that obstructions &c. shall not be made to the injury of individuals.
such surveyor to alter the said water-course, in such way and manner as they shall think just and proper; and when the highways are blocked up, or incumbered with snow, the surveyors shall forthwith cause so much thereof to be removed, or trod down, as will render the roads passable.

Sect. 2. And be it further enacted by the authority aforesaid, That the selectmen or assessors of each town are authorized, empowered and directed to assign and appoint, in writing, annually, to the surveyors, their several limits and divisions of the highways and town-ways, for repair and amendment, unto which assignments the said surveyors are directed to observe and conform themselves.

Sect. 3. And be it further enacted by the authority aforesaid, That each town, at some public meeting of the inhabitants thereof, regularly notified and warned, shall vote and raise such sum of money, to be expended in labour and materials on the highways and town-ways, as they shall determine necessary for the purpose: And the assessors shall assess the same on the polls and ratable estate, personal and real, of the inhabitants, residents and non-residents of their town, as other town charges are by law assessed, and deliver to each surveyor a list of the persons, and the sums at which they are severally assessed, for his limits. And the surveyor shall give reasonable notice (in writing, if desired) to each person in his list, of the sum he is assessed to the highways and town-ways, and also to the inhabitants within his district, assessed as aforesaid, six days' notice (extraordinary casualty excepted) of the times and places he shall appoint for providing materials and labouring; to the end, each person may have opportunity to work on the highways and town-ways, in person or by his substitute, or with his oxen, horses, cart and plough, at the rates and prices the town shall affix to such labour, to the full amount of the sum at which he is assessed; or he may pay the surveyor in money the sum he is assessed, in which case the surveyor shall carefully expend the sums thus paid, in labour and materials, for repairing the highways and town-ways in his limits, according to his best discretion. And the surveyor, at the expiration of his term, shall render to the assessors, for the time being, a list of such persons as shall have been deficient (if any such there be) in working out their highway rate, or otherwise paying him the sum assessed therefor; which deficient sums shall by the assessors be put in a distinct column, in the next assessment for the town tax, and collected by the constable or collector thereof, as other town taxes are collected, and paid into the town treasury, for the use of the town.

Sect. 4. And be it further enacted by the authority aforesaid, That when the sum appropriated and assessed for the repair of the highways and town-ways, in the limits of any particular surveyor, shall not fully answer, or be insufficient for that purpose, it shall be lawful for the surveyor, with the consent of the selectmen, or the major part of them, where such deficiency happens, to employ such of the inhabitants of the town, upon

Selectmen or assessors, to assign limits to the surveyors. 1788 ch. 39.

Each town shall raise such sum as may be necessary for the repair of highways.

Manner of assessing the same.

Surveyors to give notice to the persons in their lists.

1796 ch. 58.
—to return delinquent to the assessors.

When the sum assessed shall be insufficient, surveyor's power in such cases.
the repair of the ways in his limits, as shall make up that deficiency; and the persons thus employed shall be equitably paid out of the town treasury therefor.

Sect. 5. And be it further enacted by the authority aforesaid, That it shall be lawful for any person to pull down and remove any gates, rails, bars or fence, upon or across any highway or county road, unless such gate, bars or fence have been erected or continued by the leave and license of the Court of General Sessions of the Peace, for the same county; and if any such incumbrance be in or across any private way, the same may be removed by the order of some Justice of the Peace of the same county, unless the gate or bars were erected or continued by the leave of the town, or the person or persons for whose particular use and benefit the private way was laid out: And any person aggrieved by the removal of such gate, bars or fence, shall be relieved at the Court of General Sessions of the Peace for the same county, if, upon examination, it shall appear, that the same were erected or continued by license or leave as aforesaid.

Sect. 6. And be it further enacted by the authority aforesaid, That when any building, fence, or other incumbrance erected, or continued on any town or private way, or on any public highway, a common training-field, burying-place, landing-place, or other piece of land appropriated for the general use, ease, or convenience of the community at large, or the inhabitants of any county, town, district, parish or precinct, shall, by any court having cognizance thereof, be adjudged and determined a nuisance, and ordered to be abated; in case the materials of such building, fences or other incumbrance, upon a public sale there of at auction, shall be insufficient to pay the costs and charges of prosecution and removal, the court from whence the process for removal shall issue, shall and may order the deficient sum to be raised and levied from the goods and chattels of the person or persons who shall be convicted of erecting or continuing the same.

Sect. 7. And be it further enacted by the authority aforesaid, That if any person shall lose a limb, break a bone, or receive any other injury in his person, or in his horse, team, or other property, through any defect, or want of necessary repair and amendment of any highway, causeway, or bridge, the person or persons injured thereby shall and may recover of the county, town, the person or persons who are by law obliged to keep the same highway, causeway, or bridge in repair, in case they had reasonable notice of the defect, double the damages thereby sustained, by a special action of the case, before any court proper to hear and determine the same. And if the life of any person shall be lost through the deficiency of the way, causeway, or bridge, or for want of rails on any bridge, the county, town, or persons, who are by law obliged to repair and amend the same, shall be liable to be amerced in one hundred pounds, to be paid to the executor or administrator of the deceased, for the use of the heirs, devisees or creditors, upon a conviction before the Court of General Sessions of the Peace.
or Supreme Judicial Court, on a presentment or indictment of the
grand jury. Provided, The county, town, or other person
or persons, who of right ought to maintain and keep the same
in repair, had been previously notified of such want of repair
and amendment, in writing, under the hands of two or more
credible witnesses, or by the presentment of the grand jury, or
by information of the attorney-general, or the person acting for
the Government in his absence, filed in the court of General
Sessions of the Peace, or the Supreme Judicial Court.

Sect. 8. And be it further enacted by the authority aforesaid,
That if any town shall neglect to vote or agree upon a sum to
be assessed for the express purpose of repairing and amending
the highways and town-ways, or shall not otherwise provide
for effectually amending and repairing such ways, each surveyor
shall assign to the several persons in his limits, their ratable
proportion of days work, and of cart, team and plough, accord-
ing to his real and personal property, as near as he can, and
shall assign certain days for amending and repairing the ways,
having regard to the season of the year, and give notice thereof
to the persons in his limits, upwards of sixteen years of age,
and liable by law to be taxed, six days at least before the time
assigned (except in extraordinary cases) to attend the service
with suitable tools, and with carts and teams (if any they have)
the notice to be in writing and delivered the person, or left at
his usual place of abode; and if any person, being thus notified,
shall make default of attending and working, by himself or
other sufficient person in his stead, or with his cart and team,
as he shall be appointed and assigned, he shall forfeit and pay
five shillings for each day's neglect, and for default of his cart
and team with the driver, ten shillings a day, and in that pro-
portion for a longer or shorter space of time; one moiety to the
use of the town, to be expended on the highways and town-
ways as the selectmen shall order, and the other moiety to the
use of the surveyor, to be recovered by complaint, before any
justice in the same county. Provided, The same be made in
one year after the forfeitures are incurred, and not afterwards,
according to the form hereafter prescribed; in which prosecu-
tion, the Surveyor may be admitted as an evidence, as to the
time and manner of notice, and the quantum of labour assign-
ed to the adverse party. And the penalties incurred by serv-
ants or minors shall be recovered of the parents, masters, or
guardians, under whose immediate care and control they may
then be.

Sect. 9. And be it further enacted by the authority aforesaid,
That the following shall be the form of the surveyor's complaint
to a justice upon such occasion, viz.

To A. B. one of the Justices of the Peace for the county of
S. complains C. D. of R. in the same county [addition]
and one of the surveyors of highways in the said town of R.
for the year duly appointed and sworn, that P. D.
of R. aforesaid [addition] a person by law liable to work
on the highways (or S. D. a son or servant, or ward, as
the case may be) within the limits assigned the complainant, in the same town, was assessed days (or with his cart, team, &c. as the case may be) and was duly notified to attend, and work out the same on the day or days of yet the said P. D. did not appear and work in person, nor did he send a sufficient substitute in his stead, but made default therein, whereby he hath forfeited, and ought to pay to the complainant the sum of one moiety to the use of the said town of R., to be expended on the highways and town-ways therein, as the selectmen thereof shall direct, and the other moiety to the use of the complainant; wherefore he prays that the said P. D. may be cited to appear at a short day, to shew cause (if any he has) wherefore a warrant of distress ought not to issue, to levy the said forfeitures upon the goods and estate of the said P. D. and in want thereof, on his body, with reasonable costs, &c.

C. D.

Upon which complaint, the justice may issue a warrant to some sworn officer, to notify the respondent, at a time and place therein mentioned, to appear and shew cause (if any he has) wherefore a warrant of distress should not issue. Which warrant may be served by reading the same, with the complaint annexed, to the respondent, seven days at least before the day assigned for a hearing, or leaving an attested copy thereof at the respondent's usual place of abode, seven days or more before the day of trial. And if the respondent, being notified as aforesaid, shall not appear, or appearing, shall not, in the opinion of the justice (from whose determination herein no appeal shall be made) shew sufficient cause, he shall enter up judgment thereon, that a warrant of distress issue for such, or so much of the sums prosecuted for, as shall appear forfeited, and costs. But in case the respondent shall make it appear, that he was unreasonably assessed, or that he was not duly notified thereof, or shall make any other legal or sufficient excuse to exempt him fully from the forfeitures, the justice shall enter up judgment, that the respondent be acquitted and discharged from the forfeitures for which he is now prosecuted, and that he recover against the complainant his costs. And the warrant of distress for levying the forfeitures, when the same shall appear to be incurred, shall run in the form following, viz.

[Seal.] S—— ss.
To the Sheriff of the County of S. or his deputy, or Constable of the town of R. in said county.

Greeting.

WHEREAS P. D. of R. aforesaid [addition] on the day of — did not appear before me, A. B. Esq. one of the Justices of the Peace for the county of S. to answer the complaint of C. D. of said R. [addition] and one of the surveyors of highways for said town, for the year for not working on the highways and townways, in said town, as he was assigned by the said C. D. who requested a warrant of distress to issue, for the sum of

Justice may issue a warrant to notify the respondent, &c.

If the respondent shall not appear &c. a warrant of distress shall issue.

Form of the warrant.
shillings, incurred by his neglect in that behalf, and for his costs, agreeably to the statute in that case made and provided, although duly summoned for that purpose (or appearing before me, A. B. Esq. one of the Justices of the Peace for the county of S. to answer to the complaint of C. D. of said R. [addition] and one of the surveyors of highways in said town for the year for not working, in person, or with his team and cart, &c. on the highways and townways in said town, as he was assigned by the said C. D. did not shew sufficient cause, wherefore a warrant of distress should not issue for the sum of shillings, incurred by his neglect in that behalf, and for costs, agreeably to the statute in that case made and provided) and judgment was thereupon rendered, that a warrant of distress should issue, for shillings, being the forfeiture thus incurred, one moiety thereof to the use of the town of R. to be expended on the highways and townways therein, as the selectmen thereof shall order, and the other moiety for the use of the said C. D. and cost taxed at which judgment is now in full force: You are, therefore, in the name of the Commonwealth of Massachusetts, hereby commanded, that you cause to be paid and satisfied in money, to the said C. D. by distress and sale of the goods and chattels of the said P. D. the aforesaid sums, amounting in the whole to and one shilling and six pence more for this precept, together with your own legal fees, (returning the overplus to the said P. D. if any there be) and for want of goods and chattels of the said P. D. to be by him shewn unto you, or found in your precinct, sufficient to levy the sums aforesaid, you are to take the body of the said P. D. and him commit to the common gaol of the said county of S. and the keeper thereof is directed to detain him there until he pay the sums aforesaid, with your legal fees, or he be therefrom discharged by order of law: Hereof fail not, and make due return of this precept, with your doings thereon, unto myself, within forty days next coming. Given under my hand and seal at R. aforesaid, this day of Anno Domini, 17

A. B. Justice of Peace.

**Sect. 10.** And be it further enacted by the authority aforesaid, That each surveyor of highways, who shall accept the said trust and shall neglect his duty therein, shall forfeit and pay for each neglect the sum of three pounds, one moiety to him that will prosecute therefor, and the other moiety to the use of the town whereof the delinquent is a surveyor, to be recovered by action of debt, before any Justice of the Peace for the same county.

**Sect. 11.** And be it further enacted by the authority aforesaid, That in case the inhabitants of any town shall be fined upon the presentment of the grand jury, or upon the information of the attorney-general, or the person acting for the Government in his absence, for a deficiency in the highways, the surveyors
within whose limits the deficient ways are, shall be liable to refund the same, with all costs, to the said inhabitants, upon an action of the case to be brought therefor. Or the surveyor of highways may be prosecuted on presentment or information aforesaid, and fined for any deficiency that may arise in his limits. And the inhabitants of any town, merely as such, shall not be excluded from being witnesses, upon any prosecutions upon this statute, upon a supposition of being interested as members of the corporation. Provided nevertheless, That nothing in this Act shall be so construed, as to give power to any surveyor, or other persons, to remove or pull down any fence which may be lawfully set up, or erected upon, or across any way, for the purpose of preventing the spreading of infectious disorders. This Act to be in force from and after the first day of September, one thousand seven hundred and eighty-seven.

An Act for incorporating the Plantation called Limerick, in the County of York, into a Town by the name of Limerick. [March 6, 1787.]

An Act for incorporating a Plantation, in the County of York, called Massabesec, by the name of Waterborough. [March 6, 1787.]

An Act providing an Establishment for the Attorney-General. [March 8, 1787.]

First section a grant for a year's service: Second section superseded by 1789 ch. 25.


An Act for repealing any Acts or Parts of Acts heretofore passed by the Legislature of this Commonwealth, which may militate with, or infringe the Treaty of Peace entered into by the United States of America and Great-Britain.

WHEREAS certain laws or statutes, made and passed in some of the United States, are regarded and complained of as repugnant to the Treaty of Peace with Great Britain, by reason whereof not only the good faith of the United States, pledged by that treaty, has been drawn into question, but their essential interests under that treaty greatly affected: And whereas justice to Great-Britain, as well as regard to the honour and interests of the United States, require that the said treaty be faithfully executed, and that all obstacles thereto, and particularly such as do or may be construed to proceed from the laws of this Commonwealth, be effectually removed: Therefore,

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That such of the Acts, or parts of Acts, of the Legislature of this Commonwealth, as may be repugnant to the Treaty of Peace between the United States and his Britannick Majesty, or any article thereof, and so far as they may be repugnant thereto, shall be and hereby are repealed: And further, that the courts of law and equity, within this Commonwealth, be and they hereby are directed and required, in all causes and questions cognizable by them respectively, and arising from, or touching the said treaty, to decide and adjudge according to the tenor, true intent and meaning of the same:
any thing in the said Acts, or parts of Acts, to the contrary thereof in any wise notwithstanding. [April, 30, 1787.]

Chap. 37. An Act for altering a Part of the Boundary Line between the Towns of Boston and Roxbury, and for satisfying an Agreement made between the said Towns for that purpose. [April 26, 1787.]

Chap. 38. An Act for naturalizing Edward Wyer, and others therein named. [May 1, 1787.]

Chap. 1. An Act for authorizing two or more Justices of the Supreme Judicial Court, to hold Sessions of the said Court in the Counties of Cumberland and Lincoln. [June 3, 1787.]

Chap. 2. An Act to divide the Town of Greenwich into two Parishes; and for including the north-east corner of the Town of Belchertown, in the South Parish. [June 21, 1787.] Add. act—1791 ch. 29.

Chap. 3. An Act to establish Naval-Offices and Notaries Public in Places not already by Law established. [June 22, 1787.] Repealed as to Naval-Offices—1789 ch. 30.

Chap. 4. An Act for regulating the Fees in the Naval-Offices within this Commonwealth, and repealing the Laws heretofore made for that purpose. [June 25, 1787.] Repealed—1799 ch. 30.

Chap. 5. An Act in Addition to an Act made in the year of our Lord one thousand seven hundred and eighty-four, entitled "An Act directing the Mode of transferring Real Estates by Deed, and for preventing Fraud therein."

WHEREAS it is, in and by the said Act, among other things, enacted, "That all deeds shall be acknowledged before some Justice of the Peace, by the grantor or grantors;" "Provided, That when any grantor or lessor, as aforesaid, shall go beyond sea, or be removed out of this Government, or be dead, before the deed or conveyance, by him executed, shall be acknowledged as aforesaid, in every such case the proof of such deed or conveyance, made by the oath of one or more witnesses, whose names may be thereunto subscribed before any court of record within this Commonwealth, shall be equivalent to the parties' own acknowledgment thereof, before a Justice of the Peace, as aforesaid," but no provision is therein made where the witnesses whose names may be thereunto subscribed are dead, as well as the grantor or grantors:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That in all cases which have or may hereafter happen, where the grantor or grantors of any deed shall be deceased before the deed or conveyance, by him executed, shall be acknowledged, and the witnesses, whose names may be subscribed thereto, are also deceased, that the proof of the hand writing of the grantor or grantors, and of the subscribing witnesses thereto, made by the oath of two witnesses before any court of record within this Commonwealth, shall be equivalent to the parties' own acknowledgment thereof before a Justice of the Peace, as is in and by the said Act mentioned. Provided, That it shall be made to appear to the satisfaction of the justices of the court, before whom such proof shall be made, that the grantees or grantees mentioned in such deed or conveyance, have, in the life-time of the grantor or grantors, taken actual possession of the real estate conveyed by such deed; and that

Where the grantor and witnesses of any deed is dead, before the same is acknowledged, proof of the hand writing shall be equivalent. Proviso.
the said grantee or grantees, or some person or persons, claiming under him or them, have continued such actual possession quietly, to the time when such application shall be made to such court for the purposes aforesaid. [June 28, 1787.] Further add. act—1802 ch. 33.


An Act to empower the Second Parish in Scarborough, in the County of Cumberland, to exchange the Parsonage Lands belonging to the said second Parish for twenty Acres of Marsh lying within the said Town. [July 2, 1787.]

An Act for naturalizing John Gore, Esquire. [July 2, 1787.]

An Act for incorporating the westerly Part of the Town of Dartmouth, in the County of Bristol, into a separate Town by the name of Westport. [July 2, 1787.] See 1794 ch. 69.

An Act to prevent the Destruction, and to regulate the Catching of the Fish called Alewives, in their Passage up the Rivers and Streams in the Town of Harwich, in the County of Barnstable. [July 4, 1787.]

An Act for setting off John Dexter, and others, therein named, with their Estates, from the North Parish in Malden, and annexing them to the South Parish in the said Town. [July 5, 1787.]

An Act for changing the Name of Thomas Greaves Russell, to Thomas Russell Greaves. [July 6, 1787.]

An Act repealing an Act passed in the year of our Lord one thousand seven hundred and eighty-three, entitled, "An Act for raising, by Lottery, the Sum of Three Thousand Pounds, for the purpose of building a Glass-House and promoting the Manufacture of Crown and other Glass in Boston," and for the Purpose of promoting the Manufacture of Crown and other Glass within this Commonwealth. [July 6, 1787.] Add. act—1788 ch. 33.

An Act in addition to an Act, entitled, "An Act for erecting the Northerly Part of the Town of Sautesbury, and that part of a tract of land called Ervingshire, which lies on the south side of Miller's River, into a separate Town by the name of Wendell." [July 6, 1787.]


An Act for naturalizing Bartholomew de Gregoire, Maria Theresa de Gregoire, his Wife, and their Children. [Oct. 29, 1787.]

An Act for enabling Proprietors of Private Ways and Bridges to repair them in equal proportion.

**Sect. 1.** BE IT ENACTED BY THE Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when and so often as any number of the proprietors and rightful occupants of any private way or bridge, where there are four, or more than four of them, shall judge a proprietors' meeting necessary, three of them, applying to a Justice of the Peace within and for the county where the said way or bridge lies, such justice is hereby authorized and empowered to grant a warrant for calling the same, or otherwise one fourth part of the said proprietors may, of themselves, call such meeting; in either case to be done by warrant under the hand of the said justice, posted up in some public place or places, in the town or towns where the said proprietors and rightful oc-
Sect. 2. And be it further enacted, That if any surveyor, chosen as is provided by this Act, shall refuse or neglect to accept that trust, and take the oath aforesaid, he shall forfeit and pay the sum of twenty shillings, to be recovered in manner aforesaid: And all fines and forfeitures incurred by breach of this Act shall be applied for the use of the propriety for repairing the said ways or bridges. [Nov. 12, 1787.] Add. act—1801 ch. 80.

An Act for incorporating a number of the Inhabitants of the town of Worcester, in the county of Worcester, into a separate Parish. [November 13, 1787.]

An Act for the further regulating the Assize of barrel Beef and Pork.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing this Act, every barrel of beef, salted for sale or exportation, shall contain, at the least, two hundred pounds weight of beef, and every half barrel, one hundred pounds weight of beef, consisting of a due proportion of the best as well as the poorest part of each quarter respectively, without having any part culled out; to be packed in good sound full bound casks: And from and after the first day of August next, every barrel and half barrel of beef, so packed, shall be in white-oak casks, clear of sap and full bound. And from and after the passing this Act, every barrel of pork, salted for sale or exportation, shall contain at the least two hundred pounds weight of pork, and every half barrel one hundred pounds weight of pork; consisting of a due proportion of the best as well as the poorest part of each hog, without having any part culled out; and each barrel containing not more than three half hogs, and six legs, to be packed in good sound white-oak full bound casks: And from and after the first day of August next, every barrel of pork so packed, shall be in white-oak casks, clear of sap and full bound. And the several packers of salted beef and pork within this Commonwealth, are hereby directed to govern themselves accordingly, under the same penalties as are already in such cases by law provided. And for the more effectually carrying into execution the provisions of this Act:

Sect. 2. It is further enacted by the authority aforesaid. That if any person shall, from and after the passing this Act, offer for sale, or sell any cask of salted beef or pork, not containing the quantity, and packed in the manner provided in this Act, he shall forfeit for every cask of salted beef or pork he shall so
offer for sale, the sum of three pounds, lawful money, to be recovered by action, information or indictment, in any court proper to try the same, one moiety thereof to the use of the person prosecuting for the same, and the other moiety to the use of the poor of the town wherein the offence shall have been committed.

**Sect. 3.** And be it further enacted by the authority aforesaid, That an Act, entitled, "An Act for altering a certain clause in an Act, entitled, 'An Act regulating the exportation of flax-seed, pot-ash, pearl-ash, beef, pork, barrelled fish and dried fish,' made and passed in the year of our Lord, one thousand seven hundred and eighty-six, from and after the passing this Act, be and hereby is repealed. [November 14, 1787.] This last section rendered inoperative by subsequent acts—1789 ch. 69: 1801 ch. 76.

An Act for the Continuance of, and in addition to an Act, entitled, "An Act for suspending the Laws for the collecting of private Debts, under certain Limitations." [November 15, 1787.] Further continued—1787 ch. 53. Expired.

An Act for establishing Public Lights on the north end of Plumb-Island, in Ipswich-Bay, in the county of Essex. [November 16, 1787.] These "light-houses, and the lands and tenements thereunto belonging" granted to the United States—1790 ch. 4.

An Act to annex a Gore of Land to the town of Long-Meadow. [November 16, 1787.]

An Act to unite the first and second Precincts in the town of Leominster, in the county of Worcester, into one Parish. [November 16, 1787.]

An Act for naturalizing Alexander Moore, and others, herein named. [November 16, 1787.]

An Act to enable Jeduthun Richardson to turn the water in Richardson-River, so called, in Woburn, in the county of Middlesex. [November 16, 1787.]


An Act for incorporating certain persons for the purpose of Building a Bridge over the River between Salem and Beverly, and for supporting the same. [November 17, 1787.] Add. act—1798 ch. 30.

An Act to incorporate certain persons by the name of The Society for propagating the Gospel among the Indians, and others, in North America. [November 19, 1787.]

An Act for the Relief of poor Prisoners who are committed by Execution for Debt.

**Sect. 1.** Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any person standing committed by force of any execution issuing from any court in this Commonwealth, on a judgment recovered by any person, shall complain, that he or she hath not estate sufficient to support him or her in prison, the gaoler, or keeper of such prison, shall, on such complaint, apply to one of the Justices of the Peace within and for the county in which such prison is, who shall thereupon make out a notification, in writing, under his hand and seal, thereby signifying to the creditor, or creditors, such prisoner's desire of taking the privilege and benefit allowed in and by this Act, and of the time and place appointed for the intended caption of the oath or affirmation allowed by this Act, and which being served on the creditor or creditors of the said prisoner, if he, she or they live within this Commonwealth, upon his or their agent or attor—
ne who brought forward the suit on which the judgment was rendered, by the sheriff, or his deputy, of the county in which the said service shall be made, either by reading the same to him or her, or by leaving an attested copy thereof, at the usual place of abode of such creditor or creditors, agent or attorney as aforesaid, at least thirty days before the time appointed for taking the said oath or affirmation, that he, she, or they may be present, if they see cause. Provided, That if any creditor or creditors live out of this Commonwealth, and have no agent or attorney, as aforesaid, living in the same, an attested copy of such notification shall be left with the clerk of the court, or the justice by whom the said execution was signed, at least fifty days before such intended caption.

Sect. 2. And be it further enacted, That any two Justices of the Peace within and for the county where such caption is to be taken, each of whom shall be of the quorum, and disinherited, and not related either to the creditor or debtor, are hereby authorized and empowered, at the time and place appointed for the taking such caption, to examine the return of the said notification; and if it shall appear to be duly made, to administer the said oath or affirmation, after fully examining and hearing the parties, if they, the said justices, shall think proper so to do, to such debtor; which oath or affirmation shall be in the form following, to wit:

I

Do solemnly swear before Almighty God, (or affirm, as the case may be) that I have, or any estate, real or personal, in possession, reversion or remainder, sufficient to support myself in prison, or to pay prison charges; and that I have not, since the commencement of this suit against me, or at any other time, directly or indirectly, sold, leased, or otherwise conveyed or disposed of to, or intrusted, any person or persons whomsoever with all or any part of the estate, real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive, or to expect any profit or advantage therefrom; or have caused, or suffered to be done, any thing else whatsoever, whereby any of my creditors may be defrauded. So help me God; (or this I do under the pains and penalties of perjury, as the case may be.)

Which oath, or affirmation, being administered by the said justices to, and taken by such prisoner, and a certificate thereof made under the hands and seals of the justices administering the same, to such gaoler or prison-keeper, he shall thereupon set such prisoner at liberty, if he or she is committed for no other cause, and the body of such prisoner shall not be held in prison any longer upon such execution; which certificate, to be made by the justices as aforesaid, shall be in the form following, to wit:

To

Keeper of the gaol at

WE, the subscribers, two of the Justices of the Peace for the said county of S., and each of us of the quorum, hereby certify, that A. B., a poor prisoner, confined upon execution for debt, in the gaol at C., aforesaid, hath caused D. E. the creditor, at whose suit he was so confined, to be notified according to law, of his, the said A. B.'s desire of taking the benefit of an Act, entitled, "An Act for the relief of poor prisoners, who are committed by execution for debt;" that, in our opinion, the said A. B. hath not any estate, either real or personal, sufficient to support himself in prison, and that he hath not conveyed or concealed his estate with design to secure the same to his own use, or to defraud his creditors, and that we have, after due caution to the said A. B., administered to him the oath (or affirmation) prescribed in the Act aforesaid. Witness our hands and seals the day of

A. D.
Sect. 3. And be it further enacted by the authority aforesaid, That if any such prisoner, as aforesaid, shall be convicted of having sold, leased or otherwise conveyed, concealed, or disposed of, or intrusted his or her estate, or any part thereof, directly or indirectly, contrary to his or her foregoing oath, or affirmation, he or she shall not only be liable to the pains and penalties of willful perjury, but shall receive no benefit from the said oath or affirmation; and in case such prisoner, at the time of the intended caption, shall not take the said oath or affirmation, or he not admitted thereto by the said justices, he shall be remanded back to prison, and shall not be entitled to the benefit of this Act, unless a new notification be made out, and served in manner as aforesaid.

Sect. 4. And be it further enacted, That all and every judgment obtained against such prisoner, shall, notwithstanding such discharge, as aforesaid, be and remain good and effectual in law, to all intents and purposes, against any estate whatsoever, which may then, or at any time afterwards, belong to him or her; and the creditor or creditors, agent or attorney, their executors or administrators may take out a new execution against the lands, tenements, hereditaments, goods and chattels of such prisoner (his wearing apparel and household furniture necessary for himself, his wife and children, and tools necessary for his trade or occupation only excepted) for the satisfaction of the debt, in such sort and manner as might have been done in case the said prisoner had never been taken in execution.

Sect. 5. And be it further enacted, That all and every person or persons now in execution and confined in any of the gaols in this Commonwealth, who have been duly admitted to the oath prescribed in an Act made and passed in the year of our Lord, one thousand seven hundred and sixty-three, entitled, "An Act for the relief of poor prisoners for debt," and who are notwithstanding still held in custody on the said execution, by his, her, or their creditor paying such weekly allowance for their support in prison, as in the same Act is provided, shall be and they hereby are discharged from such executions, whereon such oath hath been administered; and the several gaolers, in whose custody such persons may be, shall, upon due notice given them of this Act, discharge them, if they are confined for no other cause. [Nov. 19, 1787.] Add. acts—1789 ch. 9: 1804 ch. 67: 1816 ch. 55: 1817 ch. 186: 1819 ch. 130.

An Act to prevent the Destruction of Oysters, and all other Shell Fish, lying within the harbours, rivers and bays within the limits of the Towns of Sandwich, in the County of Barnstable, and Wareham, in the County of Plymouth, and the Towns of Dartmouth and Westport, in the County of Bristol. [Nov. 20, 1787.] See 1795 ch. 71.

An Act making Provision for the building and maintaining Light-Houses on the Sea-Coast of this Commonwealth, and for repealing all Laws heretofore made for that purpose. [Nov. 21, 1787.] Light-Houses granted to the U. States—1790 ch. 4: 1795 ch. 18.

An Act authorizing the Justices of the Supreme Judicial Court to license the Sale of Real Estate by Married Women, in certain cases, and for other purposes in the Act mentioned.

WHEREAS it sometimes happens, that husbands absent
Preamble.

Sup. J. Court empowered to license the sale of real estate by married women, when husbands absent themselves, and do not make provision for their support.

If such husbands return while a contract made by the wife is undischarged, remedy shall lie against them.

Notice of applications for liberty to sell shall be given as in case of libel for divorce.

seems themselves from this Commonwealth, and abandon their wives, not making sufficient provision for their support, who may be thereby reduced to great distress, not being able to make any valid contracts or dispose of any estate of their own: For remedy whereof,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all such cases where any married man has heretofore, or may hereafter absent himself from this Commonwealth, abandoning his wife, and not making sufficient provision for her support or maintenance, the Justices of the Supreme Judicial Court are hereby authorized, at any of the terms of the said court, upon the application of any such wife, to empower and enable her, during the absence of her husband from this Commonwealth, and no longer, in her own name, to make and execute any contract either under seal or otherwise, and by deed to sell and convey any estate, real or personal, of which, at the time of such sale, she shall be seized or possessed in her own right, and to commence, prosecute and defend any suit in law or equity, to final judgment and execution, in the same manner, as fully, and to all intents and purposes, as if she was sole and unmarried; or the said justices may grant to any such wife any or all the powers above described, according as they shall judge the circumstances of such wife shall require.

Sect. 2. And be it further enacted by the authority aforesaid, That if any such husband should return into this Commonwealth, while any contract made by his wife, pursuant to the powers aforesaid, should remain undischarged, the same remedy shall lie against such husband, as if the contract had been made by her before the marriage; and no suit pending, whereon his wife shall be a party, pursuant to the said powers, shall abate by his return into this Commonwealth.

Sect. 3. And be it further enacted by the authority aforesaid, That when application shall be made by any wife, for any or all of the powers aforesaid, the justices of the said court shall, previous to their granting any of the powers aforesaid, cause such public notice of the said application to be given, as by law they are directed in case of any libel filed by any married woman for a divorce. [Nov. 21, 1787.]

Chap. 33. An Act for the Preservation of the Fish called Alewives in Mattapoiset-River, in Rochester, in the County of Plymouth, and for the regulating the taking the said fish, in the said River. [March 1, 1793.] Add. acts—1790 ch. 5; 1790 ch. 22; 1802 ch. 11; 1817 ch. 130.

Chap. 34. An Act for annexing that Part of the Town of Scituate, commonly called the Two-Mile, to the Town of Marshfield. [March 10, 1798.]

Chap. 35. An Act to prevent the Destruction of the Fish called Shad and Alewives in Ten and Three Miles Rivers, in the County of Bristol. [March 10, 1798.] Repealed as to Three Miles River—1790 ch. 17.

Chap. 36. An Act granting liberty for taking the Fish called Menhaden, in Neposet-River, with Seines. [March 10, 1795.] Repealed—1790 ch. 45.

Chap. 37. An Act empowering the Town of Weymouth to regulate and order the taking and disposing of the fish, called Shad and Alewives, within the limits of that Town. [March 10, 1788.] Repealed—1800 ch. 73.
An Act for incorporating a number of the inhabitants of the Town of Portland, in the County of Cumberland, into a distinct and separate religious Society. [March 17, 1789.]

An Act in addition to an Act, entitled, "An Act in addition to an Act, providing for the payment of Costs in Criminal Suits." [March 18, 1788.] Repealed—1791 ch. 55.

An Act to prevent neglect in Sheriffs, Selectmen and Town-Clerks respectively, in not calling and presiding at Town-Meetings, receiving and returning the Votes for Governor, Lieutenant-Governor, Senators and Councillors, as is pointed out by the Constitution of this Commonwealth. [March 18, 1788.] Repealed—1795 ch. 55.

An Act for incorporating a Congregational Society in the Town of New-Salem, and for repealing an Act heretofore made for that purpose. [March 18, 1789.]

An Act in addition to and for explaining an Act passed in the year of our Lord one thousand seven hundred and eighty-seven, entitled, "An Act for regulating the Proceedings on Probate Bonds in the Courts of Common Law; and directing their Form in the Supreme Court of Probate."

WHEREAS, it is required by the aforesaid act, that guardians shall give bond to the Judge of Probate, with sufficient sureties for the faithful discharge of their trust; and in order to carry into effect the good purposes thereof, it is sufficient that such sureties shall be liable to satisfy the judgment which may be rendered upon such bond, so far only as the estate of the guardians shall prove deficient, and it is unreasonable that sureties shall be compelled to satisfy executions awarded upon judgments rendered upon such bonds, so long as the principal hath estate to satisfy the same, and it may tend to the great inconvenience of guardians to procure sureties, and also to multiply law suits: Therefore,

SEC. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any such bond shall be put in suit against any person as surety for a guardian, and the guardian shall not be a party to the suit, or that no service shall be made upon him, the surety who may be defendant shall have a right at the Supreme Judicial Court to which the cause may be carried, to demandoyer of the bond sued; and upon the motion of the defendant, the said court shall order a notification to be issued (attested by the clerk, and returnable to the said court at the next term to be held in the same county) to the guardian, and if the defendant shall desire it, to the other surety, who hath subscribed the bond, to appear at the said court, and to join with the said defendant in answering the said action, and the cause shall be continued to the next term of the said court to be held in the same county; and if it shall appear by the return of the sheriff or other proper officer, that the person or persons, for whom the said notification was directed to issue, hath or have been duly served with an attested copy of the writ, and the notification, or otherwise by reading the same, fourteen days at least before the sitting of the court to which the same is returnable, the person or persons so notified shall be considered as defendant or defendants, and the same proceedings and judgment shall be had thereon, as though the said person or persons so notified had been originally named in the writ, and duly served therewith.

SEC. 2. And be it further enacted, That when execution shall be awarded upon any judgment which may be hereafter rendered upon such bond against a guardian and his sureties, it shall be expressed in every such execution that the guardian and are sureties. And it shall be lawful for such surety or sureties to shew to the officer, who may have the execution, any estate which may be lawfully taken belonging to such guardian, to satisfy the same in whole or in part; and in such cases the sureties shall not be chargeable with the payment of such execution, unless the estate of the guardian so shewn shall prove insufficient; and then only for the residue or sum which shall be deficient. And in order that the estates of the said sureties may be held finally to respond the judgment as aforesaid:

SEC. 3. Be it further enacted, That all attachments upon the estates of such surety or sureties shall continue in force for the term of six months after judgment shall be rendered, unless the said judgment shall be sooner satisfied.

And whereas it is reasonable that sureties should be held to answer for such guardians for failure in their trust, after the expiration of the term of their trust, and of a convenient time for the adjustment and recovery of the sums due upon such bonds: Therefore,

SEC. 4. Be it further enacted, That no surety shall be held to answer to any action which shall be commenced against him after the expiration of the term of two years from the time that the minor under the custody of such guardian shall have arrived to full age; or that the term of such guardianship shall have otherwise expired.

When bonds are put in suit against sureties for guardian not a party, sureties may demandoyer of the bond, &c.

Provision when execution is awarded upon judgment rendered on said bonds.

Attachments to be in force six months after judgment.

Sureties not held to answer to action after minors have been of age two years.
Provido, in case of their absence from the State.

Section 5. Provided nevertheless, and be it further enacted by the authority aforesaid, That in all cases where it shall be made to appear to the satisfaction of the Judge of Probate, that any such minor or minors are out of the Commonwealth, at the time they shall arrive to the age of twenty-one years, having no lawful agent or attorney to represent him or them, (as the case may be) in every such case the guardian or guardians of such minors shall not be held to settle their accounts within the time limited by this act, and the Judge of Probate is hereby empowered to allow such further time for settling the said accounts, as he shall judge circumstances may require. [March 18, 1788.] Repealed—1798 ch. 30.

Chapter 43. An Act for incorporating the Plantation of New Worcester, so called, or No. 9, in the County of Lincoln, into a Town by the name of Orrington. [March 21, 1788.] Add. act—1798 ch. 27.


Chapter 45. An Act to incorporate the inhabitants of a Plantation known by the name of West-Bowdoinham, in the County of Lincoln, into a Town by the name of Bowdoin. [March 21, 1788.]

Chapter 46. An Act to annex certain Land hereafter described, to the Town of Cummington. [March 21, 1788.]

Chapter 47. An Act for setting off Nathaniel Kingsbury, an inhabitant of the first Parish in Dedham, in the County of Suffolk, and annexing him and his estate, to the third Parish in the said Dedham. [March 21, 1788.]

Chapter 48. An Act to prevent the Slave-Trade, and for granting Relief to the Families of such unhappy persons as may be kidnapped or decoyed away from this Commonwealth.

Preamble.

WHEREAS by the African trade for slaves, the lives and liberties of many innocent persons have been, from time to time, sacrificed to the lust of gain: And whereas some persons residing in this Commonwealth may be so regardless of the rights of human kind, as to be concerned in that unrighteous commerce:

Section 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no citizen of this Commonwealth, or other person residing within the same, shall, for himself, or any other person whatsoever, either as master, factor, supercargo, owner or hirer, in whole or in part, of any vessel, directly or indirectly, import or transport, or buy or sell, or receive on board, his or their vessel, with intent to cause to be imported or transported, any of the inhabitants of any state or kingdom, in that part of the world called Africa, as slaves, or as servants for term of years; and that every citizen, inhabitant or resident, as aforesaid, who shall, directly or indirectly, receive on board his or their vessel, with intent to import or transport, or cause to be imported or transported, any of the said inhabitants of Africa, contrary to the true intent and meaning of this Act, and be thereof lawfully convict, shall forfeit and pay the sum of fifty pounds, for every person by him or them so received on board, with intent to be imported or transported; and the sum of two hundred pounds, for every vessel fitted out with intent to, and that actually shall be employed in the importation or transportation aforesaid, to be recovered by action of debt, in any court within this Commonwealth, proper to try the same; the one moiety thereof to the use of this Commonwealth, and the other moiety to the person who shall prosecute for and recover the same.

Section 2. And it is further enacted by the authority aforesaid,
That all insurance which shall be made within this State, on any vessel fitted out with intention as aforesaid, and having on board slaves in order to be transported from Africa, as aforesaid, or upon any slaves so shipped on board of any vessel for transportation, shall be void, and of no effect; and this Act may be given in evidence under the general issue, in any suit or action commenced for the recovery of insurance so made.

And whereas divers peaceable inhabitants of this Commonwealth, or residents therein, have been privately carried off by force, or decoyed away under various pretences, by evil-minded persons, and with a probable intention of being sold as slaves without the same; and although sufficient provision is made for public justice, in such case, by the common law, and an Act, entitled, "An Act establishing the right to, and the form of the writ de homine replegiando," yet no provision is made for bringing actions for damages by the friends or families of any inhabitants who may be so carried off, or decoyed away, during his or her life-time:

Sect. 3. Be it therefore further enacted by the authority aforesaid, That when any inhabitant, or resident of this Commonwealth, shall be so carried off, or decoyed away, it shall be lawful for any friend of such injured inhabitant or resident, to bring forward and prosecute to final judgment and execution, before any court of law proper to try the same, any action for damages against any person concerned in decoying or carrying off such inhabitant or resident, in the name of such inhabitant or resident, and in the same manner, and to the same effect, as if thereunto fully authorized by letter of attorney from such inhabitant or resident for that purpose. Provided nevertheless, Such friend, prosecuting as aforesaid, shall first give to the Judge of Probate for the county wherein such injured party last dwelt, good and sufficient bond, with sureties to the satisfaction of such Judge of Probate, conditioned that such prosecutor shall pay the monies that he may recover in damages, as aforesaid, to the said injured party, on his or her return to this Commonwealth, if that shall happen by the time when such execution is satisfied; and if not, shall apply such monies to the use and maintenance of the wife, children or family of the injured party, in proportion, at such periods, and in such way and manner as the said judge shall decree best for the interest of such wife, children, or family, in the absence of such injured party.

Sect. 4. Provided also, and be it further enacted, That in case the defendant, who shall be prosecuted as is provided in and by this Act, shall be acquitted by the court before whom the trial may be, the said court shall not only render up judgment for legal costs, but for such reasonable damages as the said defendant hath sustained by such prosecution: Provided also. That this Act do not extend to vessels which have already sailed, their owners, factors, or commanders, for and during their present voyage, or to any insurance that shall have been made, previous to the passing of the same. [March 26, 1783.]
An Act for altering a certain Clause in an Act, entitled, "An Act to prevent the Destruction of Salmon, Shad, and Alewives and other Fish, in Agawam or Westfield River." [March 26, 1788.] See 1791 ch. 52.

WHEREAS it often happens that persons taxed in public and other assessments abscond, not having paid their rates and taxes, by which means the said taxes are frequently lost, and no provision being made in the said Act for remedy thereof:

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same:

That when any person, duly taxed in any assessment as aforesaid, hath absconded or shall hereafter abscond, not having paid their rates and taxes, and hath concealed or shall conceal his goods and estates; in every such case, the collectors, and constables to whom the said rates and taxes are committed to collect, shall have like remedy against their agents, factors or trustees, for the recovery of the same, as by the laws of this Commonwealth other creditors have for the recovery of their debts. [March 26, 1788.] Further add. act—1789 ch. 4.

An Act in addition to, and in explanation of an Act, entitled, "An Act to incorporate the South Parish of the Town of Bolton, together with David Taylor, Silas Carley, Job Spinford and John Brigham, inhabitants of Marlborough, with their estates, into a District by the name of Berlin." [March 26, 1788.]

An Act for reviving and continuing in force two Laws of this Commonwealth; one passed in the year of our Lord one thousand seven hundred and eighty-six, entitled, "An Act for suspending the Laws for the Collection of private Debts, under certain Limitations;" the other passed in the year of our Lord one thousand seven hundred and eighty-seven, entitled, "An Act for the Continuance of, and in addition to an Act, entitled an Act for suspending the Laws for the collecting of private Debts, under certain Limitations," [March 26, 1788. Expired.

An Act for suppressing and punishing of Rogues, Vagabonds, common Beggars, and other idle, disorderly and lewd persons.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall be erected, built or otherwise provided by the Court of General Sessions of the Peace, in every county within this Commonwealth, at the charge of such county, a fit and convenient house or houses of correction (where such house is not already provided) with convenient accommodations thereunto adjoining and belonging; to be used and employed, for the keeping, correcting and setting to work of rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons. And until such house or houses of correction be erected, built, or otherwise provided, the common prison in each county may be made use of for that purpose.
Sect. 2. And be it further enacted by the authority aforesaid, That the Court of General Sessions of the Peace in each county may nominate and appoint, at their will and pleasure, a suitable person to be master of such house of correction. And also to make, ordain and establish such rules and orders as may be necessary (not repugnant to the laws of this Commonwealth) for the ruling, governing and punishing of such persons as may be there committed; and such rules and orders by them made, shall be in force and put in execution. And any Justice of the Peace, as well as the Court of Sessions, may send and commit unto the said house, to be kept and governed according to the rules and orders thereof, all rogues, vagabonds and idle persons, going about in any town or place in the county, begging; or persons using any subtle craft, juggling or unlawful games or plays, or feigning themselves to have knowledge in physiognomy, palmistry, or pretending that they can tell destinies or fortunes, or discover where lost or stolen goods may be found; common pipers, fiddlers, runaways, stubborn servants or children, common drunkards, common night-walkers, pilferers, wanton and lascivious persons in speech, conduct or behaviour; common railers or brawlers, such as neglect their callings or employment, mispend what they earn, and do not provide for themselves or the support of their families, upon conviction of any of the offences or disorders aforesaid, complaint thereof having been made in writing.

Sect. 3. And be it further enacted by the authority aforesaid, That the master of such house of correction, to be appointed as aforesaid, shall have power and authority, and shall set all such rogues, vagabonds, beggars, and other lewd, idle and disorderly persons as aforesaid, that shall be duly sent or committed unto his custody, to work and labour (if they be able) for such time as they shall continue and remain in the said house; and to punish them by putting shackles or fetters upon them; and also from time to time, in case they be stubborn, disorderly, idle or refractory, and do not perform their tasks, and in good condition, according as they shall be reasonably stinted, or to abridge them of their food, as the case shall require, until they be reduced to better order.

Sect. 4. And be it further enacted by the authority aforesaid, That when any person shall be committed to the said house, the selectmen of the town to which he or she belongs (if within the Government) shall, at the town's expense, provide suitable materials, and such as shall be convenient and necessary, to keep the person thus committed to work, during his or her continuing there, and deliver the same to the master or keeper of the house for that purpose. And when any stubborn children or servants, under the immediate care and government of parents or masters, shall be committed to the said house, the parent or master (if able) shall take care and provide such things as may be necessary to keep him or her to work and labour during his or her abode in the said house. And the persons committed shall be allowed two third parts only of what Court to appoint masters of such house, and to make rules and orders for governing them. 1797 ch. 62.

Who are to be committed to such houses, and by whom.

Power and authority of such masters.

How to punish the disorderly, &c.

Selectmen to provide materials for keeping such persons at work. [Altered—1802 ch. 22.]

Parents and masters to provide materials for their children and servants. 1802 ch. 22.

Appropriation of their earnings.
they earn, and the residue shall be to the use of the master or keeper of the house, unless such persons are masters or heads of families; then the whole profit of their labour, or so much thereof as the Court of Sessions shall order, shall be for the relief and support of such persons and their families. And if any person, committed as aforesaid, shall be able to work, or be weak and sick, or the profits of whose work shall not be sufficient for supporting him or her, then to be comfortably provided for and taken care of by the master of the same house, who shall be reimbursed the same by the parent, master, town, or the Government, who are by law obliged to maintain and support such persons when unable to support themselves, as the case may require.

Sect. 5. And be it further enacted by the authority aforesaid, That the master of the said house of correction shall, for his care, labour and service in looking after the several persons that shall from time to time be committed to his care and custody, over and above one third part of their net earnings, have such reasonable allowance made him as the justices in session shall order and direct, to be paid him by the parent or master of such as are under their immediate care and custody, otherwise by the town to which such persons belong, if within this Government; or at the charge of the Government, if they belong to no particular town within it. And the master or keeper of every such house shall keep an exact account of all profits and earnings, that shall arise from the labour of all such as shall be committed unto his care and custody, as well as the particular time of their commitment and liberation, and present the same account (upon oath, if required) unto the Justices of the Peace for the same county, annually, and also whenever he shall by them be thereunto directed; and in default thereof may be amerced by the said justices in their sessions, not exceeding one hundred pounds. Provided nevertheless, That whenever any person, committed as aforesaid, shall apply to the master of the said house for a discharge therefrom, the said master shall signify the same to the overseers of the poor of the town, in which such house of correction shall be, or to the overseers of the poor of such town as the person so committed shall belong to, and the major part of either of the overseers of the poor, aforesaid, upon its being made to appear to them that the ends of such commitment have been answered, are hereby empowered to issue their order to the master of such house of correction to discharge the said person from his or her said confinement; the charges arising therefrom being first paid in manner as is herein before provided; and the said master is hereby required to discharge him or her accordingly.

Sect. 6. Be it further enacted by the authority aforesaid, That no person, being an African or negro, other than a subject of the Emperor of Morocco, or a citizen of some one of the United States (to be evidenced by a certificate from the Secretary of the State of which he shall be a citizen) shall tarry within this Commonwealth for a longer time than two months;
and, upon complaint made to any Justice of the Peace within this Commonwealth, that any such person has been within the same more than two months, the said justice shall order the said person to depart out of this Commonwealth; and in case that the said African or negro shall not depart, as aforesaid, any Justice of the Peace within this Commonwealth, upon complaint and proof made that such person has continued within this Commonwealth ten days after notice given him or her to depart as aforesaid, shall commit the said person to any house of correction within the county, there to be kept to hard labour, agreeably to the rules and orders of the said house, until the Sessions of the Peace, next to be held within and for the said county; and the master of the said house of correction is hereby required and directed to transmit an attested copy of the warrant of commitment to the said court on the first day of their said session; and if, upon trial at the said court, it shall be made to appear that the said person has thus continued within the Commonwealth contrary to the tenor of this Act, he or she shall be whipped not exceeding ten stripes, and ordered to depart out of this Commonwealth within ten days; and if he or she shall not so depart, the same process shall be had and punishment inflicted, and so totes quoties. [March 26, 1788.]

Add. acts—1797 ch. 62: 1802 ch. 22.

An Act for dividing the County of Lincoln into three Districts, and for establishing a Registry of Deeds and Court of Probate in the Middle District. [March 27, 1788.]

An Act for apportioning and assessing a Tax of sixty-five thousand pounds, four shillings, to answer the Exigencies of Government; and also thirteen thousand two hundred and sixty two pounds and one shilling, to replace the same sum, drawn out of the Treasury to pay the Members of the House of Representatives for their Attendance the seven last sessions of the General Court; also a further sum of thirty pounds, set to the Town of Bowdoin, and the sum of ninety four pounds, fifteen shillings and ten pence, set on the lands of the heirs and assigns of the late Brigadier Waldo. [March 27, 1788.]

An Act in addition to an Act, entitled, "An Act in addition to an Act passed in the year of our Lord one thousand seven hundred and eighty three, entitled, An Act to regulate the Catching of Salmon, Shad and Alewives, and to remove and prevent Obstructions in Merrimack-River, and in the other Rivers and Streams running into the same, within this Commonwealth, and for repealing several Acts heretofore made for that purpose." [March 28, 1788. Repealed—1798 ch. 51.

An Act to prevent the Destruction of Alewives and other Fish in Ipswich-River, and to encourage the Increase of the same. [March 29, 1788.] Add. acts—1792 ch. 83: 1796 ch. 66: 1804 ch. 90.


An Act for the Preservation of the Salt Marshes in that part of the Town of Dorchester, in the County of Suffolk, known by the name of Squantum. [March 29, 1788.

An Act to set off a certain Point of Land, adjoining to Topsham, now known by the name of Patten's Point, from the Town of Bowdoinham, and annexing the same to the Town of Topsham. [March 29, 1788.]

An Act repealing a certain Paragraph of an Act, passed in the year of our Lord one thousand seven hundred and eighty three, entitled, "An Act in addition to the several Acts of this Commonwealth, already made, for the Preservation of the Fish called Alewives, and for the better regulating the River called Weweawantett, in the County of Plymouth," and for making an addition to the said Act, [March 29, 1788.] Add. act—1788 ch. 58. Both repealed—1797 ch. 69.
Chap. 63. 1786 ch. 49.


Chap. 64. 12 W. III. ch. 9.

An Act to prevent the Exportation of green or unmanufactured Calf-Skins, out of this Commonwealth, by land or water.

WHEREAS the exporting of green or unmanufactured calf-skins will occasion a scarcity thereof, and he attended with disagreeable consequences to the Commonwealth: For preventing thereof,

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing this Act, no green or unmanufactured calf-skins shall be exported out of the limits of this Commonwealth, by land or water; and if the owner or owners of any green or unmanufactured calf-skins, or other person or persons, employed by him or them, shall lade or put on board of any vessel or float, bound out of this Commonwealth, any green or unmanufactured calf-skins; or if any master of any ship or vessel, or other officer or mariner, shall receive on board any green or unmanufactured calf-skins, as aforesaid, the person or persons so offending shall incur the penalty of six shillings for each and every green or unmanufactured calf-skin, so shipped or attempted to be shipped; to be sued for and recovered in any court within this Commonwealth, proper to try the same; and every such green or unmanufactured calf-skin, laded on board of any vessel as aforesaid, shall be forfeited. And it shall and may be lawful for any Justice of the Peace, upon information given of any green or unmanufactured calf-skins, being put on board any ship or other vessel, with intent to export the same as aforesaid, to issue his warrant, directed to the sheriff or his deputy, or any constable, requiring them respectively, to make seizure of any such green or unmanufactured calf-skins, laded for exportation as aforesaid, to secure the same, in order for trial; and such officers are hereby respectively empowered and required to execute the same; and every officer of impost and excise, and every naval officer, and their respective deputies, are hereby severally empowered, on information given by any person or persons, to seize and secure any green or unmanufactured calf-skins, laded as aforesaid, for trial; and the fines or forfeitures incurred by a breach of this Act, shall be one moiety thereof to the person or persons who may give information, sue for and recover the same, and the other moiety to and for the use of this Commonwealth. [March 31, 1788.]

Chap. 65. Preamble.

An Act for annexing Fees to certain Papers in the Secretary's Office, and for making an Appropriation thereof.

WHEREAS it is found necessary that some certain provision should be made for the pay of the Secretary, and the clerks in his office:

SECT. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That so much of an Act passed the first day of March, one thousand seven hundred and eighty-seven, as relates to the fees established for the Secretary's Office, be, and it is hereby repealed.

Part of a former Act repealed.

1786 ch. 73.
Sect. 2. And be it further enacted by the authority aforesaid, That in future the following shall be the established fees to be paid into the Secretary's Office.

For all copies for the benefit of individuals, at the rate of one shilling for each hundred words.

For copies of resolves and orders of the General Court, or of the Governor and Council, of a private or local nature, three shillings.

For an Act for the benefit of individuals, companies or corporate bodies (except societies for the promotion of arts and sciences, agriculture and manufactures, religion and charitable purposes) twelve shillings.

For every act for the incorporation of a town, district, precinct or parish, excepting the incorporation of plantations, to be paid by the agent applying therefor, six shillings.

For every commission of sewers, six shillings.

For every register of a vessel, six shillings.

For every warrant for a branch pilot, six shillings.

For every impression of the seal of the State, with a certificate on private papers, twelve shillings.

For every pass or letter of recommendation for persons or vessels bound to foreign parts, twelve shillings.

For every notification of the Secretary for an appointment of inspectors, assay-masters or surveyors of tobacco, flax-seed, pot-ash, pearl-ash, loaf-sugar, beef, pork, fish and butter, six shillings.

For every notification of the Secretary of an appointment to the office of controller-general, thirty shillings.

For every notification of the Secretary of an appointment to the office of collector of impost and excise, twenty shillings.

For every notification of the Secretary of an appointment of naval-officer, twelve shillings.

Provided that the persons notified as aforesaid, shall accept their respective trusts.

For every commission to the office of coroner, six shillings.

For every commission to the office of Justice of the Peace, of the quorum, and through the Commonwealth, nine shillings.

For every commission of a letter of marque and reprisal, twenty-four shillings.

For every act of naturalization of a foreigner, otherwise than a husbandman, mechanic or common labourer, six pounds.

Sect. 3. And be it further enacted by the authority aforesaid, That the Secretary shall receive, and keep an account of all the fees by him taken in virtue of this Act, and shall pay the same quarterly into the treasury of this Commonwealth; and the said Secretary's proportion of a quarterly payment of the salary allowed him, and also the proportion that may be due to the several clerks in the said Secretary's office, shall be paid out of the same, in discharge of the warrants respectively drawn in their favour: And a fair account of the whole fees received, with the names of the persons paying the same, shall be annually laid before the General Court. [March 31, 1783.] Repealed—1795 ch. 41, § 7—so far as the services, mentioned in this Act, are provided for in that: Superseded and become inoperative, as to other services, by the constitution and laws of the United States, &c.
An Act in addition to an Act, entitled, "An Act to prevent the Destruction of the Fish called Shad and Alewives, in their passage up the rivers and streams in the town of Rehoboth, in the county of Bristol." [June 9, 1788.] Repealed—1803 ch. 116.

An Act for the better Regulation of the Indian, Mulatto and Negro Proprietors in Marshpee, in the county of Barnstable. [June 13, 1788.] Repealed—1788 ch. 38.

An Act for setting off certain Tract of Land belonging to the town of Belchertown, in the county of Hampshire, and for annexing the same to the town of Pelham. [June 16, 1788.]

An Act in addition to an Act, entitled, "An Act for incorporating a number of the inhabitants of the town of Amherst, in the county of Hampshire, into a separate Parish by the name of The Second Parish in the town of Amherst." [June 17, 1788.]

An Act for dividing the county of Berkshire into three Districts, for the purpose of choosing Registers of Deeds in the said Districts.

WHEREAS a great part of the inhabitants of the county of Berkshire, by reason of their distance from the place where the office of register of deeds, by the laws now in being, is directed to be kept, are subjected to great inconvenience in procuring their conveyances of real estate to be recorded: For remedy whereof in future,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the towns of Lenox, Pittsfield, Richmond, Stockbridge, Lee, Tyringham, Becket, Washington and Partridgefield, and such gores or tracts of land unincorporated, as may lie between any of the said towns, be and they hereby are constituted a district for the registry of deeds; and the inhabitants of the said towns and districts are hereby authorized to choose a register of deeds for the said district, in the manner provided by law; and the register, so chosen, shall keep his office within the said town of Lenox; and Jahleel Woodbridge, Esq. of Stockbridge, is hereby authorized and empowered to issue his warrants, directed to the selectmen of the several towns aforesaid, ordering them forthwith to convene the inhabitants of their respective towns, qualified to vote for representatives, that they may proceed to the choice of some meet person, qualified by law for the office of a register of deeds, and ordering the selectmen to seal up and transmit a transcript of the record of the number of votes, and of the person or persons voted for, in their respective towns, together with the said warrants, to the Court of General Sessions of the Peace next to be held at Lenox, within and for the county of Berkshire, on the second Tuesday of September next, to be opened and compared with the like returns from other towns in such district; and the person having the majority of votes, after being sworn, and giving bond as by law directed, shall be the register of deeds in the said district, and shall continue in said office until the last day of March, one thousand seven hundred and ninety-one, and until another is chosen.

Sect. 2. Be it further enacted, That the towns, plantations, and all other lands in said county of Berkshire, which lie north of the towns above enumerated, be and they hereby are consti-
tuted a separate district for the registry of deeds; and the inhabitants of the said towns, plantations, and other lands, are hereby authorized to choose a register of deeds for the said district, in the manner provided by law; and the register so chosen, shall keep his office in the town of Lanesborough, within the said district; and William Owner, Esq. of Willamstown, within the said district, is hereby authorized to issue his warrant to the selectmen of the several towns, and to some principal inhabitant of each of the plantations in said district, in manner and returnable as aforesaid, and the votes being opened and compared in the said Court of General Sessions of the Peace, the person having a majority of votes, after being sworn and giving bond as aforesaid, shall continue in the said office until the last day of March above mentioned, and until another is chosen; and if it shall appear that no person has a majority of votes in the said districts, or either of them, the same proceedings shall be had as are directed, by law, in other cases of vacancy, in the office of register of deeds.

Sect. 3. And be it further enacted, That the persons chosen as aforesaid, shall be subject to the rules and disqualifications to which registers of deeds for the several counties are subject; and from and after the first day of January next, shall be fully authorized to register and record all deeds, or other conveyances of lands or other real estate, lying within the district for which they are respectively chosen; and the record of any deed, or other conveyance of lands or other real estate, which after the first day of January next shall be made by any other than the persons chosen and qualified as aforesaid, for the said districts respectively, shall be void and of no effect; and the registers to be chosen as aforesaid, shall be entitled to the same fees, in the execution of their respective offices, as registers of deeds in the several counties are entitled to.

Sect. 4. And be it further enacted, That the towns, districts, plantations and lands in the said county of Berkshire, which lie south of the towns above enumerated, shall be a separate district for the registry of deeds, in which district the office of register shall be kept in the town of Great-Barrington: And nothing in this Act shall be taken in any manner to affect the choice of the present register of deeds for the said county, so far as it respects the district last aforesaid.

Sect. 5. And be it further enacted, That all the records of deeds and other conveyances of lands in said county, which have been made or shall be made before the first day of January next, shall be removed and deposited in the register's office, herein provided for, in the said town of Lenox, to be kept by the register aforesaid, for the first mentioned district. [June 18, 1788.] Add. act—1812 ch. 83.

An Act to incorporate the Plantation called Lewistown, in the county of Lincoln, into a Town by the name of Greene. [June 18, 1788.]

An Act to prevent the Destruction, and regulate and limit the Catching of Fish in the rivers and streams in the Town of Westport, in the County of Bristol. [June 18, 1788.]

Chap. 6.

Chap. 7.

VOL. I.
An Act to incorporate a Plantation, in the County of Lincoln, known by the name of Fairfield, into a Town by the name of Fairfield. [June 13, 1788.]

An Act for incorporating certain tracts of land in the county of Lincoln, with the inhabitants thereon, into a Town by the name of Canaan. [June 15, 1788.]

An Act to incorporate a Plantation known by the name of Norridgewock, in the County of Lincoln, into a separate Town by the name of Norridgewock. [June 18, 1788.]

An Act empowering the Justices of the Supreme Judicial Court to grant Writs of Review, in certain cases.

WHEREAS the Justices of the Supreme Judicial Court are by law empowered, in certain cases, to set aside verdicts and grant new trials; but are not empowered by law to set aside judgments, when rendered on such verdicts; — and forasmuch as the said justices have no power to set aside such judgments, many inconveniences have happened, and may hereafter happen, unless some remedy be provided:

SECT. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That wherever there hath been or hereafter may be any legal cause for the said justices, before judgment, to set aside any verdict, but nevertheless, judgment hath been or hereafter may be rendered on such verdict, the party aggrieved by such judgment (and not otherwise entitled to a review of the cause) may petition the justices of the aforesaid court, at any of their terms, for a review of such cause; and the said justices, on due notice to the adverse party, and full consideration of such petition, are hereby empowered (if they see fit) to grant a review of the said cause, on such terms and conditions as to them may seem just and reasonable between the said parties.

And whereas by reason of accident, mistake, or some unforeseen cause, judgments have been and hereafter may be rendered in the said court, on discontinuance, nonsuit, nil dictum, non sum informatus, report of referees, or default, and suits have been and hereafter may be discontinued without judgment, to the hindrance or subversion of justice: Wherefore,

SECT. 2. Be it further enacted by the authority aforesaid, That whenever, by reason of any accident, mistake, or any unforeseen cause, judgment hath been or hereafter may be rendered on discontinuance, nonsuit, nil dictum, non sum informatus, report of referees, or default, or suits have been or hereafter may be discontinued without judgment, to the hindrance or subversion of justice; the said justices, on petition as aforesaid, are further empowered to grant a review of the action in manner as aforesaid.

And whereas similar cases do happen in the Courts of Common Pleas, and before Justices of the Peace:

SECT. 3. Be it therefore enacted by the authority aforesaid, That wherever, by reason of any of the causes mentioned in the last enacting clause, any judgment in the said Court of Common Pleas, or before any Justice of the Peace, hath been or hereafter may be rendered in manner as in the same clause is mentioned; or any appeal hath been or hereafter may be prevented or lost, to the hindrance or subversion of justice, as
an Act for the Ease of the Citizens concerning Actions upon Penal Statutes.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all actions, suits, bills or informations, which shall hereafter be had, brought, sued or commenced, for any forfeiture upon any penal statute, made or to be made, the benefit whereof is or shall be by the said statute limited in whole or in part to the person or persons who shall inform and prosecute in that behalf, shall be had, brought, sued or commenced, by any person that may lawfully pursue the same, as aforesaid, within one year next after the offence committed, or to be committed, against the said statute; and in default of such pursuit, then the same shall be had, brought or prosecuted for the Commonwealth, at any time within two years after the offence committed; and if any action, suit, indictment or information, for any offence against any penal statute, shall be brought after the time in that behalf limited, the same shall be void and of none effect, any Act to the contrary notwithstanding. Provided always, That when any action, suit or information is or shall be limited by any penal statute, to be had, sued, commenced, or brought within a shorter time than is above mentioned, in every such case, the action, suit or information, shall be brought within the time limited by such statute. Provided also, That this act or any clause contained therein, shall not extend to any action, suit, indictment or information, which shall hereafter be had, brought, sued or commenced, for offences heretofore committed by any person or persons, against any
Act or Acts for restraining the taking of excessive usury, if the person or persons, who may be sued or prosecuted therefor, have, for the space of one year from the passing this Act, refused or neglected to make restitution of the full amount of the excessive usury by him or them so heretofore taken or received, and the lawful interest thereof, from the time the same was taken, to the person or persons, his or their executors or administrators, or to his or their lawful agents or attorneys, from whom such excessive usury has been taken or received as aforesaid, if by them thereunto required, in person, at any time within the said year, or by writing left at his or their last and usual place of abode, fourteen days at least before the expiration of the said year; the cost of travel to make such request, to be paid by the person or persons guilty of taking the excessive usury; but in all such cases, the action, suit, indictment or information, had, sued and commenced, for the offences aforesaid, shall and may be sustained and prosecuted to final judgment, any thing in this Act to the contrary notwithstanding:

Provided, The same be commenced within two years after the passing this Act, and not otherwise.

Sect. 2. And be it further enacted by the authority aforesaid, That in all informations to be exhibited, and in all actions or suits to be commenced against any person or persons, on the behalf of any informer, or on the behalf of the Commonwealth, and any informer, for or concerning any offence committed or to be committed against any penal statute, the offence shall be laid and alleged to have been committed in the county where such offence was in truth committed, and not elsewhere; and if the defendant, in any such information, action or suit, pleads that he owes nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit, upon evidence to the jury that shall try such issue, shall not both prove the offence laid, in the said information, action or suit, and that the same offence was committed in that county, the issue shall be found for the defendant or defendants.

Sect. 3. And be it further enacted by the authority aforesaid, That if any information, suit or action, shall be brought or exhibited against any person or persons, for any offence committed or to be committed against the form of any penal law, on behalf of any informer, or on behalf of the Commonwealth and any informer, it shall be lawful for such defendants to plead the general issue, and give any special matter in evidence to the jury, which shall be as available to him or them, as if he or they had sufficiently pleaded the same matter in bar, or discharge of such information, suit or action. Provided always, That this act, or any clause contained therein, shall not extend to any information, suit or action, grounded upon any law or statute, concerning the concealing or defrauding the Commonwealth of any customs, duties, impost or excises. [June 19, 1788.]
An Act for preventing the Destruction of Alewives in the Town of Wellfleet, and regulating the fishery of them in the said Town. [June 19, 1788.]

Chap. 14.

Sect. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same,
That no action shall be brought whereby to charge an execu-
tor or administrator, upon any special promise, to answer dam-
ages out of his own estate; or whereby to charge the defend-
ant, upon any special promise, to answer for the debt, default
or misdoings of another person, or to charge any person upon
any agreement made upon consideration of marriage, or upon
any agreement that is not to be performed within the space of
one year from the making thereof, unless the agreement upon
which such action shall be brought, or some memorandum, or
note thereof, shall be in writing, and signed by the party to be
charged therewith, or some other person thereunto by him law-
fully authorized.

Chap. 15.

Sect. 2. And be it further enacted by the authority aforesaid,
That no contract for the sale of any goods, wares or merchan-
dize, for the price of ten pounds or more, shall be allowed to
be good, except the purchaser shall accept part of the goods so
sold, and actually receive the same, or give something in earn-
est to bind the bargain, or in part payment, or that some note
or memorandum in writing of the said bargain, be made and
signed by the parties to be charged by such contract, or their
agents thereunto lawfully authorized.

Chap. 16.

Sect. 3. And be it further enacted by the authority aforesaid,
That whenever a debtor in execution, having goods, effects or
credits, to the amount of ten pounds or more, (that are unat-
tachable by the common and ordinary process of law) shall
spend or use the same, or so much thereof, for his subsistence,
as shall amount to the sum upon which he is committed in ex-
cution, without giving the creditor, his agent, factor or attorney,
notice where and of what kind they are, and enabling him, if
he thinks proper, to accept the same, or such part of them as
will amount to the debt for which he is in execution, in satisfac-
tion thereof, such neglect shall be esteemed and taken as a
fraudulent transaction in the debtor; and every person who
shall knowingly aid and assist a debtor in such fraudulent trans-
asction, shall be answerable and chargeable to the creditor, to
double the full value of the money, goods or effects, by him or
them thus secreted, spent or embezzled, in a special action on
the case.

Sect. 4. And be it further enacted by the authority aforesaid,
That whenever a judgment-creditor shall discover goods, effects
or credits of his debtor, that are unattachable by the common
and ordinary process of law, he shall be entitled to the process
provided in the Act made to enable creditors to receive their
just debts out of the effects of their absent or absconding deb-
tors; and upon the agent, factor or trustee's being summoned in
the manner the said Act directs, all the money, goods, effects

Provision when a judgment-
creditor shall
discover goods,
&c. of his debt-
or that are un-
attachable.
and credits in his hands, shall be secured to respond the judgment that may be given thereon, and he shall answer thereunto, at the first term, in case his principal has personal or other sufficient and legal notice of the suit, fourteen days before the court's sitting. Provided always, That upon a judgment-creditor's pursuing such remedy to recover his debt, he shall, within seven days after the same process on the supposed agent is served, discharge the body of the debtor (in case he is taken in execution upon the same judgment) by a note or memorandum, in writing, directed and delivered to the officer who has him in custody, stating the reason and occasion of the discharge of the person of the debtor; and such a discharge shall not vacate, annul, or in any manner injure the original judgment; but in case the judgment-creditor shall not within the seven days discharge the person of the debtor, in manner aforesaid, the process commenced as aforesaid shall abate, and the debtor shall recover treble costs. [June 19, 1788.]

Chap. 17. An Act in addition to an Act, entitled, "An Act to bring into the Public Treasury the sum of one hundred and sixty three thousand and two hundred pounds, in Public Securities, by a sale of a part of the Eastern Lands, and to establish a Lottery for that purpose." [June 20, 1788.]

Chap. 18. An Act to prevent the Destruction of Salmon and Shad in Connecticut-River. [June 20, 1788.] Repealed—1796 ch. 88.

Chap. 19. An Act to confirm the Doings of Justices of the Peace whose Commissions have expired, or may hereafter expire and be again renewed.

WHEREAS by the Constitution of this Commonwealth, the commissions of Justices of the Peace expire at the end of seven years; and whereas it has heretofore happened, and may hereafter so happen, that much business which has been or may be begun by them, in the execution of the duties of their office, and the business so begun by them has not been or may not be completed and carried into full execution before the expiration of the said term of their commissions; and as doubts have arisen, whether such actions, doings and proceedings, can survive and remain valid after the expiration of the term of such former commissions, and be again re-assumed and proceeded upon, after such commissions have or shall be renewed:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all such actions, doings and proceedings of Justices of the Peace within this Commonwealth, which have been re-assumed and carried into execution since the renewal of their said commissions, be and they hereby are confirmed and rendered valid, to all legal intents, as fully as if the commissions, under authority whereof they originated, had continued in force, until the final issue of such actions and proceedings aforesaid.

Sect. 2. And be it further enacted by the authority aforesaid, That all Justices of the Peace, as aforesaid, before whom actions may be commenced under former commissions, and such commissions have or shall expire before judgment has been or shall be rendered thereon, or judgment being rendered, the same remains in whole or in part unsatisfied, such Justices of
the Peace, who have heretofore or shall hereafter have their said commissions seasonably renewed, and being duly qualified agreeably to the Constitution of this Commonwealth, to act under such commissions, be and they hereby are authorized and empowered to render judgment and issue execution on all such actions, commenced as aforesaid, in the same manner as if the commissions under which such actions were or may be commenced, were in full force. [June 20, 1788.]

An Act in addition to the Act, "for regulating the Proceedings on Probate Bonds in the Courts of common Law, and directing their Form in the Supreme Court of Probate."

WHEREAS in and by the last section of the said Act it is enacted, "That when judgment shall be rendered upon any probate bond, against the obligors, their executors or administrators, and the party or parties against whom such judgment shall be rendered, shall by law be entitled to a review thereof, execution shall be suspended or stayed in such counties as have but one Supreme Judicial Court annually, for the space of six calendar months, to commence on the day of rendering the judgment; and in such counties as have two Supreme Judicial Courts annually, execution shall be suspended until the next term or sitting thereof in the same county, to the end the said obligors, their executors or administrators may (if they see cause) review the same."—By reason of which, all attachments of real or personal property, on the original writ for bringing forward such suits, are rendered useless and ineffectual for satisfying the judgments that may be given therein:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That it shall and may be lawful for the party or parties, for whose use and benefit a judgment upon any probate bond may be hereafter rendered (as soon as twenty-four hours shall be expired after the judgment shall be entered up) to sue out execution thereupon, any thing in the said recited section to the contrary notwithstanding: Provided, The person or persons suing out the same execution shall give bond to the party or parties against whom the same shall issue (and file the bond in court for his or their use) in double the sum named in the execution, with surety or sureties, to the acceptance of the court, with condition to refund and pay to him or them whatever sum or sums shall be received or levied by virtue thereof, more than sufficient to satisfy the final judgment that may be given in his or their favour upon a writ of review, that may be commenced thereupon within the time by law limited for such review: And if, at the time of rendering the final judgment on the review, it shall appear to the court that the party or parties suing out execution, as aforesaid, have received or levied thereon a larger sum than the final judgment, it shall and may be lawful for the same court, and they are hereby authorized and empowered to enter up judgment in favour of the obligee, for the restitution thereof, and thereupon to issue execution for the same against the said obligors (or so many of them as shall be then living) in as full and ample a manner as though a suit was commenced and prosecuted on the same bond.

When judgment upon any probate bond shall be hereafter rendered, the party or parties may sue out execution—giving bond to refund in case—

[Parties cannot now re-review, as a matter of right—1917 ch. 85.]
Sect. 2. And be it further enacted by the authority aforesaid, That when any suit shall hereafter be brought on a probate bond, and the principal obligor named in the bond is living and resident within the Government, and shall not be named in the writ, or, if named, shall not be attached or summoned to answer thereunto, it shall and may be lawful for the court, at the request of the surety or sureties that may be attached or summoned thereby, to continue the same cause to the next term, or to some distant day in the same term, if, upon a consideration of the circumstances attending the suit, they shall determine such continuance reasonable or expedient: to the end such surety or sureties may purchase out a writ, in such form as the same court shall direct, for attaching the property, securing the person or summoning the principal to come in and become a party to the suit; and in case the principal, (after being attached or summoned upon such process fourteen days, or more, prior to the time of his being directed to appear and answer) shall not appear and answer, the court are hereby authorized and empowered to render judgment against him in the same way and manner they might have done, had such principal been duly named and legally summoned by the original writ which commenced the suit, and he had neglected to appear, or, appearing, had neglected to make answer thereto. 

Sect. 3. And be it further enacted by the authority aforesaid, That a law made and passed the eighteenth day of March, one thousand seven hundred and eighty-eight, entitled "An Act in addition to, and for explaining an Act passed in the year one thousand seven hundred and eighty-seven, entitled, an Act for regulating the proceedings on probate bonds in the courts of common law, and directing their form in the Supreme Court of Probate," be and hereby is repealed. [June 20, 1788.] 

Chap. 21. An Act for incorporating a number of the inhabitants of the Town of Groton, in the County of Middlesex, of the Presbyterian Denomination, into a separate Parish. [Nov. 19, 1788.] 

Chap. 22. An Act to incorporate the Plantation known by the name of Walpole, in the County of Lincoln, into a Town by the name of Nobleborough. [Nov. 20, 1788.] 

Chap. 23. An Act for conferring to Nathaniel Gorham and Oliver Phelps, Esquires, a certain Tract of Land, pursuant to a contract made with them for that purpose. [Nov. 21, 1788.] 

Chap. 24. An Act for granting a Lottery for the purpose of purchasing an Orrery, made by Joseph Pope, for the use and benefit of the University at Cambridge. [Nov. 21, 1788.] 

Chap. 25. An Act for naturalizing Elisha Bourn, and others, the- em named. [Nov. 21, 1788.] 


Chap. 27. An Act in addition to, and for repealing and amending a certain Part of an Act passed the twenty-first day of March, one thousand seven hundred and eighty-eight, entitled "An Act for incorporating the Plantation of New-Worcester, so called, or No. 9, in the County of Lincoln, into a Town by the name of Orrington." [Nov. 22, 1788.]
An Act for setting off Isaac Moffit, and others, from the Town of Charlton, in the County of Worcester, and annexing them to the Town of Oxford in the same County. [Jan. 5, 1789.]


WHEREAS erecting houses for the employment of idle persons, who neglect and refuse to exercise any lawful calling or business to support themselves and families, and for the poor and indigent, that want means to employ themselves, may be useful to the public, and especially to such towns, as shall be concerned in such an undertaking:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any town, in this Commonwealth, shall see meet to erect or provide a house, for the purpose before named, such town shall be, and hereby is fully authorized and empowered thus to do; and the towns aforesaid, as well as those who have already erected such houses, are hereby empowered, at their annual meeting for the choice of town officers, to choose three, five, seven, or more overseers of the said house, who shall have the inspection and government thereof, with full power of appointing a master, and needful assistants, for the more immediate care and oversight of the persons received into, or employed in the said house; which overseers, once in every month, and at other times as occasion shall require, shall assemble together for the purpose of determining the most eligible method of discharging the duties of their office: And at their stated monthly meetings shall have power to make needful orders and regulations for such house; which orders shall be binding until the next public meeting of the inhabitants of such town, to whom such orders shall be presented for approbation; and when by them approved, shall be obligatory, until revoked by the town.

Sect. 2. And be it further enacted by the authority aforesaid, Then when any number of towns shall agree (at their joint charge, and for their common benefit) to erect or provide a work-house for the employment of persons residing in such towns, that are indigent or idle, or to purchase land whereon to erect such house, or for the accommodation thereof, they shall be and hereby are vested with power and authority thus to do; and the ordering and governing the same, making the necessary repairs thereof, appointing a master and other assistants, and the power of removing him or them from their respective offices or trusts, for irregular behaviour, incapacity, or for other sufficient cause, shall be vested in overseers, to be from year to year specially chosen by the several towns, at their annual meeting for the choice of town officers, each town to choose three, unless all the towns engaged in the undertaking shall agree upon a different number: And in case of the death of an overseer, or his removal from the town

Any town may erect or provide a work-house.

Any number of towns that shall agree to erect a work-house, are vested with power thus to do.

Overseers to be annually appointed.

Empowered to choose overseers.

Overseers to meet monthly and make needful orders and regulations.
for which he was appointed, the vacancy made thereby may be supplied by such town, at any other public meeting: And if any town concerned shall neglect to choose such overseers, in such case the person or persons chosen in the other towns may proceed in all affairs of the said house, any such neglect notwithstanding.

**Sect. 3. And be it further enacted by the authority aforesaid,**

That there shall be stated quarterly meetings of all the overseers, on the first Tuesday of the months of January, April, July and October, annually, to be held at the work-house, in order to inspect the management, and for directing the business thereof; and besides those stated meetings, intermediate ones, to be held at the work-house, may be called by the overseers of any town concerned; due notice of the time and occasion thereof being given to the rest, in such way and manner as shall be agreed upon by the overseers, at any general stated meeting: And the said overseers, when duly assembled, may choose a moderator; and at their first general meeting annually, after their appointment, they shall likewise choose a clerk, to enter and record all votes and orders that shall be made and passed by the overseers, who shall be sworn to the faithful discharge of his trust.

**Sect. 4. And be it further enacted by the authority aforesaid,**

That the overseers, for the time being, at a general quarterly meeting, provided one half, at the least, of the whole number chosen are present, shall have full power and authority to make all reasonable orders and by-laws, not repugnant to the laws of this Commonwealth, for the ordering and regulating the said house, and the affairs thereof; which orders and by-laws shall continue and be in force until altered, annulled or reversed by them or their successors in office, and may likewise agree with the master or other assistants, and order meet allowance for their care and service; and all other matters of less importance, relating to the said house, may be transacted at any other meeting duly notified, when only one third part of the overseers are present, subject nevertheless to be altered or reversed, at any general stated meeting.

**Sect. 5. And be it further enacted by the authority aforesaid,**

That the yearly stipend, or allowance, to the master and assistants, over and above what is provided for by this Act, for their care and trouble, together with the charge of keeping the house in repair, shall be paid by the several towns concerned, in proportion as they are taxed to the Government, at the time the expense is incurred, or in such other proportion as all the towns concerned shall agree upon: And if any town or towns shall refuse or neglect to advance or reimburse their respective proportions of such allowance, or other charges before-mentioned, after they shall have been stated and adjusted by the overseers, the same may be recovered of such delinquent town or towns, in any court proper to try the same, by action to be brought by such person or persons, as the overseers shall, in writing, appoint for that purpose.
Sect. 6. And be it further enacted by the authority aforesaid, That any two or more of the overseers, in any town already provided with such house, and any two or more of the overseers, in any town that, either by themselves, or in conjunction with other towns, shall hereafter erect a work-house, be and they are hereby authorized, empowered and directed, to commit to such house, by writing, under the hands of the said overseers, to be employed and governed according to the rules and orders of the house, any person or persons, residing in such town, that are in this Act declared liable to be sent thither: Provided, That no greater number of persons, belonging to any town, be received into the house, than such town's proportion of the said house, to be allotted them, can accommodate, when the receiving them will exclude or incommode such as belong to other towns; and an order of commitment from two or more overseers, directed to a constable of the same town, shall, by such constable, be obeyed and executed.

Sect. 7. And be it further enacted by the authority aforesaid, That the persons who shall be liable to be sent unto, employed and governed in any work-house erected or to be erected, by one or more towns, in pursuance of this Act, are, all poor and indigent persons that are maintained by, or receive alms from the town; also all persons able of body to work, and not having estate or means otherwise to maintain themselves, who refuse or neglect so to do, live a dissolute, vagrant life, and exercise no ordinary calling or lawful business, sufficient to gain an honest livelihood, and all such as, having some ratable estate, but not sufficient to qualify them to vote in town affairs, do neglect the due care and improvement thereof, and such as spend their time and property in public houses, to the neglect of their proper business, or by otherwise mispending what they earn, to the impoverishment of themselves and their families, are likely to become chargeable to the town, or to the Commonwealth.

Sect. 8. And be it further enacted by the authority aforesaid, That if any town shall refuse or neglect to provide its proportion of the needful furniture for such house, or the materials, implements or other necessary apparatus for carrying on the work there to be performed, according to their agreement, or as shall be directed by the overseers, such town shall be deprived of the privilege of sending any person thither, until they shall comply with such agreement or direction.

Sect. 9. And be it further enacted by the authority aforesaid, That besides the aforesaid proportion of materials and other things to be found by the towns concerned, each town may likewise provide such other materials and tools for work, as the overseers for such town shall determine any person, by them committed to the said house, can be employed about, more advantageously: And the master of the house shall receive such materials and tools, and keep them separate and apart from those sent from any other town, and shall be accountable to the overseers of each town concerned, as well for the prime cost, as for all profits and earnings that shall be made by the
labour of those belonging to such town, under his care, and
shall keep a register of the names of the persons committed to
such work-house, and of the towns to which they respectively
belong, with the time of their being received into, and dis-
charged therefrom, and of their earnings, that the same may
appear to any of the overseers, whenever they shall incline to
inspect them: And all controversies between the master or
keeper of such house, and the overseers of any town, touching
his accounts or other his affairs whatever, respecting the work-
house, may be determined by the overseers of the house, at a
general or quarterly meeting.

Sect. 10. And be it further enacted by the authority aforesaid,
That no town shall be chargeable for the relief or support of
any person committed to the said house, who was not sent
thither by the overseers belonging to such town, nor shall any
person, orderly committed to the said house, be discharged
therefrom, but by the overseers that made the commitment, or
by the overseers at a general or quarterly meeting, or otherwise
by the Court of Common Pleas in the same county, upon applica-
tion to them made for that purpose; And every person thus
committed, if fit and able to work, shall be kept diligently em-
ployed in labour, during his or her continuance there: And in
case the person so committed, shall be idle and not perform
such reasonable task or stint as shall be assigned, or shall be
stubborn and disorderly, they shall be punished according to
the orders that shall be made for ruling, governing and punish-
ing the persons there committed, not repugnant to the laws of
the government.

And whereas it sometimes happens, that such idle or indigent
persons are foreigners, and have not gained a legal inhabi-
tancy in any particular town, but are the proper charge of the
Commonwealth:

Sect. 11. Be it further enacted by the authority aforesaid, That
when any foreigner or other person, not a legal inhabitant of
any town within this Commonwealth, shall become idle or in-
digent, it shall be the duty of the overseers of the town in which
such person resides, or any two of them, to commit such idle
or indigent person to the work-house belonging to the same
town, or in which such town is interested; and the person or
persons so committed, shall be under the care of the keeper of
such house, and be employed, if capable of labour, in the same
way and manner as is herein before directed, and shall be sub-
ject to the same rules and regulations as others committed to
said house. And such overseers shall keep a fair account of
the charge of supporting such idle or indigent person from
time to time, and shall exhibit the same once in every year,
at the least, to the General Court, for allowance and payment,
deducting therefrom the amount of such person’s earnings.

Sect. 12. And be it further enacted by the authority aforesaid,
That one third part of the profits or earnings of the work, done
by the persons detained in such house, shall be to the master,
for and towards his support, over and above such further an-
nual stipend as the overseers may allow him: And the prime
stock, together with the other two thirds of the profits, shall be disposed of by the overseers of the respective towns, to whom it belongs, either to the master towards his services, or for the support of the families of the persons there detained, if any such they have, or otherwise for the use of such town, as occasion shall require.

Sect. 13. And be it further enacted by the authority aforesaid, That any work-house, erected or provided as aforesaid, may be discontinued or applied to any other use, whenever the town or towns concerned shall find their circumstances require it, and shall agree thus to do. Provided nevertheless, That nothing herein contained shall be understood to abridge the town of Boston, or the overseers of the poor thereof, of any privilege or power respecting a work-house, granted unto them, by a law passed in the year one thousand seven hundred and thirty-five; but the same law, entitled, “An Act for employing and providing for the poor of the town of Boston,” and every clause thereof, is hereby established, ratified and confirmed: Provided also, That nothing herein contained shall be so construed as to abridge the town of Salem, or the overseers of the poor thereof, of any privilege or power granted unto them by an Act passed the twenty-sixth day of January, one thousand seven hundred and seventy-three, entitled “An Act for employing and providing for the poor of the town of Salem, and for the better regulating the work-house in said town;” but the same, and all other Acts relative to work-houses heretofore erected in any particular town, and every clause of such Acts, are hereby established, ratified and confirmed. [Jan. 10, 1789.]

An Act for incorporating the Township Number Four, on the east side of Penobscot-River, commonly called Naskeag, in the County of Lincoln, into a Town by the name of Sedgwick. [Jan. 25, 1789.]

An Act to set off John Dickinson, and others, from the Town of Hadley, in the County of Hampshire, and to annex them to the Town of Amherst. [Jan. 15, 1789.]

An Act in addition to an Act, entitled, “An Act repealing an Act passed in the year of our Lord one thousand seven hundred and eighty-three, entitled, an Act for raising by Lottery the Sum of three thousand pounds, for the purpose of building a Glass-House, and promoting the manufacture of Crown and other Glass in Boston;” and for the purpose of promoting the Manufacture of Crown and other Glass within this Commonweal th. [Jan. 20, 1789.]

An Act for incorporating certain Persons, therein named, by the name of The Trustees of the Grammar School in the Easterly Part of the Town of Boxbury, and for repealing all the Laws heretofore made for that purpose. [Jan. 21, 1789.]

An Act to set off to the Patentees, and other Purchasers, certain lands on the Island of Chapequidick, in the County of Dukes County, and finally to adjust and determine all Disputes between the said Patentees and other Purchasers, and the Indians on the said Island, and to prevent Cattle, Horses, Sheep, Goats and Swine from going at large on the said Island at certain seasons of the year. [Jan. 26, 1789.] Add, acts—1790 ch. 7: 1796 ch. 14.

An Act to incorporate the Plantation known by the name of St. Georges, in the County of Lincoln, into a Town by the name of Cushing. [Jan. 26, 1789.]

An Act for incorporating Long-Island Plantation, with the Islands adjacent, in the County of Lincoln, into a Town by the name of Isleborough. [Jan. 28, 1789.]
Chap. 38.

An Act for the better regulating of the Indian, Mulatto and Negro Proprietors and Inhabitants of the Plantation called Marshpee, in the County of Barnstable.

WHEREAS the provisions already made by law respecting the Indian, mulatto and negro proprietors and inhabitants of the plantation called Marshpee, in the county of Barnstable, are insufficient to the well ordering and managing their affairs, and protecting them and their property against the arts and designs of those who may, from time to time, be disposed to take the advantage of their weakness:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That a board of overseers shall be established, consisting of five discreet and disinterested persons (two of whom to be inhabitants of the county of Barnstable, and the other three of the adjoining counties) and shall be appointed as is herein after directed; which overseers are hereby vested with full power and authority to regulate the police of the said plantation, to establish rules and regulations for the well ordering and managing the affairs, interest and concerns of the said Indian, and other proprietors and inhabitants, as well with respect to the improvement and leasing out of their lands and tenements, regulating their streams, ponds and fisheries, perambulating their lines, and meting out lots for their particular improvement, as with respect to their bargains, contracts, wages and other dealings, and to take due care of their poor, and that their children be bound out to suitable persons, of sober life and conversation. And the said overseers are empowered and directed to hold stated meetings, elect a moderator, secretary and treasurer, and may, if they judge it necessary, appoint some suitable person or persons to act under their direction, as a guardian or guardians to the said Indian and other proprietors, and to carry into execution their said regulations and orders (which guardian or guardians shall give bonds to the said board of overseers, for the faithful discharge of their trust, and to render in to the said overseers, and settle their accounts once every year, and oftener, if required) and whenever the said board shall judge the continuance of the said guardians in their said trust inexpedient or unnecessary, they may remove them.

Sect. 2. And be it enacted, That the said board of overseers, or the guardians whom they may appoint, are hereby vested with power and authority to demand and receive any property, dues or wages, which now are or hereafter may be detained, withheld from, or justly owing to said proprietors, or any of them, by any person or persons, and to institute and bring forward, in their own names and capacities, any action or actions for the recovery thereof, as likewise for any illegal entries, or trespasses, which have been, or may be made or committed on their lands, tenements, fisheries and other property; or for any fraud or injury done to them or any of them, and the same action or actions to pursue to final judgment and execution; and shall, at all times, have full power

Preamble.

1788 ch. 2.

A board of overseers to be established.

[So much of this section, as directs a board of overseers and more than one guardian, repealed—1807 ch. 109.]

Stated meetings of the overseers directed to be held.

Overseers and guardians vested with power to demand and receive dues, &c.
and authority to examine, adjust and settle all accounts and controversies between them or any of them, and any white person or persons, for voyages or other services and transactions which remain unsettled, or which may hereafter be done or arise; as likewise to adjust and bring to a settlement all accounts and proceedings of any former guardian, trustee or overseer, taking effectual care that justice be done therein; and may also bind, by indenture, the children of the poor of the said proprietors to suitable persons, of sober life and conversation, as they, the said overseers or guardians, may judge necessary and convenient.

Sect. 3. And be it further enacted, That no lease, indenture, covenant, bond, bargain or contract, in writing, made by any of said proprietors, shall be of any validity, unless it be made by, or under the direction of said board, guardian or guardians, or with their consent and approbation; nor shall any action be brought against any of the said proprietors upon any account, for goods sold and delivered, services done and performed, or for money had and received, to the use of another, unless such account shall have been first examined by the said overseers, guardian or guardians, and by them approved.

Sect. 4. And be it further enacted, That the said overseers shall keep a fair and regular account of all their transactions, and of all the rents and profits arising from their the said proprietors' lands, tenements and fisheries, or otherwise, and of all money, wages or incomes, which they may receive from time to time belonging to the said proprietors or any of them, and shall distribute to them their respective rights, dues and shares, after deducting the reasonable expense of conducting their said business, payment of their just debts, and (from the common profits) providing for the sick and indigent, and reserving, from time to time, such sum or sums as can conveniently be spared, for the support and continuance of religious instruction among them, and the schooling of their children; and they, the said overseers, shall state their accounts annually, and lay the same before the Governor and Council for approbation and allowance: And the Governor, with the advice of the Council, is hereby authorized and empowered to appoint such overseers, and to fill up vacancies, whenever by death, resignation, removal out of the Commonwealth, or otherwise, they may happen; to displace them, or any of them, for want of ability or integrity, or other reasonable cause, and to audit their accounts.

Sect. 5. And be it enacted, That no liberty or pretended liberty, from the proprietors, or any of them, for cutting off any wood, timber or hay, milking pine-trees, carrying off any ore or grain, or for planting or improving any of said lands or tenements, without the approbation of said overseers, guardian or guardians, shall be any bar in any of their action or actions. Provided nothing herein shall be construed to defeat any lease or indenture heretofore made agreeably to law. And the lands and tenements of said proprietors shall not be liable.

No lease, covenant or contract, shall be valid, unless made under the direction of the overseers or guardians.

Overseers to keep a fair and regular account of their transactions.

To state their accounts annually, and lay the same before the Governor and Council.

Overseers to settle all controversies and accounts.

No wood, timber or hay, shall be cut, under pretence of liberty from the proprietors.
Proprietors to have the benefit of an Act for the relief of prisoners committed for debt. And if any of said proprietors shall be committed in execution for debt, he, she or they shall have the same benefit, from an Act, entitled, "An Act for the relief of poor prisoners who are committed by execution for debt," as any white person now hath, who has no estate, their being proprietors notwithstanding, and the oath shall be varied accordingly.

SECT. 6. And be it further enacted, That all laws hereetofore made respecting the said Marshpee Indians, be and hereby are repealed. [Jan. 30, 1789.] Add. acts—1789 ch. 52: 1807 ch. 109.

An Act to incorporate a Plantation on the east side of Penobscot-River, in the County of Lincoln, called Township Number Five, or Blue-Hill Bay, into a Town by the name of Blue-Hill. [Jan. 30, 1789.]

An Act for incorporating Deer-Island Plantation, Little Deer-Island, and the Isles of Hol, in the County of Lincoln, into a Town by the name of Deer-Isle. [Jan. 30, 1789.]

An Act to ascertain the Boundary Line between Templeton and Gerry. [Jan. 30, 1789.]

An Act incorporating the Wardens and Vestry of Christ Church (so called) in Boston, for certain Purposes. [Jan. 30, 1789.]

An Act for incorporating certain Persons by the name of The Proprietors of the Beverly Cotton Manufactory. [Feb. 3, 1789.]

An Act to prevent Damage by Horses going at large.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all horses and horse kind, (of one year old and upwards) that shall be suffered to go at large, shall be constantly fettered with a sufficient pair of fetters, from the fifteenth day of April, to the first day of November; and the owner of any such horse, or horse kind, that shall be found going at large on the common, or ways, in any town in this Commonwealth, not being sufficiently fettered, shall forfeit and pay the sum of three shillings, to be recovered by action of debt, by the field-driver, or any other person who will sue for the same, before a Justice of the Peace in the same county, one third part to the use of the poor of the town where such owner dwells, and the other two thirds to the use of the prosecutor.

SECT. 2. And be it further enacted, That when the owner of any horse kind, going at large, without being fettered, as this Act requires, is unknown; in such case, the field-driver, or any other person, may impound them, and otherwise proceed with them as the law directs, in the case of stray beasts: And when the owner appears to demand such horse, he shall pay the three shillings forfeiture for each horse kind unlawfully at large, for the uses aforesaid, before delivery. Provided always, That it shall be in the power of any town, at the annual meeting in March or April, by a vote thereof, to grant liberty for horses to go at large, without fetters, within the bounds of such town, or in such parts and divisions thereof as the town shall determine most for the benefit of the inhabitants, between the said fifteenth day of April, and the first day

When the owner of any horse kind going at large is unknown;—proceedings in such cases.

Proviso, that towns may grant liberty for horses to go at large.
of November; in which case it shall be lawful for any person residing therein, to suffer his horse to go at large unfettered accordingly, without incurring the forfeiture aforesaid: Provided further, That no horse of the male kind, being ungelded, and more than one year old, shall be permitted to go at large on the common or highways with or without fetters; and the owner of any such ungelded horse, so going at large, shall forfeit twenty shillings, to be recovered in the manner, and for the uses herein before prescribed.

Sect. 3. And be it further enacted by the authority aforesaid, That all laws heretofore made, permitting horses to go at large on the common, be and hereby are repealed. [Feb. 3, 1789.] Add. act—1793 ch. 19.

An Act to prevent Damage being done on the Salt Marshes in the Town of Arundell, in the County of York, by Horses, Sheep and Cattle being suffered to run at large on certain Beaches, Flats and Necks of land, adjoining said marshes. [Feb. 3, 1789.] Add. act—1793 ch. 3.

An Act to set off Jonathan Hardy from the first Parish in the Town of Bradford, in the County of Essex, and to annex him to the second Parish in said Town. [Feb. 9, 1789.]

An Act directing the mode of prosecuting Writs of Review, after the Death of any or all of the parties in the original suit.

WHEREAS when judgment hath been recovered in any action, upon which a review is open and before such writ is sued out, or before judgment rendered therein, one or both of the parties may die, and doubts have arisen whether the judgment in such cases is not final: for the clearing of which,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when in any real action, the demandant shall recover judgment for his seize[n] and possession of the demanded tenements, and shall die within the term allowed by law to the defendant to review the same judgment, it shall be lawful for him within the said term, to sue out and prosecute his writ of review for the reversal thereof, against the person in the actual possession of such tenements, or against him who hath right to hold the same under the demandant, in case the said judgment shall not be reversed, or both of them, at his election: And when in any such real action as aforesaid, judgment shall be rendered for the defendant for his costs, and he shall die within the term allowed by law to the demandant to review the same judgment, it shall be lawful for him within the same term, to sue out and prosecute his writ of review, for the reversal thereof, against the person in the actual possession of the demanded tenements, or against him who hath right to hold the same, under the original defendant, in case the said judgment shall not be reversed, or both of them, at his election. And when both the demandant and defendant, or either of them, shall die after judgment rendered in the original suit, it shall be lawful for the heirs at law of the party against whom judgment shall have been rendered in such suit, or for any other person having a right under such party to the seize[n] and possession of the demanded tenements, in case the last judg-
ment shall be reversed within the term allowed by law, to sue out and prosecute their writ of review, for the reversal thereof, in manner and form as aforesaid, or against the party who recovered in the original suit, if living: And in the several cases mentioned in this enacting clause, the same proceedings and judgment shall be had, *mutatis mutandis*, as would have been had between the original demandant and defendant, if they had been in full life, and the writ of review had been pending between them.

**SECT. 2.** *And be it further enacted by the authority aforesaid,*
That when judgment shall be recovered in any personal action, and one or both of the original parties shall die within the term allowed by law to review the same judgment, no writ of review being pending between them, it shall be lawful, either for the surviving party, or for the executors or administrators of the deceased party or parties, where both of them shall die as aforesaid, within the same term, to sue out and prosecute a writ of review, for the reversal of the same judgment: And the same proceedings and judgment shall be had therein, *mutatis mutandis*, as would have been had between the original parties.

**SECT. 3.** *And be it further enacted by the authority aforesaid,*
That if, pending a writ of review between the original parties, whether in a real or personal action, either of them shall die, his death shall, at the request of the attorney for either party, be entered upon the records of the court, and the cause shall thereupon be continued, to the end, the heirs at law of such deceased party, or other person interested in the tenements in question, as aforesaid, or his executors or administrators, as the case may be, may come into court, and take upon them the prosecution or defence of the same suit to final judgment: And if, after a reasonable time, according to the discretion of the court, granted for this purpose, neither of them shall appear as aforesaid, or appearing, shall afterwards become nonsuit, or be defaulted, then the same proceedings and judgment shall be had therein, *mutatis mutandis*, as would have been had between the original parties. [Feb. 9, 1789.]

**Chap. 49.**
An Act for setting off Joseph Perkins and Jacob Perkins from the South Parish in Malden, and annexing them to the North Parish in the said Town. [Feb. 10, 1789.]

**Chap. 49.**
An Act in addition to an Act passed in the year of our Lord one thousand seven hundred and eighty-one, entitled, "An Act to incorporate certain Physicians by the name of The Massachusetts Medical Society."

WHEREAS some doubts have arisen with respect to the extent of the powers given to, and duties required of, the said society, by the Act to which this is an addition, touching the examination of any candidates for the practice of physic and surgery, "who shall offer themselves therefor, respecting their skill in their profession," as well as with respect to the authority of the said society, to demand and receive a suitable compensation for their time, trouble and expense, in examining candidates, and for the letters testimonial, which by the said Act they are required to give to such as shall be approbated:

For removing the said doubts,
Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That it shall be the duty of the said Massachusetts Medical Society, in order more effectually to answer the designs of their institution, from time to time to describe and point out such a medical instruction, or education, as they shall judge requisite for candidates for the practice of physic and surgery, previous to their examination before them, or their officers appointed for said purpose, respecting their skill in their profession, and shall cause the same to be published in three newspapers, in three different counties within this Commonwealth: And every candidate examined and approved by the president and fellows of the said society, or such of their officers or fellows as they shall appoint, shall be held to pay such reasonable fees of office as shall be established by the said society, for the examination of candidates and letters testimonial in favour of such as shall be approbated; and the treasurer of the said society, for the time being, shall have full power and authority to sue for and recover the same, in any court proper to try the same.

Sect. 2. And be it further enacted, That the eighth enacting clause of the said incorporating Act, making the president or such other person or persons as shall be elected for the purpose of examining candidates, each and every of them, subject to a fine of one hundred pounds, in case of obstinate refusal to examine any candidate offering himself therefor, be and it is hereby repealed.

Sect. 3. And be it further enacted, That from and after passing this act, whenever the officers, appointed for examining candidates for the practice of physic and surgery, shall obstinately and unreasonably refuse to examine such as may apply therefor, respecting their skill in their profession, the officers so refusing shall be subject to a fine not exceeding one hundred pounds, nor less than twenty pounds, to be sued for and recovered by the candidate injured, and to his own use, in any court within this Commonwealth, proper to try the same.

Feb. 10, 1789.] Further add. act—1802 ch. 123.

An Act to enable the Town of Watertown to regulate and order the taking of the Fish called Shad and Alewives, within the limits of the said Town. [Feb. 10, 1789.] Expired. See 1797 ch. 75.

Chap. 50.

An Act authorizing Executors and Administrators to make Sale of Real Estate mortgaged to their Testators or Intestates, and such as they shall take in Execution in certain Cases.

Chap. 51.

WHEREAS doubts have arisen, and may arise, with respect to the extent of the right, interest, title and estate, which executors or administrators may have in houses, lands and tenements mortgaged to their respective testators or intestates, and also the right, interest, title and estate, which executors or administrators may have in houses, lands and tenements, set off by execution, at the suit of executors or administrators, for debts due to the estates of persons deceased: For the better defining and declaring the law in those respects,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same.
When any person to whom lands, &c. are mortgaged shall decease before recovery of seizin—executors and administrators authorized in such cases.

That whenever any person or persons, to whom any lands, tenements or hereditaments may be mortgaged for the payment of debts, or the performance of any collateral promise or engagement whatsoever, shall decease before recovery of seizin and possession of the lands, tenements or hereditaments mortgaged, that then the debts due on said deed of mortgage, and the lands, tenements or hereditaments, mortgaged by the same, shall be assets in the hands of executors or administrators, as personal estate, and the executors or administrators shall have the same control and power of disposal of all the estate which the said deceased had in the lands, tenements and hereditaments mortgaged, as if they had been a pledge of personal estate; and executors or administrators may bring actions for recovery of seizin and possession of the lands, tenements and hereditaments mortgaged, as aforesaid; in which actions, it shall be sufficient to declare on the seizin and possession of the testator or intestate.

Sect. 2. And be it further enacted, That whenever executors or administrators shall recover seizin or possession of lands, tenements or hereditaments, mortgaged as aforesaid, the executors or administrators shall be seized and possessed of the estate so recovered, to the sole use and behoof of the widow and heirs of the intestate, or such devisees of the testator, to whom said estate may be devised. And the Court of Probate may make distribution of the same, as of personal estate accordingly, unless the lands, tenements or hereditaments, mortgaged and recovered as aforesaid, shall be necessary for the payment of debts, legacies, annuities or charges of administration; and in that case, the said executor or administrator, having obtained license, in manner as by law provided, shall have full right, power and authority to dispose and make sale of the whole or part of the lands, tenements or hereditaments, recovered as aforesaid, as though the testator or intestate had died seized thereof, subject however to the right of redemption, in case such sale shall be made before such right shall be extinguished.

Sect. 3. And be it further enacted, That whenever any executor or administrator shall recover judgment for any sum of money, whereon execution shall issue, and lands, tenements or hereditaments shall be set off to the said executor or administrator, in discharge of the said execution, the said executor or administrator shall be seized and possessed of the whole estate in the lands, tenements or hereditaments so set off, to the sole use and behoof of the widow and heirs of the deceased intestate, or to the residuary legatee or legatees of the testator, as the case may be; and the Court of Probate may make distribution of the same, as of personal estate, accordingly; unless the lands, tenements or hereditaments so set off, on the said execution, shall be necessary for the payment of debts, legacies, annuities or charges of administration; and in that case the said executor or administrator, having obtained license, in manner as by law provided, shall have full right, power and authority to dispose and make sale of the whole or part of the
lands, tenements or hereditaments so set off as aforesaid, subject however to the right of redemption, in case such sale be made before such right shall be extinguished.

Sect. 4. And be it further enacted, That after executors or administrators shall recover seizin and possession of any lands, tenements or hereditaments mortgaged as aforesaid, or shall become seized and possessed of lands, tenements or hereditaments, by having the same set off in discharge of an execution as aforesaid, and before conveyance or assignment thereof, in manner aforesaid, if any mortgagor, his heirs, executors, administrators or assigns, or the person, his heirs, executors, administrators or assigns, whose estate has been levied upon as aforesaid, shall, within the time limited for redeeming the estate mortgaged or levied upon, redeem the mortgaged or levied premises, the executors or administrators shall, in every instance, be entitled to receive the said redemption-money, and are hereby authorized, empowered and directed, to discharge the said mortgaged premises, or estate levied upon, by release, quitclaim, or other legal conveyance.

Sect. 5. And be it further enacted, That nothing in this Act contained shall be construed to control any last will or testament, or any part thereof.

Sect. 6. And be it further enacted, That an Act made and passed the twenty-seventh day of June, seventeen hundred and eighty-six, entitled, "An Act authorizing executors and administrators to make sale of real estate mortgaged to their testators or intestates, and such as they shall take in execution in certain cases," be and hereby is repealed. [Feb. 11, 1789.]

An Act for granting a Lottery for the purpose of erecting a suitable Building for the use of the Free School in Williamstown. [Feb. 11, 1789.]

An Act authorizing Courts having criminal jurisdiction, to award, in certain cases, Conditional Sentences against Offenders.

WHEREAS courts having criminal jurisdiction are authorized, for the punishment of certain offences, to award, at their discretion, either a fine or imprisonment, confinement to hard labour, or corporal and ignominious punishment of the offender:

And whereas the fines, in such cases imposed, are oftentimes avoided by the inability or obstinacy of offenders, who remain in prison, at the great expense of the counties having them in charge, which discourages the infliction of fines:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That when, before any court, having jurisdiction thereof, any person shall be convicted of any crime or offence, which by law is punishable by a fine, or by imprisonment, confinement to hard labour, or corporal and ignominious punishment of the offender, at the discretion of such court, the justices of such court are hereby authorized and empowered, if they see cause, to award a conditional sentence against such offender, and to order such offender to pay a fine within a limited time, to be expressed in such sentence; and in default
thereof, to suffer such other punishment as may by law be inflicted on the offender for such offence.

**Sect. 2.** And be it further enacted, That in case the person, against whom such sentence shall be awarded, shall not pay the fine imposed within the time limited, it shall be the duty of the sheriff of the county, having charge of such offender, to cause the other part of such sentence to be inflicted, according to the form and effect thereof, any law, usage, or custom, to the contrary notwithstanding. [Feb. 13, 1789.]

**Chap. 54.**

An Act for bringing to a speedy Settlement all Accounts subsisting between Towns and such persons as may have been employed by them in enlisting and paying Soldiers, and furnishing Supplies for the late Continental Army. [Feb. 13, 1789.]

**Chap. 55.**
10 W. III. ch. 7. 1 Geo. II. ch. 7. 350 1789.

Money or goods found, of the value of 6s.—notice how given.

If the money or goods found amount to 40s.—notice how given.

**Sect. 1.** BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whoever shall find any money or goods lost, of the value of six shillings or upwards, whereof the owner is unknown, the finder shall, within ten days next following, at the utmost, give notice thereof, in writing, unto the clerk of the town in which they are found, and pay him one shilling and six pence, for making an entry thereof in a book to be kept for that purpose, and for procuring the same to be recorded with the register of deeds for the same county, as is in this Act directed: And the finder shall also cause a notification thereof to be posted up in some public place within the same town, and also shall cause the same to be publicly cried therein, on three several days, provided there shall be any public crier in said town: And if the money or goods, so found, be of the value of forty shillings or upwards, then to be cried as aforesaid, and notice thereof posted up in like manner in the same, and the two next adjoining towns, within one month next after such finding.

**Sect. 2.** And be it further enacted, That every person who shall find and take up any stray beast, shall cause the same to be entered, with the colour and marks, natural and artificial, and also to be posted up and cried in manner and time as aforesaid; and likewise, within ten days, put, and from time to time keep a withe about the neck of such stray beast (sheep only excepted from being withed) on pain of losing all his charges about it afterwards: And such finder of lost goods or stray beast, shall also, within two months, and before any use or improvement thereof is made to its disadvantage, procure from the town-clerk or a Justice of the Peace, a warrant, directed to two such disinterested, judicious persons, as the clerk or justice shall appoint, returnable into the town-clerk's office in seven days from the date, to appraise and value the goods or stray beast, upon oath, at the true value thereof in money, according to their best judgment, and to administer an oath unto them for that purpose accordingly; which warrant and oath the clerk and justice are hereby respectively authorized to issue and administer.
Sect. 3. And be it further enacted, That if the owner of any such lost money, goods, or stray beast, appear within one year and a day next after such notice of the finding given to the town-clerk as aforesaid, and make out his right and title thereof, he shall have restitution of the same, or the full value thereof, allowing and paying three pence for each time it was cried, and the money paid for entering the same as aforesaid, together with such necessary charges as shall have arisen in keeping, notifying, appraising, and necessary travel respecting the business, to be liquidated and adjusted by some Justice of the Peace of the same county, in case of disagreement between the owner and finder: And if no owner appear within one year and a day as aforesaid, then such strays, lost money or goods, shall be and remain to the finder, he paying one half of the value thereof (all necessary charges being first deducted) according to appraisement, unto the treasurer of such town, for the use of the poor thereof, and to be recovered by the town-treasurer (upon neglect or refusal to pay the same) as in other cases.

Sect. 4. Be it further enacted, That the town-clerk shall once every two months transmit to the register of deeds in the county where he lives, an authentic copy under his hand of all entries that shall be made with him of lost money, goods, or strays, excepting all such lost goods or strays as shall be delivered to the owner thereof, within the said two months, and shall pay to the register six pence for each copy of an entry transmitted to him as aforesaid; and the register shall keep a book, wherein he shall record all entries transmitted by the town-clerk as aforesaid, and give out copies of the same when desired, at the price of six pence for each copy, and for searching such record shall be allowed two pence, and no more. And if any town-clerk or register shall neglect or fail of doing his duty, as by this Act is provided and directed, their respective fees being paid, or tendered unto them as is in this Act mentioned, he shall, for every such neglect, forfeit and pay the sum of forty shillings, one half to the use of the county, and the other half to him or them that will prosecute and sue therefor.

Sect. 5. And be it further enacted, That if any finder of any lost goods, money, or stray beast, of the value of six shillings or upwards, shall neglect to cause the same to be entered, cried and posted up in manner and time as before directed, or to withe such stray beast, he shall forfeit and pay the full value of such goods, money or stray beast, one half to the use of the county, and the other half to him or them that will prosecute and sue for the same. And if the owner of any stray beast, or other person, shall take off the withe from the same, or take away such stray beast before all the necessary charges arisen for entering, crying, notifying, keeping and appraising thereof be defrayed, such person, so offending, shall forfeit and pay, unto the finder of such stray beast, the full value of the same.
No strays to be made at certain seasons of the year.

Former laws repealed.

Chap. 56.

5 W. & M. ch. 9. 10 W. III. ch. 4. 2 Anne ch. 3.

Hogreeves to be annually chosen.

Penalty for swine going at large.

When swine are impounded, penalty how recovered.

Sect. 6. And be it further enacted, That no person, from the fifteenth day of April to the first day of November, shall take up any horse, gelding, mare or other beast for a stray, unless such beast be taken damage feasant, in some inclosure, and impounded for that, or some other sufficient cause.

Sect. 7. And be it further enacted, That all acts and laws heretofore passed, relating to strays and lost goods, be and hereby are repealed. [Feb. 13, 1789.] Add. act—1815 ch. 1.

An Act for regulating Swine.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall be appointed at the annual meeting in March or April, in each town in this Commonwealth, two or more persons for hogreeves, who shall be chosen and sworn in the same manner as other town officers; whose duty it shall be to carry the regulations made by this Act into execution; and any person who shall suffer his swine to go at large out of his inclosure, shall forfeit and pay one shilling for each swine thus suffered to go at large, to be recovered with costs of suit by any hogreeve or other person who will sue therefor, before a Justice of the Peace in the same county, by action of debt, or by impounding such swine. And when swine are impounded, to recover the penalty incurred by this Act, the owner, if known, shall be notified in the time and manner by law directed, and if unknown, such notice of the time, place and cause of impounding shall be given, as the law in that case hath directed; and if no owner appear within three full days after the impounding, to pay the forfeiture and charges, and reasonable expense of keeping, or to replevy such swine, the impounder may, in writing, apply to a Justice of the Peace of the same county, or to the clerk of the same town, and there file an information of the transaction upon oath; and if it shall appear, from such information, to the satisfaction of the justice or clerk, that such impounder has complied with the directions of the law in such cases, then such justice or clerk may issue a precept in form as hereafter prescribed, to any constable of the same town, if the constable himself is not the impounder, or interested; and if he is, to any other discreet or disinterested inhabitant of the same town, to sell the swine, and after paying the impounder the fine and costs and expenses, to be taxed and allowed by the justice or clerk, to deliver the surplusage into the town treasury, there to remain for the owner, deducting one shilling on the pound for the treasurer's trouble, in case he shall appear and claim it within one year and a day from the time of issuing such precept; but in case no owner appear within that time, such surplusage shall be one half to the impounder, and the other half to the poor of the town, and be by the treasurer distributed accordingly.

Sect. 2. And be it further enacted, That the form of the precept to be issued for selling swine impounded, to recover the forfeiture incurred by a breach of this Act, shall be in substance as follows:
WHEREAS A. B. of B——, in the county of S——, has this day given me information, that on the day of he found a swine [here insert the marks, natural and artificial, if any, and such a description of the size and age, as can conveniently be done] owned by C. D. of going at large in said town of B——, against the statute in that case provided; whereby the said C. D. forfeited the sum of one shilling; for the recovery of which he impounded the same swine, and within twenty-four hours then next following, gave him notice thereof, in writing (or left a notification thereof at his dwelling-house, as the case may be) and although three full days have elapsed since the impounding, yet he has not paid the said forfeiture and charges, nor has he reprieved the same swine (or in case the owner is unknown, after the description of the swine, its marks natural and artificial, let it be inserted, belonging to some person unknown) at the time of impounding, going at large against the statute in that case provided, whereby the owner forfeited the sum of one shilling, for the recovery of which he impounded the same swine, and within twenty-four hours then next following, caused notifications of the time, place and cause of impounding, to be posted up agreeably to the directions of the law in such cases; and although three full days have elapsed since the impounding, no person hath appeared to pay the said forfeiture and charges, or reprieved the same swine, as by the information by him signed and sworn unto, with me now remaining, appears:

THese are therefore, in the name of the Commonwealth of Massachusetts, to will and require you, after you have posted up notifications of the time and place of sale, twenty-four hours beforehand, to sell and dispose of the said swine, at such time and place as you shall have thus appointed, to the highest bidder; and from the monies arising upon the sale, you are to pay the said A. B. one shilling for the said forfeiture, and shillings and pence, by me allowed, for his costs, charges and expenses (according to the bill annexed) and one shilling and six pence more for this precept, amounting in the whole to shillings and pence. And the surplus arising from such sale, deducting three shillings and six pence for your own fees on the business, you are to pay over to the town-treasurer of B——, to be disposed of as the law directs; and you are also directed to deliver the said treasurer a copy of the information of the said A. B. as it is recited herein, together with a certificate of the date of this process: And of this precept, with your doings hereon, you are to make return into the office of the town-clerk of B——, in fourteen days from this time. Given under my hand and seal, this day of

Anno Domini

And when the precept is directed to a particular person by name, because the constable himself is the impounder, or in...
Towns may, at their annual meetings, give liberty for swine to go at large.

Sect. 3. Be it further enacted, That any town may, at the annual meeting in March or April, by a vote thereof, give liberty for swine to go at large during the whole or part of the year; in such town, or in such parts thereof, as the town shall determine most for the benefit of the inhabitants; in which case it shall be lawful for any person residing therein to suffer his swine to go at large accordingly, without incurring the forfeiture aforesaid; any thing in this Act contained to the contrary notwithstanding. Provided such swine shall be sufficiently yoked from the fifteenth day of April to the first day of November, and constantly ringed in the nose all the time they shall be permitted to go at large.

And that it may be known what a sufficient yoking doth mean:

Sect. 4. Be it further enacted, That a yoke which is the full depth of the swine's neck, above the neck, and half so much below the neck, and the soal or bottom of the yoke full three times as long as the breadth or thickness of the swine's neck, upon which it shall be placed, shall be deemed a sufficient yoking within the meaning of this Act. [Feb. 13, 1789.] Add. act—1796 ch. 70.

Chap. 57.

An Act for establishing a Salary, of a fixed and permanent value, for the Governor, and repealing a Law hertofore made for that purpose.

WHEREAS the Constitution of this Commonwealth provides that the Governor thereof shall have an honourable stated salary, of a fixed and permanent value, established by standing laws, that he may not be under the undue influence of any of the members of the General Court, by a dependence on them for his support; that he may in all cases act with freedom for the benefit of the public; that he may not have his attention necessarily diverted from that subject to his private concerns, and that he may maintain the dignity of the Commonwealth in the character of its Chief Magistrate; and whereas the annual salary of eight hundred pounds will be amply sufficient for all the purposes aforesaid: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the last Wednesday of May next, the sum of eight hundred pounds, in specie, be and hereby is established as the annual salary of the Governor, for the time being, and a proportionable sum for a less time, in full for his services as Governor, to be paid out of the public treasury.

Sect. 2. And be it further enacted, That the Governor shall not be entitled to any reward, fee or perquisite in addition to the salary established by this Act.

Sect. 3. And be it further enacted, That the aforesaid Act for establishing a salary of a fixed and permanent value for His Excellency the Governor, passed the eighth day of February, one thousand seven hundred and eighty-one, shall, from and after the last Wednesday in May next, become null and void. [Feb. 13, 1789.] Repealed—1818 ch. 83, and the act of 1780 ch. 5. revived.

Chap. 58.

An Act in addition to, and in explanation of an Act passed the twenty-third day of June, in the year of our Lord one thousand seven hundred and eighty-three, entitled, "An Act for the improvement of the Banks of the Pen-wauntet-River, in the County of Plymouth," and for repealing an Act in addition to said Act, which passed the twenty-ninth day of March, in the year of our Lord one thousand seven hundred and eighty-eight. [Feb. 13, 1789.] Repealed—1797 ch. 69.

Chap. 59.

An Act in addition to an Act, entitled, "An Act for erecting that Part of the Town of Pfallmouth, in the County of Cumberland, commonly called the Neck, into a Town by the name of Portland." [Feb. 13, 1789.]

Chap. 60.

An Act for incorporating of certain persons for the purpose of making, laying and maintaining a Boom across Androscoggin-River, in the County of Lincoln. [Feb. 14, 1789.]
An Act providing for the Support of the Poor.  

**Chap. 61.**

**SEC. 1.** BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That when any person shall be poor and unable to support himself, it shall be the duty of the overseers of the poor, where such officers are chosen, otherwise it shall be the duty of the selectmen, to communities, to probe into this support of the Commonwealth, at the charge and expense of the town or district whereof he is an inhabitant, to make inquiry of his support, and to see if there is one or more relations within the Commonwealth, in the line or degree of father, or grandfather, mother, or grandmother, children, or grandchildren, who in the opinion of the Court of Common Pleas of the county where he belongs, are of sufficient ability to support him; in which case, such relation or relations shall relieve and support him in such manner as the said justices shall order and assess; and when a poor person unable to support himself, shall have several relations within the Commonwealth, of ability to contribut, to his support, the justices of the said Court of Common Pleas may, from time to time, apportion his support among them, or any of them, in such proportion as under all circumstances shall appear just and equitable.

**SEC. 2.** And be it further enacted by the authority aforesaid, That the said Court of Common Pleas may assess the relations of a poor person, within the degrees aforesaid, for any cost and charge incurred for his necessary support, before he shall be so burdensome as to be cast upon the town, and also for charges incurred for his maintenance before application is made to the Court of Common Pleas: Provided always that no assessment be made in favour of any particular relation, or town, for any support afforded for more than one year preceding such application to the Court of Common Pleas.

**SEC. 3.** And be it further enacted by the authority aforesaid, That when any person, who is not an inhabitant of any town or district in this Commonwealth, shall stand in need of support and maintenance, and have no relations within the degrees aforesaid, residing within the Commonwealth, of ability to support such poor person, he or she shall be relieved by the overseers of the poor, or selectmen of the town or district where he or she is situated, at the expense of this Commonwealth; and any town or district, who shall incur expense for the necessary support of such poor person, shall be reimbursed the same from the treasury of this Commonwealth, by a warrant from the Governor with advice of Council; a particular account of the expense being exhibited, and after the same has been examined, and (so much thereof as shall be just and equitable) allowed by the General Court, or such persons as they from time to time shall appoint for that purpose. Provided always, That the allowance of any sum, for the support of a poor person as aforesaid, shall in no manner operate as a determination that such person is not an inhabitant of some town or district in this Commonwealth.

**SEC. 4.** And be it further enacted by the authority aforesaid, That the overseers of the poor in any town or district, where such officers are chosen, otherwise the selectmen or the major part of them, are hereby fully authorized and empowered, by and with the assent of two Justices of the Peace, to set to work, or bind out apprentice, all such children, whose parents shall in their opinion be unable to maintain them, (whether they receive alms, or are chargeable to the town or district) in case they are not assessed to the government, town, or district, for rates; male children until they arrive to the age of twenty-one years, and females to the age of eighteen, unless such females are sooner married; which binding shall be as good and effectual in law to every intent and purpose, as if such child, being of full age, had by deed of indenture or covenant, bound himself: Provision to be made in the indenture for instructing the males to read, write and cipher, and females to read and write, as they respectively may be capable; and it shall be the duty of the overseers or selectmen to make enquiry into the treatment of children, bound out by themselves, or their predecessors in office, and if they find them at any time injured, to seek a redress thereof; and the said overseers or selectmen, or the major part of them, are hereby further authorized and empowered, by and with the assent of two Justices of the Peace, to set to work, or bind out to service for the space of one whole year, at a time (by indenture, or by any other form of covenant) all such persons, married or unmarried, upwards of twenty years of age, able of body, who have no visible means of support, and live idle, and neither use or exercise any lawful trade, or ordinary calling for a subsistence; and the persons to be bound out shall be so ordered, that every virtual of every person who shall be bound out to service, (over and above the necessary costs and about the same) shall be taken by the overseers or selectmen respectively, who shall bind out such person, to be improved by them, for the support of the family of such person, if any he hath; but in case he hath no family to provide for, then to be laid out at the discretion of the said overseers or selectmen, for the use and benefit of such person bound out as aforesaid.

**SEC. 5.** And be it further enacted by the authority aforesaid, That if any inhabitant of, or resident in any town or district, shall receive, admit, or entertain any person not being an inhabitant of the same town or district, either as an in-
person, for more than 90 days, without giving information.

Clause to prevent the importation of poor, vicious, or infamous persons.

Penalty for bringing into this Commonwealth persons, who have been convicted of crimes.

Mode of settling disputes respecting the place of habitation of poor persons.

Court of Common Pleas may determine the matter of habitation.

Proviso.—with respect to the counties of Nantucket and Dukes-County.

Provision for a hearing, in case of non-appearance of respondents.

mate, bordder, or tenant, or by any other qualification, for more than ninety days, and shall not in writing give information thereof, to one or more of the selectmen, or town or district clerk, or the name of the person thus entertained, with the time he first received him, the place from whence he came, together with such other circumstances respecting such person as have come to his knowledge, he shall forfeit and pay the sum of five pounds, one moiety for him that will sue and prosecute therefor, and the other moiety for the use of the town or district where the offence shall be committed: Provided the prosecution is commenced within one year after the said forfeiture shall be incurred.

And to prevent the importation of poor, vicious and infamous persons, who may prove chargeable to the Commonwealth, or some particular town or district therein:

SECT. 6. Be it further enacted by the authority aforesaid, That when any master of a ship or other vessel shall arrive within this Commonwealth, with any passengers from any dominion or country without the United States of America, he shall, before entry of his vessel, make return to the office where he shall enter, of the names of all passengers on board the same vessel, their nation, age, character and condition, so far as hath come to his knowledge, and that if any person, entering such ship or vessel, shall neglect to make such return, or witthily and willingly make a false return therein, such person so offending, shall forfeit his share and part, and all interest which he shall have in such vessel, and the cargo therein, and shall further be liable to the forfeiture of the sum of fifty pounds, which forfeitures shall be recovered by libel, indictment or action, according to the nature of the forfeiture, before any court proper to try the same, one moiety thereof to the use of the Commonwealth, and the residue to him or them who shall inform or sue for the same.

SECT. 7. And be it further enacted by the authority aforesaid, That if any master of a ship or other vessel shall bring into and land within this Commonwealth, from any State or country, any person who has been convicted of any crime, or who is notoriously of a dissolute, infamous and abandoned life and character, knowing him or her to be such, the vessel in which such person is imported shall, together with the cargo therein, be forfeited, and the master, or any other person entering such vessel, shall for every person so brought in or landed contrary to this act, forfeit the sum of fifty pounds; the fines and forfeitures to be recovered in the same manner, and to the same use, as is provided for making a false return of passengers.

And whereas disputes may arise respecting the place of habitation or legal settlement of a poor person:

SECT. 8. Be it further enacted by the authority aforesaid, That it shall be lawful for any town, district or person, who has been at expense for the support of a pauper, not an inhabitant of the same town or district, to file a memorial in writing, in the clerk's office of the Court of Common Pleas, in the county where the pauper is said to belong, stating the facts and requesting a determination of the habitation, and a reimbursement of the expense incurred, and in an order for a removal, and shall thereupon cause the town or district, where the pauper in the memorial is said to belong, to be notified thereof, thirty days at least before the sitting of the said court, by leaving with some one or more of their selectmen, or with their town or district clerk, an attested copy of the said memorial from the clerk of the said court: And the said Court of Common Pleas shall hear and determine the matter, with or without the intervention of a jury, as the answer in writing to the memorial may require. Provided always, It shall be lawful for any town, district or person who has been at expense for the support of a pauper, said to be an inhabitant of either of the towns in the county of Nantucket or Dukes-County, to file a memorial, in manner already provided, in the clerk's office of the Court of Common Pleas in the county of Barnstable or Bristol; and the said Court of Common Pleas shall hear and determine the matter in the same manner as if the pauper was said to belong to any town within either of the said counties of Barnstable or Bristol. And in case a town or district, when the selectmen or town or district clerk have been reasonably notified as aforesaid, shall refuse or neglect to appear and make answer in writing to the memorial by their selectmen, or an agent duly chosen therefor, the court may proceed to hear the evidence, and determine the question of habitation, in their absence, and in case the court determine the question of habitation in favour of the memorialist or memorialists, they may proceed to examine and determine the quantum of expense incurred for the pauper, and order and decree a reimbursement, and issue execution therefor, with the necessary costs attending the decision, and may also order the pauper to be removed to the town or district where he belongs, in case he be requested in the memorial.

But in case the determination be in favour of the respondents, they shall recover their reasonable costs: And the inhabitants of any town or district, merely as such, shall not be excluded from being witnesses upon any prosecution on this statute, on a supposition of being interested as members of the corporation.
And whereas indigent persons are frequently brought into this Commonwealth, under various pretences, who are not inhabitants of any town or district within the same:

Sect. 9. Be it further enacted by the authority aforesaid, That any person, who shall bring into this Commonwealth, any pauper or indigent person, and leave him or her in any town or district, within the same, of which town or district, he or she is not an inhabitant, he shall forfeit and pay for every person so brought in and left, the sum of twenty pounds, to be recovered in any court proper to try the same, for the use of such town or district. [Feb. 14, 1789.] Repealed—1793 ch. 38.

An Act for incorporating the northeasterly Part of the Town of North-Yarmouth, together with a tract of land called Prout's Gore, in the County of Cumberland, into a separate Town by the name of Freeport. [Feb. 14, 1789.]

An Act for naturalizing James Heyman, and others, therein named. [Feb. 14, 1789.]

An Act to empower the inhabitants of the Town of Portland, belonging to the several Religious Societies within the same, to raise money for defraying Ministerial and other Charges. [Feb. 14, 1789.]

An Act declaring the Causes for which Cattle may be impounded, the Manner how they shall be proceeded with in such Cases, and for preventing Rescue and Pound Breach.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there shall be kept and maintained in each town, at their proper cost and charge, a sufficient pound or pounds, in such place or places therein as the town shall direct, who shall also appoint a suitable person to keep each pound, wherein swine, sheep, horses and neat cattle may be restrained and kept for the causes herein after mentioned; and any town, that shall neglect to provide or maintain such pound for the space of six months, shall forfeit and pay to the use of the county, ten pounds, to be recovered by presentment of the grand jury.

Sect. 2. And be it further enacted, That there shall be chosen at the annual meeting for the choice of town officers, in each town, two or more persons for field-drivers, who shall be sworn to the faithful discharge of their trust; and the field-drivers thus chosen and sworn are hereby severally authorized and empowered to take up and impound any swine unyoked or unringed, horses unfettered, sheep not under the care of a shepherd, or going at large on the common or highways leading through such town, between the fifteenth day of April and the first day of November, and them in pound detain, or deal with as is herein after mentioned, until the owner shall pay, for the use of the field-driver, one shilling a head for all such horses, and three pence a head for all sheep and swine, besides two pence a head for all such horses, and one penny for all sheep and swine, to the pound-keeper who may have the care of the particular pound in which they may be restrained.

Sect. 3. And be it further enacted, That any person injured in his tillage, mowing, or other lands under improvement, that are inclosed with a legal and sufficient fence, whether such improved lands be in a common or general field, or in a close by itself, by swine, sheep, horses, or neat cattle, may have and maintain an action of trespass quare clausum fregit, against the owner of the cattle for his damages; or he may impound the creatures doing the damage, or some of them, at his election, with or without the aid of a field-driver; and in case he im-
pound the creatures, he may restrain them in one of the town pounds, or in some other place under his immediate care and inspection, as may be most convenient for relieving them with suitable meat and water; which relief it shall be the duty of the person impounding to furnish, or cause to be sufficiently furnished, during their confinement.

Sect. 4. And be it further enacted. That when any of the creatures aforesaid shall be impounded, whether it be done for being at large out of the owner's inclosure, or for doing damage as aforesaid, the person impounding shall inform the owner of the creatures impounded (if known) within the space of twenty-four hours, by giving him a notification thereof in writing or otherwise; and in case the owner of the creatures impounded be absent, such written notification shall be left at his house or usual place of abode, describing the creatures, and specifying the time, place and cause of impounding. And the person impounding shall also leave with the pound-keeper, if they are in the town or district pound, at the time such creatures are committed to his custody, a memorandum, in writing, under his hand, of the cause of impounding, and the sum he demands in damages from the owner before they are liberated: And no action shall be maintained against the pound-keeper for detaining such creatures, until that sum, with his lawful fees, shall be paid. Provided nevertheless, That if the person whose creatures are impounded, damage feasant, shall think the damages mentioned in the memorandum left with the pound-keeper are unreasonable, he may have the same ascertained by two or more disinterested, judicious persons, being thereto appointed and duly sworn by some Justice of the Peace for the same county, or by the town-clerk, where no Justice of the Peace is; which sum thus ascertained shall be taken instead of the sum first left with the pound-keeper. And if the owner doth not, within twenty-four hours after notice as aforesaid, pay the damages and charges of impounding, or levy the creatures, the party trespassed upon may apply to a Justice of the Peace, or the town-clerk for a warrant, directed to two or more disinterested, judicious persons, which warrant the town-clerk of the same town, or any Justice of the Peace in the same county, may issue, and make returnable into the town or district clerk's office of the same town or district, as soon as the business is performed, and may also administer an oath unto the persons appointed, faithfully and impartially to estimate the damage done the party injured, and also to appraise so many of the creatures impounded as shall be sufficient to answer the damages and all charges. And the party damned, after the persons appointed as aforesaid shall have ascertained the damage, and valued such of the creatures as shall be necessary to satisfy the same and charges, and have made return of their warrant into the clerk's office, with their doings thereon, may retain and keep the creature or creatures, so appraised, to his own use, or may sell the same at public vendue to the highest bidder, notice of such sale being posted up at some public place within the same town or district twenty-four hours be-
forchand; and in either case, returning the overplus, if any there be, to the owner, and shall liberate the remainder of the creatures impounded; but in case the owner of the creatures impounded be unknown, the person impounding shall cause the same to be publickly cried, or notifications thereof, as aforesaid, posted up in some public places in the town or district, and in the two next towns or districts adjoining, in case the distance thenceunto from the place where the creatures may be taken up doth not exceed four miles; and if no owner or claimer appear within the space of three full days next after the impounding and notifying as aforesaid, then the person so restraining them may proceed with them in all respects as the law provides respecting strays, after having his damages ascertained, in case the cattle be taken damage feasant, in manner as is before provided.

Sect. 5. And be it further enacted, That when an action of trespass shall be brought against the owner of any of the creatures aforesaid, for damages by them done upon his inclosed lands under improvement, or when such creatures, taken damage feasant and impounded, shall be releved, it shall be in the power of the justice or court, before whom the cause shall be determined, to render judgment in favour of the person demanding damages for the injury sustained, upon satisfactory evidence being produced, that such creatures were either clandestinely turned in, or broke in o the close in a part where the fence was good and sufficient, according to law, some other parts of the fence round the same close being deficient notwithstanding.

Sect. 6. And be it further enacted, That if any person shall rescue any creatures, taken up as aforesaid, out of the hands or care of the field-driver, or from the hands of any other person being about to drive or convey them to pound, whereby the party injured may be in danger of losing such his remedy, and the law evaded, the person thus offended shall, for such rescue, forfeit and pay the sum of forty shillings, to be recovered by action of debt, one half part to him or them that will sue for the same, and the other half part to and for the use of the county within which the offence is committed, and be further liable to pay the party injured the full damages he might be entitled to recover, by impounding such creatures, in an action of the case. And if any person shall make any pound-breacb, or by any indirect way or manner whatever, convey or deliver any of the creatures aforesaid, impounded, from the pound or place where they may be restrained, the person thus offending shall forfeit and pay the sum of five pounds, to be recovered by action of debt, one half to him that will sue for the same, and the other half for the use of the county within which the offence may be committed; or by presentment of the grand jury; in which case the whole penalty shall ensue to the use of the county: And the court before whom the conviction shall be. may, at the time of declaring the sentence, further order, in default of payment of the said sum of five pounds, with costs of prosecution, within fourteen days after sentence, the person convicted to be

In case the owner be unknown the creatures shall be publickly cried.

When actions of trespass are brought, power of the justice or court.

Penalty for rescuing creatures out of the hands of the field-driver, &c.

Penalty for pound-breacb.
publicly whipped not exceeding twenty stripes, or to be confined to hard labour for a term not exceeding six months; and the person offending as aforesaid shall be liable to pay the party injured double the damage he may be entitled to recover, by the impounding such creatures, in an action of the case; and the party injured by a pound-breath, when it is effected by an apprentice or minor, may prosecute, for his damages, the parent or master under whose care such apprentice or minor may then be, or the apprentice or minor, at his election; in which action, as well as for damages occasioned by the rescue of cattle about to be impounded, the defendant shall not be permitted to give in evidence the insufficiency of the fence, if any such there be, or that the creatures, when taken, were under such circumstances as to render the impounding illegal, to prevent the party from recovering his full damages. [Feb. 14, 1789.]
circumstances of the estate of the person deceased, under their administration, as to its solvency:

Sect. 2. Be it further enacted, That no executor or administrator shall be compelled in any court of law to defend any suit that shall be commenced or instituted against him, in said capacity, within the term of twelve months next after his taking upon him that trust, unless the same shall be instituted for the recovery of a demand that will not be affected by the insolvency of the estate, or the suit shall be instituted for the purpose of ascertaining a claim that is contested. And all suits brought within one year as aforesaid (except for the purposes aforesaid) shall be continued at the plaintiff's expense, until that term, from the time the executor or administrator gave bond in the Probate Court, for the faithful discharge of his trust, shall be fully expired; and in case the executor or administrator pays the demand, or will bring sufficient money into court for that purpose, and there leave the same for the plaintiff's use, or shall make a legal tender thereof to the plaintiff, within the year, he shall recover his costs.

Sect. 3. And be it further enacted, That all claims of creditors to the estate of any person deceased, upon which an executor or administrator has already undertaken the administration, shall be exhibited and demanded of the executor or administrator of such estate, within three years from the passing of this Act, or within three years after such claim may accrue, and not afterwards. And no executor or administrator that shall hereafter undertake that trust, shall be compelled or held to answer to the suit of any creditor of his testator or intestate, unless the same suit shall have been originally commenced within the term of three years next following his giving bond for the faithful discharge of his trust (except as hereafter excepted.) Provided, such executor or administrator shall give public notice of his appointment to that office, in the manner this Act directs. The filing a claim with the commissioners upon an estate represented insolvent, to be esteemed equivalent to originating a suit against executors or administrators, within the meaning of this Act.

Sect. 4. And be it further enacted, That when any certain demand against the estate of any person deceased, arising from covenant, contract, or agreement, shall commence and be in force after the said term of three years, and which could not, by virtue of such covenant, contract or agreement (although known) be claimed until after the said term, in such case the claimant may, at any time within the said term of three years, file such future demand at the office of the Probate Court, where administration was granted, or the will was approved; and such Probate Court shall direct the executor or administrator to retain in his hands assets (if sufficient there be) to answer said demand, unless the heirs to such estate, or devisees thereof, or some one or more of them, shall give good and sufficient security, in the opinion of the Judge of Probate, for such executor or administrator to respond such demand; and when security is so given, such executor or administrator shall not be allowed to retain in his hands assets, for the purpose aforesaid; the estate of the said deceased shall however be liable, in the hands of the said heirs or devisees, or their heirs or assigns, to answer the said demand.
Remedy may be had against those who interfere with the estate.  

Proviso, respecting the recovery of legacies and bequests.

Preamble.

1783 ch. 32.

Mode of perpetuating evidence that notice was given respecting the sale of real estates by executors and administrators.

[* Eighteen months—1812 ch. 24.]

[This clause extended to guardians—1814 ch. 71.]  

Sect. 5. And be it further enacted, That where certain demands, against the estate of any person deceased, arise by virtue of any covenant, contract or agreement, that could not be claimed until after the said term of three years (such covenant, contract or agreement, not being in full force during said term) the claimant in such case, unless he shall have filed the same in the Probate Court, as aforesaid, may have his remedy against those who inherit the estate of such person, or devisees thereof, against whom the demand lies, if such claim be made within one year from the time of its becoming due, and not against the executor or administrator. Provided always, That nothing in this Act shall operate to bar any action that may be commenced against an executor or administrator with the will annexed, for the recovery of a legacy, bequest, gift or annuity, arising, accruing or becoming due, by virtue of any last will and testament, but the same may be commenced and prosecuted in the same time, way and manner, as they might have been, had this statute never been made.

And whereas executors and administrators, upon their obtaining license to sell real estate for the payment of debts or legacies, are by law directed, before sale be made, "to give thirty days public notice, by posting up notifications of such sale in the town or plantation where the lands lie, as well as where the deceased person last dwelt, and in the two next adjoining towns, as also in the shire town of the county." But no particular method is provided for perpetuating the evidence that such notice was given, by reason whereof disputes may arise respecting the legality of such sales:

Sect. 6. Be it therefore further enacted, That the affidavit of the executor or administrator, or the affidavit of such person or persons as may be by them employed, to post up such notifications, taken before the Probate Court, where such executor or administrator derived his authority to administer, within seven months* next following the sale of the real estate, and there filed and recorded, together with one of the original advertisements of the time, place and estate to be sold, or a copy of such advertisement, are hereby declared to be one mode of perpetuating the evidence that such notice was given, and also to make the originals or copies thereof, from the register of the Probate Court, admissible evidence in any court of law: And when the person employed by the executor or administrator, to post up such notifications, resides more than ten miles distant from such Probate Court, his deposition respecting that matter, taken before a Justice of the Peace, and filed in such Probate Court, within the seven months* as aforesaid, shall have the same force and effect, as if the same was taken before the Probate Court; and the printing a notification, three weeks successively, in such gazette or newspaper, as the court, who may authorize the sale, shall order and direct, shall be deemed equivalent to the posting up of notifications as aforesaid.

Sect. 7. And be it further enacted, That guardians and others, who, upon obtaining license for the sale of real estate, are or
shall be directed to give public notice before sale be made, are hereby authorized to perpetuate the evidence, that such notice was given, in the Probate Court, where the guardian or other person selling is directed to account for the proceeds arising from the sale, in the same way and manner herein before provided for executors or administrators.

Sect. 8. And be it further enacted, That no executor or administrator, against whom any suit shall be commenced, after the expiration of one year from the time of his undertaking that trust, shall be entitled to a continuance of course, but shall be held to assign some good cause therefor, before he shall be allowed a continuance. [Feb. 14, 1789.] Add. act—1791 ch. 28: (Suspended—1792 ch. 33:) 1812 ch. 24.


An Act to prevent the Destruction of the Fish called Shad and Alewives, in Mystic-River, so called, within the Towns of Cambridge, Charlestown and Medford, and for repealing all Laws heretofore made for that Purpose. [Feb. 16, 1789.] Continued and extended to Woburn and Malden—1793 ch. 69. Extended to West Cambridge—1820 ch. 67. See 1802 ch. 73: 1815 ch. 43, 54.

An Act for setting off Benjamin Hodges, from the Town of Stoughton, and annexing him to the Town of Sharon. [Feb. 16, 1789.]

An Act for incorporating the Plantation Number One, on the east side of Union River, in the County of Lincoln, into a Town by the name of Trenton. [Feb. 16, 1789.]

An Act for incorporating the Plantation of Goldsborough, so called, in the County of Lincoln, into a Town by the name of Goldsborough. [Feb. 16, 1789.]

An Act for incorporating the Plantation Number Two, on the east side of Union River, in the County of Lincoln, into a Town by the name of Sullivan. [Feb. 16, 1789.]

An Act to prevent the Destruction, and to regulate the catching of the Fish called Salmon, Shad and Alewives, in the rivers and streams in the Counties of Cumberland and Lincoln, and to repeal all Laws heretofore made for that purpose. [Feb. 16, 1789.] Add. acts—1793 ch. 29: 1793 ch 45. All repealed—1797 ch. 50.

An Act to enable the Proprietors of a Marsh, lying in the Towns of Malden and Chelsea, to make and maintain a Dam for the better improving of the said Marsh. [Feb. 17, 1789.]

An Act for incorporating the Plantation of Mount Desert, so called, in the County of Lincoln, into a Town by the name of Mount Desert. [Feb. 17, 1789.]

An Act to incorporate the Plantation called Royalsborough, in the County of Cumberland, into a Town by the name of Durham. [Feb. 17, 1789.]

An Act to annex Jabez Briggs and Gideon Gould, with a certain Gore of Land, to the Town of Sutton, in the County of Worcester. [June 5, 1789.]

An Act directing an equal Distribution of the Estates of Intestates.

WHEREAS in an Act, entitled, "An Act directing the descent of intestate estates, and for empowering the Judge of Probate to make partition in certain cases," passed on the ninth day of March one thousand seven hundred and eighty four it is enacted, "that when any person shall die, seized of any lands, tenements or hereditaments, not by him devised, the same shall descend in equal shares to and among his children, and such as shall legally represent them (if any of them be dead) except
the oldest son, then surviving, who shall have two shares; if there is no issue of an older son, in which case such issue and lineal descendant or descendants of such issue shall have two shares in right of the father, although the father died before the grandfather: And “that when any person shall die possessed of any chattels or personal estate not by him bequeathed, the same shall be distributed among his heirs, in the same way and manner real estates descend by this Act:”

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That when any person shall, after the first day of January next, die seized of any real estate in fee simple, or possessed of any chattels or personal estate, not by him devised or bequeathed, the same shall descend and be distributed in equal shares to and among his children, and such as shall legally represent them (if any of them be dead) in like manner as it would have descended and been distributed, in virtue of the Act aforementioned, if the said exception had not been contained therein, and not otherwise; any law, usage or custom to the contrary notwithstanding. [June 8, 1789.]

Chap. 3. An Act for setting off three Fifty Acre Lots of land from the Town of Goshen, in the County of Hampshire, and annexing them to the Town of Chesterfield, in the same County. [June 8, 1789.]

Chap. 4. An Act further to enable Constables and Collectors of Taxes to complete their Collections in certain Cases.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That where any person, duly rated in any town, district, precinct, parish or plantation, hath died, or shall die before the payment of the same rates, and where any person, duly rated as aforesaid, hath removed or shall remove out of the town, district or plantation, in which such person lived at the time such rates were or may be assessed, before the payment of such rates, and where any unmarried woman, being duly rated as aforesaid, hath intermarried, or shall intermarry before payment of such rates; in all such cases, it shall and may be lawful for the constables or collectors of such town, district, precinct, parish or plantation, to sue for such rates, and they shall have the like remedy for the recovery thereof, as other creditors have for recovering their proper debts. [June 15, 1789.]

Chap. 5. An Act in addition to an Act passed the last year, entitled, “An Act for the Preservation of the Fish called Alewives, in Matapoisset River, in Rochester, in the County of Plymouth, and for regulating the taking of the said fish in the said River.” [June 15, 1789.] Add. acts—1790 ch. 22: 1802 ch. 71: 1811 ch. 6: 1817 ch. 136.

Chap. 6. An Act to enable the Town of Charlestown to exchange a Part of the Ministerial Lot in said Town, for an equal quantity of other land. [June 17, 1789.]

Chap. 7. An Act for reviving and continuing sundry Laws that are expired or near expiring. [June 17, 1789.] Continued till Nov. 1, 1797.

Chap. 8. An Act regulating the Taking of the Fish called Alewives, in the Town-Brook, so called, in the Town of Plymouth. [June 20, 1789.] Extended to Fresh Pond Brook—1798 ch. 15.
An Act in addition to an Act made and passed in the year of our Lord one thousand seven hundred and eighty seven, entitled, "An Act for the Relief of poor Prisoners who are committed by execution for Debt."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any person standing committed on an execution issued upon a confession before any Justice of the Peace agreeable to law, shall be entitled to all the benefits allowed by the said Act, to which this is an addition, to persons standing committed by force of any execution issuing from any court in this Commonwealth, on a judgment rendered by such court. [June 22, 1789.]

An Act to encourage the Manufacture and Consumption of Strong Beer, Ale, and other Malt Liquors. [June 22, 1789.] Expired—June 22, 1794.

An Act authorizing the Settlement of the Claims of Executors and Administrators in the Probate Court, by Referees.

WHEREAS executors and administrators, having claims against the estate of their testator or intestate, cannot commence and prosecute an action at law for the determination thereof, and it may tend to the furtherance of justice as well as the satisfaction of the parties interested, to have the same determined by referees mutually chosen and appointed in the Probate Court:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when an executor or administrator shall exhibit a claim, in writing, against his testator or intestate, to the Judge of Probate, having cognizance thereof, for allowance, and the same shall be disputed by any person interested adversely in the allowance thereof, it shall be lawful for the said executor or administrator, and the legatees or heirs whose interest will be affected by the issue thereof, to submit the determination of such claim to referees who may be mutually agreed upon by the parties interested; and the Court of Probate, before whom such submission is made, may receive, approve and allow the report of such referees, made in writing, pursuant to the submission and decree accordingly: Provided, the submission be made in writing, and signed by all the parties interested therein, or their agents duly authorized thereunto, and when any of the parties are minors, by his or their guardians, duly nominated and appointed.

Sect. 2. And be it further enacted, That when a dispute shall arise respecting the occupation, use and improvement of real estate in the hands of the executor or administrator, and the quantum he ought to credit in his account therefor, it shall and may be lawful for the Judge of Probate to appoint three disinterested persons living near to the estate, to ascertain the true value thereof; and the report of them, or the major part of them, made thereupon, in writing, after hearing the parties, and accepted by the judge, shall be the sum the executor or administrator shall be charged with in his account, and no more. [June 22, 1789.]

An Act for naturalizing Nathaniel Skinner, and others therein named. [June 22, 1789.]
Chap. 13.

An Act for incorporating the easterly and southerly Parts of the Town of Danuble, into a District by the name of Tyngsborough. [June 22, 1789.]

Chap. 14.

An Act determining what Transactions shall be necessary to constitute the Settlement of a Citizen in any particular Town or District.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all persons, citizens of this Commonwealth, who, before the tenth day of April, one thousand seven hundred and sixty-seven, resided or dwelt within any town or district in the then Province of the Massachusetts Bay, for the space of one year, not having been warned to depart therefrom according to law, or who since the same tenth day of April, have obtained the approbation of the town or district at a general meeting of the inhabitants for his dwelling there, or who have obtained a legal settlement in such town or district, by birth, marriage, or otherwise, and have not afterwards gained a settlement elsewhere, in this, or some other of the United States, shall be deemed and taken to be inhabitants of the same town or district, to every intent and purpose whatever. And every person being a citizen of this Commonwealth, who shall be seized of an estate of freehold, in any particular town or district, of the clear annual income of three pounds, and shall reside thereon, or within the same town or district, occupying and improving the same in person, for the space of two whole years, or who, after the age of twenty one years, shall reside and pay a tax, for the term of five years successively, or shall reside in such town or district, for the space of two years successively, without being warned to depart in manner hereafter provided, shall be deemed and taken to be an inhabitant of the same town or district.

Sect. 2. And be it further enacted by the authority aforesaid, That any citizen of this Commonwealth, who shall have and obtain the vote of any town or district at a regular meeting, to be admitted and received an inhabitant thereof, shall, from and after the passing such vote, in case such citizen shall there reside and dwell, be deemed and taken to be an inhabitant of the same.

Sect. 3. And be it further enacted by the authority aforesaid, That every woman, by intermarrying with an inhabitant of any town or district, shall by such marriage be deemed and taken to be an inhabitant of the same town or district with her husband; and children born in wedlock at the time of their birth, and afterwards, shall be deemed and taken as inhabitants of the same town or district with their parents; and children otherwise born, shall be deemed and taken to be inhabitants with the mother, until they shall have obtained a legal settlement or habitation in some other town or district; but no person shall have more than one place of legal settlement at one and the same time, but upon obtaining a new place of settlement, shall be deemed and taken voluntarily to have relinquished any former one. Provided always, That no person committed to prison, or lawfully detained in any town or district, or who shall come or be sent for nursing, education or support, or to learn any trade or mystery, or who shall come or be sent to any physician or surgeon, to be cured of any disorder, shall, by remaining in such town or district for any length of time, in consequence thereof, obtain a settlement therein.

Sect. 4. Be it further enacted by the authority aforesaid, That when any person shall come into any town or district within this Commonwealth to reside, not entitled to habitation by the qualifications before recited in this Act, the selectmen of such town or district shall be, and they are hereby empowered to warn such person to depart the limits of such town or district.

Sect. 5. And be it further enacted by the authority aforesaid, That the method of warning a person to depart from any town or district, shall be in writing under the hands and seals of the selectmen, or the major part of them, in substance as follows, viz.

[Seal.] —— ss.

To either of the Constables of the Town of in said County.

GREETING.

You are, in the name of the Commonwealth of Massachusetts, directed to warn and give notice unto A. B. of in the county of labourer, (or a transient person, as the case may be) who has lately come into this town for the purpose of abiding therein, not having obtained the town’s consent therefor, that he (or she) depart the limits thereof (with their children, and others under their care, if such they have) within fifteen days. And of this precept, with your doings thereon, you are to make return into the office of the clerk of the town (or district) within twenty days next coming, that such further proceedings may be had in the premises, as the law directeth. Given under our hands and seals at this day of Anno Domini Selectmen of

Mode of service.

And the mode of service shall be by reading or delivering a copy of the precept to the person ordered to depart, or by leaving a copy of such precept at his or her last and usual place of abode; and it shall be the duty of the town or district clerk, to make a record of the warrant, and the return of the constable made thereon, in the town book.
Sect. 6. And be it further enacted by the authority aforesaid, That all former laws for fixing or determining the habitability or settlement of citizens, touching settlements hereafter to be obtained, be and hereby are repealed. [June 23, 1789.]

Add. acts—1790 ch. 59 : 1791 ch. 41: 1792 ch. 69. All repealed—1793 ch. 34.

An Act prescribing the Form of the Bond which shall be given by the Treasurer of the Commonwealth, and determining to whom such Bond shall be given. [June 23, 1789.]

Superseded by 1791 ch. 59.

An Act to enable the Proprietors of a Marsh and rough Meadow, lying in the Town of Rowley, to make and maintain a Dike, for the better improving said Marsh and Meadow. [June 24, 1789.]

See 1814 ch. 179.

An Act for incorporating the North Eleven Thousand Acres, so called, in the County of Berkshire, into a District by the name of Bethlehem. [June 24, 1789.]


An Act to provide for the Instruction of Youth, and for the Promotion of good Education.

WHEREAS the Constitution of this Commonwealth hath declared it to be the duty of the General Court to provide for the education of youth; and whereas a general dissemination of knowledge and virtue is necessary to the prosperity of every State, and the very existence of a Commonwealth:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every town or district within this Commonwealth, containing fifty families, or householders, shall be provided with a school-master or school-masters, of good morals, to teach children to read and write, and to instruct them in the English language, as well as in arithmetic, orthography, and decent behaviour, for such term of time as shall be equivalent to six months for one school in each year. And every town or district containing one hundred families, or householders, shall be provided with such school-master or school-masters, for such term of time as shall be equivalent to twelve months for one school in each year. And every town or district containing one hundred and fifty families, or householders, shall be provided with such school-master or school-masters, for such term of time as shall be equivalent to six months in each year; and shall, in addition thereto, be provided with a school-master or school-masters, as above described, to instruct children in the English language, for such term of time as shall be equivalent to twelve months for one school in each year. And every town or district containing two hundred families, or householders, shall be provided with a grammar school-master, of good morals, well instructed in the Latin, Greek and English languages; and shall, in addition thereto, be provided with a school-master or school-masters, as above described, to instruct children in the English language, for such term of time as shall be equivalent to twelve months for each of said schools in each year.

And Whereas by means of the dispersed situation of the inhabitants of several towns and districts in this Commonwealth, the children and youth cannot be collected in any one place for their instruction, and it has thence become expedient that the towns and districts, in the circumstances aforesaid, should be divided into separate districts for the purpose aforesaid:

Laws repealed.

Chap. 15.

Chap. 16.

Chap. 17.

Chap. 18.

Chap. 19.

Preamble.

Col. L. 1647. 71. 85.

4W. & M. ch. 11. 13W. III. ch. 20.

11 Anne ch. 1.

4 Geo. I. ch. 2.

8 Geo. III.

Towns to provide school-masters, for different terms, according to the number of families.

Towns containing 200 families, to provide a grammar school-master.
Towns to define the limits of school districts. 1789 ch. 66.

Sect. 2. Be it therefore enacted by the authority aforesaid, That the several towns and districts in this Commonwealth, be and they are hereby authorized and empowered, in town meetings, to be called for that purpose, to determine and define the limits of school districts within their towns and districts respectively.

And to the end that grammar school-masters may not be prevented in their endeavours to discharge their trust in the most useful manner:

Sect. 3. Be it further enacted, That no youth shall be sent to such grammar schools, unless they shall have learned, in some other school or in some other way, to read the English language, by spelling the same; or the selectmen of the town where such grammar school is, shall direct the grammar school-master to receive and instruct such youth.

Sect. 4. Be it further enacted by the authority aforesaid, That it shall be and it is hereby made the duty of the president, professor and tutors of the University at Cambridge, preceptors and teachers of academies, and all other instructors of youth, to take diligent care, and to exert their best endeavours to impress on the minds of children and youth committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity, and universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, and those other virtues which are the ornament of human society, and the basis upon which the republican constitution is structured. And it shall be the duty of such instructors to endeavour to lead those under their care (as their ages and capacities will admit) into a particular understanding of the tendency of the before mentioned virtues, to preserve and perfect a republican constitution, and to secure the blessings of liberty, as well as to promote their future happiness; and the tendency of the opposite vices to slavery and ruin.

And to the end that improper persons may not be employed in the important offices before mentioned:

Sect. 5. Be it further enacted by the authority aforesaid, That no person shall be employed as a school-master as aforesaid, unless he shall have received an education at some college or university, and, before entering on the said business, shall produce satisfactory evidence thereof, or unless the person to be employed as aforesaid shall produce a certificate from a learned minister, well skilled in the Greek and Latin languages, settled in the town or place where the school is proposed to be kept, or two other such ministers in the vicinity thereof, that they have reason to believe that he is well qualified to discharge the duties devolved upon such school-master by this Act; and, in addition thereto, if for a grammar school, "that he is of competent skill in the Greek and Latin languages, for the said purpose." And the candidate of either of the descriptions aforesaid shall moreover produce a certificate from a settled minister of the town, district, parish or place, to which such candidate belongs, or from the selectmen of
such town or district, or committee of such parish or place, "That to the best of his or their knowledge, he sustains a good moral character." Provided nevertheless, This last certificate, respecting morals, shall not be deemed necessary where the candidate for such school belongs to the place where the same is proposed to be actually kept; it shall however be the duty of such selectmen or committee who may be authorized to hire such school-master, specially to attend to his morals. And no settled minister shall be deemed, held, or accepted to be a school-master, within the intent of this Act.

Sect. 5. And be it further enacted by the authority aforesaid, That if any town or district having the number of fifty families, or householders, and less than one hundred, shall neglect the procuring and supporting a school-master or school-masters, to teach the English language as aforesaid, by the space of six months in one year, such deficient town or district shall incur the penalty of ten pounds, and a penalty proportionable for a less time than six months in a year, upon conviction there-of; and, upon having the number of one hundred families, or householders, and upwards, shall neglect the procuring and supporting such school-master or school-masters, as is herein required to be kept by such town, for the space of one year, every such deficient town or district shall incur the penalty of twenty pounds, and a proportionable sum for a less time than a year, upon conviction of such neglect. And every town or district having one hundred and fifty families, or householders, which shall neglect the procuring and supporting such schoolmasters, and for such term of time as the schools aforesaid are herein required to be kept by such town or district, in any one year, shall incur the penalty of thirty pounds, and a proportionable sum for a less time, upon conviction of such neglect. And every town or district having two hundred families, or householders, and upwards, that shall neglect the procuring and supporting such grammar school-master, as aforesaid, for the space of one year, shall incur the penalty of thirty pounds, and a proportionable sum for a less time than a year, upon conviction of such neglect.

Sect. 7. And be it further enacted by the authority aforesaid, That the penalties, which may be incurred by virtue of this Act, shall be levied by warrant from the Supreme Judicial Court or Court of General Sessions of the Peace for the county to which such deficient town or district belongs, upon the inhabitants of such deficient town or district, in the same manner as other sums for the use of the county, and shall be paid into the county treasury, and the same shall be appropriated for the support of such school or schools as are prescribed by this Law in such town or towns, district or districts, in the same county, as shall have complied with this Law, and whose circumstances most require such assistance, or in such plantation or plantations in the same county, as the said Court of Sessions shall order and direct. And it shall be the duty of the minister or ministers of the Gospel and the selectmen (or such other persons as shall be specially chosen by each town or district...)
for that purpose) of the several towns or districts, to use their influence and best endeavours, that the youth of their respective towns and districts do regularly attend the schools appointed and supported as aforesaid, for their instruction; and once in every six months at least, and as much oftener as they shall determine it necessary, to visit and inspect the several schools in their respective towns and districts, and shall inquire into the regulation and discipline thereof, and the proficiency of the scholars therein, giving reasonable notice of the time of their visitation.

Sect. 3. Be it enacted by the authority aforesaid, That all plantations which shall be taxed to the support of Government and all parishes and precincts are hereby authorized and empowered, at their annual meeting in March or April, to vote and raise such sums of money upon the polls and ratable estates of their respective inhabitants for the support and maintenance of a school-master to teach their children and youth to read, write and cypher, as they shall judge expedient, to be assessed by their assessors in due proportion, and to be collected in like manner with the public taxes.

And whereas schools for the education of children in the most early stages of life, may be kept in towns, districts or plantations, which schools are not before particularly described in this Act; and that the greatest attention may be given to the early establishing just principles in the tender minds of such children, and carefully instructing them in the first principles of reading:

Sect. 9. Be it enacted, That no person shall be allowed to be a master or mistress of such school, or to keep the same, unless he or she shall obtain a certificate from the selectmen of such town or district where the same may be kept, or the committee appointed by such town, district or plantation, to visit their schools, as well as from a learned minister settled therein, if such there be, that he or she is a person of sober life and conversation, and well qualified to keep such school. And it shall be the duty of such master or mistress carefully to instruct the children, attending his or her school, in reading (and writing, if contracted for) and to instil into their minds a sense of piety and virtue, and to teach them decent behaviour. And if any person shall presume to keep such school without a certificate as aforesaid, he or she shall forfeit and pay the sum of twenty shillings, one moiety thereof to the informer, and the other moiety to the use of the poor of the town, district or plantation, where such school may be kept.

Sect. 10. Be it further enacted by the authority aforesaid, That no person shall be permitted to keep, within this Commonwealth, any school described in this Act, unless, in consequence of an Act of naturalization, or otherwise, he shall be a citizen of this or some other of the United States. And if any person, who is not a citizen of this or some one of the United States, shall presume to keep any such school within this State for the space of one month, he shall be subjected to pay a fine
of twenty pounds, and a proportionable sum for a longer or shorter time: the one half of which fine shall be to the use of the person who shall sue for the same, and the other half thereof to the use of this Commonwealth.

Sect. 11. And be it further enacted by the authority aforesaid, That all fines and forfeitures, for a breach of this Act, shall be recovered by bill, plaint or information, before any court proper to try the same; and all grand jurors shall diligently inquire, and presentment make, of all breaches and neglects of this Law.

Sect. 12. And be it further enacted by the authority aforesaid, That this Act shall be in force, and operate from and after the first day of October next. [June 25, 1789.] Add. act—1799 ch. 66.

An Act in addition to the Act regulating the Exportation of Flax-Seed and other Articles, passed on the ninth day of November, Anno Domini one thousand seven hundred and eighty-four.

Sect. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same, That the regulations respecting the shipping and exporting of flax-seed, as provided in the said Act to which this is an addition, shall, from and after the passing of this Act, extend and be construed to extend to the shipping and exporting of flax-seed which shall be exported to any port or place within the kingdom of Ireland, or that part of Great-Britain, commonly called Scotland, only; and that all flax-seed which shall be intended to be exported to any other port or place, may, after inspection and examination in manner as is provided in that Act, or as is herein after provided, be shipped and exported in bulk or in casks of any other dimensions than by that Act are required, any thing therein contained to the contrary notwithstanding: Provided always, That such casks shall have a mark of the surveyor, expressing the quantity contained therein, and be otherwise surveyed and marked as in the said Act is provided and required.

Sect. 2. And be it further enacted by the authority aforesaid, That in every case of the shipping of flax-seed in bulk, the owner or shipper thereof shall procure and produce to the master, officer or mariner of the vessel appointed to receive the same, duplicate certificates under the hand and seal of some surveyor of flax-seed, that the quantity of flax-seed expressed in such certificates hath been surveyed and examined, and been found to be well cleansed and in good order. And before such vessel, having on board flax-seed in bulk, shall be cleared out by any naval officer of any port within this Commonwealth, the master, officer or mariner who has received such flax-seed, shall make oath to the whole quantity which hath been so laded and by him received on board such vessel, and by whom the same hath been shipped; and shall also lodge with such naval officer one of the duplicates of the surveyor’s certificate or certificates for the whole quantity of flax-seed as aforesaid; and such naval-officer shall likewise require the oath of the respective owners or shippers of such flax-seed, to be taken before

Fines, how recovered.

Exportation of flax-seed, how regulated.

Proviso.

Owners or shippers of flax-seed, to produce a certificate of survey.
Forfeiture for lumber &c. flax-seed not surveyed.

Surveyor's fees.

Penalties, in case of fraud.

Penalties, how recovered and appropriated.

An Act to incorporate the Plantation from Belfast to Wheeler's Mills, west side of Penobscot River, in the County of Lincoln, into a Town by the name of Frankfort. [June 25, 1789.] 

An Act to incorporate the Islands in Penobscot-Bay, commonly called the North and South Fox-Islands, in the County of Lincoln, into a Town by the name of Washhaven. [June 25, 1789.] 

An Act in addition to, and for repealing certain Clauses in an Act, entitled, "An Act to raise a public Revenue by Excises;" and also for repealing certain Clauses in an Act, entitled, "An Act in addition to, and for the amending of an Act, entitled, an Act to raise a public Revenue by Excises." [June 25, 1789.] Repealed—1789 ch. 48. 

An Act for erecting and establishing two new Counties in the County of Lincoln, and declaring the Boundaries of the County of Lincoln in future. [June 25, 1789.] Add. act—1791 ch. 9. See 1790 ch. 24. 

An Act providing an Establishment for the Attorney-General. [June 25, 1789.] First section expired—second section superseded by 1789 ch. 45.

An Act prescribing the Form, and directing the Mode of Process, to be adopted in replying of Cattle or Beasts distracted, and also of Goods and Chattels.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any person shall have his cattle restrained or impounded, in order to obtain satisfaction for damages they may
have committed, or to obtain a forfeiture, supposed to have been incurred for their going at large, out of the inclosure of the owner, in violation of law, in order to have the legality of such distress or impounding determined, he may have and prosecute a writ of replevin for the liberation of the cattle thus impounded, in the form following:

**Commonwealth of Massachusetts.**

[Seal] S—— ss.

To the Sheriff of our County of S——, or his Deputy, or to either of the Constables of the Town of B. in said County,

GREETING.

WE command you, that you replevy [here insert a description of the beast or beasts impounded] belonging to P. D. of B. [addition] now distressed or impounded by S. P. of B. [addition] in the common pound in said B. (or in such other place as they may be restrained) and then deliver unto the said P. D. Provided, The same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said P. D. and summon the said S. P. to appear before I. S. one of our Justices of the Peace for our said county of S. at his dwelling-house in B. on the day of at of the clock in the noon, to answer unto the said P. D. in a plea of replevin, for that the said S. P. on the day of at a place called A. in B. aforesaid, unlawfully took and impounded the said , and the same unjustly detained to this day, to the damage of the said P. D. as he saith, the sum of shillings, as shall then and there appear, with other due damages: Provided, he, the said P. D. shall give bond, with sufficient surety or sureties, to the said S. P. in the sum of pounds, being double the value of the said beasts, to prosecute his said replevin to final judgment, and to pay such damages and costs as the said S. P. shall recover against him, and also to return the said in case such shall be the final judgment. And of this writ, with your doings hereon. and the bond you shall take, you are to make return to our said justice, on or before the said day of at o'clock. Witness I. S. our said justice, at B. in said county, this day of

*Anno Domini, 17* I. S.

And when the sheriff or his deputy are parties, the writ may be directed to a coroner; or where the sum does not exceed twenty pounds, it may be directed to a constable, and by him executed.

*Sect. 2. And be it further enacted,* That when it shall appear from the plea of the defendant in replevin, that the cattle were taken and impounded, damage feasant, or for the recovery of a penalty incurred for their being found going at large, out of the inclosure of the owner, in violation of law; and upon the issue it shall be determined that the cause of taking and detaining was lawful and justifiable, judgment shall, instead of a return of the catt.e, be rendered for the de-
How rendered if detained without a sufficient cause.

The defendant to recognize to enter his action at the Com. Pleas, or Sup. J. Court in certain cases.

Judgment to be rendered in case of neglect so to recognize.

Sect. 3. And be it further enacted, That when it shall appear from the plea or avowry of the defendant in replevin, that the sum demanded in damage for the taking and detaining exceeds eighty shillings,* or that the property of the beast taken is the question between the parties (in case the value exceeds eighty shillings*) or that the right to soil and freehold is coming in question; in every such case, the justice shall not proceed to try the issue, but shall order the defendant in replevin to recognize in a reasonable sum, with sufficient surety or securities, to the adverse party, to enter the said action at the next Court of Common Pleas or the Supreme Judicial Court, to be held in the same county, as the plaintiff in replevin shall then and there elect and choose, and to prosecute the same to effect; and if such defendant in replevin shall neglect or refuse thus to recognize, the justice shall render judgment against him in the same manner as if he refused to make answer to the same suit. And in case such defendant shall, after recognizing, fail of entering or prosecuting the same action, the plaintiff may enter and prosecute the action, or have his remedy on the recognizance, at his election.

Sect. 4. And be it further enacted, That when any goods or chattels shall be taken, distrained or attached, which shall be claimed by a third person, and the person thus claiming the same shall think proper to replevy them, in case such goods and chattels are of the value of more than four pounds,* he may take out and prosecute his writ of replevin from the clerk’s office of the Court of Common Pleas, in the county where the goods and chattels are thus taken, distrained or attached, in the form following, viz.

**Commonwealth of Massachusetts.**

[Seal.] S———, ss.

To the Sheriff of our County of S———, or his Deputy, Greeting.

[or if the sheriff or his deputy are defendants, then it may be directed to a coroner.]

WE command you, that you replevy the goods and chattels
following, viz. [here enumerate and particularly describe them] belonging to P. D. of B. [addition] now taken, detained or attached (as the case may be) by S. P. of B. [addition] at in B. aforesaid, and them deliver unto the said P. D.: Provided, The same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said P. D. and summon the said S. P. that he appear before our Justices of our Court of Common Pleas, next to be helden at B. within and for our county of S. on the Tuesday of to answer unto the said P. D. in a plea of replevin, for that the said S. P. on the day of at said B. unlawfully, and without any justifiable cause, took the goods and chattels of the said P. D. as aforesaid, and them unlawfully detained to this day, to the damage of the said P. D. as he says, the sum of pounds: Provided, he, the said P. D. shall give bond to the said S. P. with sufficient surety or sureties in the sum of , being twice the value of the said goods and chattels, to prosecute the said replevin to final judgment, and to pay such damages and costs, as the said S. P. shall recover against him; and also to return and restore the same goods and chattels, in like good order and condition as when taken, in case such shall be the final judgment; and have you there this writ, with your doings herein, together with the bond you shall take. Witness S. N. Esq. at B. this day of Anno Domini 17 E. P. Clerk.

And in case the plaintiff in replevin shall neglect to enter and prosecute the suit, the defendant may, upon complaint, have judgment for a return and restoration of the goods and chattels repleived, and the damages for the taking, to the amount of six per cent. on the bond, with reasonable costs, and a writ of return and restitution thereupon accordingly. And if, upon a trial of the issue, judgment shall be rendered for a return and restitution, the interest of six per cent. upon the penal sum of the bond shall be taken as a rule for estimating the plaintiff's damages, in case they were taken on execution. And when the cause of taking shall have been upon execution, the goods and chattels returned shall be held responsible for the space of twenty days after the return; and if on mesne process, until thirty days shall have expired, after final judgment thereon, in case judgment shall not then have been given; but if final judgment on the mesne process shall have been given before the return, then for the space of twenty days only after the return, to the end the creditor, at whose suit they were originally taken, may have a complete remedy, and the benefit of his attachment. And the monies recovered by way of damages, by any officer who has taken or attached at the suit of a creditor, shall be considered and taken as recovered to the use of the creditor, and when received, be paid over to him accordingly.

Sect. 5. And be it further enacted, That when the defendant in replevin cannot be found, an authentic copy of the writ of replevin, attested by the officer, being left at his house or place of usual abode, seven days if before a justice, and fourteen if
before the Court of Common Pleas, prior to the time of trial, shall be sufficient to oblige the defendant to answer to the suit.

Sect. 6. And be it further enacted, That the form of the writ of return and restitution to be issued, to carry a judgment of that kind, rendered before a Justice of the Peace, into execution, shall be in substance as follows, viz.

**Commonwealth of Massachusetts.**

[Seal.]  S—— ss.

To the Sheriff of our County of S——, or his Deputy,

Greeting.  

Writ of return. WHEREAS P. D. of B. in our county of [addition] lately repleived the beasts following, [here insert such description of them as they had in the writ of replevin] which S. P. of B. in our county of [addition] had unlawfully taken and unjustly detained, as the said P. D. suggested, and caused the said S. P. to be summoned before I. S. one of our Justices of the Peace, for our said county of S. to answer unto the said P. D. for such supposed unlawful taking and detaining, at a day now passed: And whereas upon the day of at B. aforesaid, upon a hearing of the cause of taking and detaining the said beasts, before our said justice, it appeared that the same taking and detaining was lawful and justifiable: Whereupon it was then and there considered, that the same beasts be returned, and restored to the said S. P. irrepleviable, and that the said S. P. recover against the said P. D. the sum of shillings damages, for his taking the same, by the said process of replevin, and the further sum of for his costs, arisen in the defence of the said suit, as by the record of our said justice, before him remaining, to us appears; whereof execution remains to be done: We command you, therefore, that you forthwith return and restore the same beasts unto the said S. P. And also that of the money of the said P. D. or of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied unto the said S. P. the aforesaid sums, being in the whole, with one shilling and six pence more for this writ, together with your own fees; and for want of such money, goods or chattels of the said P. D. to be by him shewn unto you, or found within your precinct, to the acceptance of the said S. P. for satisfying the aforesaid sums: We command you to take the body of the said P. D. and him commit unto our gaol in B. And we command the keeper thereof accordingly, to receive the said P. D. into our said gaol, and him safely to keep, until he pay the full sums abovementioned, with your fees, or that he be discharged by the said S. P. the creditor, or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein, unto our said justice, within sixty days next coming. Witness our said justice at B. the day of in the year of our Lord.

J. S.

Sect. 7. And be it further enacted, That when the sheriff or other officer, unto whom the writ of return and restitution shall be directed, shall not be able to find the beast or other proper-
ty in his precinct, which shall, by the same precept, be directed to be returned and restored irrepleviable, and the same shall appear, in writing, by the return of the officer thereon, the court from whence the same issued may, upon motion, grant a writ of withernam against the plaintiff in replevin, to compel a complete and specific performance of the judgment; which writ of withernam shall be in substance as follows, viz.

**Commonwealth of Massachusetts.**

[Scal.] S——— ss.

*To the Sheriff of our County of S———, or his Deputy,*

Greeting.

WHEREAS P. D. of B. in our county of S. [addition] lately replevied the beasts following, viz. [here insert such description of them as they had in the writ of replevin] and which were, at the time of the replevy, of the value of which S. P. of B. aforesaid, had unlawfully taken and detained, as the said P. D. suggested, and caused the said S. P. to be summoned before I. S. one of our Justices of the Peace for our said county of S. to answer unto the said P. D. for such supposed unlawful taking and detaining, at a day now passed:

And whereas upon the day of at B. aforesaid, upon a hearing of the cause of taking and detaining the said beasts, by our said justice, it was determined that the same taking and detaining was lawful and justifiable: Whereupon it was then and there considered, that the beasts be returned and restored to the said S. P. irrepleviable, and for his damages and costs; and afterwards, on the day of our writ of return and restitution issued, in due form of law, directed to the sheriff of our said county of S. or his deputy, to return the same accordingly: Which writ of return and restitution was delivered to C. D. to execute accordingly; who, on the day of returned thereon, that [here insert the return made by the officer, of his inability to return the beast]

And we, being desirous that the said P. D. should not, by his false suggestions and pretensions, any longer detain the beasts so by him repleved as aforesaid, command you forthwith to take the beasts of the said P. D. of like kind and value, if any he hath to be found in your precinct, in withernam, and in default thereof, any other of his goods and chattels, to the full value, in withernam, and them deliver unto the said S. P. to be by him kept, used and improved, until the said P. D. shall restore him the beasts he took from him, by our writ of replevin, as aforesaid; and also that of the money of the said P. D. or of his goods or chattels, to be found within your precinct, at the value thereof in money, you cause to be paid and satisfied unto the said S. P. three shillings for this writ, together with your own fees for executing the same. Hereof fail not, and make return of this writ, with your doings herein, unto our said justice, within sixty days next coming.

Witness our said justice, at B. the day of in the year of our Lord.

I. S.

Sect. 3. And be it further enacted, That when the writ of return and restoration, or writ in withernam, shall issue from
any other court of law, or for any other property than beasts, the court from whence the same shall issue shall so vary the form as to them shall appear expedient to carry the same into full force and effect, as the nature and circumstances of the case shall require.

This Act to be in force from and after the twentieth day of October, one thousand seven hundred and eighty-nine. [June 24, 1789.]

Chap. 27. An Act to enable Dudley Atkins, Esquire, to take the surname of Tyng. [Jan. 16, 1790.]

Chap. 28. An Act for the Protection and Security of the Sheep and other Stock on Tarpaulin-Cove-Island, otherwise called Naushon-Island, and on Nemmessenet-Island, and several small islands contiguous, situated in the County of Dukes' County. [Jan. 30, 1790.]

Chap. 29. An Act in addition to an Act, entitled, "An Act to prevent the Destruction, and to regulate the Catching of the Fish called Salmon, Shad and Alewifes, in the rivers and streams in the Counties of Cumberland and Lincoln, and to repeal all Laws heretofore made for that purpose." [Feb. 2, 1790. Add. act—1793 ch. 45. Both repealed—1797 ch. 70.

Chap. 30. An Act for repealing an Act, entitled, "An Act establishing Naval Offices in this Commonwealth, and for the repealing Laws made for that purpose," and for repealing the several Laws regulating the Fees and Forms in that Office. [Feb. 6, 1790.]

Chap. 31. An Act ascertaining the Boundary Line between the Towns of Egremont and Alford, in the County of Berkshire. [Feb. 8, 1790.]

Chap. 32. An Act for repealing an Act made and passed in the year of our Lord one thousand seven hundred and eighty-four, entitled, "An Act in addition to an Act for incorporating Jonathan Gardner, jun. and others therein named, into a Society by the name of The Marine Society at Salem, in the County of Essex, in the Province of the Massachusetts-Bay, in New-England;" and also for altering the said Act of Incorporation. [Feb. 8, 1790.]

Chap. 33. An Act to empower the Proprietors of the South Meeting-House in Salem, where the Reverend Daniel Hopkins officiates, to raise money to defray Ministerial and other necessary Charges. [Feb. 15, 1790.]

Chap. 34. An Act repealing an Act passed in July, in the year of our Lord one thousand seven hundred and forty-one, entitled, "An Act to prevent unnecessary Petitions to the Great and General Court." [Feb. 17, 1790.] [Note: The act of 15 Geo. II. above repealed, gave costs to respondents, whenever petitions or complaints were dismissed as vexatious or causeless, and it was so expressed in the vote of dismissal. See Temporary Province Acts, page 13.

Chap. 35. An Act for incorporating that Part of the Town of Swanzey, known by the name of Shewemt, in the County of Bristol, into a separate Town by the name of Somerset. [Feb. 20, 1790. Add. act—1793 ch. 9.]

Chap. 36. An Act for regulating the Manufacture of Nails made for Sale or Exportation, within this Commonwealth, and repealing all Laws heretofore made for that purpose. [Feb. 22, 1790.] Repealed—1799 ch. 41.

Chap. 37. An Act to explain a certain Clause in an Act passed in the year of our Lord one thousand seven hundred and eighty-three, entitled, "An Act to empower the Proprietors of the Meeting-House in the East Parish in Salem to raise money by a Tax on the Pews and Seats in the said Meeting-House, to support a Colleague to their present minister, and making Provision for the Dissolution of the said Parish." [Feb. 22, 1790.]

Chap. 38. An Act to set off John Tuller from the Town of Sheffield, in the County of Berkshire, and annex him to the Town of Egremont. [Feb. 22, 1790.]

Chap. 39. An Act to prevent the Destruction of the Fish called Alewifes in Taunton Great River (so called) in the County of Bristol, and to regulate the Catching of said Fish therein for the future. [Feb. 22, 1790.] Repealed—1792 ch. 62. Add. act—1791 ch. 55.
An Act in addition to, and for the explanation of an Act passed in the year of our Lord one thousand seven hundred and seventy-nine, entitled, "An Act for setting off a part of the inhabitants of the Town of Methuen, in the County of Essex, into a separate Parish." [Feb. 23, 1790.]

An Act for incorporating certain persons for the purpose of erecting and maintaining several Booms in Merrimack-River, and for stopping and securing the Logs and Lumber that shall be drifted down the said river. [Feb. 24, 1790.]

An Act to provide for the safe Keeping all Prisoners, committed under the Authority of the United States, in the several Gaols within this Commonwealth.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the keepers of the several gaols within this Commonwealth shall, under the like penalties as by law are provided for the custody and safe keeping the prisoners thereof, take custody of, and safely keep all prisoners committed, under the authority* of the United States, until they shall be discharged by due course of the laws thereof.

Sect. 2. And be it further enacted, That the several treasurers of the respective counties within this Commonwealth, and their successors, be and they are hereby authorized and directed, to receive for the use of their respective counties, to defray the county charges arising therein, all such monies as the United States have agreed to pay for the use and keeping of such gaols, and to account for the same according to law. [Feb. 26, 1790.] Explanatory act—1813 ch. 97.

An Act empowering the Town of Pembroke to regulate and order the Taking and Disposing of the Fish called Alewives, within the Limits of the said Town. [Feb. 26, 1790.] Add. act—1811 ch. 72.

An Act for establishing Salaries of a fixed and permanent value, for the Justices of the Supreme Judicial Court. [Feb. 27, 1790.] Repealed—1806 ch. 3.

An Act making Compensation to the Attorney-General of this Commonwealth for his Services.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing this Act, there shall be allowed and paid out of the treasury of this Commonwealth, annually, the sum of three hundred pounds, lawful money, to the attorney-general, in full compensation for his services, to be paid in quarterly payments, as the same shall become due.

Sect. 2. And be it further enacted by the authority aforesaid, That in all bills of costs, in criminal prosecutions before the Supreme Judicial Court in this Commonwealth, the sum of fifteen shillings shall be taxed for the fees of the attorney-general, without any allowance of travel; and all fees thus received by the said attorney-general shall be accounted for by him, annually, with the Treasurer of this Commonwealth. [Feb. 20, 1790.] See 1813 ch. 131.

An Act authorizing Judges of Probate to dismiss Guardians from their Guardianship in certain Cases.

WHEREAS the several Judges of the Probate of wills in this Commonwealth are by law authorized to appoint guardians to minors in certain cases, persons who spend their estates by excessive drinking, idleness or debauchery, idiots, non compos mentis or lunatic persons; and doubts have arisen whether the said Judges of Probate have any authority to displace such guardians in any cases whatever; which may operate to the disadvantage not only of the bondsmen, but of the ward also:

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing thi-
Judge of Probate authorized to dismiss guardians, in certain cases. Proviso. Act, each and every Judge of Probate within this Commonwealth be and hereby is fully authorized to dismiss any such guardian, appointed by himself or his predecessor in that office; whenever it may appear to the said judge that necessity or expediency may require the same, and to appoint some other person guardian in his place. Provided, That no such guardian shall be dismissed, as aforesaid, from his guardianship, before he shall have had notice, in writing, given him by such Judge, fourteen days before the time of hearing, to appear and shew cause why he should not be so dismissed. [March 1, 1790.] Repealed—1817 ch. 190, § 45.

Chap. 47. An Act for raising the sum of ten thousand pounds by Lottery, for the use of this Commonwealth. [March 2, 1790.]


Chap. 49. An Act for apportioning and assessing a Tax of twenty-five thousand three hundred and sixty pounds three shillings and five pence, to answer the Exigencies of Government; and also four thousand one hundred fifty-five pounds twelve shillings, to replace the same sum drawn out of the Treasury to pay the Members of the House of Representatives for their Attendance the two last Sessions of the General Court; also for assessing a further sum of eleven pounds fourteen shillings, set to the Town of Bowdoin; and the sum of thirty-six pounds nineteen shillings and eight pence, set on the Lands of the Heirs and Assigns of the late Brigadier Waldo. [March 5, 1790.]

Chap. 50. An Act empowering Commissioners appointed to receive and examine the Claims of the Creditors to Insolvent Estates, to require of, and administer to them an Oath or Affirmation, the better to discover the truth of their claims.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing of this Act, the commissioners who are or shall be appointed by any Judge of Probate, to receive and examine the claims of the creditors to the estate of any person deceased, when represented insolvent, shall be and are hereby authorized and empowered to examine, by the oath or affirmation of the creditor, the truth of any claims presented; and to that end, the said commissioners, when they are sitting by virtue of such commission, and when it shall be adjudged expedient by a majority of them, may require of such creditor an oath, or, being of the persuasion called Quakers, an affirmation, to be administered by any one of the said commissioners in manner following, that is to say:

YOU do swear (or affirm, as the case may be) that you will make true answers to the questions which shall be asked you by the commissioners relative to your claim against the estate of (naming the deceased insolvent debtor) now under consideration. So help you God, (or, this you do under the pains and penalties of perjury, as the case may be.)

And thereupon such commissioners may inquire of the truth of any writing, demand, or the charges in any accounts exhibited as a claim against such insolvent estate, and whether the same and every part of such claim remains actually due and unpaid, and may make such other questions relative thereto, as shall be material and tending to discover the truth of such claim.

Sect. 2. And be it further enacted by the authority aforesaid, That any person who shall take such oath or affirmation, having been administered as aforesaid, and shall thereupon wilfully and corruptly make any false answer or answers to any
question or questions material for the determination of the
truth of the claim, in proof of which such oath or affirmation
shall have been taken, and shall be thereof duly convicted,
shall be adjudged guilty of the crime of perjury, and shall be
liable to any and all of the pains and penalties which are or
shall be by law inflicted for the punishment of such crime.

[March 3, 1790.]

An Act to regulate the Catching of Salmon, Shad, and Alewives, and to prevent
Obstructions in Merrimack River, and in the other rivers and streams running
into the same within this Commonwealth, and for repealing several Acts hereto-
fore made for that purpose. [March 4, 1790.] Add. acts—1792 ch. 78: 1793
ch. 62: 1802 ch. 51: 1803 ch. 158: 1804 ch. 134: 1806 ch. 28: 1811 ch. 175:
1812 ch. 34: 1817 ch. 16: 1819 ch. 4, 20.

An Act in addition to an Act, entitled, “An Act for the better regulating of the
Indian, Mulatto and Negro Proprietors and Inhabitants of the Plantation called
Marshpee, in the County of Barnstable.”

WHEREAS it appears that an Act, entitled, “An Act for the
regulation of the Indian, mulatto and negro proprietors and inhab-
habitants of the plantation called Marshpee, in the county of
Barnstable,” proves insufficient for the well regulating said
plantation, in many instances:

Sect. 1. Be it enacted by the Senate and House of Represent-
vatives, in General Court assembled, and by the authority of the
same, That the overseers, guardian or guardians of the said
plantation, for the time being, shall have full power and au-
thority to appoint, annually, one constable, two fence-viewers,
two surveyors of highways, two hogreeves, and one warden,
being all inhabitants of the said plantation; whose duty it shall
be to carry into execution the laws of the Commonwealth with-
in the said plantation, as fully as the like officers chosen by the
several towns in this Commonwealth are by law enabled to do
within their respective towns; and said officers shall be sworn
before some Justice of the Peace in the said county, faith-
fully to perform the duties required of them in their respective
offices.

And whereas several persons have entered upon the lands be-
longing to the said proprietors, and set up houses upon the same,
without paying rents therefor, to the great injury of said proprie-
 tors:

Sect. 2. Be it further enacted, That any person or persons,
not being a proprietor of said plantation, who shall enter upon
said plantation to reside there, or who are now residents there,
who shall refuse to pay to the guardian or guardians of said
plantation, for the benefit of the proprietors thereof, such sum
or sums of money, or the value thereof in some other way, for
the rents of such lands as they respectively improve, as, in the
opinion of the said guardian or guardians, shall be just and
equitable; every person so refusing shall, if required by the
said guardian or guardians, be removed from the said planta-
tion, by warrant, to be issued by some Justice of the Peace for
the said county (upon complaint of said guardian or guar-
dians.) Provided however, That such complaint shall appear
reasonable to the justice to whom the complaint is made; and
the said warrant shall be directed to the constable of said planta-
tion; and if the person so removed shall again return, with in-

jury, and pun-
ished as such.

Chap. 51.
1783 ch. 21 &c.

Chap. 52.
1783 ch. 38.

Preamble.

Guardians au-
thorized to ap-
point officers.

Residents re-
suming to com-
pense for priv-
ileges—to be
removed at the
will of the
guardians.

Provido.
Forfeiture.

An Act for repealing the last Paragraph of an Act passed in the year of our Lord one thousand seven hundred and eighty four, entitled, "An Act for erecting a District in the County of Suffolk by the name of Dover," and for annexing the said District of Dover, with the Town of Medfield, for the purpose of choosing Representatives for the future. [March 4, 1790.] See 1790 ch. 28.

An Act for setting off Benjamin Chase, his family and estate, from the Town of Freeport, and annexing them to the Town of Brunswick. [March 4, 1790.]

An Act granting a Lottery for the purpose of securing and fortifying the Beach on the southwesterly side of the Harbour of Marblehead, and appointing Trustees to apply the proceeds. [March 4, 1790.]

An Act for naturalizing John Jarvis, and others therein named. [March 6, 1790.]

An Act limiting the Operation of Lotteries. [March 6, 1790.]

An Act authorizing particular Persons, in certain Cases, to prosecute and defend Suits at Law.

WHEREAS it has been represented to this Legislature, that doubts have arisen in some of the courts of judicature within this Commonwealth, respecting the right of persons to constitute attorneys in certain cases, other than those which have been admitted in the usual form prescribed by law; for the removal of which doubts,

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every
citizen be and hereby is authorized to appear in any court, and before any tribunal, judge, Justice of the Peace or magistrate, to prosecute and defend his suit or action, by himself or by any person of a decent and good moral character, whom he shall call to his aid or appoint for that purpose; and that any person of such decent and good moral character, who shall produce in court a power, or letter of attorney, specially for that purpose, from any person whomsoever, shall have full authority, though his principal be absent, to prosecute and defend any suit or matter, wherein his principal shall be concerned, to final judgment and execution; and to plead, implead or manage the same case as fully as if such person, so authorized, was an attorney of such court, and admitted and sworn in usual form as prescribed by law, and agreeably to the rules of such court. [March 6, 1790.]

Chap. 50. 1790 ch. 25.


Chap. 1.

An Act altering the Time of holding the Supreme Judicial Court at Salem, within and for the County of Essex. [June 4, 1790.]

Chap. 2.

An Act for incorporating the southerly part of the Town of Plympton, in the County of Plymouth, into a Town by the name of Carver. [June 9, 1790.] Add. act—1792 ch. 31.

Chap. 3.

An Act to incorporate a Society by the name of The Episcopal Protestant Society in Marshfield. [June 9, 1790.]

Chap. 4.

An Act for granting to the United States of America the several public Light-houses within this Commonwealth.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there be and hereby are granted unto the United States of America the light-house situate on Light-House-Island, in the harbour of Boston, together with the lands and tenements thereunto belonging, the property of this Commonwealth, with the jurisdiction of the same; also, the two light-houses situate on Thacher's Island, so called, in the county of Essex, together with the lands and tenements thereunto belonging, the property of this Commonwealth, with the jurisdiction of the same; also, the two light-houses situate on the north end of Plumb-Island, in the county of Essex, together with the lands and tenements thereunto belonging, the property of this Commonwealth, with the jurisdiction of the same; also, the light-house situate on Portland-Head, in the county of Cumberland, together with the lands and tenements thereunto belonging, with the jurisdiction of the same; also, the light-house situate on Sandy-Point, so called, in the county of Nantucket, together with the lands and tenements thereunto belonging, the property of this Commonwealth, with the jurisdiction of the same; and the several light-houses aforesaid, together with the lands and tenements thereunto severally belonging, the property of this Commonwealth, with the juris-
diction of the same, are hereby ceded to and vested in the United States of America; and also the four following buoys at the mouth of Merrimack-River, one on the Hum-Sands; another on the Sunken-Rocks; another on the Ganway-Rock, and the fourth on the Half-Tide-Rocks, together with the beacon, on the spit of sand, near the light-house, in the harbour of Boston.

Sect. 2. Provided nevertheless, and be it further enacted, That if the United States shall, at any time hereafter, neglect to keep lighted, and in repair, any one or more of the light-houses aforesaid, that then the grant of such light-house or light-houses, so neglected, shall be void and of no effect: Provided also, That all civil and criminal processes, issued under the authority of this Commonwealth or any officers thereof, may be executed on any of said lands or in any of said buildings, in the same way and manner as if the jurisdiction had not been ceded as aforesaid:—And provided further, That if the United States shall, at any time hereafter, make any compensation to any one of the United States for the cession of any light-house heretofore, or which may be hereafter made to the United States; that then, like compensation be made to this Commonwealth by the United States, for the cession of the light-houses aforesaid, in proportion to their respective values. [June 10, 1790.]

Chap. 5. An Act to empower the Town of Fryeburg to exchange Part of the Parishage Land for other Land in said Town. [June 14, 1790.]


Chap. 7. An Act in addition to an Act, entitled, "An Act to set off to the Patentees and other Purchasers certain lands on the Island of Chapiquiddick, in the County of Dukes County, and finally to adjust and determine all Disputes between the said Patentees and other Purchasers, and the Indians on the said Island; and to prevent Cattle, Horses, Sheep, Goats and Swine from going at large on the said island at certain seasons of the year." [June 19, 1790.] Further add. act—1796 ch. 14.

Chap. 8. An Act for the Preservation and Increase of the Fish called Alewives, in Acque-net-River, in the Town of New-Bedford, in the County of Bristol, and for regulating the taking the said fish in the said river. [June 19, 1790.]

Chap. 9. An Act to set off John Tippet from the second to the first Parish in Methuen. [June 21, 1790.]

Chap. 10. An Act for determining at what Times and Places the several Courts of General Sessions of the Peace and the Courts of Common Pleas shall be holden, within and for the several Counties within this Commonwealth, and for repealing all Laws heretofore made for that purpose. [June 21, 1790.]

Chap. 11. An Act for incorporating a number of the inhabitants of the Towns of New-Gloucester and Gray, in the County of Cumberland, into a distinct and separate religious Society. [June 23, 1790.] See 1802 ch. 130.

Chap. 12. An Act in addition to an Act made and passed Februany the fourteenth, one thousand seven hundred and eighty-nine, entitled, "An Act for rendering Processes in Law less expensive." [June 24, 1790.] Expired.

Chap. 13. An Act for the Relief of the Town of Charlestown. [June 24, 1790.]

Chap. 14. An Act to repeal, in case of the Assumption of the State Debts by the Congress of the United States, an Act, entitled, "An Act to raise a public Revenue by Excise, and to regulate the Collection thereof," passed the third day of March, Anno Domini seventeen hundred and ninety. [June 24, 1790.]
An Act to repeal certain Parts of an Act, entitled, "An Act to raise a public Revenue by Excise, and to regulate the Collection thereof," passed the third day of March last. [Sept. 17, 1790.]

An Act to set off Peter Larkin, with his family and estate, from the Town of Lancaster to the District of Berlin. [Feb. 8, 1791.]

An Act to repeal, in Part, an Act, entitled, "An Act to prevent the Destruction of Fish, called Shad and Alewives, in Ten and Three Miles Rivers, in the County of Bristol." [Feb. 11, 1791.]

An Act to incorporate the Plantation of Cambden, in the County of Hancock, into a Town by the name of Cambden. [Feb. 17, 1791.]

An Act to incorporate and establish a Society by the name of The Humane Society of the Commonwealth of Massachusetts. [Feb. 23, 1791.]

An Act to suspend, in certain cases, the Operation of an Act passed on the thirteenth day of February, Anno Domini one thousand seven hundred and eighty-seven, entitled, "An Act for the Limitation of Personal Actions, and for avoiding Suits at Law." [Feb. 23, 1791.] Further suspending act—1792 ch. 62.

An Act to set off the northwesterly Corner of Framingham, in the County of Middlesex, and to annex the same to the Town of Marlborough, in the same County. [Feb. 23, 1791.]


An Act to incorporate the Plantation of Kenduskee into a Town by the name of Bangor. [Feb. 25, 1791.]

An Act setting off Part of the County of Hancock, and annexing it to the County of Lincoln. [March 3, 1791.]

An Act to establish an Academy in the Town of Hallowell, by the name of Hallowell Academy. [March 5, 1791.] Add. act—1792 ch. 45.

An Act for incorporating a certain Part of the Town of Lee into a School District by the name of The Hopland School District. [March 7, 1791.] Add. acts—1796 ch. 90: 1798 ch. 7.

An Act repealing Part of an Act, entitled, "An Act providing a speedy Method for doing Justice when, through mistake, Executions are levied on real estate not belonging to the debtors."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the provisional clause in said Act, declaring that no application by any creditor shall be sustained after the expiration of two years, from the time of extending and levying any execution, through mistake, upon estate that did not belong to the debtor, be and hereby is repealed and made null and void. [March 7, 1791.]

An Act in addition to, and to amend and explain an Act passed the seventh day of July, seventeen hundred and eighty-four, entitled, "An Act for erecting a District in the County of Suffolk, by the name of Dover." [March 7, 1791.]

An Act for regulating the Fishery in Connecticut-River. [March 7, 1791.] Another act—1812 ch. 103.

An Act to prevent Damage being done to the Beach and Meadows on the south side of the Town of Edgarton, in the County of Dukes County, and to the Creeks adjoining thereto, by Cattle, Sheep and Horses passing over the same, and for preserving the Fish in the said creeks. [March 7, 1791.] Expired. Another act—1793 ch. 33.

An Act for incorporating a number of inhabitants of the Town of Windham, in the County of Cumberland, into a religious Society. [March 7, 1791.]

An Act for incorporating a number of the inhabitants of the Town of Gorham, in the County of Cumberland, into a distinct Society. [March 7, 1791.]
Chap. 33. An Act for incorporating the members of the Episcopal Church in the Town of Portland, into a religious Society. [March 7, 1791.] Add. acts—1801 ch. 63: 1819 ch. 64.

Chap. 34. An Act to incorporate a number of the inhabitants in the Town of Taunton into a Parish by the name of The First Congregational Society in the Town of Taunton. [March 8, 1791.]

Chap. 35. An Act appointing Commissioners, on the Part of this Commonwealth, for ascertaining the Boundary Line between this Commonwealth and the State of Connecticut. [March 8, 1791.]

Chap. 36. An Act appointing commissioners on the Part of this Commonwealth, for ascertaining the boundary line between this Commonwealth and the State of Rhode-Island. [March 8, 1791.]

Chap. 37. An Act for regulating the Alewife Fishery in the Town of Bridgewater, in the County of Plymouth, and for repealing all Laws heretofore made for that purpose. [March 9, 1791.] Repealed—1796 ch. 39.

Chap. 38. An Act for altering the Times for holding the Courts of General Sessions of the Peace and Courts of Common Pleas, now required by Law to be held annually in the month of March, in the Counties of Hancock and Washington. [March 9, 1791.]

Chap. 39. An Act in addition to an Act, passed in the year of our Lord one thousand seven hundred and eighty-nine, entitled, "An Act determining what Transactions shall be necessary to constitute the Settlement of a Citizen, in any particular Town or District."

Preamble. WHEREAS in and by an Act, entitled, "An Act determining what transactions shall be necessary to constitute the Settlement of a citizen, in any particular Town or District," passed in the year of our Lord one thousand seven hundred and eighty-nine, it is among other things provided, that persons of certain descriptions, in the said Act mentioned, who shall come into, and reside in any town or district, for the space of two years, without being warned to depart the same, shall be deemed and taken to be inhabitants of such town or district:

And whereas it appears expedient, that the time of giving notice and warning, to depart as aforesaid, should be extended and prolonged: Therefore

"Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person shall be deemed, or taken to be an inhabitant of any town or district, by virtue of residence therein, unless he or she shall have resided in the same, for the space of three* full years, without being warned to depart as aforesaid; the above recited act notwithstanding. [March 9, 1791.] Further add. acts—1791 ch. 41: 1792 ch. 69. All repealed—1793 ch. 34.

Chap. 40. An Act in addition to, and to explain an Act passed the tenth day of March, in the year of our Lord one thousand seven hundred and eighty-four, entitled, "An Act for the better managing of Lands, Wharves, and other real Estate lying in common."

Preamble. WHEREAS doubts have arisen upon the Act, entitled "An Act for the better managing of lands, wharves, and other real estate lying in common," whether those who have last held and improved in common, and as a proprietary, any lands, wharves, or other real estate, are and shall, after the final division of the same, be liable for any debts which had been, or shall be contracted in their corporate capacity, before such division, and whether such capacity is, or shall be continued for other purposes, respecting the concerns of such proprietary:

Sect. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That notwithstanding the final division of any lands, wharves, or other real estate lying in common, and which had been, or shall have been held and improved as a proprietary, the last proprietors, or holders in common, shall continue in their corporate capacity, until all debts and taxes due to such proprietary are collected and received, and until all their contracts

The last proprietors to continue a corporate body after a division; until—
and agreements, made prior to such final division, shall be performed; and are and shall be liable and capable, in and by the same name and capacity, as before such division, to sue and be sued, and by their agents to pursue and defend, in all matters and demands, respecting such proprietary, until final judgment and execution; and shall and may call and hold meetings, and choose all necessary officers, and may vote, assess, levy and collect all reasonable rates and assessments, in like manner, form and proportion, as before such division such proprietary could or might have done.

Sect. 2. *And be it further enacted by the authority aforesaid,*

That where, after such final division of any lands or other real estate, which have been or shall have been held as a proprietary, the proprietors making such division have ordered and delivered, or shall order and deliver the record of their proprietary into the custody of the town-clerk, in which such land or other real estate, or part thereof, may lay; the proprietors, who shall hold any meeting for the purposes before mentioned, may recall the said record, and may cause the clerk then appointed and sworn, or the town-clerk, to whom such records have been committed, to record all votes and proceedings which shall be had at any meeting as aforesaid, and copies of the same may be certified as by law is provided for certifying any other part of such record. *Provided nevertheless,* that the proprietors aforesaid shall not continue to act in their corporate capacity for more than ten years after the final division of their lands or other real estate, nor shall any suit brought against them be sustained, unless commenced within six years from the passing this Act, or from the time such right of action shall accrue, any thing in this Act to the contrary notwithstanding.

*March 9, 1791.*

An Act for regulating the Manufacture of Nails within this Commonwealth, and for repealing all Laws heretofore made for that purpose. *[March 10, 1791.]*

Add. acts—1794 ch. 52: 1795 ch. 77. All repealed—1799 ch. 64.

Chap. 41.

An Act for the Relief of poor Prisoners confined in Gaol for Taxes.

**Sect. 1.** *BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,*

That when any person standing committed to prison by virtue of any warrant for the collection of any tax, rate or assessment, shall complain that he or she hath not estate sufficient to support him or herself in prison, the gaoler or keeper of such prison shall, on such complaint, apply to one of the Justices of the Peace, within and for the county in which such prison is, who shall thereupon make out a notification, in writing, under his hand and seal, thereby signifying to the Assessors of the town, district, plantation or parish, where such tax, rate or assessment was made, and also to the constable or collector who executed such warrant, such prisoner’s desire of taking the privilege and benefit, and of the time and place appointed for the intended caption, of the oath or affirmation allowed by this Act; which notification shall be served on such assessors, and constable or collector, by leaving an attested
copy thereof, at the office of such assessors, or at the usual place of abode of any one of them; and also at the usual abode of such constable or collector, at least thirty days before the time appointed for the taking the said oath or affirmation, that they may be present, if they see cause.

Sect. 2. And be it further enacted, That any two Justices of the Peace and of the quorum, of the same county, being disinterested, shall be and hereby are authorized and required, at the time and place appointed in such notification, and upon the examination of the return thereof, and a full hearing of the parties who shall and may appear thereupon, and no sufficient cause to the contrary, in the opinion of either of the said Justices, being shewn, and after due caution and examination of such prisoner, to proceed to administer an oath, or if he be of the sect called Quakers, an affirmation, in the form following, to wit:

I do solemnly swear before Almighty God (or I do affirm, as the case may be) that I had not, at the time of my imprisonment, by (naming the said collector or constable) nor have I, at this time, any lands, goods, money or demands, whereby to satisfy the sum at which I am assessed in the list or warrant of taxes committed to him to collect, and for which I am now holden in prison, or for the payment of any part of that sum, my necessary apparel and some other articles not liable to be distrained for taxes, and what has been expended for my necessary support while in prison, only excepted; nor have I, at any time before or since my said imprisonment, disposed or intrusted, to any person or persons, any estate, either real or personal, whereby to avoid such payment. So help me God: (or this I do under the pains and penalties of perjury, in case of affirming as aforesaid.)

Which oath or affirmation being administered by the said justices to, and taken by such prisoner, and a certificate thereof made, under the hands and seals of the justices administering the same, to such gaoler or prison-keeper, he shall thereupon set such prisoner at liberty, if he or she is in prison for no other cause; and the body of such prisoner shall not be held in prison any longer upon such warrant or commitment. Which certificate to be made by the justices as aforesaid, shall be in the form following, to wit:

S——— ss. To Keeper of the Gaol at C——.

WE, the subscribers, two of the Justices of the Peace and of the quorum, for the county of S. hereby certify, that A. B. a poor prisoner, confined by warrant for taxes, in the gaol at C. aforesaid, hath caused the assessors of the town, district or parish (as the case may be) by virtue of whose warrant the said was so confined, and also (naming the said constable or collector who executed such warrant) to be notified according to law, of the said A. B.'s desire of taking the benefit of an Act, entitled, "An Act
for the relief of poor prisoners confined in gaol for taxes; and no sufficient cause to the contrary being shewn—We have, after due caution and examination of the said A. B. administered to him or her the oath or affirmation prescribed in the Act aforesaid. Witness our hands and seals, this day of Anno Domini, 17

And the said justices, or either of them (if only one be present) may adjourn to a future day, if he or they shall judge it to be necessary.

Sect. 3. And be it further enacted, That any person who shall take the oath, or make the affirmation aforesaid, having had at the time of his or her commitment as aforesaid, or afterwards, and before or at the time of taking such oath or affirmation, any lands, goods, money or demands, other than therein is excepted, and whereby he or she might have discharged the said rates or taxes, or any part thereof, or having disposed of or intrusted his or her estate, contrary to the tenor of the said oath, and shall be thereof duly convicted before the Justices of the Supreme Judicial Court of this Commonwealth, he or she, so therein offending, shall suffer the pains and penalties of wilful perjury, which are or shall be in other cases provided. And in case such prisoner, at the time of the intended caption, shall not take the said oath or affirmation, or not be admitted thereto by the said justices, he or she shall be remanded back to prison, and shall not be entitled to the benefit of this Act, unless upon a repetition of the proceedings aforesaid, the oath or affirmation aforesaid shall be administered.

Sect. 4. And be it further enacted, That all and every warrant for taxes as aforesaid, against such prisoner, shall, notwithstanding such discharge as aforesaid, be and remain good and effectual in law, to all intents and purposes, against any estate whatsoever, which may then or at any time afterwards belong to him or her (his or her wearing apparel, and other articles not liable to be distrained for taxes, only excepted) and may be carried into execution for the satisfaction of such taxes, out of such estate, in such sort and manner as might have been done in case the said prisoner had never been committed as aforesaid; or the constable or collector, who shall make such commitment, or the inhabitants of the town or place, where such tax was assessed, shall and may have remedy therefor, by a suit or action, as for the proper debt of such constable, collector or inhabitants; any judgment to be recovered thereupon, to be satisfied only from the goods or estate of such poor person, who shall and may be relieved by this Act.

Sect. 5. And be it further enacted, That when any person standing committed as aforesaid, for any tax due to this Commonwealth, or to the county, shall be liberated from such commitment, by virtue of this Act, in every such case, the town, plantation or district, from whose assessors the warrant, by virtue of which such prisoner was committed, was issued, shall be holden to pay the whole tax required of such town, plantation or district, by law, such liberation notwithstanding.
Sect. 6. Provided, and be it further enacted, That when any person who shall be imprisoned for the non-payment of the proportion of any tax which shall be assessed after the first day of April next, shall be discharged from confinement, by virtue of this Act, the collector or constable making such imprisonment shall not be discharged of the proportion which was due from such person, but shall be held to pay the same, unless such imprisonment shall be made within one year, next after the commitment of such tax to such collector or constable, or unless the inhabitants of such town or place, in legal town-meeting, shall see fit to abate the same to such collector or constable. [March 10, 1791.]

Chap. 43. An Act for establishing an Academy in the Town of Berwick by the name of Berwick Academy. [March 11, 1791.]

Chap. 44. An Act for repealing an Act passed in the year of our Lord one thousand seven hundred and eighty-four, entitled, "An Act to incorporate the Church and Congregation in the District of Orange, in the County of Hampshire, wherein the Rev. Mr. Emerson Foster is the present minister, into a Society by the name of The Congregational Society of Orange." [March 11, 1791.]

Chap. 45. An Act for regulating the Taking of Shad, Alewives and other Fish in their passage through Neponset-River and the several streams to the ponds called Punkapog and Massapog. [March 11, 1791.] Repealed—1796 ch. 83.

Chap. 46. An Act to incorporate the north Part of the Town of Winthrop, in the County of Lincoln, with the Inhabitants thereon, into a Town by the name of Readfield. [March 11, 1791.]

Chap. 47. An Act for naturalizing John White and others. [March 11, 1791.]

Chap. 1. An Act for establishing the Boundary Line between the Towns of Brookfield and New-Braintree, in the County of Worcester. [June 10, 1791.] Add. act—1791 ch. 54.

Chap. 2. An Act to set off John Ladd from the first to the second Parish in Methuen. [June 10, 1791.]

Chap. 3. An Act for the Preservation and Encouragement of the Fur Trade within this Commonwealth.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person or persons shall hereafter, in either of the months of June, July, August or September, take, or wilfully kill, any otter, beaver, minks, sable or martin, fisher or black-cat, leusifee, musquash or wolfelin, on pain of forfeiting and paying a sum not less than twenty shillings, nor more than three pounds, to and for the use and benefit of the person or persons who shall or may sue or prosecute for the same, together with full costs of suit; to be recovered by action of debt, in any court of this Commonwealth competent to try the same: Provided, That all prosecutions or suits for any breaches of this Law shall be commenced within two years from the time when the offence was committed, and not otherwise. [June 10, 1791.]

Chap. 4. An Act altering the Place of holding the Courts of General Sessions of the Peace and of Common Pleas, in and for the County of Cumberland, now by law to be held at Portland, in that County, in the month of January annually. [June 11, 1791.]

Chap. 5. An Act for altering the Time of holding the Court of General Sessions of the Peace and the Court of Common Pleas, within and for the County of Plymouth, from the last Tuesday of July to the second Tuesday of August. [June 15, 1791.]
An Act to set off Julius Allis from the Town of Deerfield, in the County of Hampshire, and to annex him to the Town of Conway. [June 17, 1791.]

An Act for incorporating certain persons for the purpose of opening a Canal from the Head of New-Meadow-River to Merry-Meeting-Bay. [June 17, 1791.]
Add. act—1792 ch. 67.

An Act to ascertain the Quality of Pot and Pearl Ashes, and for the more effectual Inspection of the same.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person or persons whatsoever shall ship any pot or pearl ashes, for exportation, before he shall first have submitted the same to the view and examination of the inspector or his deputy, who shall be appointed as hereinafter mentioned; who shall start the same out of the casks, and carefully examine, try and inspect the same, and sort the same in three different sorts, if necessary; that the said inspector shall put each sort by itself in tight new casks, well hooped and coopered, which he shall distinguish by the words, first sort, second sort, or third sort, with the words pot or pearl ashes, as the same may be, branded in plain legible letters, together with the letters of his name, and the place where such pot or pearl ashes shall be inspected, as also the word Massachusetts, at full length, on each cask: For which services, and also the additional service for re-packing the said pot and pearl ashes, and putting the casks in good condition for shipping, and for inspecting and weighing the same, and delivering to the owner an invoice or weight-note under his hand, of the weight of each cask, he shall have and receive four pence half-penny for every hundred weight so inspected, to be paid by the purchaser of the same.

Sect. 2. And be it enacted by the authority aforesaid, That from and after the first day of March next, every cask in which pot or pearl ashes shall be packed for exportation, shall be made of sound and well seasoned oak or white ash staves and heading, full bound, twenty-nine inches in length, nineteen inches diameter in the head, and of such weight in proportion to its contents, as will amount, as near as may be, to fourteen per centum tare thereon.

Sect. 3. And be it further enacted by the authority aforesaid, That the said inspector, or his deputy, at the time of starting pot or pearl ashes for inspection, shall weigh the cask or casks, and mark the weight with a marking-iron on each head thereof.

Sect. 4. And be it further enacted by the authority aforesaid, That every such inspector shall have full power and authority by virtue of this Act, and without further or other warrant, to enter on board any ship or vessel whatsoever, lying and being in the harbour where such inspector is authorized to inspect pot or pearl ashes, shipped or shipping on board any such vessel for exportation from this State: And if said inspector shall, on search, discover any cask or casks of pot or pearl ashes, not branded as before directed, the person or persons so shipping, or having shipped the same, shall forfeit all and every such cask or casks of pot and pearl ashes, so shipped or shipping, and not branded in the manner hereinbefore directed.

Chap. 6.

Chap. 7.

Chap. 8.

Ashes not to be shipped till inspected.

Quality and dimensions of the casks.

Inspector to weigh & mark the casks.

Empowered to enter ships, &c.
And such inspector, or his deputy shall and may seize and carry away and secure the same for trial, and require necessary aid for that purpose, which it shall be the duty of every person so required to give, on pain of forfeiting the sum of forty shillings for his refusal or neglect. And the master or commander of any such vessel, who shall receive on board any such cask or casks of pot or pearl ashes, not branded as aforesaid, shall forfeit the sum of five pounds for each cask so received. And if any master of any ship or vessel, or any of his servants or seamen, shall obstruct or hinder the said inspector in making such search, as aforesaid, every person so offending shall forfeit for each offence the sum of ten pounds.

Sect. 5. And be it further enacted by the authority aforesaid, That if any inspector of pot or pearl ashes (according to the duties of this Act) shall, on application made for the examination of any pot or pearl ashes aforesaid, unreasonably refuse, neglect or delay to proceed to such examination and inspection, for the space of three hours after such application so made to him, the inspector so refusing, neglecting or delaying to make such examination or inspection, shall, for each offence, forfeit the sum of twenty shillings.

Sect. 6. And be it enacted by the authority aforesaid, That if any person shall brand any cask of pot or pearl ashes manufactured by himself, with the name of any other person than his own, or shall brand any such cask manufactured by another person, with his own name, or shall counterfeit any brand belonging to, or proper to be used by the said inspector, or any of his deputys, or shall impress or brand any cask of pot or pearl ashes with any brand or brands of such inspectors, or with any counterfeited as aforesaid, he shall forfeit and pay for each offence the sum of fifty pounds.

Sect. 7. And be it further enacted by the authority aforesaid, That if any person shall empty any cask or casks of pot or pearl ashes, inspected and branded as by this Act is required, and put in any other pot or pearl ashes for sale or exportation, without first cutting out the said brand-marks, the person or persons so offending shall, for each cask, forfeit and pay the sum of fifty pounds.

Sect. 8. And be it enacted by the authority aforesaid, That all fines and forfeitures mentioned in this Act, above the sum of four pounds, and under twenty pounds, shall and may be sued for and recovered with costs, by any person to his own use: But if the sum shall amount to twenty pounds, or more, then one half to his own use, and the other half to the use of the Commonwealth; and in both cases, by action of debt in the Court of Common Pleas in the county where the offence shall be committed, with liberty of appeal as in other civil actions. But if the forfeiture shall be four pounds or under, then it may be sued for by such action, for the use of the prosecutor, before a Justice of the Peace, with like liberty of appeal. And all casks of pot or pearl ashes, forfeited and seized as aforesaid, may be prosecuted to condemnation by the officer seizing the same, by libel before the Court of Common Pleas, in the
county where the seizure shall be made, if above the value of four pounds, or before a Justice of the Peace, if under that sum, with liberty of appeal to the Supreme Judicial Court, or Court of Common Pleas, respectively, as the case may require; and after condemnation, the same shall be sold at public vendue, by such officer; and after payment of all charges, one half of the remainder shall be by him paid into the treasury, for the use of the Commonwealth, and the other half be for the use of such officer.

Sect. 9. And be it further enacted by the authority aforesaid, That every manufacturer of pot and pearl ashes within this Commonwealth shall brand each cask containing the same, with the initial letters of his christian name, and his surname at full length, with the name of the town where the same shall be manufactured, before the same shall be removed from the manufactury, under the penalty of five shillings for each cask so removed, without being previously branded as aforesaid.

Sect. 10. And be it further enacted by the authority aforesaid, That there shall be an inspector of pot and pearl ashes for the Commonwealth, who shall be well skilled in the knowledge and properties of the same, to be appointed by the Governor, with the advice and consent of the Council and to be by them removable at pleasure; and who, before he shall enter upon the duties of his office, shall give bond, with sufficient sureties, to the Treasurer of the Commonwealth, in the penal sum of one thousand pounds, for the faithful discharge of his duty, and shall also be sworn faithfully to perform the same. And such inspector shall have power, when so qualified, to appoint, and shall appoint deputy-inspectors in every seaport town where pot and pearl ashes are exported, and also in Watertown and Medford, and such other places as he shall judge necessary; for whom he shall be answerable, and shall take bonds from them, with sufficient surety or sureties, and they shall also be sworn to the faithful discharge of their duty: And the said inspector shall not be entitled to receive, from any deputy he may appoint, more than one penny for each hundred weight of pot or pearl ashes such deputy may inspect agreeably to this Act.

Sect. 11. And be it further enacted by the authority aforesaid, That all former laws respecting the inspection and assay of pot and pearl ashes, so far as they relate to the same, be and hereby are repealed. Provided nevertheless, That they shall be considered as in full force, with regard to all actions and proceedings which may be now depending for any penalty or forfeiture incurred for breach of the same. [June 17, 1791.]

An Act in addition to an Act, entitled, "An Act for erecting and establishing two new Counties in the County of Lincoln, and declaring the Boundaries of the County of Lincoln in future." [June 10, 1791.]

An Act in addition to an Act, entitled, "An Act for appointing the Times and Places for holding the Supreme Judicial Court." [June 17, 1791.]

An Act for repealing in Part an Act, entitled, "An Act for the further regulating the Assize of barrel Beef and Pork," passed the fourteenth day of November, one thousand seven hundred and eighty-four. *

WHEREAS the Act abovementioned requires that all bar-
An Act in addition to an Act, entitled, "An Act for the more safe keeping the Registry of Deeds and conveyances of Land, and for appointing the Time and Manner of choosing Registers."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever it shall so happen, that no person shall have a majority of the votes legally returned for a register of deeds in any county within this Commonwealth; in such cases, the Court of General Sessions of the Peace shall be and hereby are empowered to adjourn, for the purpose of opening the votes returned, upon a new warrant, by the said court issued, to some day previous to the next Court of General Sessions of the Peace to be by law holden in the county, any thing in the said recited Act to the contrary notwithstanding: And at any adjournment for the purpose aforesaid, the same proceedings shall be had as are now authorized by law at any Court of General Sessions of the Peace by law established for such county. [June 18, 1791.]

An Act directing the Manner in which Inquests of Office shall be taken to vest Real Estate in the Commonwealth, or to entitle the Commonwealth thereto.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all cases where lands, tenements or hereditaments have heretofore been granted, or confirmed by the late Province or Colony of Massachusetts Bay, or by this Commonwealth, or which may hereafter be granted or confirmed by this Commonwealth, on certain conditions in such grants or confirmations mentioned, and the Commonwealth shall claim to be vested in the same, for the breach of one or more of the said conditions, an inquest of office shall thereupon be taken, in the Supreme Judicial Court in the county where the estate lies, in the manner following, that is to say; the attorney-general shall, upon the direction of the Legislature, file an information in behalf of the Commonwealth, in the said court, at any term thereof, in any county, setting forth, among other things, the grant or confirmation, with the conditions therein mentioned, and assigning the breaches of such of the said conditions as shall be directed by the Legislature, and of no others; and alleging that by force thereof the Commonwealth have right by law to be vested in the said estate, and praying that process may issue thereupon in due course of law; whereupon the court shall order a scire facias to issue against such person or persons, bodies politic and corporate, or proprietors, as the attorney-general, in his information, shall allege hold the estate under such grant or confirmation, returnable to the
said court at one of the terms to be holden in the county where the estate lies; which seire facias shall be served thirty days before the sitting of the court to which the same is made returnable. And if the defendants shall not appear, or appearing, shall refuse to plead, judgment shall be rendered, that the Commonwealth be reseized of the estate described in the information; and if the defendants shall, by plea, disclaim to hold the said estate, or any part thereof, then judgment shall be rendered, that the attorney-general take nothing by his information, so far as the same respects the estate so disclaimed; and the defendants, their heirs and assigns, shall forever thereafter, be estopped from claiming or holding the estate so disclaimed, under the said grant or confirmation: But if the defendants shall claim to hold the said estate, or any part thereof, under such grant or confirmation, and shall traverse the breaches assigned, issue being joined thereon, the same shall be tried by a jury at the bar of the said court, in the usual and due course of law; and a view may be granted or a plan ordered, when necessary, as in the trial of real actions. And if the issue be found in favour of the Commonwealth, judgment shall be rendered, that the Commonwealth be reseized of the said estate, and recover costs of suit; for which costs, execution shall issue in due form of law: But if the issue shall be found for the defendants, judgment shall be rendered, that they recover their costs of suit, to be taxed by the court, and paid out of the public treasury, by warrant of the Governor and Council. Provided nevertheless, If the only condition alleged to be broken, is, that the defendants hold more land under such grant or confirmation than they have right, by force thereof, to hold, and the same shall appear, either by verdict of the jury, or confession of the defendants; then the justices of the said court shall have power to assign to the defendants by metes and bounds, at their request and cost, so much of the land which shall be held by the defendants as aforesaid, as shall be equal in quantity to the land they might lawfully have held under such grant or confirmation, and in such part thereof as shall be just and reasonable, under all the circumstances of the case, and may order the same to be located by proper persons, to be appointed for that purpose by the court, at the expense of the defendants; which location, with a plan thereof, shall be returned to the said court, and may be confirmed by the same, unless good cause be shewn to the contrary by the attorney-general or the defendants. And if such location shall be confirmed, then the court shall order an attested copy thereof, and of the said plan, to be filed, at the expense of the defendants, in the Secretary's office, and judgment shall be rendered, that the Commonwealth be reseized of the residue, and recover costs of suit.

Sect. 2. And be it further enacted, That in all other cases where an inquest of office is necessary by law to entitle the Commonwealth to hold lands, tenements or hereditaments, such inquest shall be taken by the Supreme Judicial Court in the county in which such estate lies, upon information of the
attorney-general, describing, among other things, the estate claimed, and the title set up thereto, by the Commonwealth; and upon the filing of such information, the same proceedings shall be had as before directed, mutatis mutandis, unless there where is no tertenant; and in such case, notice shall be given to any person or persons claiming such estate, to shew cause, at such term of the said court as shall be mentioned in the notification, why judgment should not be rendered, that the Commonwealth be seized of such estate, by causing an attested copy of such information, with the order of court thereon, to be published in such public newspapers as the court shall direct, three weeks successively, ninety days at least before the sitting of the said court: And if no person shall appear, and, by plea, deny the title of the Commonwealth to such estate, then judgment shall be rendered, that the Commonwealth be seized thereof: But if any person shall appear, and, by plea, deny the title of the Commonwealth to such estate, then judgment shall be rendered, that the Commonwealth be seized thereof, and recover costs of suit against the defendant; for which costs, execution shall issue in due form of law: But if the jury shall find, that the Commonwealth hath no title to such estate, and that the defendant hath good title thereto, the defendant shall recover his cost of suit, to be taxed by the court, and paid out of the public treasury, by warrant of the Governor and Council; but if the jury do not find that the defendant hath good title to such estate, then he shall not be allowed his costs.

Sect. 3. And be it further enacted, That when any judgment shall be rendered on any inquest of office, that the Commonwealth be reseized, or seized of any lands, tenements or hereditaments, the Commonwealth shall immediately, upon the rendition of such judgment, be deemed, and taken in the law, to be in fact seized of all such estate, to all intents and purposes whatever: And all judgments rendered on any inquest of office, taken by virtue of this Act, shall conclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in full force. [June 13, 1791.] Add. acts—1796 ch. 4: 1798 ch. 43.


Chap. 15. An Act for discontinuing the Office of Comptroller General in this Commonwealth. [June 18, 1791.]

Chap. 16. An Act determining at what Times and Place the Courts of General Sessions of the Peace and Courts of Common Pleas shall be held, within the County of Berkshire. [June 18, 1791.]

Chap. 17. An Act in addition to an Act, entitled, "An Act empowering the Justices of the Supreme Judicial Court to grant Writs of Review, in certain cases."

WHEREAS in said Act no provision is made, in cases wherein, by reason of any accident, mistake, or unforeseen
cause, an appeal in a civil action, or complaint, may not be entered at the Supreme Judicial Court at the proper term of said court for entering the same, and a provision in such cases is found to be necessary:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in every such case, the justices of the same court be and they are hereby empowered, on the petition of the party, at their discretion, to order such appeal, or complaint, to be entered at any other term of said court within the county where the judgment appealed from shall have been rendered; and to proceed to try the appeal, or affirm the former judgment, with additional damages and costs, in the same manner as they might have done if the said appeal, or complaint, had been entered at the proper term for entering the same; and the said justices are hereby vested with all the discretionary power respecting such appeals, or complaints, with which they are vested, in the cases mentioned in said Act. Provided, That no petition for entry of such appeal or complaint shall be sustained, unless such petition shall be exhibited to the court within one year after the term, at which such appeal or complaint ought to have been entered, or within one year from the passing of this Act: And provided also, That no goods or estate attached, or bail given upon the original writ, shall be affected by any thing done by force of this Act; but the same shall remain discharged, notwithstanding the entry of any such appeal or complaint as aforesaid.

And whereas the power for granting reviews by the said justices is limited to certain cases in the aforesaid Act described, and to a certain time therein specified, which is found to be inconvenient:

Sect. 2. Be it therefore enacted by the authority aforesaid, That the said justices be and they are hereby vested with a discretionary power to grant reviews in civil actions, whenever they shall judge it to be reasonable, without being limited to particular cases, any omissions in the aforesaid Act notwithstanding. Provided, That application be made to the justices of the said court, within three years after the rendition of the judgment complained of.

Sect. 3. And be it further enacted by the authority aforesaid, That every Court of Common Pleas, within this Commonwealth, be and they are hereby vested with the same powers respecting appeals made from judgments rendered by Justices of the Peace, and complaints for not entering the same; and also respecting all actions and suits before Justices of the Peace wherein the damage laid does not exceed four pounds, and wherein the defendant has been defaulted for want of actual notice of the suit, or by some other accident or mistake, with which the Justices of the Supreme Judicial Court are by this Act vested, respecting appeals from judgments rendered by Courts of Common Pleas, and complaints for not entering the same, and respecting the granting reviews in the certain other actions or suits before mentioned, wherein the defendant has been defaulted, or lost his law. [June 18, 1791.]
Chap. 18. An ACT to incorporate the Plantation of Wales, in the County of Lincoln, into a Town by the name of Monmouth. [Jan. 20, 1792.]

Chap. 19. An ACT to regulate the taking of Fish called Alewives, in the Town of Middleborough, in the County of Plymouth, and for repealing a certain Law made for that purpose in the year of our Lord one thousand seven hundred and forty-nine. [Jan. 30, 1792.] Further acts—1797 ch. 41: 1801 ch. 25.

Chap. 20. An ACT to incorporate the westerly Part of the Town of Vassalborough, in the County of Lincoln, with the inhabitants thereof, into a Town by the name of Sidney. [Jan. 30, 1792.]

Chap. 21. An ACT for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, at Patucket-Falls, between the Towns of Chelmsford and Dracut, in the County of Middlesex, and for supporting the same. [Feb. 1, 1792.]

Add. act—1795 ch. 60.

Chap. 22. An ACT in addition to the several Laws now in force, providing for the Collection of Taxes.

Preamble.

WHEREAS provision is made by law, when any constable or collector of taxes in any town, district, plantation, precinct or parish, shall die before the completing of the collection of the taxes committed to him, that the assessors appoint a collector to perfect such collection; but no provision is made when any constable or collector shall become non compos mentis, or be disabled by bodily infirmities from perfecting his collection; for remedy whereof,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any constable or collector of any town, district, plantation, precinct or parish, who is already, or may hereafter become non compos mentis, and who hath, or may have a guardian duly appointed, or who hath already been, or may hereafter, by bodily infirmities, be rendered incapable of discharging the duties of his office, in the judgment of the assessors, before such insane or infirm constable or collector hath perfected his collection, the assessors shall thereupon procure and appoint, in writing, under their hands, some suitable person a collector, to perfect such collection, and grant him a warrant for that purpose; and the person so appointed shall have the same power and authority as were granted to such insane or infirm constable or collector: Provided nevertheless, That no person shall be appointed to complete the collection of such infirm collector, unless he shall request the same: And provided further, That when it shall appear to the assessors, that such insane or infirm constable or collector shall have paid to the treasurer or treasurers, to whom he was accountable, a larger sum or sums of money than the amount of the monies that he has collected from the persons borne on his list of assessment, the assessors, in their warrant to the collector by them appointed, shall direct him to pay such sum as shall appear to them to be overpaid, as aforesaid, to the guardian of such insane constable or collector, or to such infirm constable or collector, as the case may be. And in the cases aforesaid, and in case of the decease of any constable or collector of taxes before his perfecting his collections, the assessors, for the time being, shall have power to demand and receive the list or lists of assessments, of and from such infirm constable or collector, or from

Power and duty of assessors, in case of infirm constables or collectors.

1785 ch. 46, § 5.

Prov'sos.

Assessors authorized, in case of the death, &c. of a collector, to receive and deliver the lists to another.
the guardian of such constable or collector as shall be non com-
pos mentis, or from the executors or administrators of any de-
cceased constable or collector, or of and from any person in
whose hands the same may be, and to deliver the same to the
collector newly appointed.

And whereas provision is also made by law, that when any
distress shall be taken by any constable or collector, for non-
payment of taxes, it shall be kept four days before notice of
sale shall be given, and that the forty-eight hours notice of sale
shall not be given until after the expiration of the said four
days, which prolongation of the time of sale often increases
expense, and appears to be unnecessary:

Sect. 2. Be it therefore enacted by the authority aforesaid,
That it shall and may be lawful for any constable or collector
to give the forty-eight hours notice of the sale of any distress
by him taken, for the non-payment of taxes, within the said
four days; and after such notice, to sell such distress, after the
expiration of the said four days, any law to the contrary not-
withstanding.

Sect. 3. And be it further enacted by the authority aforesaid,
That any officer who may have occasion to distrain any per-
sonal property of any deficient constable or collector, by force
of any warrant of distress, or execution issued by the Trea-
surer of the Commonwealth, or by the treasurer of any county,
town, district, plantation, parish or precinct, shall proceed in
the sale of said personal property, in the same manner such
officer by law is obliged to proceed, in serving executions upon
judgments obtained by creditors against their debtors, where
personal estate is taken for satisfying the same. [Feb. 3, 1792.]

Further acts—1799 ch. 51: 1815 ch. 130: 1817 ch. 69.

An Act granting certain Privileges to the proprietors of the lower or new Slitting-
Mill standing on Mill-River, in the Town of Taunton, in the County of Bristol.
[Feb. 6, 1792.] Repealed—1797 ch. 71.

An Act to establish and incorporate a religious Society in the Town of Easton, in
the County of Bristol, by the name of The Congregational Parish in Easton.
[Feb. 7, 1792.

An Act to incorporate the Plantation of Number Seven (so called) in the County of
Hampshire, into a Town by the name of Hawley. [Feb. 7, 1792.] Add.
act—1792 ch. 48.

An Act for establishing an Academy in the Town of Fryeburg, by the name of
Fryeburg Academy. [Feb. 9, 1792.

An Act to incorporate the Plantation called Ossipee, in the County of York, into a
Town by the name of Limington. [Feb. 9, 1792.

An Act in addition to, and for repealing and altering Part of an Act, entitled,
"An Act for limiting the Time within which suits may be prosecuted against
Executors and Administrators, and for perpetuating the Evidence of Notice given
by them, and by Guardians and others, respecting the Sale of Real Estate."

WHEREAS in the third enacting clause of the aforesaid
Act it is provided, that all claims of creditors to the estate of
any person deceased, upon which an executor or administrator
has already taken the administration, shall be exhibited and
demand'd of the executor or administrator of such estate, with-
in three years from the passing of said Act, or within three
years after said claim may accrue, and not afterwards:

1785 ch. 70, § 2. Collectors may sell a distress within four
days.

Method of pro-
cedure in case of distress upon collectors, &c.
and that no executor or administrator who should, after the passing of the said Act, undertake that trust, should be compelled, or held to answer to the suit of any creditor of his testator or intestate, unless the same suit should have been originally commenced within the term of three years next following his giving bond for the faithful discharge of his trust: And whereas from the shortness of said limited term, and from the want of a general knowledge thereof, many inconveniences may accrue to the citizens of this Commonwealth:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all and every part of said enacting clause which relates to the time within which claims may be exhibited, and suits prosecuted against executors and administrators, be and hereby is repealed.

Sect. 2. And be it further enacted by the authority aforesaid, That all claims of creditors to the estate of any person deceased, upon which an executor or administrator was appointed before the passing of the aforesaid Act, shall be exhibited and demanded of such executor or administrator within four years from the time of passing the Act aforesaid, and not afterwards; and that no executor or administrator who has been appointed since the passing the aforesaid Act, or who shall hereafter be appointed, shall be held to answer to any suit that shall be commenced against him in that capacity, unless the same shall be commenced within the term of four years from the time of his accepting that trust: Provided, That he give notice of the appointment in the manner prescribed in the act before recited. [Feb. 14, 1792.]

Chap. 29. 1787 ch. 2. An Act in addition to an Act made and passed the twenty-first day of June, in the year of our Lord one thousand seven hundred and eighty-seven, entitled, "An Act to divide the Town of Greenwich into two Parishes." [Feb. 22, 1792.]

Chap. 30. An Act for regulating the Taking the Fish called Alewives, in their Passage up Indian-Head-River (so called) between the Towns of Pembroke and Hanover, in the County of Plymouth, into a pond in said Town of Pembroke, known by the name of Indian-Head-Pond. [Feb. 22, 1792.]

Chap. 31. An Act for setting off Samuel Holmes, jun. from the Town of Stoughton, and annexing him to the Town of Sharon. [Feb. 22, 1792.]


Chap. 33. An Act for dissolving the first and second Parishes in Malden, and for confining certain Articles of Union entered into between the said Parishes. [Feb. 23, 1792.]

Chap. 34. An Act for enquiring into the Ratable Estates within this Commonwealth. [Feb. 25, 1792.]

Chap. 35. An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex, and for supporting the same. [Feb. 24, 1792.] Add. acts—1792 ch. 3: 33: 1795 ch. 49.

Chap. 36. An Act for incorporating the north Precinct of the Town of Braintree, in the County of Suffolk, into a separate Town by the name of Quincy; and for annexing sundry inhabitants of the Town of Dorchester, with their estates, to the said town of Quincy. [Feb. 23, 1792.] Add. act—1815 ch. 102.
An Act to prevent Damage by mischievous Dogs.

WHEREAS many persons in this Commonwealth have been greatly exposed by being suddenly assaulted by mischievous dogs; and many have also sustained great damage by such dogs worrying, wounding and killing neat cattle, sheep and lambs, and in various other ways; for the prevention of which,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after passing this Act, it shall and may be lawful, for any person or persons in this Commonwealth, to kill any dog that shall suddenly assault them while they are quietly and peaceably walking or riding any where out of the inclosure of the owner or keeper of such dog; and it shall also be lawful for any person to kill any dog that shall be found out of the inclosure or immediate care of its owner or keeper, worrying, wounding or killing any neat cattle, sheep or lambs.

Sect. 2. And be it further enacted, That if any person shall be assaulted by any dog in manner as aforesaid, or if any dog shall hereafter be found strolling out of the inclosure or immediate care of its owner or keeper, by day or by night, and the person so finding such dog shall, at any time within forty-eight hours after such an assault or the finding such dog strolling as aforesaid, make oath thereof before any Justice of the Peace for the county, or clerk of the town where the owner of such dog shall dwell, (who are hereby empowered to administer said oath, and to certify the same) and shall further swear, that he really suspects such dog to be a dangerous or mischievous dog, and shall give notice thereof to such owner or keeper, by delivering him a certificate of such oath, signed by such justice or clerk; it shall be the duty of the owner or keeper of such dog forthwith to kill or confine the same; and if he shall neglect so to do for the space of twenty-four hours after notice is given as aforesaid, he shall forfeit and pay the sum of forty shillings, to any person that shall sue for the same, to be recovered with costs, by action of debt, before any Justice of the Peace in the county in which such owner or keeper dwells, reserving liberty of appeal to either party from such justice’s judgment, as in other civil actions.

Sect. 3. And be it further enacted, That if, after such notice, such dog shall not be killed or confined, but shall again be found strolling out of the inclosure or immediate care of its owner or keeper, it shall and may be lawful for any person to kill such dog; and if sued therefor (or for killing a dog, as in and by the first enacting clause of this Act is provided) to plead the general issue, and give this Act and the special matter in evidence under it.

Sect. 4. And be it further enacted, That if any dog, after notice is given as aforesaid, shall by any sudden assault, in manner as aforesaid, wound or cause to be wounded, any person, or shall worry, wound or kill any neat cattle, sheep or lambs, or do any other mischief, the owner or keeper shall be liable to

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pay to the person injured thereby, treble damage, to be recovered with costs, by action of debt, before a Justice of the Peace in the county where such owner dwells, if such treble damage doth not exceed four pounds; but if it doth exceed that sum, then before the Court of Common Pleas in such county, reserving liberty of appeal to either party, as in other civil actions.

**Laws repealed.**

**Sect. 5. And be it further enacted,** That all laws heretofore made for preventing damage being done by unruly dogs (except such as are enacted to prevent damage being done by dogs in the island of Nantucket) be and they are hereby repealed, except so far as they shall respect any suit already commenced. [Feb. 25, 1792] Add. acts—1798 ch. 54: (1810 ch. 109: repealed by 1811 ch. 91:) 1812 ch. 146.

**Chap. 39.** An Act for erecting a Town within the County of Hampshire, by the name of Russell. [Feb. 25, 1792]

**Chap. 40.** An Act to set off Joseph Danforth, Josiah Danforth, John Cumings and Joseph Upton from the Town of Dunstable, in the County of Middlesex, and to annex them to the District of Tyngsborough. [March 3, 1792]

**Chap. 41.** An Act ascertaining the Boundary Line between the towns of Medway and Shirley. [March 3, 1792]

**Chap. 42.** An Act to prevent Appeals, in certain Cases, from the Judgment of a Court of Common Pleas.

**BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,** That upon any report of referees returned into any Court of Common Pleas, in pursuance of an Act for rendering the decision of civil causes as speedy and as little expensive as possible, and also upon any report made by referees appointed by a rule of any Court of Common Pleas, wherein it is agreed, at the time of entering into such rule, that the report of said referees shall be final, the judgment of said Court of Common Pleas, upon all such reports, shall be final, and no appeal therefrom shall be allowed by said court; any law to the contrary notwithstanding. [March 3, 1792]

**Chap. 43.** An Act to render valid the Votes and Proceedings of certain Town-Meetings which have been assembled by virtue of a Warrant signed by a Town-Clerk, by order of the Selectmen.

**BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,** That all warrants heretofore signed by a town-clerk, by order of the selectmen of any town, or a major part of them, and all proceedings of the legal voters of such towns, which have been had in pursuance of such warrants, be and hereby are ratified and confirmed, in the same manner as if the said warrants had been signed by the selectmen. [March 6, 1792]

**Chap. 44.** An Act in addition to an Act passed in the year of our Lord one thousand seven hundred and eighty-nine, entitled, "An Act determining what Transactions shall be necessary to constitute the Settlement of a Citizen in any particular town or District."

**Preamble.**

**WHEREAS in and by an act, entitled "An act determining what transactions shall be necessary to constitute the settlement of a citizen in any particular town or district," passed in the year of our Lord one thousand seven hundred and eighty
1791. — CHAP. 45—53. 403

The laws, it is among other things provided, that persons of certain descriptions in the said act mentioned, who shall come into, and reside in any town or district, for the space of two years, without being warned to depart the same, should be deemed and taken to be an inhabitant of such town or district: And whereas it appears expedient, that the time of giving notice and warning to depart as aforesaid shall be extended and prolonged: Therefore,

An Act to set off Asahel Smith and others from South-Hadley, to Granby. [March 6, 1792.]

An Act incorporating certain persons for erecting a Bridge over Connecticut River, between Montague and Greenfield, in the County of Hampshire. [March 6, 1792.]

An Act for annexing Part of the Town of Norwich and Part of the Town of Southampton, to the Town of Montgomery. [March 6, 1792.]

An Act to incorporate the Plantation called Shepardsfield, in the County of Cumberland, into a Town by the name of Hebron. [March 6, 1792.] Add. act—1804 ch. 14.

An Act to incorporate and establish a Society, by the name of The Massachusetts Society for promoting Agriculture. [March 7, 1792.]

An Act for establishing an Academy in the Town of Machias, by the name of Washington Academy. [March 7, 1792.]

An Act to enable the Town of Framingham to regulate and order the Taking of the Fish called Shad and Alewives, within the Limits of said Town. [March 8, 1792.]

An Act to prevent the Catching of Fish in the mouth of Agawam River. [March 8, 1792.] Another act—1813 ch. 147.

An Act providing for the Payment of Costs in Criminal Prosecutions, and for preventing unnecessary Costs therein.

WHEREAS the provision made by an Act, entitled, "An Act providing for the payment of costs in criminal suits," passed the twelfth day of March in the year of our Lord one thousand seven hundred and eighty-three, and by several Acts since passed in addition thereto, is still found to be insufficient: Therefore,

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the several Acts aforesaid be and the same hereby are repealed.

SECT. 2. And be it further enacted, That in all cases where-in any costs have already arisen, or may hereafter arise in any Criminal prosecution, commenced either before the Supreme Judicial Court or Court of General Sessions of the Peace in any county in this Commonwealth, the court before whom such prosecution has been, or may be so commenced (having cognizance of the offence) shall have power to allow and tax such costs for justices, officers and their assistants, jurors and witnesses, and for court and other charges as have arisen, or may arise upon such prosecution, and previous to its determination, not exceeding the fees that are or may be stated by law; ex-

Laws repealed.

Courts empowered to tax costs in certain cases.

1813 ch. 182.

[Time of payment limited—1809 ch. 93.]
cept in cases which are or may be otherwise provided for by law, and in which a discretionary power is or may be given to the court, whether the person accused be brought to trial or not, or whether he be convicted or acquitted upon trial: And all such costs, so taxed, shall be paid out of the county treasury; those costs which are taxed by the Court of General Sessions of the Peace, to be charged to the county;* And the clerk of each of said courts shall attest and deliver to the county-treasurer, copies of all bills of cost allowed by the court, and certificates of all fines and forfeitures imposed and accruing to the Commonwealth or to the county, either before the rising thereof, or as soon after as may be: And the clerk of the Supreme Judicial Court shall also deliver him a separate certificate of all the bills of cost allowed by the court, setting down therein the sum total only of each, for the purpose hereafter mentioned; and the clerks of both said courts shall also be held, as is already provided by law, to return into the treasury of the Commonwealth, a certificate of all fines and forfeitures imposed, to the use of the Commonwealth, by their respective courts.

Sect. 3. **And be it further enacted,** That all sheriffs, coroners and constables, who may hereafter receive any fines, forfeitures or bills of cost, in pursuance of the judgment or sentence of either of said courts, as well where such fines or forfeitures accrue to the Commonwealth as where they accrue to the county, except debts and costs received upon executions in favour of the Commonwealth, shall forthwith pay the same to the treasurer of the county in which they shall be received: And if any sheriff or other officer, receiving such fine or forfeit, or bills of cost, shall neglect to pay the same for the space of ten days after receipt thereof, he shall forfeit and pay double the amount of such fine or forfeit, and bill of cost, to such county-treasurer; who is hereby empowered and directed to sue for the same forthwith, to be recovered with costs, by action of debt, in the Court of Common Pleas, in the same county; one third of said penalty to the use of such county-treasurer, the other two thirds to the use of the Commonwealth: And the same, when recovered and received (if the fine or forfeit unpaid accrue to the Commonwealth) shall, together with all other fines, forfeitures and costs accruing to the Commonwealth, by him received as above, be applied to the payment of bills of cost taxed in the Supreme Judicial Court, and certified to him as aforesaid; otherwise, it shall be for the use of the county. And if any sheriff, or other officer aforesaid, or any gaoler, shall permit any person who may be sentenced to pay any fine, forfeit, or bill of cost, and committed to the custody of such sheriff or other officer, or gaoler, till such sentence be performed, to go at large, without and before payment, unless by order of law, and shall not pay such fine, forfeitures and costs, to the county-treasurer, within twenty days next after such escape, he shall be held to pay double the sum of such fine, forfeitures and costs; and the treasurer of the county shall have power to sue for and recover the same in the same manner, and to the same uses as is
herein before provided, where such sheriff or other officers neglect to pay such fines, forfeitures and costs as they have actually received. And every sheriff and other officer aforementioned, shall, instead of having his accounts of fines received and paid audited by either of said courts, as by law is now provided, be held to produce to said courts respectively, at every sessions thereof in their county, receipts in full, from the county-treasurer, for all fines, forfeitures and costs, imposed by said courts respectively, received and paid, previous to the sitting of such courts, or to assign the cause why they have not received, or not paid the same, in order that such court may order a prosecution against such as shall appear to be delinquent.

And in order as well to increase the said fund for payment of costs, as to promote the convenience of Justices of the Peace, by enabling them to settle their accounts with the county-treasurer, instead of the Treasurer of the Commonwealth:

Sect. 4. Be it further enacted, That every Justice of the Peace be and he hereby is directed to pay all fines and forfeitures by him already received, or that he may hereafter receive, upon convictions and sentences before himself, as well those which accrue to the Commonwealth as those which accrue to the county, to the treasurer of the county whereof he is a Justice of the Peace; and that he render his account, and pay such fines once in every six months from and after the passing of this Act; and that such payment shall exempt such Justice of the Peace from all penalties inflicted by law for non-payment of such fines and forfeitures into the treasury of the Commonwealth; and such of said fines as accrue to the Commonwealth shall be appropriated as aforesaid. And if any Justice of the Peace shall neglect to account for, and pay in such fines and forfeitures to the treasurer of the county whereof he is justice as aforesaid, he shall forfeit and pay, for every such neglect, the sum of ten pounds, to such county-treasurer, to be by him recovered as aforesaid, with costs. One half of such forfeiture to his own use, and the other half to the use of the Commonwealth; which half accruing to the Commonwealth, shall be appropriated to the payment of costs, and be accounted for as aforesaid: And it shall be the duty of every county-treasurer, from time to time, to call upon the Justices of the Peace within his county, and to require them to account to him for, and pay in such fines and forfeitures, and to prosecute such as shall be delinquent.

Sect. 5. And be it further enacted, That every county-treasurer in counties where the Supreme Judicial Court is holden but once a year, shall once a year, and where it is held twice a year, shall twice a year, and within two months after the rising of said court, make out and transmit to the Treasurer of the Commonwealth, an account, upon oath, therein charging the Commonwealth with all bills of costs allowed and taxed by said court, for which the clerk's certificate above mentioned, shall be a sufficient voucher; and a commission of five per cent. on all monies received and paid, and giving credit for all fines, Officers to produce receipts from county treasurer. Justice of Peace to account for fines, &c. — once in six months. Forfeiture, in case of neglect. — appropriation. Duty of county treasurer to call to account — To transmit accounts to State Treasurer.
forfeitures and costs accruing to the Commonwealth, and by him received as aforesaid, and pay, in the balance of such account, if in favour of the Commonwealth, to the treasurer thereof; but if such balance be in favour of the county-treasurer, it shall be paid him or his order, out of any unappropriated monies in the treasury, as soon as may be, by the Treasurer of the Commonwealth; said account having been first laid by him before the Governor and Council for their examination and allowance, and their warrant thereupon by him obtained for payment of the same. And any county-treasurer who shall neglect to make out and transmit his account as aforesaid, and to pay the balance, if any be due, to the Commonwealth as aforesaid, within the time aforesaid, shall forfeit and pay the sum of thirty pounds, to the use of the Commonwealth; to be recovered with costs, by action of debt, in the Court of Common Pleas in the county whereof he is treasurer: And the attorney-general, upon notice of such neglect, from the Treasurer of the Commonwealth, which he is hereby required forthwith to give, shall be and hereby is authorized and required to prosecute such action, without delay, to final judgment and execution. And the said county-treasurer shall be also held, notwithstanding the recovery of the penalty aforesaid, to account for and pay the balance of all such fines, forfeitures, and costs, accruing to the Commonwealth, into the treasury thereof.

And whereas unnecessary costs have arisen, to the injury of the Commonwealth, and to the oppression of individuals, by the summoning of unnecessary witnesses by Justices of the Peace, at the request of private prosecutors of criminal suits: For prevention thereof,

Sect. 6. Be it further enacted, That no Justice of the Peace shall hereafter have power to issue summonses for witnesses to appear at any court, or before any Justice of the Peace, except on complaint brought before himself, to give evidence in behalf of the Commonwealth, upon any criminal suit, unless it be by the request of the attorney-general or person acting as state's attorney in the county where such justice dwells; and no witness, summoned without such request, shall be allowed any pay for his travel or attendance: And when any Justice of the Peace shall issue any summons at the request of the party prosecuted, it shall be so expressed in the summons, and the witness shall therein be required to appear and give evidence, upon condition such person prosecuted pays him his legal fees, but not otherwise. [March 8, 1792.] Add. acts—1794 ch. 48: 1817 ch. 145.

Chap. 54. 1791 ch. 1.

An Act in addition to an Act passed on the tenth day of June, one thousand seven hundred and ninety-one, entitled, "An Act for establishing the Boundary Line between the Towns of Brookfield and New-Brantree, in the County of Worcester." [March 8, 1792.]

Chap. 55. 1789 ch. 39.

An Act in addition to an Act passed February the twenty-second, one thousand seven hundred and ninety, entitled, "An Act to prevent the Destruction of the Fish, called Alewives, in Taunton Great-River (so called) in the County of Bristol, and to regulate the Catching of said Fish therein for the future," [March 8, 1792.] Original act repealed—1792 ch. 62. This act repealed—1815 ch. 119.
An Act for incorporating Daniel Reed, and others, Proprietors of a certain Tract of Meadow Land, in the Town of Abington, known by the name of The Old Mill-Pond-Meadow, into a Body Corporate, by the name of The Proprietors of the Old Mill-Pond-Meadow. [March 8, 1792.]

An Act to incorporate Henry Knox, Esq. and others, for the purpose of opening a navigable Canal from some part of Connecticut-River, to communicate with the Town of Boston, by the name of the Proprietors of the Massachusetts Canal. [March 10, 1792.]

An Act providing for the due Observation of the Lord’s Day, and repealing the several Laws heretofore made for that purpose.

WHEREAS the observance of the Lord’s Day is highly promotive of the welfare of a community, by affording necessary seasons for relaxation from labour and the cares of business; for moral reflections and conversation on the duties of life, and the frequent errors of human conduct; for public and private worship of the Maker, Governor and Judge of the world; and for those acts of charity which support and adorn a Christian society: And whereas some thoughtless and irreligious persons, inattentive to the duties and benefits of the Lord’s Day, profane the same, by unnecessarily pursuing their worldly business and recreations on that day, to their own great damage, as members of a Christian society; to the great disturbance of well-disposed persons, and to the great damage of the community, by producing dissipation of manners and immoralities of life:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That no person or persons whatsoever shall keep open his, her or their shop, ware-house or work-house, nor shall, upon land or water, do any manner of labour, business or work (works of necessity and charity only excepted) nor be present at any concert of music, dancing, or any public diversion, show or entertainment, nor use any sport, game, play or recreation, on the Lord’s Day, or any part thereof, upon penalty of a sum not exceeding twenty shillings, nor less than ten shillings, for every offence.

Sect. 2. Be it further enacted by the authority aforesaid, That no traveller, drover, waggoner, teamster, or any of their servants, shall travel on the Lord’s Day, or any part thereof (except from necessity or charity) upon the penalty of a sum not exceeding twenty shillings, nor less than ten shillings.

Sect. 3. Be it further enacted, That no vintner, retailer of strong liquors, innholder, or other person keeping a house of public entertainment, shall entertain or suffer any of the inhabitants of the respective towns where they dwell, or others, not being travellers, strangers, or lodgers in such houses, to abide and remain in their houses, yards, orchards or fields, drinking or spending their time, either idly or at play, or doing any secular business on the Lord’s Day, or any part thereof, on penalty of ten shillings, payable by such vintner, retailer or innholder, or person keeping such house of entertainment, for each person so entertained or suffered; and every person so drinking or abiding (except as aforesaid) shall pay a fine not [Penalties in these three first sections enhanced—1796 ch. 89.]
exceeding ten shillings, nor less than five shillings; and every such licensed person, upon any conviction after the first, shall pay a fine of twenty shillings, and having been three times convicted, shall be debarred from renewing his license forever after.

And although it is the sense of this court, that the time commanded in the sacred scriptures to be observed as holy time, includes a natural day, or twenty-four hours; yet whereas there is a difference of opinion concerning the beginning and ending of the Lord's Day, among the good people of this Commonwealth, and this Court being unwilling to lay any restrictions which may seem unnecessary or unreasonable to persons of sobriety and conscience:

Sect. 4. **Be it therefore enacted by the authority aforesaid,** That all the foregoing regulations, respecting the due observation of the Lord's Day, shall be construed to extend to the time included between the midnight preceding and the sun setting of the same day.

Sect. 5. **Be it enacted by the authority aforesaid,** That no person shall be present at any concert of music, dancing, or other public diversion, nor shall any person or persons use any game, sport, play or recreation, on the land or water, on the evening next preceding or succeeding the Lord's Day, on pain of ten shillings* for each offence; and no retailer, innholder, or person licensed to keep a public house, shall entertain, or suffer to remain, or be in their houses or yards, or other places appurtenant, any person or persons (travellers, strangers or lodgers excepted) drinking or spending their time on the said evenings, on penalty of ten shillings* for each offence.

And whereas the public worship of Almighty God is esteemed by Christians an essential part of the due observance of the Lord's Day, and requires the greatest decency and reverence for a due performance of the same:

Sect. 6. **Be it therefore enacted,** That any person, being able of body and not otherwise necessarily prevented, who shall, for the space of three months together, absent him or herself from the public worship of God, on the Lord's Day (provided there be any place of worship at which he or she can conscientiously and conveniently attend) shall pay a fine of ten shillings.

Sect. 7. **Be it further enacted by the authority aforesaid,** That if any person shall, on the Lord's Day, within the walls of any house of public worship, behave rudely or indecently, he or she shall pay a fine not more than forty shillings, nor less than five shillings.

Sect. 8. **And be it enacted by the authority aforesaid,** That if any person or persons, either on the Lord's Day, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the public worship of God, within the place of their assembling, or out of it, he or they shall severally pay a fine not exceeding ten pounds, nor less than twenty shillings.
Sect. 9. Be it further enacted by the authority aforesaid, That no person shall serve or execute any civil process, from midnight preceding to midnight following the Lord's Day; but the service thereof shall be void, and the person serving the same shall be as liable to answer damages to the party aggrieved, as if he had done the same, without any such civil process.

Sect. 10. And be it further enacted, That the tythingmen chosen, or which shall be chosen in the several towns and districts, within this Commonwealth, shall be held and obliged to inquire into, and inform of all offences against this Act; and all such tythingmen as shall be hereafter chosen, shall take the following oath:

YOU, being chosen a tythingman for the town of for the year ensuing, and until another shall be chosen in your room, do solemnly swear, that you will diligently attend to, and faithfully execute the duties of the said office, without partiality, and according to your best discretion and judgment. So help you God.

And every such tythingman is hereby authorized and empowered, to enter into any of the rooms and other parts of an inn, or public house of entertainment, on the Lord's Day, and the evening preceding and succeeding; and if such entrance shall be refused to any tythingman, the landlord or licensed person shall forfeit the sum of forty shillings for each and every offence. And the said tythingmen are hereby further authorized and empowered, within their respective towns, to examine all persons whom they shall have good cause, from the circumstances thereof, to suspect of unnecessarily travelling as aforesaid, on the Lord's Day, and to demand of all such persons the cause thereof, together with their names and places of abode; and if any person shall refuse to give answer, or shall give a false answer to such demand, he shall pay a fine not exceeding five pounds, nor less than twenty shillings; and if the reason given for such travelling shall not be satisfactory to such tythingman, he shall enter a complaint against the person travelling, before a Justice of the Peace in the county where the offence is committed, if such person lives in such county, otherwise shall give information thereof to some grand-jury-man, to be by him laid before the grand jury, for their consideration and presentment.

Sect. 11. And be it further enacted, That the oath of any tythingman shall be deemed full and sufficient evidence, in any trial for any offence against this Act, unless, in the judgment of the court or justice, the same shall be invalidated by other evidence that may be produced.

Sect. 12. And be it further enacted, That the special authority given by this Act to tythingmen, for preventing the breaches thereof, shall not be construed or understood to exempt any sheriff, grand-jurors, constables or other officers or persons whatsoever, from any obligation or duty to cause this Act to be put in execution, but they shall be held to take due authority of tythingmen not to exempt other officers.
notice and prosecute all breaches thereof, such special authority notwithstanding.

Sect. 13. And be it further enacted, That all the penalties and fines, incurred and paid for any of the offences aforesaid, shall be for the use of the Commonwealth: And that all said offences, the penalties against which exceed forty shillings, shall be prosecuted by presentment of the grand jury, before the Court of General Sessions of the Peace in the county wherein the offence may be committed: But all offences, the penalty whereof does not exceed forty shillings (except the offender lives out of the county in which the offence may be committed) shall be prosecuted by complaint before a Justice of the Peace in such county: But when the offender lives out of such county, he may be prosecuted by presentment as aforesaid, although the penalty does not exceed forty shillings.

Sect. 14. And be it further enacted by the authority aforesaid, That all laws heretofore made, so far as they relate to the due observation of the Lord's Day, be and hereby are repealed and declared null and void. [March 8, 1792. Add. acts—1796 ch. 89: 1815 ch. 135.]

An act providing for the Security of the Treasury of this Commonwealth.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every person who shall be hereafter, pursuant to the Constitution, chosen to the office of Treasurer and Receiver-General, and accept the same, shall, before he enters on the discharge of the business of such office, take and subscribe, before the Governor and Council, the oaths or affirmations and declarations, required of such officer, by the Constitution of this Commonwealth, and Laws of the United States; and shall likewise become bound, with three sureties at the least, to be approved as sufficient by the Governor, with the advice of Council, and with such officer to be jointly and severally held thereupon, in the sum of thirty thousand pounds, to the Commonwealth; the condition of which bond shall be to the following effect, that is to say, That the person chosen and qualified, or to be qualified as aforesaid, and undertaking the said office of Treasurer and Receiver-General, and all persons who shall be by him intrusted and employed in such office, shall, in all things, faithfully and honestly discharge and perform their respective duties and trusts, which are or shall be of, or in them respectively required or had; and more especially that the said Treasurer and Receiver-General shall, during his continuance in office, use all necessary and reasonable diligence and care, in the safe keeping and lawful disposal of all sums of money, books, bonds, notes, papers, and all other matters and things appurtenant to the said office, and which by virtue thereof have or shall come to the hands of the said Treasurer and Receiver-General, his agents or servants; and thereof, and of all expenditures in the said office, the said Treasurer and Receiver-General, his heirs, executors, administrators, or sureties, or some one of them shall render a just
and true account, when, by law, or by the Senate and House of Representatives, for the time being, or by either of them, with reasonable notice, required; and shall, at the expiration of the office of such Treasurer and Receiver-General, by a new choice, or his death or resignation, or any vacancy thereof, which shall be, by virtue of this Act, declared by the Governor with the advice of Council, produce and deliver over without fraud, embezzlement or delay, all and singular the monies, books, credits and other appurtenances of the said office, then remaining in the custody of the said Treasurer and Receiver-General, his agents or servants, to such person or persons as are or shall be by law appointed and authorized to receive the same; and that the said Treasurer and Receiver-General, his executors or administrators, or the said sureties, or their respective executors or administrators, or some of them, shall, as soon as may be then after, and as far as in them lies, cause a final adjustment of the accounts of said office, and all balances and defalcations which shall appear against such Treasurer or Receiver-General, thereupon shall pay or cause to be paid into the treasury of this Commonwealth.

Sect. 2. And be it further enacted, That the Governor with the advice of Council, upon the complaint or suggestion made, under oath, of any person or persons, and more especially of any surety of a Treasurer and Receiver-General, in any bond, to be taken as aforesaid, that such officer is insane, or manifestly insolvent, or hath absconded and concealed himself for fear of his just creditors, or is absent from this Commonwealth, or the duties of his said office, to the imminent hazard of the said Commonwealth, in respect to the trusts in such officer reposed, and the truth of such complaint or suggestion appearing, upon due examination thereof had, shall have authority, and it shall be their duty, to disable such Treasurer and Receiver-General, and to declare such office vacant.

Sect. 3. And be it further enacted, That upon the death or resignation of the Treasurer and Receiver-General, or upon any other vacancy of that office, which the Governor, with the advice of Council, shall be authorized by this Act to declare, the Secretary, with two discreet and impartial citizens, to be appointed by warrant, under the hand and seal of the Governor, upon such event or declaration made, shall have authority, and it shall be their duty respectively to repair to the place and places where the monies, papers and other matters, appurtenant to the treasury, are usually kept, deposited or known to be, and having previously notified such late treasurer, or his heirs, executors or administrators, and the sureties bound with him as aforesaid, or one of them, to attend thereat, shall seal up and secure in their presence, if they shall see fit to attend, all such monies, papers and other matters, taken to be the property of this Commonwealth; and shall give such representatives or sureties, if required by them, a true list of all boxes and packages which shall be so sealed and secured, and shall note, on such list, the place or places, wherein the same are deposited; and as soon as it may afterwards be conven-
jently done, shall, having given like notice, cause the said boxes and packages to be examined, and an accurate inventory to be taken of the said monies, and of all bonds, notes, securities, books, and of any other matters appurtenant to the said office, which shall be required by the said late treasurer or his representatives or sureties, or either of them, present thereat; and a copy thereof shall be lodged in the Secretary's office; and one or more copies, as may be required, shall be given to any person concerned in ascertaining the truth in the premises; and the said committee shall safely keep all such monies, papers and other matters, inventoried as aforesaid, until another treasurer shall be chosen, to whom they shall deliver over the same, when qualified in the manner this Act provides, taking duplicate receipts from such treasurer, one of which shall be deposited with the Secretary, and the other with such late treasurer, or his legal representative, or his said sureties, or one of them. Provided always, That in the succession, by the annual choice of a Treasurer and Receiver-General, the former officer being present and capable of acting, duplicate receipts shall be given by the successor, one of which, being lodged with the Secretary, shall be sufficient evidence for such former officer, of the property of the Commonwealth remaining and delivered over by him, and shall be his sufficient discharge therefor accordingly, without other proceedings as herein required.

Sect. 4. And be it further enacted, That the bonds herein required shall be lodged in the Secretary's office, and the attorney-general, upon the order of the Governor with the advice of Council, or of the Senate and House of Representatives, in General Court assembled, and any other person or persons, who shall be by them authorized herein, shall and may, in behalf, and for the use of this Commonwealth, commence any action or actions, upon any such bond, and pursue the same to final judgment, execution and satisfaction.

Sect. 5. And be it further enacted, That if any clerk, or other person employed by the Treasurer and Receiver-General, shall commit any fraud or embezzlement therein, and shall be duly convicted thereof before the Supreme Judicial Court, he shall be punished by fine, not exceeding five hundred pounds, or by confinement to hard labour for a term of years, or for life, according to the nature and aggravation of the offence, and the judgment of the said court thereupon. [March 8, 1792.]

An Act providing a more easy and simple method than is now in use of Barring Estates Tail in Lands, and for making the same liable to the Payment of the Debts of the Tenant in Tail.

WHEREAS the method now in use of barring estates tail in lands, tenements and hereditaments, by common recoveries suffered at common law, is dilatory and expensive, and liable to many objections, and it is expedient to provide an easier and more simple method for effecting that purpose, and for conveying such lands, tenements, and hereditaments in fee simple:

Preamble.
Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That from and after the publication of this Act, it shall and may be lawful for any person or persons, who shall and may be seized and possessed of any lands, tenements or hereditaments, within this Commonwealth, in fee tail, being of full age, by deed duly executed before two or more credible subscribing witnesses, acknowledged before the Supreme Judicial Court in any county, or the Court of Common Pleas in the county where such lands lie, or before any Justice of the Peace in this Commonwealth, or before a Justice of the Peace or magistrate in some other of the United States of America, or in any other state or kingdom, wherein the grantor or vender may reside at the time of making and executing the deed, and recorded in the record of deeds for such county, for a good or valuable consideration, bona fide, to give, grant, sell and convey such lands, tenements or hereditaments, or any part thereof, in fee simple, to any person or persons capable, by law, of taking and holding real estates, in this Commonwealth; and such deed so executed, acknowledged and recorded, shall be sufficient and effectual in law, to bar all estates tail in such lands, tenements or hereditaments; and all right and title of the tenant or tenants in tail, and their issue in tail, and of all others claiming under, and by force of the original gift or grant which created such estate tail, in and to such lands, tenements or hereditaments, and all reversions and remainders, expectant upon the determinations of such estates tail, and to pass, and to vest the absolute inheritance, in fee simple, of such lands, tenements or hereditaments, in such purchasers, or grantees, without any fine or common recovery, made or suffered, or any other Act or ceremony whatever, any law, custom or usage to the contrary notwithstanding.

Sect. 2. And be it further enacted, That all lands, tenements or hereditaments, in this Commonwealth, held, or that may be held, in fee tail, general or special, shall be and are hereby declared to be liable and subject to the payment of the debts of the tenant in tail, in the same way and manner as other real estates are liable and subject, as well after the decease, as in the life time of such tenant in tail.

Sect. 3. And be it further enacted, That whenever any person shall hereafter, in and by his last will and testament, devise any lands, tenements or hereditaments, to any person, for and during the term of such person's natural life, and after his death, to his children or heirs, or right heirs in fee, such devise shall be taken and construed to vest an estate for life only in such devisee, and a remainder in fee simple, in such children, heirs or right heirs, any law, usage or custom to the contrary notwithstanding. [March 3, 1792.] Add. act—1804 ch. 59.

An Act for making the Certificates of certain Officers, evidence in criminal Cases.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That in
Evidence admitted in case of forgery.

all criminal prosecutions, within this Commonwealth, for forging or altering any paper, or other bill of credit of the United States of America, or either of said States, or of uttering or passing any such paper or other bill of credit, knowing the same to be forged or altered, or of holding and possessing such forged or altered bill of credit, with intent to utter or pass the same, knowing the same to be forged or altered, the certificate under oath of the Secretary or Treasurer of the said United States of America, or of either of the said States, of the tenor of the true bill alleged to be forged or altered, shall be admitted on trial, in such prosecution, for the purpose of proving such bill of credit to be forged or altered. [March 8, 1792.]

Chap. 62. An Act for incorporating certain Persons for the purpose of building a Bridge over Charles-River, from the westerly part of Boston, to Cambridge, and for extending the interest of the Proprietors of Charles-River Bridge for a term of years. [March 9, 1792. Add. acts—1792 ch. 21. 87.] See 1795 ch. 76: 1799 ch. 41.

Chap. 63. An Act regulating the taking of the Fish called Alewives, in the several Streams emptying into Merrimack-River, in the Town of Andover. [March 9, 1792. Add. act—1796 ch. 91.

Chap. 64. An Act in further addition to an Act, entitled, "An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that purpose." [March 9, 1792. Repealed—1793 ch. 14.

Chap. 65. An Act in addition to an Act, entitled, "An Act to establish a Bank in this State, and to incorporate the Subscribers thereto."

WHEREAS it is necessary to provide for a more secure administration of the affairs of the Massachusetts Bank, in order that the purposes for which the same was established may be answered:

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said corporation shall not issue note of a less denomination than five dollars,* and from and after the first day of January next, the total amount of all the promissory notes of said corporation, together with the money loaned by them, by a credit on their books or otherwise, shall not, at any one time, exceed double the amount of their capital stock in gold and silver, actually deposited in the bank, and held to answer the demands against the same; and in case of excess, the directors of said bank, under whose administration it shall happen, shall be liable for the same, in their natural and private capacities, and an action of debt, or on the case, may, in such case, be brought against them, or any of them, their or any of their heirs, executors or administrators, in any court proper to try the same, by any creditor or creditors of the said corporation, and may be prosecuted to final judgment and execution, any condition, covenant or agreement to the contrary notwithstanding; but this shall not be construed to exempt the said corporation, or the lands, tenements, goods or chattels of the same, from being also liable for, and chargeable with the said excess. Provided, That such of the said directors as may be absent, when the said excess was contracted or created, or who may have dissented from the resolution or act, whereby the same

[*Altered—1805 ch. 24. 1808 ch. 20. 99. 1812 ch. 56.]

Smallest notes they can issue.

Directors liable.

Provided. That such of the said directors as may be absent, when the said excess was contracted or created, or who may have dissented from the resolution or act, whereby the same
was so contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent, to the Supreme Executive of this Commonwealth, for the time being.

Sect. 2. And be it further enacted by the authority aforesaid, That it shall be the duty of the directors of said bank to furnish the Governor and Council of this Commonwealth, for the time being, once in six months, at least, and as much oftener as they may require, with statements of the amount of the capital stock of said corporation, and of the debts due to the same, of the monies deposited therein, of the notes in circulation, and of the cash in hand; which statement shall be signed by the directors, and attested by their cashier.

Sect. 3. And be it further enacted by the authority aforesaid, That if the said corporation, or any person or persons for or to the use of the same, shall deal or trade in buying or selling any goods, wares, merchandize or commodities, or shall, after six months from the passing this Act, buy or sell the stock or shares of any bank that is already, or may hereafter be established in this State or any of the United States, all and every person or persons by whom any order or direction for so dealing and trading shall have been given, and all and every person and persons who shall have been concerned as parties or agents therein, shall forfeit and pay double the value of the goods, wares, merchandize, commodities, or bank stock, in which such dealing and trade shall have been; one half to the use of the informer, and the other half thereof to the use of the Commonwealth, to be recovered with costs of suit.

Sect. 4. And be it enacted by the authority aforesaid, That no stockholder or proprietor in the Massachusetts Bank shall be entitled to more than ten votes, at any meeting of said corporation. [March 9, 1792.]

An Act to continue an Act, entitled, "An Act for rendering Processes in Law less expensive." [March 9, 1792.] Further continued—1792 ch. 16. 77 : 1799 ch. 3. All expired.

An Act permitting the Naturalization of Persons proscribed by any Law of this Commonwealth.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all persons proscribed by any law or laws of this Commonwealth, may be naturalized and admitted as citizens, in the same manner, and on the same conditions, as are directed and provided in case of other aliens, in and by an Act of the United States, in Congress assembled, entitled "An Act to establish an uniform rule of naturalization;" any law or resolve to the contrary notwithstanding: Provided, That the previous proceedings at a common law court of record, required by that Act, be had before some such court within this Commonwealth. [June 9, 1792.]

An Act to repeal an Act, entitled, "An Act to invest the Committee of the second Precinct in Rehoboth, with corporate powers, for certain purposes therein mentioned," and to incorporate a number of the inhabitants of said Precinct, by the name of The Catholic Congregational Church and Society in the second Precinct in the Town of Rehoboth. [June 19, 1792.] Altered—1812 ch. 142.

Duty of the directors.
1812 ch. 140.

Corporation prohibited from dealing or trading.

Forfeiture.

Number of votes limited.

Chap. 1.

Chap. 66.

Chap. 2.

1798 ch. 67.

2 Geo. III. ch. 7.
1792.—Chap. 3—17.

Chap. 3. 1791 ch. 35. An Act in addition to an Act, entitled, "An Act for incorporating certain Persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex, and for supporting the same." [June 22, 1792.] Further add. acts—1792 ch. 35 : 1795 ch. 49.

Chap. 4. 2 Geo. III. ch. 13. An Act to incorporate certain persons by the name of The Congregational Society in the first Precinct in the town of Rehoboth, in the County of Bristol, whereof the Rev. John Ellis is the present Pastor; and for repealing an Act made and passed in the year of our Lord, one thousand seven hundred and sixty-two, entitled, "An Act to invest the committee of the first Precinct in Rehoboth with Corporate Powers for certain purposes therein mentioned. [June 23, 1792.]

Chap. 5. An Act for incorporating a number of the inhabitants, of the Town of New-Bedford, in the county of Bristol, into a separate Parish. [June 23, 1792.]


Chap. 7. An Act in addition to the several Acts now in force which respect the carting and transporting Gun-Powder through the Streets of the Town of Boston, and the Storage thereof in the same Town. [June 26, 1792.] Repealed—1807 ch. 137. Other acts—1801 ch. 20 : 1803 ch. 129 : 1820 ch. 47.

Chap. 8. An Act for setting off Elisha Richardson and Moses Fisher, from the west Precinct in Medway, to the Town of Franklin. [June 27, 1792.]

Chap. 9. An Act determining at what Time and Place the Courts of General Sessions of the Peace and Courts of Common Pleas shall be holden, within the county of Wash-ington. [June 27, 1792.]

Chap. 10. An Act securing the free passage of the Fish called Alewives, in the Rivers in the Town of Dartmouth, in the County of Bristol, and for the Preservation of the same. [June 27, 1792.]

Chap. 11. An Act incorporating Joseph Storer, and others, for the purpose of making a better Harbour in Mousum-River, in Wells. [June 27, 1792.]

Chap. 12. An Act to set off Benjamin Freeman, and others, from the Town of Charlton, in the County of Worcester, and to annex them to the Town of Sturbridge. [June 27, 1792.]

Chap. 13. An Act incorporating Dudley Atkins Tyng, Esq. and others, for the purpose of rendering Merrimack-River passable with Boats, Rafts, and Masts, from the Divisional Line of New-Hampshire and Massachusetts, to the Tide-Waters of the said River, by the name of The Proprietors of the Locks and Canals on Merrimack-River. [June 27, 1792.] See 1795 ch. 27 : 1797 ch. 6 : 1803 ch. 102.

Chap. 14. 13 Geo. II. An Act regulating, in certain particulars, the Improvement of Plumb-Island, in the County of Essex, and repealing an Act for the effectual preventing of Horses, Neat Cattle, Sheep and Swine, from running at large, or feeding upon a certain island, called Plumb-Island, lying in Ipswich-Bay, in the County of Essex, passed in the year one thousand seven hundred and thirty-nine. [June 27, 1792.]

Chap. 15. An Act to incorporate the Plantation of Buckstown, in the County of Hancock, into a Town by the name of Buckstown. [June 27, 1792.] Name altered to Bucksport—1817 ch. 5.


Chap. 17. An Act authorizing Coroners to execute Writs and Precepts, when the Office of Sheriff may be vacant.

BE it enacted, by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That at all times hereafter, when the office of sheriff in any county may be vacant by death, resignation, removal, or otherwise, the several coroners of such county be and they hereby are respectively authorized and empowered to execute and return all writs and precepts, which are by law appointed to be ex-
An Act to incorporate certain persons by the name of The Independent Christian Church in Gloucester. [June 28, 1792.]

An Act to incorporate the Plantation of Washington, in the County of Lincoln, into a Town by the name of Mount-Vernon. [June 28, 1792.]

An Act to repeal an Act, entitled, "An Act for incorporating a number of the inhabitants of the first Parish in Mendon in the County of Worcester into a Society by the name of The First Congregational Society in Mendon," passed in the year of our Lord, one thousand seven hundred and eighty-four. [June 28, 1792.]

An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Charles River, from the westerly part of Boston to Cambridge, and for extending the interest of the Proprietors of Charles River Bridge, for a Term of Years," and for repealing a certain clause in said Act. [June 30, 1792.] Further add. act—1792 ch. 87.

An Act for establishing an Academy in the Town of Taunton, in the County of Bristol, by the name of The Bristol Academy. [June 30, 1792.]

An Act for ascertaining the Boundary Line between the northeast part of the Town of Franklin, and the southeast part of the Town of Medway. [Nov. 13, 1792.]

An Act to set off John Abbot, and others, with their families and estates, with other lands, from the Town of Ashburnham, and to annex the same to the Town of Ashby. [Nov. 16, 1792.]

An Act in addition to an Act for the due Regulation of Licensed Houses, BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Justices of the Courts of General Sessions of the Peace in the several counties in this Commonwealth, be and are hereby authorized and directed to grant license as the law directs, for keeping a tavern or for retailing spiritsuous liquors, to any person applying for such license within their respective counties, who may be an inhabitant or resident in any plantation or other place not within the limits of any incorporated town or district, on such person's taking the oath required by law to be taken by persons previous to their receiving license, and producing satisfactory evidence to the court to which he shall apply, that he is firmly attached to the Constitution and laws of this Commonwealth, and well qualified and provided for the exercise of such an employment, and that such license will be subservient to the public good. [Nov. 17, 1792.] Further add acts—1807 ch. 127: 1816 ch. 112: 1818 ch. 65.

An Act for altering an Act of this Commonwealth, entitled, "An Act directing the Manner in which Money shall be raised and levied to defray the charges which may arise within the several Counties in this Commonwealth." BE it enacted by the Senate and House of Representatives, in Ge-

Chap. 18. 1792. — Chap. 18—26. 417

Chap. 19.

Chap. 20. 1792 ch. 39.

Chap. 21. 1792 ch. 62.

Chap. 22.

Chap. 23.

Chap. 24.

Chap. 25. 1792 ch. 63.

Chap. 26. 1791 ch. 22.
Act altered. 

Chap. 27. An Act to empower Silas Nowell, Guardian to his Children, to join in the division of certain undivided estates, to them belonging, with the other owners, and on their behalf to execute any Deeds that may be necessary for that purpose. [Nov. 17, 1792.]

Chap. 28. An Act providing for the Establishment of Hospitals for inoculating with the Small-Pox, and for repealing all Laws heretofore made for that purpose. [Nov. 17, 1792.] Repealed—1792 ch. 58.

Chap. 29. An Act for incorporating a number of the Inhabitants of Turner, and the Plantation called Bucktown, in the County of Cumberland, into a distinct religious Society. [Nov. 17, 1792.]


Chap. 31. An Act in addition to, and for amending an Act passed the ninth day of June, one thousand seven hundred and ninety, entitled, "An Act for incorporating the southerly part of the Town of Plympton, in the County of Plymouth, into a Town by the name of Carver." [Feb. 8, 1793.]

Chap. 32. An Act for admitting Inhabitants of Towns, and certain other Corporations, to be Witnesses, as well for as against such Towns and Corporations, in Suits at Law.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all suits at law, whether of a civil or criminal nature, now depending, or that hereafter may be depending in any court, or before any Justice of the Peace, within this Commonwealth, wherein any town, district, precinct or parish, or other religious incorporate society is or may be a party, or interested in the event of the suit, any inhabitant of such town, district, precinct or parish, or member of such other religious incorporate society, shall and may be admitted as a competent witness; and his deposition may be used, if duly taken, and for legal cause, in the trial of the cause, as well for as against such town or other corporation: Provided, he hath no other interest therein than as an inhabitant or member of such town or other corporation, and is not otherwise legally disqualified; any law, usage or custom to the contrary notwithstanding. [Feb. 13, 1793.]

Chap. 33. An Act to suspend, for a certain Time, an Act passed on the fourteenth day of February, in the year of our Lord one thousand seven hundred and eighty-nine, entitled, "An Act for limiting the Time in which Suits may be prosecuted against Executors and Administrators, and for perpetuating the Evidence of Notices given by them, and by Guardians and others, respecting the Sale of Real Estate." [Feb. 14, 1793.]

Chap. 34. An Act repealing in part a clause in an Act, passed March the fifth, one thousand seven hundred and eighty-five, entitled, "An Act for incorporating the Plantation of Shapleigh, in the County of York, into a Town by the name of Shapleigh, and for annexing certain Lands to Lebanon." [Feb. 14, 1793.] See 1786 ch. 64.
An Act in further addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex, and for supporting the same." [Feb. 15, 1793.] Further add. acts—1793 ch. 49: 1808 ch. 33.

An Act to set off Jonathan Kidder, and others, from the Town of Sutton, in the County of Worcester, and to annex them to the Town of Oxford. [Feb. 18, 1793.]

An Act for incorporating a number of the inhabitants of the Town of Haverhill, and of the neighbouring Towns, in the County of Essex, into a distinct and separate religious Society. [Feb. 18, 1793.]

An Act to set off Williams Allen, and others, from the Town of Dartmouth, and annex them to the Town of Westport. [Feb. 25, 1793.]


An Act to set off Caleb Woods, and others, from Groton, and to annex them to Dunstable. [Feb. 25, 1793.]

An Act for giving Liberty to plead the General Issue, and give the Special Matter in Evidence, in certain cases.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all actions now depending, or that may be hereafter depending in any court within this Commonwealth, wherein the defence intended to be set up by the defendant, is, or may be, that he was a Justice of the Peace, sheriff, deputy-sheriff, or coroner, or a town, district, precinct or parish officer, or some other officer civil or military; and that the act or thing for which he is or may be sued, is or may be any act or thing done by him, by virtue or in the execution of his office, the defendant may plead the general issue, and give the special matter in evidence, upon filing in the cause a brief statement of such special matter of defence, within such time as the court shall order, of which statement the plaintiff shall be entitled to a copy; or he may plead specially at his election. [Feb. 25, 1793.]

An Act for altering the Time of holding the Court of General Sessions of the Peace and the Court of Common Pleas, within and for the County of Worcester, from the Tuesday next preceding the last Tuesday of March, to the fourth Tuesday of March. [March 2, 1793.]

An Act for setting off Elijah Whitney from the Town of Shrewsbury, in the County of Worcester, and annexing him to the Town of Westminster, in the same County. [March 2, 1793.]

An Act to enable the Town of Newbury to regulate and order the taking of Fish, called Shad, Bass and Alewives, in the River Parker, within the limits of said Town. [March 2, 1793.] See 1796 ch. 52.

An Act in addition to an Act, entitled, "An Act to establish an Academy in the Town of Hallowell, by the name of Hallowell Academy." [March 2, 1793.]

An Act to annex a certain Gore of Land to the Town of West-Stockbridge. [March 2, 1793.]

An Act for naturalizing George William Erving. [March 9, 1793.]

An Act in addition to an Act, entitled, "An Act to incorporate the Plantation Number Seven (so called) in the County of Hampshire, into a Town by the Name of Hawley." [March 9, 1793.]

Chap. 35. 1791 ch. 35.

Chap. 36.

Chap. 37.

Chap. 38.

Chap. 39. 1791 ch. 32.

Chap. 40.

Chap. 41. General issue may be pleaded by officers, and a statement filed.

Chap. 42.

Chap. 43.

Chap. 44.

Chap. 45. 1790 ch. 25.

Chap. 46.

Chap. 47.

Chap. 48. 1791 ch. 25.
Chap. 49. An Act for incorporating the south Precinct of the Town of Braintree, in the County of Suffolk, into a separate Town by the name of Randolph. [March 9, 1793.] Add. act—1811 ch. 52.


Chap. 51. An Act empowering Charles Barrett, Esq. to erect Locks and open a navigable Canal from the upper part of Barrett's-Town (so called) in the County of Lincoln, with the Sea, through George's-River (so called.) [March 9, 1793.] Add. act—1802 ch. 50.

Chap. 52. An Act for incorporating Jonathan Davis and others, for the purpose of Building a Bridge across New-Meadow-River. [March 9, 1793.] Add. act—1793 ch. 12.

Chap. 53. An Act for altering the Time of holding the Court of General Sessions of the Peace and Court of Common Pleas, now holden on the last Tuesday of September annually, in the County of Essex. [March 12, 1793.]

Chap. 54. An Act to set off Eleazer Robbins, and others, with their families and estates, from the Towns of Stoughton and Sharon, and to annex them to the Town of Foxborough. [March 12, 1793.]

Chap. 55. An Act in addition to an Act passed in the year of our Lord one thousand seven hundred and eighty-one, for incorporating the second Precinct in the Town of Lancaster, into a Town by the name of Sterling. [March 12, 1793.]

Chap. 56. An Act for incorporating a Part of the Towns of Lanesborough, Windsor, Adams, and the District of New-Ashford, in the County of Berkshire, into a Town by the name of Cheshire. [March 14, 1793.]


Chap. 58. An Act for providing Hospitals for Inoculation, and preventing Infection from the Small-Pox, and for repealing several Acts heretofore made for that purpose.

Preamble.

WHEREAS the laws heretofore made, with intent to prevent the spreading of infection from the small-pox, are insufficient, and other provision is necessary to be made:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That an Act passed in the year of our Lord one thousand seven hundred and seventy-six, entitled, "An Act empowering Justices of the Court of General Sessions of the Peace in the several counties to permit inoculating Hospitals to be erected in said counties:" And also another Act passed in the year of our Lord one thousand seven hundred and seventy-seven, in addition to, and amendment of the Act before mentioned: And also an Act passed in the year of our Lord one thousand seven hundred and seventy-six, entitled, "An Act to prevent the continuance of the small-pox in the town of Boston, and to license inoculation there for a limited time:" Also, one Act made in the year of our Lord one thousand seven hundred and ninety-two, entitled, "An Act providing for the establishment of hospitals for inoculating with the small-pox, and for repealing all laws heretofore made for that purpose," be and hereby are repealed.

Sect. 2. And be it further enacted by the authority aforesaid, That it shall be lawful for the inhabitants of any town or district, at any meeting legally warned, eight days before holding the same, to agree upon, erect, establish, or appoint such hos-
pital or hospitals, for inoculation with the small-pox, within the same town, as shall be thought proper by the major part of the legal voters present at the same meeting: Provided how-
erver, That all such hospitals shall be subject to such orders, regulations and restrictions as the selectmen of the town or district, or a committee of said town or district, appointed for that purpose, where such hospital shall be, shall agree upon and establish for the safety of the people; and the inhabitants of the same town or district, at a legal meeting, shall have power to discontinue such hospital whenever they shall think proper: Provided however, That no such hospital shall be erected within one hundred rods of any dwelling-house inhabited, situated in any adjacent town, without the consent of such adjoining town, in legal town-meeting therefor, first had and obtained.

Sect. 3. And be it further enacted by the authority aforesaid, That no person shall inoculate any other person, or inoculate himself or herself, or suffer himself or herself to be inoculated with the small-pox, unless at some hospital licensed and authorized according to this Act, on pain that every person so offending, shall, for each offence, forfeit a sum not exceeding forty pounds, to be recovered on indictment or presentment of the grand-jury, at the Supreme Judicial Court or Court of General Sessions of the Peace, within the same county in which such offence shall have been committed; the one half of which forfeiture shall be paid into the treasury of the county, and the other half into the treasury of the town in which such offence shall appear to have been done.

Sect. 4. And be it further enacted by the authority aforesaid, That whenever any hospital shall be so erected, established, or appointed, the physician, the persons inoculated, or sick there, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such property as shall be used or brought there, shall be subject to all such orders and regulations as shall be made by the selectmen, or a committee appointed for that purpose, to prevent spreading the infection.

Sect. 5. And be it further enacted, That when the small-
pox shall unexpectedly break out in any town or district, the selectmen of the same shall have power, and it shall be their duty immediately to provide such hospital, or place of reception for the sick and infected, as they shall judge best for their accommodation, and the safety of the inhabitants, and may give license for inoculating there all such persons as shall be supposed to have taken infection; and such hospitals and places of reception shall be subject to the orders and regulations of the selectmen, in the same manner as is herein before provided respecting licensed hospitals; and the said selectmen shall cause such sick and infected persons to be removed to such hospitals, or places of reception, unless the condition of the sick person should not admit of removal without danger of life; in which case, the house or place where the sick shall remain, shall be considered as an hospital, to every pur-
pose before mentioned, and all persons residing in or in any way concerned with the same, shall be subject to the orders and regulations of the selectmen of the town or district, as before expressed and provided.

Sect. 6. And be it further enacted, That in all the cases above mentioned, it shall be the duty of the selectmen to use all possible care to prevent the spreading of infection, and to give public notice to travellers of infected places, by displaying red flags at proper distances, and by all other means which, in their judgment, shall be most effectual for the common safety; and in case any physician or other person within any of the hospitals, or places of reception above described, or who shall attend, approach, or be concerned with the same, shall violate or contravene any of the restrictions, orders or regulations of the same, made according to this Act, either in respect of himself, or his, or any other person’s property, the person so offending shall, for each offence, forfeit and pay a sum not exceeding thirty pounds, nor less than four pounds, to be recovered and paid in the same manner as is in this Act before provided, in case of offences committed by inoculating, or being inoculated contrary to the form and effect of this Act.

Sect. 7. And be it further enacted, That whenever any householder shall know that any person within his or her family is taken sick of the small-pox, such householder shall immediately give notice thereof to the selectmen of the town or district of which such householder shall be an inhabitant or resident, on pain that every householder, who shall refuse or neglect to give such notice, shall forfeit and pay for such offence, a sum not exceeding thirty pounds, nor less than ten pounds, to be recovered in the same manner as is before provided for recovering the forfeitures mentioned in this Act, and to be appropriated and paid in the same manner. [March 15, 1793.]

Chap. 59. An Act for erecting and maintaining a Bridge over Miller’s-River, so called, in the County of Hampshire. [March 15, 1793.] See 1813 ch. 33.

Chap. 60. An Act to incorporate the Plantation of Bucktown, or Number Five, in the County of Cumberland, into a Town by the name of Buckfield. [March 16, 1793.]

Chap. 61. An Act for establishing an Academy in the Town of Plymouth by the name of The Plymouth Academy. [March 19, 1793.]

Chap. 62. An Act to prevent the Destruction of the Fish called Alewives, in Taunton-Great-River, so called, in the County of Bristol, and also to regulate the catching the said Fish therein for the future. [March 19, 1793.] Repealed in part—1796 ch. 53. Add. act—1799 ch. 85. Both repealed—1815 ch. 119.

Chap. 63. An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex, at Bodwell’s-Falls, between Andover and Methuen, and for supporting the same. [March 19, 1793.] Add. acts—1795 ch. 79: 1799 ch. 22: 1801 ch. 46.

Chap. 64. An Act to annex a certain Gore of Land lying on each side North-River, so called, between the Towns of Shelburne and Charlemont, in the County of Hampshire, to the said Towns of Shelburne and Charlemont. [March 19, 1793.]

Chap. 65. An Act empowering John Langdon to erect a Bridge over part of the River Piscataqua, in the County of York. [March 22, 1793.]

Chap. 66. An Act to incorporate a number of the inhabitants of the Towns of Rochester and Middleborough, in the County of Plymouth, and of Freetown, in the County of
1792. — Chap. 67—72.

An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of opening a Canal from the Head of New-Meadow-River, to Merry-Meeting-Bay." [March 22, 1793.]

An Act to incorporate certain Persons to manage the Funds of the first Congregational Society in Taunton, in the County of Bristol. [March 22, 1793.]

An Act in addition to an Act passed in the year of our Lord one thousand seven hundred and eighty-nine, entitled, "An Act determining what Transactions shall be necessary to constitute the Settlement of a Citizen in any particular Town or District."

WHEREAS in and by an Act, entitled "An Act determining what transactions shall be necessary to constitute the settlement of a citizen in any particular town or district," passed in the year of our Lord one thousand seven hundred and eighty-nine, it is among other things provided, that persons of certain descriptions in the said Act mentioned, who shall come into, and reside in any town or district, for the space of two years, without being warned to depart the same, should be deemed and taken to be inhabitants of such town or district: And whereas it appears expedient that the time of giving notice and warning to depart, as aforesaid, shall be extended and prolonged: Therefore,

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person shall be deemed or taken to be an inhabitant of any town or district, by virtue of residence therein, unless he or she shall have resided in the same for the space of five years from the time of passing the Act to which this is an addition, without being warned to depart as aforesaid; the above recited Act notwithstanding. [March 22, 1793.] Repealed—1793 ch. 34.

An Act for altering and determining the Places of holding the Supreme Judicial Court in the County of Lincoln, for the Counties of Lincoln, Hancock and Washington. [March 22, 1793.]

An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, between the Towns of Haverhill and Bradford, in the County of Essex, and for supporting the same. [March 22, 1793.] Add. acts—1793 ch. 35: 1796 ch. 36: 1799 ch. 16.

An Act for dividing the County of Suffolk, and establishing a new County by the name of Norfolk.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all the territory of the county of Suffolk, not comprehended within the towns of Boston and Chelsea, from and after the twentieth day of June next, be and hereby is formed and erected into an entire and distinct county, by the name of Norfolk; and Dedham shall be the shire town, till otherwise ordered by the General Court; and the inhabitants of said county of Norfolk shall have and possess, use, exercise and enjoy all the powers, rights and immunities, which by the Constitution and Laws of this Commonwealth, the inhabitants of any county within the same have, possess, exercise and enjoy, or are entitled to.

SECT. 2. And be it further enacted, That there shall be held and kept within the said county of Norfolk, at the shire town thereof, a Court of General Sessions of the Peace, and a Court of Common Pleas, on the last Tuesdays of April and September, yearly; and a Supreme Judicial Court, on the Tuesday next preceding the last Tuesday in August, annually, to commence in the year one thousand seven hundred and ninety-four: And the justices of said courts of subordinate jurisdiction, when

Suffolk divided.

Norfolk erected with powers.

[Altered by subsequent Acts.]
lawfully appointed and commissioned, shall have, hold, exercise and enjoy all the powers and authority which are given and granted to justices of like courts, in any other county within this Commonwealth; and all the aforesaid courts shall bear the same legal relation to each other, by process of every kind, as the like courts do in the other counties of this Commonwealth.

Sect. 3. *And be it further enacted*, That the methods and proceedings directed by law for choosing a county treasurer and register of deeds, and the modes, forms and proceedings, known and practised, in bringing forward and trying actions, causes, pleas, or suits, and of originating and conducting legal process of every kind, whether civil or criminal, in the Judicial Courts established in the several counties in this Commonwealth, and for choosing jurors to serve at said courts, shall be observed, and put in practice within the said county of Norfolk: *Provided*, That the choice of county-treasurer and register of deeds for said county of Norfolk shall, for the first time, originate in the same manner as prescribed by law where vacancies happen in said offices by death or resignation.

Sect. 4. *And be it further enacted*, That all writs, suits, and process of every kind, which may, before the said twentieth day of June, be depending in any court, including Probate Courts, within the county of Suffolk, shall be heard and tried, proceeded and determined upon, in the county of Suffolk, in the same manner as they would have been if this Act had not been made.

Sect. 5. *And be it further enacted*, That all deeds for the conveyance of real estates within the said county of Norfolk, which shall be executed prior to the establishment of a registry of deeds, and qualification of a register within said county of Norfolk, may be recorded in the office of the register of deeds for the county of Suffolk, and shall have the same legal effect and operation as though they were recorded in the registry of deeds for the said county of Norfolk.

Sect. 6. *And be it further enacted*, That the several towns and districts, within the said county of Norfolk, shall pay their proportions of all county taxes already granted and assessed, in the same manner as they would have done if this Act had not been made; and shall be helden to pay their proportion of all debts that shall be owing by the county of Suffolk, on the said twentieth day of June next, after the appropriation of the present outstanding taxes, and be entitled also to their proportion of all property belonging to said county of Suffolk, except in the county court-house, gaol and gaol-house, and the land belonging thereto:

And said county of Norfolk shall be obliged to build and keep in repair all bridges within the said county of Norfolk, which at this time are chargeable upon the county of Suffolk, and perform all other duties and obligations within their limits, which the county of Suffolk are now obliged to perform.

Sect. 7. *And be it further enacted*, That if it shall so happen, that any person or persons shall be liable to be committed to prison within the said county of Norfolk within two years
from the passing of this Act, it shall be lawful to commit such person or persons, by due process, to the common gaol within the county of Suffolk; and all processes of law, and the powers of all officers within said county of Norfolk, shall be as legal and binding for that purpose as though the same gaol was within the said county of Norfolk; and the keeper for said gaol shall be liable for the safe keeping of all prisoners, so committed, in the same manner as though committed by due course of legal proceedings within the county of Suffolk; and all prisoners, so committed, shall be entitled to the same benefits and indulgencies as though committed within the said county of Norfolk; and all necessary expenses which shall arise in consequence of the commitment of any prisoners from the county of Norfolk, shall be defrayed by the same county. [March 26, 1793.] Repealed as to Hingham and Hull—1793 ch. 8. Add. acts—1793 ch. 11. See 1797 ch. 42.

An Act in addition to an Act, entitled, "An Act to ascertain the quality of Pot and Pearl Ashes, and for the more effectual Inspection of the same," passed the seventeenth day of June, one thousand seven hundred and ninety-one.

WHEREAS the fees for inspecting pot and pearl-ashes have been found insufficient: Therefore,

SECT. 1. Be it enacted by the Senate and House of Represent-atives, in General Court assembled, and by the authority of the same, That the inspector of pot and pearl-ashes, or his deputy, shall have and receive, for inspecting the same, the sum of five pence for every hundred weight so inspected; and also the further sum of six-pence for coopering and nailing each cask and putting the same in shipping order, to be paid by the purchaser.

SECT. 2. And be it further enacted, That the said inspector shall not, in future, receive from any deputy he has, or shall appoint, more than seven and an half per cent. on the sum first above mentioned, and no part of the sum allowed for cooperation; any thing in the Act, to which this is an addition, to the contrary notwithstanding. [March 26, 1793.] Further add. act—1821 ch. 55.

An Act for securing the growth of Wood and Timber in a certain tract of woodland situate in the Towns of Ipswich, Gloucester, Wenham, Beverly and Manchester. [March 26, 1793.] Made perpetual—1796 ch. 89.

An Act granting Liberty to the Proprietors of Saco-Bridges (so called) over Saco-River, in the County of York, to continue the same, and for regulating the Toll for passing the same. [March 26, 1793.]

An Act permitting the inhabitants of that part of the Town of Wareham which was formerly Part of Rochester, to take Alewives, with Seines or Drag-Nets, at a Place called The Narrows, in Wareham-River, on a certain day in each week. [March 26, 1793.]


An Act in addition to an Act passed the fourth day of March, one thousand seven hundred and ninety-one, entitled, "An Act to regulate the catching of Salmon, Shad and Alewives, and to prevent Obstructions in Merrimack-River and in the other Streams running into the same, within this Commonwealth. [March 27, 1793.] Add. acts—1793 ch. 62: 1802 ch. 51: 1803 ch. 138: 1806 ch. 28: 1811 ch. 175: 1812 ch. 84: 1817 ch. 16: 1819 ch. 4, 29: 1820 ch. 22.

Chap. 73. 1791 ch. 8.

Chap. 74. Preamble.

Chap. 75. Fees enlarged. Inspector not to receive more than 7 1/2 per cent. of his deputies.

Chap. 76.

Chap. 77. 1788 ch. 67.

Chap. 78. 1789 ch. 51.

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Chap. 79. An Act for establishing the Dividing-Line between the Towns of Holden and Paxton, in the County of Worcester. [March 27, 1793.]

Chap. 80. An Act to incorporate certain persons by the name of The West Congregational Society in Taunton. [March 27, 1793.]

Chap. 81. An Act providing for the Support of poor Persons while confined in Gaol, upon Charge or Conviction of Crimes against this Commonwealth. [March 27, 1793.] Repealed—1794 ch. 48.

Chap. 82. An Act to suspend, in certain cases, the Operation of an Act passed on the thirteenth day of February, in the year of our Lord one thousand seven hundred and eighty-seven, entitled, "An Act for the Limitation of Personal Actions, and for avoiding Suits at Law." [March 27, 1793.]

Chap. 83. An Act to incorporate certain persons by the name of The Trustees of Charlestown Free Schools. [March 27, 1793.] Add. act—1799 ch. 77.

Chap. 84. An Act for incorporating certain lands in the Town of Dedham, in the County of Suffolk, into a Common Field. [March 27, 1793.]


Chap. 86. An Act to incorporate a number of the inhabitants of the Town of Pittston, in the County of Lincoln, into a Parish by the name of The Episcopal Society in Pittston. [March 28, 1793.]

Chap. 87. An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Charles-River, from the westerly part of Boston, to Cambridge, and for extending the interest of the Proprietors of Charles-River Bridge for a Term of Years." [March 28, 1793.] See 1795 ch. 76: 1799 ch. 41.

Chap. 88. An Act in addition to, and for repealing a certain Clause in an Act passed March the twenty-eighth, in the year of our Lord one thousand seven hundred and eighty-eight, entitled, "An Act to prevent the Destruction of Alewives, and other Fish, in Ipswich-River, and to encourage the increase of the same." [March 28, 1793.] Further add. acts—1796 ch. 66: 1804. ch. 96: 1814 ch. 22.

Chap. 89. An Act for regulating the opening of Sluice-Ways in the several Mill-Dams on River-Meadow Brook, in the Town Chelmsford, and District of Carlisle. [March 28, 1793.]

Chap. 1. An Act for repealing one Clause, and altering a Dividing Line described in an Act, entitled, "An Act for dividing the Town of Salisbury, in the County of Essex into two Parishes." [June 6, 1793.]

Chap. 2. An Act authorizing Lewis Ansart de Marsquelle to omit the addition of De Marsquelle, and to be called and known by the names of Lewis Ansart. [June 6, 1793.]

Chap. 3. An Act for the Encouragement of the Glass Manufactory within this Commonwealth. [June 15, 1793.] Expired.

Chap. 4. An Act in addition to an Act, entitled, "An Act for the establishing another Term for holding Courts of Common Pleas, and General Sessions of the Peace in the County of Worcester," passed March twenty-eight, seventeen hundred and ninety-three. [June 17, 1793.]

Chap. 5. An Act for establishing an Academy in the Town of Westfield, in the County of Hampshire, by the name of Westfield Academy. [June 17, 1793.]

Chap. 6. An Act for incorporating the east Precinct of the Town of Yarmouth, in the County of Barnstable, into a separate Town by the name of Dennis. [June 19, 1793.]

Chap. 7. An Act to incorporate the inhabitants of a Plantation known by the name of Number Four, into a Town by the name of Paris. [June 20, 1793.]

Chap. 8. An Act repealing Part of an Act, entitled, "An Act for dividing the County of Suffolk, and establishing a new County by the name of Norfolk," passed March twenty-sixth, Anno Domini one thousand seven hundred and ninety-three. 

BE it enacted by the Senate and House of Representatives,
in General Court assembled, and by the authority of the same, That the aforesaid Act, so far as it respects the towns of Hingham and Hull, is hereby repealed, and made null and void. [June 20, 1793.] Hingham and Hull annexed to Plymouth County—1803 ch. 14.

An Act in addition to an Act, entitled, "An Act for incorporating that part of the Town of Swansey known by the name of Shewanet-Purchase, in the County of Bristol, into a separate town by the name of Somerset." [June 20, 1793.]

An Act to incorporate the Parish of Ipswich-Hamlet (so called) in the Town of Ipswich, in the County of Essex, with certain other inhabitants and estates, in a separate Town and Parish, by the name of Hamilton. [June 21, 1793.]

An Act in addition to an Act, entitled, "An Act for dividing the County of Suffolk, and establishing a new County, by the name of Norfolk." [June 21, 1793.] Respecting grand jurors for the year 1793.

An Act in addition to an Act, entitled, "An Act for incorporating Jonathan Davis, and others, for the purpose of building a Bridge over New-Meadow-River." [June 21, 1793.]

An Act for altering an Act, entitled, "An Act incorporating the Honourable John Worthington, Esquire, and others therein named, for the purpose of rendering Connecticut-River passable for Boats and other things, from the mouth of Chickapec River, northward throughout this Commonwealth, by the name of The Proprietors of Locks and Canals on Connecticut-River. [June 21, 1793.] Further add, act—1799 ch. 58.

An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that purpose, excepting an Act, entitled, "An Act for establishing Rules and Articles for governing the Troops stationed in Forts and Garrisons within this Commonwealth, and also the Militia when called into actual Service." [June 22, 1793.] Add, acts—1795 ch. 54: 1790 ch. 73; 1800 ch. 31: 1805 ch. 114. All repealed—1809 ch. 108.

An Act to establish a College in the County of Berkshire, within this Commonwealth, by the name of Williams College.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there be erected and established in the town of Williamstown, in the county of Berkshire, a College for the purpose of educating youth, to be called and known by the name of Williams College, to be under the government and regulation of a body politic and corporate as hereafter in this Act is provided.

Sect. 2. And be it further enacted by the authority aforesaid, That John Bacon, Esq. Rev. Daniel Collins, Israel Jones, Woodbridge Little, David Noble, Theodore Sedgwick, Tompson J. Skinner, Esquires, Rev. Seth Swift, Henry Vanscaack, Esq.Rev. Stephen West, D. D. William Williams and Elijah Williams, Esquires, together with the president of the said College, for the time being, to be chosen as in this Act is hereafter directed, be and hereby are created a body politic and corporate by the name of The President and Trustees of Williams College, and that they and their successors, and such others as shall be duly elected members of the said corporation, shall be and remain a body politic and corporate by that name forever.

Sect. 3. And be it further enacted by the authority aforesaid, That for the more orderly conducting the business of the said corporation, the president and trustees shall have full power and authority. from time to time, as they shall determine, to elect a vice-president and secretary of the said corporation,
and to declare the tenures and duties of their respective offices, and also to remove any trustee from the same corporation, when, in their judgment, he shall be rendered incapable, by age or otherwise, of discharging the duties of his office, or shall neglect or refuse to perform the same; and to fill up all vacancies in the said corporation, by electing such persons for trustees as they shall judge best.  *Provided nevertheless,* That the number of the said trustees, including the president of the said College, for the time being, shall never be greater than seventeen, nor less than eleven.

**Sect. 4.** *And be it further enacted,* That the said corporation may have one common seal, which they may change, break or renew at their pleasure; and that all deeds signed and delivered by the treasurer, and sealed with their seal, by order of the president and trustees, shall, when made in their corporate name, be considered in law as the deed of the said corporation: And that the said corporation may sue and be sued in all actions, real, personal or mixed, and may prosecute and defend the same to final judgment and execution, by the name of The President and Trustees of Williams College: And that the said corporation shall be capable of having, holding and taking in fee simple, or any less estate, by gift, grant, devise, or otherwise, any lands, tenements, or other estate, real or personal: *Provided nevertheless,* That the annual clear income of the same shall not exceed the sum of six thousand pounds.

**Sect. 5.** *And be it further enacted by the authority aforesaid,* That the said corporation shall have full power and authority to determine at what times and places their meetings shall be held, and on the manner of notifying the trustees to convene at such meetings: And also from time to time to elect a president and treasurer of said College, and such professors, tutors, instructors, and other officers of the said College, as they shall judge most for the interest thereof, and to determine the duties, salaries, emoluments and tenures of their several offices aforesaid: The said president for the time being, when elected and inducted into his office, to be, ex officio, president of the said corporation: And the said corporation are further empowered to purchase or erect, and keep in repair, such houses and other buildings as they shall judge necessary for the said College: And also to make and ordain, as occasion may require, reasonable rules, orders and by-laws, not repugnant to the laws of this Commonwealth, with reasonable penalties for the good government of the said College; and also to determine and prescribe the mode of ascertaining the qualifications of the students, requisite to their admission; and also to confer such degrees as are usually conferred by Universities established for the education of youth. *Provided nevertheless,* That no corporate business shall be transacted at any meeting, unless seven at the least of the trustees are present: *And provided further,* That the said corporation shall confer no degrees other than those of bachelor of arts and master of arts, until after the first day of January, which will be in the year of our Lord one thousand eight hundred.
Sect. 6. And be it further enacted by the authority aforesaid, That the clear rents, issues and profits of all the estate, real and personal, of which the said corporation shall be seized or possessed, shall be appropriated to the endowment of the said College, in such manner as shall most effectually promote virtue and piety, and the knowledge of such of the languages, and of the liberal arts and sciences as shall hereafter be directed from time to time by the said corporation.

Sect. 7. And be it further enacted by the authority aforesaid, That the Hon. Tompson J. Skinner, Esq. be and he is hereby authorized and empowered to fix the time and place for holding the first meeting of the said corporation, of which he shall give notice, by an advertisement in the Stockbridge newspapers, at least fourteen days previous thereto.

Sect. 8. And be it further enacted by the authority aforesaid, That the treasurer of the said College shall, before he enter upon the execution of the duties of his office, give bonds to the said corporation, in such sums, and with such sureties as they shall approve of, conditioned for the faithful discharge of the said office, and for rendering a just and true account of his doings therein, when required. And that all the money, securities, and other property of the president and trustees of Williams College, together with all the books in which his accounts and proceedings, as treasurer were entered and kept, that shall be in his hands at the expiration of his office, shall, upon demand made upon him, his executors or administrators, be paid and delivered over to his successor in that office. And all monies recovered by virtue of any suit at law, upon such bond, shall be paid over to the president and trustees aforesaid, and subjected to the appropriation above directed in this Act.

Sect. 9. And be it further enacted by the authority aforesaid, That the Legislature of this Commonwealth may grant any further powers to, or alter, limit, annul, or restrain any of the powers by this Act vested in the said corporation, as shall be judged necessary to promote the best interests of the said College; and more especially, may appoint and establish overseers or visitors, of the said College, with all necessary powers and authorities for the better aid, preservation and government thereof.

Sect. 10. And be it further enacted by the authority aforesaid, That all the property, real and personal, belonging to the trustees of Williamstown Free School, be and the same hereby is vested in the corporation, which by this Act is created.

Sect. 11. And be it further enacted by the authority aforesaid, That there be hereby granted to the trustees of Williams College, for the use benefit, and purpose of supporting said College, twelve hundred pounds, to be paid out of the treasury of this Commonwealth; three hundred pounds of the same to be paid the first day of September, one thousand seven hundred and ninety-three, and three hundred pounds, annually, on the first day of September, for the three succeeding years. [June 22, 1793.] Add. act—1795 ch. 72.

Chap. 17. An ACT for incorporating a religious Society in the Town of Penobscot, in the County of Hancock. [June 22, 1793.]

Chap. 18. An ACT to incorporate certain Lands in the Town of Dedham, in the County of Norfolk, into a Common Field. [June 22, 1793.]

Chap. 19. An ACT in addition to an Act, entitled, "An Act to prevent Damage by Horses going at large."

WHEREAS the same damage, which arises from horses going at large, is frequently done by asses and mules; and whereas the Act made in February, one thousand seven hundred and eighty-nine, to prevent said damage by horses, is confined only to horses and horse-kind:

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said Act, and every clause and part thereof, shall extend to asses and mules, and that the same proceedings shall be had with respect to them, as are provided in the said Act with respect to horses. [June 22, 1793.]

Chap. 20. An ACT for incorporating certain persons for the purpose of building a Bridge over theiscott-River, in the County of Lincoln, and for supporting the same. [June 22, 1793.]


Chap. 22. An ACT to incorporate the east Part of Greenfield, in the County of Hampshire, into a Town by the name of Gill. [Sept. 28, 1793.] Add. acts—1793 ch. 61: 1798 ch. 8.

Chap. 23. An ACT to establish an Academy in the Town of Groton, by the name of Groton Academy. [Sept. 28, 1793.]

Chap. 24. An ACT to establish an Academy in the Town of Westford, by the name of Westford Academy. [Sept. 28, 1793.]

Chap. 25. An ACT to empower the Proprietors of the south Meeting-House in the south Parish in Danvers, in the County of Essex, to raise money by a Tax on the Pews and such Seats in the said Meeting-House as the Proprietors of said Meeting-House shall think proper, and making Provision for the Dissolution of said Parish. [Sept. 28, 1793.]


Chap. 27. An ACT to incorporate Benjamin Greenleaf, Esquire, and others, for the purpose of establishing a Woollen Manufactory. [Jan. 29, 1794.]

Chap. 28. An ACT to incorporate the Plantation of Sandy-River, with the inhabitants thereof, into a Town by the name of Farmington. [Feb. 1, 1794.]


Chap. 30. An ACT to set off Joseph Clarke and Jonathan Beals from the Town of Cumington, in the County of Hampshire, and to annex them to the District of Plainfield, in said County. [Feb. 4, 1794.]

Chap. 31. An ACT for dividing the Town of Sanford, and for incorporating the north Parish into a distinct District. [Feb. 4, 1794.]

Chap. 32. An ACT to incorporate the Plantation of Bridgton, in the County of Cumberland, into a Town by the name of Bridgton. [Feb. 7, 1794.]

Former act extended to asses and mules.
An Act to prevent Damage being done to the Beach and Meadows on the south side of the Town of Edgartown, in the County of Dukes' County, and to the Creeks adjoining thereto, by Cattle, Sheep, and Horses passing over the same, and for preserving the Fish in the said Creeks. [Feb. 11, 1794.]

An Act ascertaining what shall constitute a legal Settlement of any Person in any Town or District within this Commonwealth, so as to entitle him to Support therein, in case he becomes Poor and Stand in need of Relief; and for repealing all Laws heretofore made respecting such Settlement.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all Laws heretofore made, enacting and ascertaining what shall constitute a legal settlement of any person in any town or district within this Commonwealth, so as to subject and oblige such town or district to support such person, in case of his becoming poor and standing in need of relief, so far as they relate to the manner of gaining a settlement in future, be and they hereby are repealed; but all settlements already gained by force of said laws, or otherwise, shall remain, until lost by gaining others in some of the ways hereafter mentioned.

SECT. 2. And be it further enacted, That legal settlements in any town or district in this Commonwealth, shall be hereafter gained, so as to subject and oblige such town or district to relieve and support the persons gaining the same, in case they become poor and stand in need of relief, by the ways and means following, and not otherwise, namely:

First. A married woman shall always follow and have the settlement of her husband, if he have any within this Commonwealth, otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage; and in case the wife shall be removed to her settlement, and the husband shall want relief from the State, he shall receive it in the town where his wife shall have her settlement, at the expense of the Commonwealth.

Second. Legitimate children shall follow and have the settlement of their father, if he shall have any within this Commonwealth, until they gain a settlement of their own; but if he shall have none, they shall, in like manner, follow and have the settlement of their mother, if she shall have any.

Third. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if any she shall then have within the Commonwealth; but neither legitimate or illegitimate children shall gain a settlement by birth in the places where they may be born, if neither of their parents shall then have any settlement there.

Fourth. Any person of twenty-one years of age, being a citizen of this or any of the United States, having an estate of inheritance or freehold in the town or district where he dwells and has his home, of the clear yearly income of three pounds, and taking the rents and profits thereof three years successively, whether he lives thereupon or not, shall thereby gain a settlement therein.

Fifth. Any person of twenty-one years of age, being a citizen of this or any of the United States, having an estate, the principal of which shall be set at sixty pounds, or the income at three pounds twelve shillings, in the valuation of estates made by assessors, and being assessed for the same, to state, county, town or district taxes, for the space of five years suc-
cessively, in the town or district where he dwells and has his home, shall thereby gain a settlement therein.

Sixth. Any person being chosen and actually serving one whole year, in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable or collector of taxes, in any town or district, shall thereby gain a settlement therein.

Seventh. All settled ordained ministers of the Gospel shall be deemed as legally settled in the towns or districts wherein they are or may be settled and ordained.

Eighth. Any person that shall be admitted an inhabitant by any town or district at any legal meeting, in the warrant for which an article shall be inserted for that purpose, shall thereby gain a legal settlement therein.

Ninth. All persons, citizens as aforesaid, dwelling and having their homes in any unincorporated place, at the time when the same shall be incorporated into a town or district, shall thereby gain a legal settlement therein.

Tenth. Upon division of towns or districts, every person having a legal settlement therein, but being removed therefrom at the time of such division, and not having gained a legal settlement elsewhere, shall have his legal settlement in that town or district wherein his former dwelling-place or home shall happen to fall upon such division; and when any new town or district shall be incorporated, composed of a part or one or more old incorporated towns or districts, all persons legally settled in the town or towns, district or districts, of which such new town or district is so composed, and who shall actually dwell and have their homes within the bounds of such new town or district at the time of its incorporation, shall thereby gain legal settlements in such new town or district. Provided nevertheless, That no person residing in that part of any town or district which, upon such division, shall be incorporated into a new town or district, having then no legal settlement therein, shall gain any by force of such incorporation only; nor shall such incorporation prevent his gaining a settlement therein within the time, and by the means by which he would have gained it there, if no such division had been made.

Eleventh. Any minor who shall serve an apprenticeship to any lawful trade for the space of four years in any town or district, and actually set up the same therein within one year after the expiration of said term, being then twenty-one years old, and continue to carry on the same for the space of five years therein, shall thereby gain a settlement in such town or district; but such person, being hired as a journeyman, shall not be considered as setting up a trade.

Twelfth. Any person, being a citizen, as aforesaid, and of the age of twenty-one years, who shall hereafter reside in any town or district within this Commonwealth for the space of ten years together, and pay all state, county, town or district taxes, duly assessed on such person’s poll or estate, for any five years within said time, shall thereby gain a settlement in such town or district.

And every legal settlement, when gained, shall continue till
lost or defeated by gaining a new one; and upon gaining such new settlement, all former settlements shall be defeated and lost.

[Feb. 11, 1794.]

An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, between the Towns of Haverhill and Bradford, in the County of Essex, and for supporting the same." [Feb. 12, 1794.]

Further add. acts—1786 ch. 36 : 1799 ch. 16.

An Act to incorporate a Society by the name of The Massachusetts Historical Society. [Feb. 19, 1794.]

A Act for granting to the United States of America the Jurisdiction of Part of the Island of Seguin.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there be and hereby is granted to the United States of America, the jurisdiction of ten acres of land, and the property of this Commonwealth therein, most convenient for a light-house, part of the island of Seguin, situated near the mouth of the river Kennebeck, in this Commonwealth, for the purpose of erecting a light-house on the same ten acres; which quantity of land shall be laid out at the time of erecting said light-house, and a description thereof, in writing, entered in the registry of deeds, in the county wherein the same shall be situated.

Sect. 2. Provided nevertheless, and be it further enacted by the authority aforesaid, That if the said United States shall neglect, for the term of four years from the date of this grant, to erect a light-house on some part of the same ten acres, and after the same shall be erected, shall neglect to keep the same in good repair, and a state useful to navigation, then this grant shall be void. Provided also, That this Commonwealth shall retain, and hereby does retain a concurrent jurisdiction with the said United States, in and over the same ten acres, so far as that all civil and criminal processes, issued under the authority of this Commonwealth, or any officers thereof, may be executed on any part of the same ten acres, granted as aforesaid, or in any buildings thereon to be erected, in the same way and manner as if the jurisdiction had not been granted as aforesaid. And provided also further, That if the said United States shall, at any time hereafter, make any compensation to any of the United States, for any cession made for the purposes of this grant, like compensation to be made to this Commonwealth by the United States, for the present grant, according to its value. [Feb. 19, 1794.]

Remainder of the island ceded to the United States—1796 ch. 73.

An Act for settling the Line between Littleton and Boxborough. [Feb. 20, 1794.]

An Act to set off Joel Brooks from the Town of Winchendon, and to annex him and his estate to the Town of Gardner. [Feb. 20, 1794.]

An Act to set off James Damon and Abiel Damon, with certain lands, from the Town of Norwich, and for annexing them to the Town of Chesterfield. [Feb. 22, 1794.]
Chap. 41.

An Act for setting off Samuel Brown, of Needham, in the County of Norfolk, from the east Parish, and annexing him to the west Parish in said Needham. [Feb. 22, 1794.]

Chap. 42.

An Act to secure to Owners their Property in Logs, Masts, Spars and other Timber, in certain cases.

WHEREAS many persons put their logs, masts, spars, and other pieces of timber, marked with their marks, into the rivers within this Commonwealth, and into the ponds and streams leading into such rivers, which marks are frequently cut out, altered or destroyed, to the injury of the owner: To prevent which wrongs,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person or persons shall cut out, alter or destroy any mark or marks of any owner or owners, made on any logs, masts, spars or other timber, put into any of the rivers, ponds or streams within this Commonwealth, as aforesaid, on conviction thereof, such offender or offenders, shall forfeit and pay a fine of forty shillings for each log, mast, spar or other piece of timber, the mark whereof he or they shall be convicted of having so altered or destroyed; and shall be further liable to pay to the owner or owners of such log, mast, spar, or other piece of timber, treble the value thereof; which fine and treble value shall be recoverable by such owner or owners, by action of trespass, in any court proper to try the same, with legal costs of suit.

Sect. 2. Be it further enacted, That if any such mark or marks shall be so cut out, altered or destroyed, by any person or persons, and the owner or owners of the same property shall be unknown, the person or persons so offending shall forfeit and pay the sum of forty shillings for each log, mast, spar or other piece of timber, the mark whereof he or they shall be convicted of so altering or destroying, to the person who shall sue for the same; to be recovered by action of debt, in any court proper to try the same, with legal costs.

Sect. 3. Be it further enacted by the authority aforesaid, That if any person or persons shall take, carry away, or dispose of, saw, split, or otherwise destroy any log, mast, spar, or piece of timber, the property of another, without the consent of the owner (except as is herein after provided) he or they so offending, and being convicted thereof, shall forfeit and pay to the owner or owners, for each log, mast, spar or piece of timber, treble the value thereof, to be recovered by an action of trespass, in any court proper to try the same, with costs of suit.

Sect. 4. And be it further enacted by the authority aforesaid, That when any log or logs, mast, spar or other piece of timber, shall be carried by the floods into any lands adjoining said rivers, the ponds, streams or waters running into the same rivers, or forming part thereof, the owner or owners of such log or logs, mast, spar or timber, may, at any time within eighteen months, lawfully remove the same from off said land, on tendering or paying to the proprietor or possessor of the land
such reasonable damages as may be occasioned by such removal; and if the owner or owners of such logs, masts, spars or timber, shall not appear and take the same from off such lands, within the same term of eighteen months, or otherwise agree with the proprietors or possessors of such lands, then the same logs, masts, spars or timber, shall be deemed their property, and wholly at their disposal.

Sect. 5. And be it further enacted by the authority aforesaid, That whenever any logs, masts, spars or other timber, shall be taken up and secured for the owner below the great boom (so called) in Saco River, between Biddeford and Pepperelborough, the person or persons so taking up and securing said logs, masts, spars or timber, shall be entitled to one sixth part of said logs, masts, spars or timber, if taken up above the lower falls on said river, and below said boom; or if taken up and secured below said lowest falls, on Saco River, one third part of all logs, masts, spars, or other timber so taken up and secured for the owners of the same: Provided, The person or persons so taking up and securing the same shall, in all such cases, advertise said logs, masts, spars or timber, describing the same and the marks (if any there be) on the same, within seven days after so taking up and securing them, by posting up such advertisement in one or more of the public inns, in Pepperelborough and Biddeford; and if no such advertisement shall be posted up as aforesaid, the owner of such logs, masts, spars or timber, may take the whole without paying any sum for taking up and securing the same; and if no owner shall appear to take a part of said logs, masts, spars or timber, and demand his part thereof, within three months from the day it is advertised as aforesaid, then the whole of said logs, masts, spars or other timber, shall become the property of the person who shall take up and secure the same as aforesaid; and any person or persons, using, selling, or any other way disposing of said logs, masts, spars or other timber, or any part thereof, within the term of three months from the time of taking up and advertising the same in manner aforesaid, unless he purchases the same of the lawful owner, shall be liable to pay the owner thereof treble the value of such logs, masts, spars or piece of timber, with costs of suit, on being convicted thereof, to be recovered as aforesaid.

And whereas it may be difficult to obtain positive evidence for the conviction of those who may offend against this Act:

Sect. 6. Be it therefore enacted by the authority aforesaid, That when any person shall be prosecuted for the breach of this Act, for any logs, masts, spars or timber, being found in his possession with the marks cut out or altered, as aforesaid, it shall be considered as evidence against the person possessing the same, as being guilty of a breach of this Act, unless such person shall give reasonable satisfaction to the court or jury which tries the cause, that neither he himself, nor any other person by his order, or for or under him, did so alter or deface the marks on the same.
Proviso repealed—1804 ch. 5.

Provided nevertheless, That nothing in this Act shall be construed to extend to Connecticut-River or the river Merrimack. [Feb. 22, 1794.] Add. acts—1801 ch. 4: 1804 ch. 5. 95: 1806 ch. 118: 1807 ch. 84: 1815 ch. 51: 1817 ch. 84: 1818 ch. 91.

Chap. 43.

An Act prescribing the Mode of recovering Forfeitures of personal Property liable thereto by Law, and also pecuniary Forfeitures.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever any personal property shall be liable to forfeiture for any offence, any person or persons entitled thereto, or interested therein, in whole or in part, may seize and shall safely keep the same till a final decree be had thereon, unless the owner or person from whom it was taken, claiming the same for himself or some other person, shall give bond, with sufficient surety, to the party seizing, to pay the appraised value thereof, when and if it shall be finally decreed forfeited; which value shall be appraised upon oath by three judicious and disinterested men, mutually chosen by the parties, or (in case of disagreement or refusal of the party seizing) appointed by a Justice of the Peace in the county where the property was seized; but upon the giving or tendering such bonds, the property shall be delivered to such owner or claimant; and if no claimant shall appear, the party seizing shall be held to cause an inventory and appraisement of the property seized, to be made by three disinterested persons under oath, who shall be appointed by a Justice of the Peace in the county where the property shall be seized, which appraised value shall be the rule by which to determine where the libel shall be commenced. And in order to obtain a decree of forfeiture of such property.

SECT. 2. BE it further enacted, That if the property seized exceed four pounds in value, the party seizing the same shall, within twenty days after the seizure, but not afterwards, file a libel in the clerk’s office of the Court of Common Pleas in the county where the offence was committed, stating the cause of seizure, and pray for a decree of forfeiture, whereupon the clerk shall make out a notification to all persons to appear at such court, and shew cause, if any they have, why such property should not be decreed forfeit, for such cause of seizure; which notifications the libellant shall cause to be inserted in some newspaper printed in the same county, if there be one; otherwise, in some newspaper printed in the next or nearest county, or in Boston, fourteen days at least before the sitting of the court at which the libel is to be tried; and upon entry of such libel, at the time when civil actions are to be entered in such court, the court shall have power to hear and determine the cause by a jury, where there is a claimant, but without one, if, upon proclamation made, no claimant appears, and to decree the forfeiture and disposition of such property according to law, and may decree a sale and distribution of the proceeds, deducting charges where they think proper; and may also award costs against the claimants: And if such libel be not supported, or be discontinued, restitution of the property
shall be decreed to the claimants, with costs: And if the jury on the trial, where the libel is tried by a jury, find the seizure groundless and without probable cause, they shall assess, and the court shall decree reasonable damages for the claimant, with costs. And either party aggrieved at the decree of such court, may appeal therefrom to the Supreme Judicial Court next to be holden in the same county, who shall have power, upon such appeal, finally to hear and determine the cause, and decree thereupon in manner aforesaid.

Sect. 3. And be it further enacted, That when the property seized shall not exceed the value of four pounds, the libel shall be preferred to some Justice of the Peace in the same county where the offence was committed, within the time aforesaid, who shall have power to hear, determine and decree thereupon as aforesaid, having first caused a like notification to be posted up, and which the libellant shall be held to do at some public place in the same county, seven days before the time of trial, saving to either party aggrieved liberty of appeal from the decree of such justice to the next Court of Common Pleas to be held in and for said county, who shall have power finally to hear, determine and decree in the cause aforesaid; and depositions taken for legal cause, and according to law, may be used on the trial, as well before said justice as before said courts. And if any such appeal is not entered and prosecuted, the court to which the same was made, upon complaint, may affirm the decree appealed from, with additional damages and costs, or with additional costs only, as the case may require.

Sect. 4. And be it further enacted, That all pecuniary fines or forfeitures made or that may be made recoverable, by bill, plaint or information, or by any of those modes of prosecution, by any law of this Commonwealth, or for the recovery whereof no mode shall be prescribed, shall and may be sued for and recovered, by action of debt, in any court proper to try the same, any law, usage or custom to the contrary notwithstanding. Provided always, That nothing in this Act shall be construed to take away any remedy already provided in and by any Act or law of this Commonwealth for any forfeiture declared thereby. [Feb. 22, 1794.]
Chap. 49. An Act dividing the Commonwealth into Districts for the Choice of Counsellors and Senators. [Feb. 24, 1794.] Superseded by 1802 ch. 21.

Chap. 50. An Act for incorporating a number of Inhabitants in the County of Berkshire, into a religious Society, by the name of The First Baptist Society in Sandisfield. [Feb. 25, 1794.] Add. act—1799 ch. 9.

Chap. 51. An Act for incorporating a number of Inhabitants of the Town of West-Stockbridge, in the County of Berkshire, into a distinct and separate religious Society. [Feb. 25, 1794.]

Chap. 52. An Act for incorporating certain persons for the purpose of building a Bridge over Fom-River, between Portland and Cape-Elizabeth, and for supporting the same. [Feb. 25, 1794.] Add. act—1799 ch. 74.

Chap. 53. An Act for incorporating the Inhabitants of the southerly part of the Town of New-Marlborough, in the County of Berkshire, into a separate Parish. [Feb. 25, 1794.]

Chap. 54. An Act to incorporate the Plantation of Washington, in the County of York, into a Town by the name of Newfield. [Feb. 26, 1794.]

Chap. 55. An Act incorporating a Society by the name of The Trustees of the Baptist Education Fund. [Feb. 26, 1794.] Add. act—1798 ch. 34.

Chap. 56. An Act for setting off from the Town of Cheshire, in the County of Berkshire, three Lots of Land, with the Inhabitants thereon, and for annexing the same to the Town of Windsor. [Feb. 26, 1794.]


Chap. 58. An Act to incorporate a religious Society by the name of The Methodist Society in the first Parish of Lynn, in the County of Essex. [Feb. 26, 1794.] Name altered, &c.—1819 ch. 122.

Chap. 59. An Act providing for the Relief and Support, Employment and Removal of the Poor, and for repealing all former Laws made for those purposes.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every town and district within this Commonwealth shall be holden to relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof; and may vote and raise monies therefor, and for their employment, in the same way that monies for other town or district charges are voted and raised: And may also, at their annual meetings, choose any number not exceeding twelve, of suitable persons, dwelling therein, to be overseers of their poor; and where such are not specially chosen, the selectmen shall be overseers of the poor, ex officio.

Sect. 2. Be it further enacted, That said overseers shall have the care and oversight of all such poor and indigent persons, so settled in their respective towns and districts, and shall see that they are suitably relieved, supported and employed, either in the work-house or other tenements belonging to such towns or districts, or in such other way and manner as they, at any legal meeting, shall direct, or otherwise at the discretion of said overseers, at the cost of such town or district.

Sect. 3. Provided always, and be it further enacted, That the kindred of any such poor person, if any he shall have, in
the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living within this Commonwealth, of sufficient ability, shall be helden to support such pauper in proportion to such ability.

And the Court of Common Pleas in the county where any one of such kindred to be charged shall reside, upon complaint made by any town or district, or kindred who shall have been at any expense for the relief and support of any such pauper (which complaint being filed in the clerk's office of such court, and summons thereon issued, directed to and served by any proper officer to serve original summons, and in the manner they are by law to be served, fourteen days before the sitting of such court, shall be sufficient to hold the persons summoned to answer thereto) may, on due hearing, either upon the appearance or default of the kindred so summoned, assess and apportion such sum as they shall judge reasonable therefor, upon such of said kindred as they shall judge of sufficient ability, and according thereto, to the time of such assessment, with costs, and may enforce payment thereof by warrant of distress: Provided, Such assessment shall not extend to any expense for any relief afforded more than six months previous to the filing of such complaint.

And may further assess and apportion upon them such weekly sum for the future as they shall judge sufficient for the support of such pauper, to be paid quarterly till further order of court, and upon application from time to time of the town, district or kindred to whom the same shall have been ordered to be paid, the clerk of said court shall issue, and may renew a warrant of distress for the arrears of any preceding quarter.

And the court may further order, with whom of such kindred, that may desire it, such pauper shall live and be relieved, and for such time with one, and such with another, as they shall judge proper, having regard to the comfort of the pauper, as well as the convenience of the kindred. And upon suggestion, other kindred of ability, not named in the complaint, may be notified, and the process may be continued, and upon due notice, whether they appear or are default, the court may proceed against them in the same manner as if they had been named in the complaint. But if such complaint be not entered, or be discontinued or withdrawn, or be adjudged groundless, the respondents shall recover costs.

And such court may take further order from time to time in the premises, upon application of any party interested, and may alter such assessment and apportionment as the circumstances may vary.

Sect. 4. And be it further enacted, That said overseers be and they hereby are empowered, from time to time, to bind out, by deed indented or poll, as apprentices, to be instructed and employed in any lawful art, trade, or mystery, or as servants to be employed in any lawful work or labour, any male or female children, whose parents are lawfully settled in and become actually chargeable to their town or district; also,
whose parents, so settled, shall be thought by said overseers to be unable to maintain them (whether they receive alms, or are so chargeable or not) Provided, They be not assessed to any town or district charges; and also all such who, or whose parents residing in their town or district, are supported there at the charge of the Commonwealth, or whose parents are unable to support them as aforesaid, to any citizen of this Commonwealth; that is to say, male children till they come to the age of twenty-one years, and females till they come to the age of eighteen, or are married; which binding shall be as valid and effectual in law as if such children had been of the full age of twenty-one years, and had, by a like deed, bound themselves, or their parents had been consenting thereto: Provision to be made in such deed for the instructing of male children, so bound out, to read, write and cypher, and of females to read and write, and for such other instruction, benefit and allowance, either within or at the end of the term, as to the overseers may seem fit and reasonable.

SECT. 5. And be it further enacted, That it shall be the duty of said overseers, to inquire into the usage of children already legally bound out, or that may be bound out by force of this Act, and to defend them from injuries. And upon complaint by such overseers, made to the Court of Common Pleas in the county where their town or district is, or where the child may be bound, against the master of any such child, for abuse, ill-treatment or neglect, said court (having duly notified the party complained of) may proceed to hear the complaint, and if the same be supported, and the cause shall be judged sufficient, may liberate and discharge such child from his or her master, with costs, for which execution may be awarded; otherwise the complaint shall be dismissed, but without costs, unless it appear groundless and without probable cause, in which case costs shall be allowed the respondent.

And any apprentice or servant, so discharged, or whose master shall decease, may be bound out anew for the remainder of the term, in manner aforesaid. And such overseers may also have remedy, by action on such deed, against any person liable thereby, for recovery of damages for breaches of any of the covenants therein contained, which, when recovered, shall be placed in the town or district treasury, deducting reasonable charges, and disposed of by the overseers, at their discretion, for the benefit and relief of such apprentice or servant within the term; the remainder, if any, to be paid him at the expiration thereof; and the court before which such cause shall be tried originally, and on the appeal, may also, upon the plaintiff's request, if they see cause, liberate and discharge such apprentice or servant from his master, if it hath not then been already done in the method before directed by this Act. And such apprentice or servant shall have like remedy when their term is expired, for damages for the causes aforesaid, other than such (if any) for which damages may have been recovered as aforesaid, by action upon such deed to be delivered them for that purpose, and on which no endorsement shall be neces-
sary: Provided. Such action be commenced within two years after the expiration of the term; and where such deed shall have before been put in suit, an attested copy from the proper office may be used and have the same force as the original. And no action brought by overseers shall abate by the death of any of them, or by their being succeeded in office, pending the action, but it shall proceed in the name of the original plaintiffs or the survivors of them.

And in case of elopement, any such apprentice or servant may be apprehended by any Justice of the Peace of the county where he is bound or where he may be found, upon the complaint of the master, or any other on his behalf, and returned to his master by any person to whom the warrant may be directed, or may be first sent to the house of correction at the justice's discretion. And every person enticing any such apprentice or servant to elope from his master, or harbouring him, knowing him to have eloped, shall be liable to the master's action for all damages sustained thereby. And the Court of Common Pleas, either in the county where the overseers binding, or the master of any apprentice or servant bound, live, may also, upon complaint of such master, for gross misbehaviour, discharge such apprentice or servant from his apprenticeship or service, after due notice to such overseers, and hearing thereupon.

Sect. 6. And be it further enacted, That said overseers shall have power to set to work, or bind out to service by deed, as aforesaid, for a term not exceeding one whole year at a time, all such persons residing and lawfully settled in their respective towns or districts, or who have no such settlement within this Commonwealth, married or unmarried, upwards of twenty-one years of age, as are able of body, but have no visible means of support, who live idly, and use and exercise no ordinary or daily lawful trade or business to get their living by; and all also persons who are liable by any law to be sent to the house of correction, upon such terms and conditions as they shall think proper. Provided always, That any person thinking him or herself aggrieved by the doings of said overseers, in the premises, may apply, by complaint, to the Court of Common Pleas in the county where they are bound, or where the overseers who bound them dwell, for relief; which court, after due notice to the overseers and to their masters, shall have power, after a hearing and examination, if they find sufficient cause, to liberate and discharge the party complaining from his or her master, and to release him or her from the care of the overseers. Otherwise to dismiss the complaint, and to give costs to either party or not, as the court may think reasonable.

Sect. 7. And be it further enacted, That the poor persons standing in need of relief, living without the bounds of any incorporated town or district, shall be under the care of the overseers of the poor, appointed in the adjoining town or district wherein the inhabitants of such unincorporated place are usually taxed: And the same overseers shall have the like authority to bind out the children of such poor persons as they
are vested with, respecting the children of persons in like circumstances, inhabitants of the town or district in which they are appointed. And such overseers may also set to work, or bind out as aforesaid, for a space not exceeding one whole year at a time, all such persons above the age of twenty-one years, married or unmarried, residing in their county, but without the bounds of any town or district, as are able of body, but have no visible means of support, or who live idly, using no ordinary, daily lawful trade or business to get their living by, or who are liable by any law to be sent to the house of correction, and shall receive and apply their earnings (deducting reasonable charges) to the support of them or their families, if any they have, at their discretion, saving to such persons the like remedy for relief, if they think themselves aggrieved, as is by this Act provided for persons set to work, or bound out for like causes by overseers of towns.

And for the prevention of poverty as well as lewdness,

Sect. 8. Be it further enacted, That any person who shall be suspected of keeping a house of ill fame, resorted to for the purposes of prostitution or lewdness, may be apprehended by warrant from any Justice of the Peace in the county, upon complaint of the overseers of the town or district wherein such house shall be; and upon conviction of such offence before such justice, or before the Court of General Sessions of the Peace, or presentment of the grand jury, may be ordered to the house of correction, for a term not exceeding one month; and after such conviction, shall not be allowed to keep lodgers or boarders, in any town or district, without the license of the overseers of the poor thereof.

Sect. 9. And be it further enacted, That it shall also be the duty of said overseers, in their respective towns or districts, to provide for the immediate comfort and relief of all persons residing or found therein not belonging thereto, but having lawful settlements in other towns or districts, when they fall into distress and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements, the expenses whereof incurred within three months next before notice given to the town or district to be charged, as also of their removal or of their burial, in case of their decease, may be sued for and recovered, either in a civil action, by the town or district incurring the same, against the town or district wherein such persons had such settlements, or in the method by complaint, hereafter prescribed in and by this Act: Provided, Such action or complaint for damages be commenced or preferred within two years after the cause of action arose, but not otherwise. And in such civil action, the settlement of the pauper shall not be contested by the defendants, if it hath been then adjudged to be in their town or district upon such process as is herein after prescribed; otherwise it may be: And a recovery in such action shall bar the town or district, against which the same shall be had, from disputing the settlement of such pauper, in such town or district, with the town or district so recovering, in any future action or process brought and prosecuted for the support or removal of such pauper.
Sect. 10. And be it further enacted, That all persons actually chargeable, or who, through age or infirmity, idleness or dissoluteness, are likely to become chargeable to the places wherein they are found, but in which they have no lawful settlement, may be removed to the places of their lawful settlements, if they have any within the Commonwealth: And in order to effect such removal (and also to recover the expenses incurred for the relief of such persons, if said overseers choose that mode in preference to a civil action) said overseers may apply, by complaint, to any Justice of the Peace in their county, not an inhabitant of their town or district, which complaint may be in substance as follows:

To a Justice of the Peace, in and for the county of

THE town of  in the said county, by the subscribers, overseers of their poor, complain and shew, that now resident in said town, is poor, and become chargeable (or is likely to become chargeable) to said town; and that his lawful settlement is in the county of  Wherefore your complainants pray, that after a due course of proceedings had, the lawful settlement of said may be adjudged to be in said town of , and that he may be removed thither by warrant accordingly. Your complainants further pray judgment for damages, for expenses incurred on account of said an account whereof is annexed, and for such as may accrue until the time of judgment, and for costs. Dated at said the day of , A. D. 17 . A. B. &c. Overseers.

Upon which complaint, such justice shall make out and annex thereto a summons, directed to the sheriff or his deputy, of the county wherein the town to be summoned is, in substance as follows:

[Seal.] ss. To the Sheriff of the County of , or his Deputy, Greeting.

IN the name of the Commonwealth of Massachusetts, you are hereby required to summon the town of in said county of  to appear, if they see fit, before me, the subscriber, a Justice of the Peace, in and for said county of  in said county of  on the day of at of the clock in the noon, to shew cause, if any they have, why the prayer of the above written complaint should not be granted, by leaving an attested copy thereof, and of this summons, with the overseers of the said town of  or some one of them, thirty days before said day of  and make return hereof, and of your doings herein, unto me, the said justice, on or before the said day of  Hereof fail not.

Given under my hand and seal the day of  in the year of our Lord . T. P.
Party and witnesses to be summoned.

And such officer shall serve and return the same, his being an inhabitant of the town to be summoned notwithstanding, for the same fees as for other writs of summons. And such justice shall summons the party to be removed, and other witnesses, and may, if he see cause, compel the appearance of the former by warrant, to be examined, and shall hear his objections to such removal, and may, for good cause, continue the process once, not exceeding three months; and after due examination and hearing, whether the town summoned appears or not, shall proceed to give judgment for or against the complainants, and make a record thereof in substance as follows:

--- ss.

AT a Court held before me Esq. a Justice of the Peace in and for the county of at in said county, on the day of in the year of our Lord one thousand seven hundred and the town of in the county of complainants against the town of in the county of shewing that now resident in said town of is poor and become chargeable to that town (or is likely to become chargeable, as the fact may be) and that said town of is the place of his lawful settlement, and praying it may be so adjudged, and that he may be removed thither (and for damages for expenses incurred on account of such pauper, or that may be incurred, and for costs:) The parties appear (or the complainants appear, but the said town of although solemnly called, doth not appear, but makes default, as the case may be) and after due examination and hearing, and on due consideration of the premises had, I do adjudge the same to be true, and I do also adjudge that the lawful settlement of the said is in the said town of and that he be removed thither, and that the complainants recover costs (or that the complainants recover the sum of damages for expenses incurred to this time for the support of said as the case may require) (or if in favour of the town complained of, say, I do adjudge that the said is not likely to become chargeable to said town of or that the lawful settlement of said is not in said town of and that said town of recover costs.)

Recorded by me, Justice of the Peace.

Costs to be awarded, as the case may be.

No costs, however, to be awarded for such town if defaulted; but if the complaint be not entered, or be discontinued, or not prosecuted, the town complained of appearing, and praying therefor, shall recover costs. And upon judgment of removal, such justice may issue his warrant of removal, directed to, and to be executed by, any constable of the town from whence the person is to be removed, or to any particular person by name, in the following form:
WHEREAS, at a court held on before me, Esq., a Justice of the Peace in and for the county on the day of it was adjudged by me, the said justice, that now resident in said town is chargeable (or likely to become chargeable, as the case may be) thereto; that his lawful settlement is in the town of in the county of and that he be removed thither. I do therefore, in the name of the Commonwealth of Massachusetts, hereby authorize and require you forthwith to take, remove and convey, by land or water, as may be most convenient, the said to the said town of , and him deliver to the overseers of the poor thereof, or some one of them, who are hereby required to receive and provide for him as an inhabitant of that town. And of this warrant, and of your doings herein, you are to make return to me as soon as may be after you shall have executed the same.

Given under my hand and seal the day of in the year of our Lord one thousand seven hundred and .

J. P.

And such overseers shall be obliged to receive and provide for such person accordingly; and said justice may also award execution for damages and costs; and may tax in costs a reasonable sum for the expense of removal; and the execution may be issued to, and may be executed by a proper officer in the county where the town is, against which it issues. And in all the proceedings aforesaid, the word district shall be inserted instead of the word town, where the cases require it. Provided always, That either party, as also any person who shall be adjudged likely to become chargeable and ordered to be removed, aggrieved at the judgment of such justice, may appeal therefrom to the next Court of Common Pleas to be held in and for the same county; and shall produce copies, and enter and prosecute the same as other appeals are. And said court shall hear and determine the same without a jury, and may award like warrant for removal, and like execution for damages and costs, mutatis mutandis; or may, on complaint, affirm the judgment of the justice with additional damages and costs, where the appeal is not prosecuted, and carry such judgment into execution.

Sect. 11. And be it further enacted, That such complaint may be originally made by said overseers, if they see fit, to the Court of Common Pleas in their county, by filing the same with the clerk of said court, and procuring a like summons from him, mutatis mutandis, and causing the same to be served in time and manner as aforesaid, as also summons for the party to be removed, and for witnesses; and such court, upon such complaint, shall proceed to hear, determine, adjudge and grant warrant and execution in the same manner as in cases

Overseers to provide.
Execution may be issued against the town.
Proviso for an appeal from justice's judgment.
Complaint may be made originally to the Com. Pleas—
—who shall hear and determine.
Parties may remove the case to Sup. J. Court—coming before them by appeal; and in all their adjudications in the premises, they shall state the facts upon which their judgments are founded, to the end that error therein, if any, may be corrected by writ of error, in the Supreme Judicial Court, to which either party aggrieved shall be entitled, if purchased within a year, but not otherwise, and upon which, if judgment be reversed, such judgment shall be given as ought to have been given below, and the plaintiff in error shall be restored to all they lost by such erroneous judgment, with costs; but if the judgment be affirmed, the defendants shall recover costs. And said Supreme Judicial Court may send to said Courts of Common Pleas, and require them to state other facts when it shall appear, by suggestion or otherwise, that some material ones were omitted in the statement aforesaid, or to explain such as do not appear to the court to be clearly stated; unless a new statement be agreed to by the parties. And depositions may be used before the justice, as well as Court of Common Pleas, on the trial of such complaints, when taken legally and for legal cause. And when expenses for support of a pauper are prayed for in such complaint, the same complaint may be proceeded upon to judgment, so far as respects his settlement and such expenses; the decease of the pauper, pending the complaint, notwithstanding. But all complaints and suits for removal of paupers, or recovery of expenses for their support, to be made and prosecuted by the town of Boston, in the county of Suffolk, shall be made and prosecuted either in the county of Middlesex or Norfolk; and all such complaints and suits to be made or prosecuted by the town of Sherburne, in the county of Nantucket, or by any town in the county of Dukes’ County, shall be made and prosecuted either in the county of Bristol or Barnstable.

Sect. 12. Provided always, and be it further enacted, That said overseers may, in all cases, if they judge it expedient, previous to any such application to any Justice of the Peace or Court of Common Pleas, send a written notification, stating the facts relating to any person actually become chargeable to their town or district, to one or more of the overseers of the place where his settlement is supposed to be, and requesting them to remove him, which they shall have power to do by a written order directed to any particular person by name, who is hereby authorized and required to obey the same; and if such removal is not effected, nor objected to by them, in writing, after such notice, to be delivered, in writing, within two months after such notice to the overseers of the town or district requesting such removal, or to some one of them, then such overseers may remove such person by land or water, as is most convenient, by a written order, directed to and to be served by any persons who shall be particularly mentioned in such order, to said place of his supposed settlement, the overseers whereof shall be obliged to receive and provide for him, and their town or district shall be liable for the expenses of his support and removal, to be recovered by action, as aforesaid, by the town or district incurring the same, and
shall be barred from contesting the question of settlement with the plaintiffs in such action. And if any person lawfully removed, agreeably to this Act, to the place of his lawful settlement within this Commonwealth, shall voluntarily return to the town or district from which he was removed, without their consent, he shall be deemed a vagabond, and upon conviction thereof before any Justice of the Peace in the same county, may be sent to the house of correction.

Sect. 13. And be it further enacted, That said overseers shall also relieve and support, and in case of their decease, decently bury all poor persons residing or found in their towns or districts, having no lawful settlements within this Commonwealth, when they stand in need, and may employ them as other paupers may be; the expense whereof may be recovered of their relations, if they have any chargeable by law for their support, in manner herein before pointed out; otherwise it shall be paid out of the treasury of the Commonwealth, by warrant from the Governor, by and with advice of Council, an account thereof having been first exhibited to, and examined and allowed by the General Court. And upon complaint of such overseers, any Justice of the Peace in their county may, by warrant directed to, and which may be executed by any constable of their town or district, or any particular person by name, cause such pauper to be sent and conveyed, by land or water, to any other State, or to any place beyond sea, where he belongs, if the justice thinks proper, if he may be conveniently removed, at the expense of the Commonwealth; but if he cannot be so removed, he may be sent to and relieved, and employed in the house of correction, or work-house, at the public expense. And every town and district shall be held to pay any expense which shall be necessarily incurred for the relief of any pauper, by any inhabitant not liable by law for his or her support, after notice and request made to the overseers of the said town or district, and until provision shall be made by them.

Sect. 14. And be it further enacted, That in all actions and prosecutions by complaint founded on this Act, for or against any town or district, or against any individual, the overseers of the poor thereof, or any person, by writing, under their hands appointed, shall and may appear, prosecute or defend the same to final judgment and execution, in behalf of such town or district, and every act or thing required or authorized by them to be done by this Act, may be done by them or the major part of them.

Sect. 15. And be it further enacted, That if any person shall bring and leave any poor and indigent person in any town or district in this Commonwealth, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, he shall forfeit and pay the sum of twenty pounds for every such offence, to be sued for, and recovered by, and to the use of such town or district, by action of debt, in any court proper to try the same.
Sect. 16. And be it further enacted, That if any master or other person, having charge of any vessel, shall therein bring into, and land, or suffer to be landed in any place within this Commonwealth, any person, before that time convicted in any other State, or in any foreign country, of any infamous crime, or any for which he hath been sentenced to transportation, knowing of such conviction, or having reason to suspect it, or any person of a notoriously dissolute, infamous and abandoned life and character, knowing him or her to be such, shall, for every such offence, forfeit the sum of one hundred pounds, one half thereof to the use of the Commonwealth, and the other half to the use of any person being a citizen of, and residing in this Commonwealth, who shall prosecute and sue for the same, by action of debt, as aforesaid.

And in order to prevent charge to the Commonwealth, or any towns or districts therein, by the importation of such convicts, or of infamous and vicious persons:

Sect. 17. Be it further enacted, That the master, or any other person having charge of any vessel arriving at any place within this Commonwealth with any passengers on board, from any foreign dominion or country without the United States of America, shall, within forty-eight hours after such arrival, make a report, in writing, under his hand, of all such passengers, their names, nation, age, character and condition, so far as hath come to his knowledge, to the overseers of the poor of the town or district, at or nearest to which such vessel shall arrive, who shall record the same in a book kept for that purpose in their office. And every such master or other person, that shall neglect to make such report, or that shall willingly and willingly make a false one, shall for each of those offences forfeit the sum of fifty pounds, to be sued for and recovered by action of debt, as aforesaid, by and to the use of such town or district.

Sect. 18. And be it further enacted by the authority aforesaid, That an Act, entitled, "An Act providing for the support of the poor," passed the fourteenth day of February, in the year of our Lord one thousand seven hundred and eighty-nine, and all other laws and parts of laws heretofore made and passed relative to the support, employment, binding, warning out, or removal of the poor, be and the same hereby are repealed: Saving, That they shall remain in force as to all actions or prosecutions already commenced and now pending upon them: Saving also, That all acts and things already lawfully done and completed under and by force of them, be and hereby are confirmed and declared to be valid; and saving further, That this repeal shall not be construed to extend to an Act, entitled, "An Act for suppressing and punishing of rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons," passed the twenty-sixth day of March, in the year of our Lord one thousand seven hundred and eighty-eight; nor to an Act, entitled, "An Act for erecting work-houses for the reception and employment of the idle and indigent," passed the tenth day of January, in the year of our Lord one thousand seven
hundred and eighty-nine; nor to an Act passed the present sessions of the General Court, entitled, "An Act ascertaining what shall constitute a legal settlement of any person in any town or district within this Commonwealth so as to entitle him to support therein in case he becomes poor, and stands in need of relief; and for repealing all laws heretofore made respecting such settlement." [Feb. 26, 1794.]

**An Act** in addition to an Act, entitled, "An Act to incorporate a number of inhabitants of the Towns of Rochester and Middleborough, in the County of Plymouth, and Freetown, in the County of Bristol, into a separate Precinct, by the name of The Congregational Precinct in Rochester, Middleborough and Freetown." [Feb. 26, 1794.]

**An Act** in addition to an Act, entitled, "An Act to incorporate the east part of Greenfield, in the County of Hampshire, into a Town by the name of Gill." [Feb. 26, 1794.] Further add. act—1798 ch. 3.

**An Act** in addition to an Act, entitled, "An Act to regulate the catching of Salmon, Shad and Alewives, and to prevent Obstructions in Merrimack-River and in the other Rivers and Streams running into the same, within this Commonwealth, and for repealing several Acts heretofore made for that purpose." [Feb. 26, 1794.] Further add. acts—1802 ch. 51: 1803 ch. 158: 1804 ch. 134: 1805 ch. 28: 1811 ch. 175: 1812 ch. 54: 1817 ch. 16: 1819 ch. 4, 20: 1820 ch. 22.

**An Act** in addition to, and for the Amendment of an Act, entitled, "An Act regulating the Appointment and Services of Grand-Jurors."

WHEREAS the mode of appointing grand-jurors, hitherto in use, has been found inconvenient, and is liable to abuse:

**SECT. 1.** Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of August next, when the inhabitants of any town shall be assembled, according to law, for the purpose of appointing a grand-juror or petit-jurors, to serve either in the Supreme Judicial Court or the Court of General Sessions of the Peace, one of the selectmen, not being the clerk of such town (a majority of whom shall be present at such meeting) shall, from the box, wherein are contained the names of such of the inhabitants of said town as are intended to serve on the petit-jury at the Supreme Judicial Court, draw out as many tickets or names as there may be grand-jurors required by the Act of the clerk of either of said courts; and the person or persons, whose name or names shall be so drawn out, shall be the grand-juror or grand-jurors, to serve at either of said courts for which they may be required.

**SECT. 2.** And be it further enacted by the authority aforesaid, That the grand-jurors, appointed as aforesaid, shall be summoned and sworn in the same manner as is directed in the Act to which this is an addition; and all the penalties, provisions and directions, in said Act mentioned and contained, shall be and remain in full force, except as is herein otherwise directed.

**SECT. 3.** And be it further enacted by the authority aforesaid, That the service of any person as a grand-juror shall not exempt or excuse him from serving as petit-juror, except at the court or within the term for which he may be chosen to serve as grand-juror.

**SECT. 4.** And be it further enacted by the authority aforesaid, That the boxes which contain the tickets or names of the inhabitants of any town intended to serve as petit-jurors, either in the Supreme Judicial Court or Court of Common Pleas and General Sessions of the Peace, which by law are to be provided and kept, shall be deposited and kept in the office of the clerk of said town.

**SECT. 5.** And be it further enacted by the authority aforesaid, That if the town-clerk or selectmen of any town shall be guilty of any fraud in the draft and appointment of any grand-juror who may be drawn or appointed, in pursuance of this Act, either by returning the name of such grand-juror into the box after it may have been fairly drawn out, and substituting some other name, or in any other way whatsoever, such town-clerk or selectman shall forfeit and pay for such offence, the sum of ten pounds, to be recovered by action of debt, in any court proper to recover the moiety thereof to be and enure to the Commonwealth, the other moiety thereof to him or them who shall prosecute for and recover the same: Provided, That if any person whose name may be drawn out to serve as a grand-juror, in pursuance of this Act, shall, at the time it is so drawn, be absent beyond sea or out of the Commonwealth, the selectmen may return the same into the box again, and proceed to draw out the name of some other person or persons in their stead, who shall be the grand-juror or grand-jurors required.

**SECT. 6.** And be it further enacted by the authority aforesaid, That from and after the first day of August aforesaid, the manner of notifying and warning the inhabitants Manner of warning inhabitants.

1793. — Chap. 60—63.

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1793 ch. 34.

Chap. 60. 1792 ch. 66.

Chap. 61. 1793 ch. 22.

Chap. 62. 1793 ch. 51.

Chap. 63. 1784 ch. 4.

Manner of appointing jurors.

How to be summoned and sworn.

Grand-juror not excused as petit-juror.

1802 ch. 32.

Town-clerk to have the care of the boxes.

Forfeiture in case of fraud.

Appropriation.

Proviso.
1793. CHAP. 64—75.

habitants for the purpose. of any town to assemble for the purpose of being present at the appointment of a grand-juror or jurors, in pursuance of this Act, shall be the same as shall be, or has been agreed upon by such town for notifying and warning the annual town-meeting in such town, for the choice of town officers, or in such other manner as any town may agree upon.

Sect. 7. And be it further enacted, That the several towns in the counties of Nantucket and Dukes County shall have power to select one third part of the number which shall be contained in the list of persons qualified to serve as petit-jurors, and which shall be laid before the town from time to time by their selectmen, agreeable to law, and such as they judge best qualified to serve at the Supreme Judicial Court, and to cause their names to be put into the box provided and appropriated to contain the names of persons to serve as petit-jurors at the Supreme Judicial Court; any thing in the law for regulating the choice and services of petit-jurors to the contrary notwithstanding. [Feb. 26, 1794.] Repealed—1802 ch. 92—& 1807 ch. 140.

Chap. 64. An Act for determining the Times and Place of holding the Supreme Judicial Court and the Court of General Sessions of the Peace and Court of Common Pleas, for and within the County of Hampshire. [Feb. 26, 1794.] Altered by subsequent acts.


Chap. 66. An Act for continuing an Act made in the year of our Lord one thousand seven hundred and eighty-nine, entitled, "An Act to prevent the Destruction of the Fish called Shad and Alewives in Mystic-River (so called) within the Towns of Cambridge, Charlestown and Medford, and for repealing all Laws heretofore made for that purpose," and also for extending the said Act to the Towns of Woburn and Malden. [Feb. 27, 1794.] Extended to West Cambridge—1820 ch. 67. See 1802 ch. 78: 1815 ch. 43. 54.

Chap. 67. An Act for the Naturalization of Henry Huetson Pentland. [Feb. 27, 1794.]

Chap. 68. An Act incorporating the Rector, Wardens and Vestry of the Episcopal Church in Dedham, for certain purposes. [Feb. 27, 1794.] Add. act—1814 ch. 56. See 1818 ch. 27.

Chap. 69. An Act for incorporating certain persons for building a Bridge over Back-Cove-River, between Portland and Falmouth, and for supporting the same. [Feb. 27, 1794.]

Chap. 70. An Act for dividing and separating the Interest or Propriety in the Locks and Canals, opening and proposed to be opened on Connecticut-River, in the County of Hampshire, called the Upper and Lower Canals. [Feb. 27, 1794.] Add. act—1798 ch. 52. See 1799 ch. 53.


Chap. 72. An Act for altering the Time of holding the Court of Common Pleas and General Sessions of the Peace within and for the County of Bristol, from the second Tuesday of March, and for establishing an additional Term for holding a Court of Common Pleas in said County. [Feb. 27, 1794.] Altered by subsequent acts.

Chap. 73. An Act to incorporate the Plantation of Francisborough, in the County of York, into a Town by the name of Cornish. [Feb. 27, 1794.]

Chap. 74. An Act to establish an Academy in the Town of Portland by the name of Portland Academy, in the County of Cumberland, and to create a Corporation of Trustees for the same. [Feb. 27, 1794.] See 1815 ch. 60.

Chap. 75. An Act in addition to the Act for the Limitation of Personal Actions, and for avoiding Suits at Law, passed the thirteenth day of February, one thousand seven hundred and eighty-seven.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any action of the case, or of debt grounded upon any lending or contract, or for arrearages of rent actually declared upon in a proper writ, returnable according to law, purchased therefor before the first day of December last, or which
has been, or which shall be so actually declared in, within the term of six years next after the cause of such action accrued, shall be deemed and taken to be duly commenced and sued, within the meaning of said Act for the limitation of personal actions, and for avoiding suits at law.

Sect. 2. And be it further enacted, That any action which hath been, or which shall be actually declared in as aforesaid, and in which the writ purchased therefor has failed of a sufficient service or return, by any unavoidable accident, or by the default, negligence or defect of any officer to whom such writ was or shall be duly directed, or when such writ shall be abated, or the action thereby commenced shall be avoided by demurrer, or otherwise, for informality of proceedings; then, and in any such case, the plaintiffs or plaintiff, or his or her executor or administrator, may commence another action upon the same demand, and shall thereby save the limitation thereof, any thing in the said Act for the limitation of personal actions, and for avoiding suits at law, to the contrary notwithstanding. Provided, That such second action shall be duly commenced by declaring in the same aforesaid, and pursued at the next Court of Common Pleas of the county in which trial of the cause may be had, or within three months next after the court whereto such former writ was or shall be returnable, or where- judgment of abatement or other avoidance of such suit shall happen, and not afterwards.

Sect. 3. And be it further enacted, That any action of the case, or of debt, grounded upon any lending or contract, or for arrearage of rent which might have been, or which may be sued and prosecuted by or against any person deceased, or who shall decease, at the time of his or her death, or within thirty days next preceding, shall and may be commenced by declaring in the same aforesaid, and sued by or against the executor or administrator of such deceased person, within two years after the grant of letters testamentary or of administration, and not afterwards, if otherwise barred by the said Act for the limitation of personal actions, and for avoiding suits at law, any thing which may be supposed therein to the contrary notwithstanding.

Sect. 4. And be it further enacted, That in any action brought or which shall be brought, for any debt upon simple contract or promise, in writing, not under seal, the defendant therein may give in evidence upon the general issue, his or her demands against the plaintiff, for goods delivered, monies paid, or services done, whereof an account shall be duly filed in the clerk’s office of the court whereto such action is or shall be brought, seven days, and before a justice, four days at least, preceding the time of trial. And in all cases of mutual demands as aforesaid, the account of the defendant, if any time of limitation shall be objected thereto by the plaintiff, shall be considered and allowed as if an action had been duly commenced thereon, by declaring in the same, at the time when the plaintiff’s action was or shall be commenced, any law, usage or custom to the contrary notwithstanding. [Feb. 27, 1794.]
An Act for raising the sum of Eight Thousand Pounds for the Purpose of erecting a Building for the Use of the University at Cambridge. [June 14, 1794.]

An Act dividing the Town of Hallowell, in the County of Lincoln, into three Parishes, and for incorporating the same. [June 14, 1794.] Second section repealed—1801 ch. 12.

An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, between the Towns of Haverhill and Newbury, in the County of Essex, and for supporting the same. [June 14, 1794.] Add. acts—1795 ch. 64: 1810 ch. 107.

An Act for incorporating certain persons by the name of The Boston Library Society. [June 17, 1794.] Add. acts—1804 ch. 35: 1820 ch. 81.

An Act in addition to an Act, entitled, "An Act for the Distribution of insolvent Estates."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever any executor of the last will, or administrator upon the estate of any person deceased, or that may hereafter decease, already appointed, or that may hereafter be appointed, shall neglect to exhibit and settle his account of administration with the Judge of Probate, where the estate has been represented insolvent, and commissioners have reported to the judge a list of claims, within six months after such report shall be made to the judge, or within such further time as the Judge of Probate shall think proper to allow therefor, under his hand and seal, so that by such refusal or neglect, the judge cannot proportion the estate among the creditors; any creditor to such estate may commence and prosecute any action, or prosecute any action then already commenced and depending for his demand against such executor or administrator; and the court, before whom such action may be depending, shall and may proceed to hear and determine the same, and to give judgment therein, and award execution thereon, in the same manner as if such estate had not been represented insolvent; any thing to the contrary, in the Act to which this is an addition, or any other law, notwithstanding. And upon the return of such execution duly made, that the executor or administrator refused or neglected, upon due request, to satisfy the same, such refusal or neglect shall be deemed waste, and upon scire facias brought, judgment shall and may be given in favour of such creditor, to recover his debt, with costs, against the proper goods or estate of such executor or administrator, and for want thereof, against his body. And if, in consequence of such refusal, or neglect, the real estate of the deceased shall be exposed to be, and shall in fact be levied upon and taken to satisfy such execution, it shall, in like manner, be deemed waste in the executor or administrator upon such estate. [June 20, 1794.] Further add. act—1821 ch. 72.

An Act to incorporate the Plantation of Unity (so called) in the County of Lincoln, into a Town by the name of New-Sharon. [June 20, 1794.]

An Act to set off Eliphalet Leonard, Esquire, and others, from the second to the first Parish in West-Springfield. [June 20, 1794.]

An Act for incorporating a number of the inhabitants of the Towns of Brunswick and Harpswell, in the County of Cumberland, and Bath, in the County of Lincoln, into a distinct and separate religious Society. [June 20, 1794.]
An Act for apportioning and assessing the sum of forty thousand and forty-seven pounds fifteen shillings, to answer the Exigencies of Government; and also five thousand and twenty pounds six shillings, to replace the same sum, drawn out of the Treasury of this Commonwealth, to pay the Members of the House of Representatives for their attendance the three last Sessions of the General Court, from the twenty-ninth day of May, one thousand seven hundred and ninety-three, to the twenty-seventh day of February, one thousand seven hundred and ninety-four, inclusive. [June 24, 1794.]

An Act for naturalizing Thomas Neil, Robert Betty, and Robert Holt. [June 24, 1794.]

An Act in addition to, and for the amendment of an Act made and passed in the year of our Lord one thousand seven hundred and eighty-one, entitled, "An Act for incorporating the Proprietors of the House erected for the Public Worship of God, called the Tabernacle, in Salem, where the Rev. Nathaniel Whitaker now officiates." [June 24, 1794.]

An Act to establish a College in the Town of Brunswick, in the District of Maine, within this Commonwealth. [June 24, 1794.]

An Act to incorporate the Episcopal Church in Cambridge (so called) for certain purposes. [June 25, 1794.]

An Act setting off the west Precinct of the Town of Pownalborough, into a separate Town by the name of Dresden. [June 25, 1794.]

An Act setting off the north Precinct of the Town of Pownalborough, into a separate Town by the name of New-Milford. [June 25, 1794.] Name altered to Alna—1810 ch. 125.

An Act for incorporating certain persons into a society by the name of The Massachusetts Charitable Fire Society. [June 25, 1794.]

An Act to annex a Gore of Land in the County of Worcester, known by the name of Middlesex-Gore, lying between the Towns of Dudley and Sturbridge, in this Commonwealth, and the Town of Woodstock, in the State of Connecticut, partly to the Town of Dudley, and partly to the Town of Sturbridge. [June 25, 1794.]

An Act to incorporate a number of inhabitants in the Town of Sutton, into a Society by the name of The first Congregational Society in Sutton. [June 25, 1794.]

An Act incorporating a number of inhabitants of the Town of Topsham, in the County of Lincoln, into a distinct and separate religious Society. [June 26, 1794.]

An Act ratifying an Amendment in the Constitution of the United States, proposed by the two Houses of Congress, to the Legislatures of the several States.

WHEREAS the Senate and House of Representatives of the United States did, on the second day of December, one thousand seven hundred and ninety-three, resolve, (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. "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State:"

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said amendment be and it is hereby agreed to, ratified and confirmed, on the part of this Commonwealth, to become valid as part of the Constitution of the United States, as soon as the same shall be ratified by three fourths of the Legislatures of the several States. [June 26, 1794.]
Chap. 21. An Act to incorporate certain persons by the name of The Northwest Congrega-
tional Society in North-Yarmouth. [June 26, 1794.] Add. act—1796 ch. 15.

Chap. 22. An Act to suspend the operation of an Act, entitled "An Act ascertaining the
Quality of Stone-Lime, and the size of Lime Casks, and for repealing all Laws
heretofore made relative thereto." [June 27, 1794.] Original act repealed—
1809 ch. 62.

Chap. 23. An Act to repeal all Laws of this Commonwealth imposing Duties and Excise on
Carriages, and inflicting Penalties for selling Wines and foreign distilled Spirits,
so far as the same respect said matters. [June 27, 1794.] Add. act—1796
ch. 21.

Chap. 24. An Act for dividing the Commonwealth into Districts for the Choice of Represen-
tatives in the Congress of the United States, and prescribing the Mode of Elec-
tion. [June 27, 1794.] Add. act—1796 ch. 12. See 1801 ch. 47. All expired.

Chap. 25. An Act for incorporating certain Land in Dedham and Sharon, in the County of
Norfolk, into a Common Field. [Jan. 22, 1795.]

Chap. 26. An Act for repealing an Act, made and passed in the year of our Lord one thou-
sand six hundred and ninety-two, entitled, "An Act for punishing Criminal
Offenders," and for re-enacting certain Provisions therein.

Sect. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same,
That the said Act be and hereby is repealed, and made whol-
ly null and void.

Sect. 2. And be it further enacted by the authority aforesaid,
That every Justice of the Peace, within the county for which
he may be commissioned, may cause to be said and arrested,
all affrayers, rioters, disturbers, or breakers of the peace, and
such as shall ride or go armed offensively, to the fear or terror
of the good citizens of this Commonwealth, or such others as
may utter any menaces or threatening speeches, and upon
view of such justice, confession of the delinquent, or other
legal conviction of any such offence, shall require of the offender
to find sureties for his keeping the peace, and being of the
good behaviour; and in want thereof, to commit him to prison
until he shall comply with such requisition: And may further
punish the breach of the peace in any person that shall assault
or strike another, by fine to the Commonwealth, not exceeding
twenty shillings, and require sureties, as aforesaid, or bind
the offender to appear and answer for his offence at the next Court
of General Sessions of the Peace, as the nature or circumstances
of the case may require. [Jan. 29, 1795.]

Chap. 27. An Act to set off William Goodepeck, with his estate, from the Town of Wash-
ington in the County of Berkshire, and annex him and his estate to the Town of
Lenox, in the same County. [Jan. 31, 1795.]

Chap. 28. An Act to incorporate Valentine Rathbun, and others, inhabitants of the Town of
Pittsfield, into a religious Society, by the name of The Baptist religious Society in
the Town of Pittsfield. [Feb. 10, 1795.]

Chap. 29. An Act for incorporating certain persons therein named, by the name of The
Trustees of the Church and Congregation in the second Precinct in Pembroke.
[Feb. 10, 1795.] Add. act—1816 ch. 93.

Chap. 30. An Act for erecting and maintaining a Bridge over Westfield-River, in the Town
of Norwich, in the County of Hampshire. [Feb. 10, 1795.]

Chap. 31. An Act to ascertain the Jurisdiction and Limits of the Counties of Suffolk and Mid-
dlessex, over and upon Charles River.

Sect. 1. BE it enacted by the Senate and House of Represen-
An Act authorizing David Morley, of West-Springfield, in the County of Hamp-shire, to build a Toll-Bridge over Westfield-River, in said County, and to enable him to support the same. [Feb. 10, 1795.]

An Act incorporating certain persons for erecting a Bridge over Damarcostti River, in the County of Lincoln. [Feb. 11, 1795.] Add. act—1785 ch. 44. Both repealed—1796 ch. 81.

An Act to incorporate a certain Tract of Land in the County of Cumberland into a Town by the name of Poland. [Feb. 17, 1795.]

An Act to incorporate the Plantation of Smithfield, in the County of Lincoln, into a Town by the name of Litchfield. [Feb. 12, 1795.]

An Act to incorporate the Plantation of Lewistown, and the Gore (so called) ad-joining, in the County of Lincoln, into a Town by the name of Lewiston. [Feb. 13, 1795.]

An Act to set off Part of the Town of Newcastle, in the County of Lincoln, and to annex the same to the Town of New-Milford in said County. [Feb. 10, 1795.]

An Act in addition to an Act, entitled, "An Act concerning general and common Fields," passed in February, in the year of our Lord one thousand seven hun-dred and eighty-six.

WHEREAS it is found necessary to make further provision

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for the due regulation and repairing of fences in common and general fields:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever the fence around any general and common field, belonging to any freeholder, occupant, or improver of any land in such field, shall become deficient and need repairing, the owner thereof shall immediately repair such defective fence, after being duly notified of such deficiency, by any fence-viewer of the town wherein such field lieth; and in case the owner thereof shall neglect to repair such defective fence for the space of three days, after due notice given thereof by any fence-viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands in such fields, to repair such defective fence; and when the same shall be completed and adjudged sufficient by two or more of the fence-viewers of the town wherein such fence lieth, and the value thereof, together with the fence-viewers' fees, ascertained in writing, by them subscribed, the person who shall make up or repair such deficient fence shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up or repair the same, at his election, double the expense of making or repairing, surveying and viewing such fence; and in case of neglect or refusal to make payment thereof for the space of one month, after notice and demand made of the person against whom he shall make his election, to satisfy him therefor, he may sue for and recover the same by a special action of the case, with cost of suit, in any court proper to try the same.

And whereas it often happens that fences around general and common fields are blown down, carried away, or otherwise destroyed by sudden floods or tempest, and it is necessary the same should be immediately repaired to prevent the destruction of the grain and crops growing therein:

Sect. 2. Be it therefore enacted, That whenever any such fence shall be thus suddenly blown down, carried away, or destroyed, and the crops of grain or grass therein growing shall be thereby exposed to be immediately destroyed, the occupant or freeholder of the same, to whom the same fence belonged to repair, shall immediately repair the same; and in case of neglect for the space of twenty-four hours, after notice given him thereof by any fence-viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands, in such fields, to set up and sufficiently repair such fence; and when the same shall be completed and adjudged sufficient by two fence-viewers, or more, as aforesaid, and the value thereof, together with the fence-viewers' fees, ascertained in writing, as aforesaid, the person who shall set up or repair the same, shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up and repair such fence, at his election, double the sum thus ascertained as aforesaid, for the expense of setting up, repairing, surveying and viewing the same; and in case of neglect or refusal
to make payment thereof for the space of one month as aforesaid, after demand made of the person against whom he shall make his election to receive the same, he may sue for and recover the same, with costs of suit, in manner as is before directed. [Feb. 13, 1795.] Further add. acts—1796 ch. 13: 1818 ch. 11: 1820 ch. 1.

An Act more effectually to prevent the Destruction of Shad and Alewives in the Rivers and Streams within the Towns of Lynn, Reading and Lynnfield. [Feb. 24, 1795.] Add. act—1795 ch. 12. Both repealed—1801 ch. 61.

An Act for dividing the Town of Shapleigh into two Parishes. [Feb. 24, 1795.]

An Act to incorporate Simon Larned, and others, for the purpose of conveying Water, by Pipes, into the centre of the Town of Pittsfield, by the name of the Proprietors of the Water-Works in the Middle of the Town of Pittsfield. [Feb. 25, 1795.] Add. act—1803 ch. 76.

An Act for introducing the Dollar and its Parts as the Money of Account in this Commonwealth.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of September next, the money of account of this Commonwealth shall be the dollar, cent, and mille; and all accounts in the public offices, and other public accounts, and all proceedings in the courts of justice, including courts of probate, shall be kept and had in conformity to this regulation.

Sect. 2. And be it further enacted by the authority aforesaid, That the forms of writs, or processes, or instruments used in the courts of justice, or courts of probate, or in any public office in this Commonwealth, in which any sum or sums are now required to be expressed in pounds, shillings or pence, shall and may be altered to an equivalent sum in dollars, and parts of a dollar, expressed as above mentioned: Provided, That this Act shall not be understood to vitiate or nullify any account, charge or entry, originally made, or to be made, or any note, bond, or other instrument, expressed, or which shall be expressed, in any money of account, existing at the time of passing this Act; but the same shall be reduced to dollars and parts of a dollar, as herein before directed, in any suit or declaration thereupon.

Sect. 3. And be it further enacted by the authority aforesaid, That until the laws for establishing fees shall be revised and rendered conformable to the money of account intended by this Act to be introduced, it shall and may be lawful, in taxing any bill of cost, or giving any account or bill of fees in any case, by any public officer, to set down the particulars of such bill or account in the present money of account, the foot of said bill or account being reduced to the money of account by this act established. [Feb. 25, 1795.]

An Act for the Explanation of an Act empowering the Selectmen of such Towns in this Commonwealth as are already, or may hereafter be provided with a Fire Engine or Engines, to nominate and appoint Engine-Men, which passed March the fifteenth, A. D. one thousand seven hundred and eighty-five, & also for

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Forms of writs and instruments used in courts, to be expressed agreeably to the alteration. Proviso.

Present money of account may be used in taxing costs till the alteration is established.

* The Act of 1735 ch. 42. was intended—that which is referred to was repealed before this statute was enacted.
the Explanation of the Militia Law, which passed June the twenty-second, A. D. one thousand seven hundred and ninety-three. [Feb. 25, 1795.] Embraced in the Act of 1809 ch. 108.

Chap. 44. An Act for establishing an Academy in the Town of New-Salem, by the name of New-Salem Academy. [Feb. 25, 1795.]

Chap. 45. An Act to incorporate the Plantation called Phipps' Canada, lying on both sides Androscoggin-River, into a Town by the name of Jay. [Feb. 26, 1795.]

Chap. 46. An Act for appropriating Twelve Thousand Pounds, Part of Tax No. 11, to the Payment of Interest on the Funded and Consolidated Debt of this Commonwealth, and for other purposes. [Feb. 26, 1795.] See 1795 ch. 56.

Chap. 47. An Act establishing an additional Term for holding a Court of Common Pleas and General Sessions of the Peace, within and for the County of Middlesex. [Feb. 27, 1795.]

Chap. 48. 1791 ch. 53.

Prisoners to be supported by the Commonwealth.

Proviso that the Commonwealth shall not pay more than 5s. a week.

Jailer to render account at each term of the Sessions—

—and credit all receipts—

—and receive reasonable allowance from county-treasury.

County-treasurer to charge the Commonwealth.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the charges of supporting prisoners, committed by due process of law, unable to support themselves, who have since the first day of May, one thousand seven hundred and ninety-three, now are, or hereafter may be confined in any gaol, upon charge, or conviction of crimes and offences committed against the said Commonwealth, shall be and hereby are made the proper charges thereof: Provided however, That in no case shall there be allowed by the Commonwealth more than at the rate of five shillings a week for any such prisoner, or more than the actual charges incurred for his support, being less than that sum: And the said charges shall be examined, allowed and paid as follows, to wit: The gaol-keeper of each gaol in the Commonwealth shall render, on oath, to the Court of General Sessions of the Peace of the county, at each term thereof, an account of the charges incurred for the support of prisoners in the respective gaols, committed as aforesaid, stating therein the time when each prisoner was committed, for what offence, how long held, and when discharged (if discharged) and shall exhibit the warrants of commitment and discharge, and leave copies thereof with the said court; and in the same account, the said gaol-keeper shall credit all monies and effects whatever, received, or to be received of the prisoner, or of any persons on his account; and the said court shall examine the said account, and inquire what part thereof the prisoner may be able to pay; and for such part as he shall be found unable to pay, the said court shall make a reasonable allowance to the said gaol-keeper, to be paid out of the county treasury.

SECT. 2. And be it further enacted by the authority aforesaid, That every county-treasurer shall and may charge to the Commonwealth, not exceeding the rate aforesaid, the several sums he shall so pay out of the county treasury, with two and a half per cent. for their services, and shall include the same in the accounts which they are required to render to the Treasurer of the Commonwealth, in and by the Act, to which this is in addition; and said payments shall make part of the debit
of said accounts against the Commonwealth, to be settled, allowed, and discharged, as in said Act is provided.

Sect. 3. And be it further enacted, That it shall be the duty of every county-treasurer, in addition to the accounts required by the Act aforesaid, to be exhibited, to make out and exhibit, on the first Monday in June next, to the Governor and Council, a general account of their proceedings, pursuant to said Act, therein crediting the Commonwealth for all monies by them respectively received by warrants on the treasury, or for fines, forfeitures, and bills of cost, and from whom; and in the same account charging the Commonwealth for all payments by them actually made before that time, and the balance due, if any, to credit to the Commonwealth in a new account; and every county-treasurer shall, at the same time, make out and transmit, as aforesaid, an account of all sums due, and to whom, on any bills of cost allowed and taxed by the Supreme Judicial Court, and also an account of all fines and forfeitures, and bills of cost, within their counties respectively, which belong to the Commonwealth, and which may be then remaining unpaid, and from whom the same shall be due; and shall afterwards, on the first Monday of June, annually, make out and exhibit a like general account with the Commonwealth, of their receipts and payments for the year preceding, accompanied with like statements, as above mentioned, of the balances remaining due, bills of cost allowed and taxed, and fines and forfeitures remaining unpaid, as aforesaid; and shall be further held to make out and exhibit such other statements, accounts and returns, as the Governor and Council shall judge to be necessary or expedient for a just and accurate settlement of said treasury transactions with the Commonwealth, under this Act, and the Act to which it is in addition, and as the said Governor and Council shall from time to time require.

Sect. 4. And be it further enacted, That an Act passed in the year of our Lord one thousand seven hundred and ninety three, entitled, "An Act providing for the support of poor persons, while confined in gaol, upon charge or conviction of offences against this Commonwealth," be and hereby is repealed. [Feb. 27, 1795.] Further acts—1809 ch. 93: 1813 ch. 182: 1817 ch. 145.

An Act setting off Samuel Sparhawke, of Cambridge, in the County of Middlesex, from the south Parish in Cambridge, and annexing him and his estate to the first Parish in said Town. [Feb. 27, 1795.]

An Act to incorporate the Plantation of Number Four, in the County of Washington, into a Town by the name of Steuben. [Feb. 27, 1795.]

An Act repealing two Clauses in an Act, entitled, "An Act for altering the Place of holding one Term of the Court of Common Pleas, and Court of General Sessions of the Peace, in the County of Lincoln, and for establishing an additional term of the said courts within the same County." [Feb. 27, 1795.] Repealed—1800 ch. 43.

An Act in addition to the Act for regulating the Manufacture of Nails within this Commonwealth, made and passed the tenth day of March, Anno Domini one thousand seven hundred and ninety-one. [Feb. 27, 1795.] Further add. act—1795 ch. 77. Both repealed—1799 ch. 64.
Chap. 53. 1794. 1783 ch. 44. An Act in addition to an Act defining the general Powers and Duties, and regulating the Office of Sheriffs.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Justices of the several Courts of Common Pleas be and hereby are authorized and required, in the term of said court, which shall be held in course, in the several counties, on or next after the last Tuesday of June, annually, to consider of the sufficiency of the security given by the sheriffs, in their respective counties; and in case they shall find and determine the same to be insufficient, they shall cause a record to be made of such determination, by the clerk; and shall also cause the sheriff, whose security shall be found insufficient, to be served with an attested copy of said record, and shall require him to procure and give new security, to the satisfaction of said justices, on or before the term of the court next following the term in which said insufficiency shall be recorded, as aforesaid.

Sect. 2. And be it further enacted by the authority aforesaid, That if any sheriff shall neglect to give security as required by the Act to which this is an addition, or shall neglect to give the new security which may be required by the Justices of the Court of Common Pleas in his county, pursuant to this Act, he shall forfeit and pay, to the use of the Commonwealth, the sum of one hundred and fifty dollars for each month's neglect, to be recovered by action of debt, in any court proper to try the same; and it shall be the duty of the attorney-general to prosecute for the same; and the name of such sheriff neglecting to give or renew his security, as aforesaid, shall be certified by the Court of Common Pleas in his county, to the Governor and Council, and also to the attorney-general; and the Governor, with the advice of Council, shall thereupon remove such sheriff from his office, and appoint some other person in his stead; unless reasonable cause, to the satisfaction of the Governor and Council, shall be assigned for said neglect; and unless such sheriff, whose name and neglect shall be certified as aforesaid, shall give or renew his security, as the case may be, to the satisfaction of the Governor and Council, within twenty days after the said certificate shall be made as aforesaid.

Sect. 3. And be it further enacted by the authority aforesaid, That that part of the first enacting clause in the Act to which this Act is in addition, by which all services done by any sheriff, in case of neglecting to give security after the time therein limited, are rendered null and void, be and hereby is repealed. [Feb. 27, 1795.] Further add. acts—1803 ch. 46: 1811 ch. 102: 1813 ch. 189: 1817 ch. 13: 1822 ch. 20.


Chap. 55. An Act for incorporating Luther Eames, and others, into a Society for the purpose of bringing fresh Water into the Town of Boston by subterraneous Pipes. [Feb. 27, 1795.] Name of the corporation altered—1796 ch. 1. Add. act—1803 ch. 35.
An Act to incorporate sundry persons by the name of The President and Directors of the Nantucket Bank. [Feb. 27, 1795.] Add. act—1796 ch. 60. Continued—1805 ch. 6: 1816 ch. 17.

An Act to incorporate the Plantation called Sterling, in the County of Lincoln, into a Town by the name of Fayette. [Feb. 28, 1795.]

An Act to incorporate the Plantation called Livermore, lying on both sides Androscoggin River, into a Town by the name of Livermore. [Feb. 28, 1795.]

An Act to incorporate the Plantation called Lower Sandy River, in the County of Lincoln, into a Town by the name of Starks. [Feb. 28, 1795.]

An Act to repeal an Act, entitled, "An Act to incorporate the Committee of the Church and Congregation in the Town of Warwick, for certain purposes." passed April twentieth, one thousand seven hundred and seventy-nine. [Feb. 28, 1795.]

Third section repealed—1800 ch. 12.

An Act to set off a Part of the Town of Windsor, in the County of Berkshire, and to annex the same to the Town of Dalton. [Feb. 28, 1795.] Repealed in part—1795 ch. 50.

An Act to incorporate the Plantation of Hancock, in the County of Lincoln, into a Town by the name of Clinton. [Feb. 28, 1795.]


Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That on or before the first day of September next, it shall be the duty of the inhabitants of the several towns and districts in this Commonwealth, and also such unincorporated plantations as now are assessed in any public tax, to provide, erect, and keep in repair such guide-posts upon all public roads, at such places, and in such manner, as is hereafter in this Act provided.

Sect. 2. And be it further enacted by the authority aforesaid, That the selectmen of the several towns and districts, and the assessors of all unincorporated plantations, assessed in any public tax, in this Commonwealth, be and they hereby are authorized and required, from time to time, to fix and determine upon such places at the corners and angles of all roads in the several towns, districts and plantations aforesaid, at which the said guide-posts shall be erected and kept, as in their judgment shall be found necessary and convenient, and shall cause a fair record thereof to be entered and kept among the records of the said towns, districts or plantations.

Sect. 3. And be it further enacted by the authority aforesaid, That the guide-posts to be erected and kept, in pursuance of this Act, shall be constructed in manner following; that is to say, There shall be erected at the several corners or angles of the roads aforesaid, at such places as shall be ordered by the selectmen of towns and districts, or assessors of the plantations aforesaid, a substantial post, of not less than eight feet in height, upon the upper end of which shall be placed a board or boards, upon each of which boards shall be plainly and legibly painted the name of the next town, with such other noted town or place as may be judged most expedient for the direction of travellers, to which each of the roads may lead, together with the distance or number of miles to the same; and also the figure of a hand, with the fore finger thereof pointing to—

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Chap. 57.

Chap. 58.

Chap. 59.

Chap. 60.

Chap. 61.

Chap. 62.

Chap. 63.

Guide-posts to be erected.

Selectmen to fix places.

Manner of construction.
wards the town or place to which the said roads may lead: Provided nevertheless, That the inhabitants of the several towns, districts and plantations aforesaid, duly qualified to vote in town or plantation affairs, may, if they judge fit, on or before the first Monday in April next, and annually afterwards, agree upon some suitable substitute in the room of said guide-posts, and appoint any proper person or persons to superintend the erecting the same.

Sect. 4. And be it further enacted by the authority aforesaid, That if the inhabitants of any of the towns, districts or plantations aforesaid shall neglect, or refuse to erect and maintain said guide-posts in such places, and in such manner as is herein provided, the said inhabitants shall forfeit and pay, to the use of the Commonwealth, twenty shillings for every month which they shall so neglect or refuse: And if the selectmen of the several towns and districts, or assessors of the several plantations aforesaid, shall neglect or refuse to fix and determine upon any places in the towns, districts and plantations aforesaid, at which the said guide-posts shall be erected and kept, by the time in this Act set and limited, the said selectmen or assessors shall forfeit and pay, to the use of the Commonwealth, twenty shillings for every month which they shall so neglect or refuse; said penalties and forfeitures to be recovered by indictment of the grand jury in the county where the offence may be committed.

Sect. 5. And be it further enacted by the authority aforesaid, That if any person shall injure, mar or deface any guide-post, or its substitute, agreed upon as aforesaid, or board which shall be set up, as is in this Act provided, and be convicted thereof before any Justice of the Peace within this Commonwealth (who is hereby empowered to try the same) such person so convicted shall forfeit a sum not more than forty shillings nor less than twenty shillings; one half to the complainant, and the other half to the use of the town, district or plantation in which such guide-posts, or its substitute, so injured, marred or defaced, was set up, and shall pay all costs of the prosecution. [Feb. 28, 1795.]

Chap. 64.

An Act to secure to Masters and Mistresses, as well as to Apprentices and minor Servants, bound by Deed, their mutual Privileges.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That minors under the age of fourteen years may be bound, by deed, until that age, as servants or apprentices, by their father; and in case of his decease, by their mother, or by their guardian, legally appointed; or having no parent or guardian, may bind themselves, with the approbation of the selectmen, or major part of them, of the town where such minors reside. And all minors of the age of fourteen years, or upwards may be bound by deed, as apprentices or servants; females, to the age of eighteen years, or to the time of their marriage, within that age; and males to the age of twenty-one years, by their father; and in case of his decease, by their mother or guardian legally appointed, having the minor’s consent expressed
in the deed: And any such minors having no father, mother, or guardian within the Commonwealth, may, by deed, bind themselves, with the approbation of the selectmen, or the major part of them, of the town where they reside: Provided, That in every case there shall be two deeds of the same form and tenor, executed by both parties; one to be kept by each; and where made by the approbation of the selectmen, they, after having examined the terms of the deeds, shall express their approbation thereon, and sign the same. Provided also, That all considerations which shall be allowed by the master or mistress, in any contract of service or apprenticeship, shall be secured to the sole use of the minor thereby engaged. And all contracts which shall be made by any parent or guardian, or by any minor, for him or herself, pursuant to this Act, shall be good and effectual in law, against all parties, and the minors thereby engaged, according to the tenor hereof.

Sect. 2. Be it further enacted, That it shall be the right and duty of parents and guardians, and of selectmen, for the time being (where selectmen shall give their approbation as aforesaid) binding minors as aforesaid, to inquire into their usage, and defend them from the cruelties, neglects or breach of covenant of their masters or mistresses; and such parents, guardians or selectmen, for the time being, may complain to the Court of Common Pleas in the county whereof such master or mistress is an inhabitant, against him or her, for any personal cruelty, neglect or breach of covenant; and the court, after having duly notified the party complained against, shall proceed to hear and determine such complaint, with or without a jury, according as the allegations of the parties may be. And if the same complaint shall be supported, the court may render judgment that the said minor be discharged from his or her apprenticeship or service, with costs against the master or mistress, and award execution accordingly; in which case, the deed of service or apprenticeship shall be deemed void, from the time of rendering such judgment, and the minor may be bound out anew: But if such complaint shall not be supported, the court shall award costs to the respondent, against the parent, guardian or selectmen, where the complaint of the selectmen shall be without probable cause, and execution accordingly.

Sect. 3. Be it further enacted, That if any servant or apprentice, bound as aforesaid, shall depart from the service of his or her master or mistress, it shall be lawful for any Justice of the Peace of the county where such servant or apprentice may be found, on complaint made to him by the master or mistress, or by any one in his or her behalf; on oath, to issue his warrant to the sheriff, his deputy, or any constable within the county, directing him to apprehend such servant or apprentice, and to bring him or her before the said justice, who, upon the hearing, shall order the said servant or apprentice to be returned to the place of his or her duty; or to commit him or her to the common gaol of the county, there to remain for a term not exceeding twenty days, unless sooner discharged by his
or her master or mistress: And the justice's warrant for returning such servant or apprentice to the place of his or her duty, directed to any officer or other person, by name, shall authorize him to convey any such servant or apprentice to such place, notwithstanding it may be in any other county in the Commonwealth; and the costs of the process and commitment by the said justice, shall be paid by the master or mistress, to be recovered by him or her, on the deed or covenant; and when recovered of the guardian, the same, with all further costs he may be held to pay, shall be a proper article of charge in his guardianship account.

**Sect. 4.** Be it further enacted, That if any servant or apprentice, bound as aforesaid, shall be guilty of any gross misbehaviour, wilful neglect, or refusal of his or her duty, the master or mistress may complain thereof to the Court of Common Pleas in the county whereof he or she is an inhabitant; and the said court, after having duly notified such servant or apprentice, and all persons covenanting on his or her behalf, and the selectmen, for the time being, of the town (where selectmen shall approve as aforesaid) shall proceed to hear and decide on such complaint, with or without a jury, as the allegations of the parties may be; and if the said complaint shall be supported, the court may render judgment that the master or mistress shall be discharged from the contract of service or apprenticeship, and every article thereof obligatory on him or her, with costs, and award execution for costs accordingly, against the parent, guardian or minor, where the minor shall engage as aforesaid, for him or herself; and any servant or apprentice, whose master or mistress shall be discharged as aforesaid, may be bound out anew.

**Sect. 5.** And be it further enacted, That no covenant of apprenticeship, entered into by any minor, his parent or guardian, for the purpose of such minor's learning, or being instructed in any trade or mystery, and made to any master and the wife of such master, or to the executors, administrators or assigns of such master, shall be binding on such minor, parent or guardian, after the decease of the master; but on the death of such master, the said covenant shall be deemed void from that time; and in any such case, any minor may be bound out anew, in the manner herein before prescribed. [Feb. 28, 1795.]

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**An Act to enable Creditors to receive their just demands out of the Goods, Effects, and Credits of their Debtors when the same cannot be attached by the ordinary Process of Law.**

WHEREAS the goods, effects and credits of persons are oftentimes so intrusted and deposited in the hands of others, that the same cannot be attached by the ordinary process of law, to satisfy such judgments as may be recovered against such persons: For remedy whereof,

**Sect. 1.** Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any person or persons, body politic or corporate, entitled to any personal action, excepting detinue, replevin, actions on the case for slanderous words or malicious prosecu-
tions, or actions of trespass for assault and battery against any person or persons other than bodies politic or corporate, having any goods, effects or credits so intrusted or deposited in the hands of others, that the same cannot be attached by the ordinary process of law, may cause not only the goods and estate of the person, against whom such action lies, to be attached in his own hands and possession, but also all his goods, effects and credits, so intrusted or deposited, to be attached in whose hands or possession soever they may be found, by an original writ, to issue under the seal of the Court of Common Pleas, signed by the clerk, and attested by the first justice of the said court not a party thereto, and of the form following, to wit:

COMMONWEALTH OF MASSACHUSETTS.

[L. S.] ss.
To the Sheriff of our county of , or to either of his deputies,

GREETING.

WE command you to attach the goods and estate of A. B. of C. within our county of D. [addition] to the value of dollars, and summons the said A. B. (if he may be found in your precinct) to appear before our Justices of our Court of Common Pleas next to be holden at within and for our county of on the day of , then and there, in our said court, to answer unto E. F. of G. within our county of H. [addition] in a plea of to the damage of the said E. F. as he saith, the sum of dollars, which shall then and there be made to appear, with other due damages: And whereas the said E. F. saith, that the said A. B. has not in his own hands and possession, goods and estate to the value of dollars, aforesaid, which can be come at to be attached, but has intrusted to, and deposited in the hands and possession of I. K. of [addition] trustee of the said A. B. goods, effects and credits, to the said value: We command you therefore, that you summon the said I. K. if he may be found in your precinct, to appear before our justices of our said court, to be holden as aforesaid, to shew cause (if any he has) why execution to be issued upon such judgment as the said E. F. may recover against the said A. B. in this action (if any) should not issue against his goods, effects or credits in the hands and possession of him, the said I. K. and have you there this writ, with your doings therein.

Witness L. M. Esq. at the day of in the year of our Lord one thousand seven hundred and N. O. Clerk.

And the officer to whom such writ may be directed, shall serve the same by attaching the goods and estate of the principal in his hands and possession, of the value required, if so much can be found in his precinct, by reading the said writ to him, or by leaving an attested copy thereof at his last and usual place of abode, if he had been an inhabitant or resident within this Commonwealth, at any time within three years next before the suing out such writ, and by reading the same to each of the trustees, or by leaving an attested copy thereof at such
trustee's usual place of abode; and in case the principal has not been an inhabitant or resident as aforesaid, a service made on the supposed trustee or trustees in manner as aforesaid, shall be deemed a sufficient service; which service shall be made fourteen days, at the least, before the day of the sitting of the court to which such writ is returnable; and the goods, effects, and credits of the principal, in the hands and possession of his trustee or trustees at the time such writ was served upon him or them, shall stand bound and be held to satisfy such judgment as the plaintiff shall recover against the principal; and when the trustees, named in such writ, do all dwell in one county, such writ shall be made returnable in the county where all the trustees dwell; but when the trustees do not all dwell in one county, such writ may be made returnable in any county in which any of the trustees dwell.

Sect. 2. And be it further enacted, That if the principal shall be absent from the Commonwealth when such writ shall be served, the court shall continue the action two terms, that he may have notice, unless the principal, after the service of the writ, and before the sitting of the court, shall have come into the Commonwealth; in which case, it shall be in the discretion of the court whether to continue the action or not; and when the principal does not appear in his own person or by attorney, to answer such suit, the trustees, or any of them, having goods, effects or credits of the principal in his or their hands or possession, may appear in his behalf, and in his name plead, pursue, and defend to final judgment and execution.

Sect. 3. And be it further enacted, That if any supposed trustee shall come into court the first term, and declare that he had not in his hands or possession, at the time the writ was served on him, any goods, effects, or credits of the principal, and shall thereupon submit himself to an examination, upon oath, and if, upon such examination, the said declaration shall appear to the court to be true, the court shall award him his legal costs, and issue execution therefor; and if such trustee shall, at the time of service of such writ, dwell in any county other than that in which the said writ is returnable, the court shall allow him such further costs as, with his legal costs, shall, under all the circumstances of the case, be a reasonable compensation to him for his time and expenses, in appearing and defending himself against such suit; and every person resident in the county where such writ shall be duly returned, who, being summoned as aforesaid, shall neglect to appear at the return thereof, and submit to an examination, as to the supposed goods, effects or credits in his or her hands, and having no reasonable cause to the contrary, in the opinion of the court where the suit shall be, shall be liable for all costs afterwards arising in such suit, to be recovered and paid out of his own goods and estate, in case judgment shall be finally rendered for the plaintiff, and unless such costs shall be duly recovered against the goods, effects, or credits of the principal in the hands of a trustee. And if several persons, resident in such county, being duly summoned as aforesaid, shall neglect to ap-
pear as aforesaid, then judgment and execution against them jointly shall be awarded for such costs. And persons resident in other counties than where the writ is returnable shall not be liable for any costs arising on the original process here-in provided.

Sect. 4. And be it further enacted, That where the plaintiff doth not support his action against the principal, and judgment shall be rendered that he take nothing by his writ, the court shall award costs against him, as well in favour of the principal, as in favour of such of the persons summoned as trustees severally, who have personally appeared in court and submitted themselves to an examination, upon oath, as aforesaid; and several executions shall issue thereupon accordingly.

And where all the supposed trustees, or any one or more of them, come into court, and are discharged upon examination, on oath, as aforesaid, or when the suit shall be discontinued by the plaintiff against them, or against any one or more of them, the plaintiff may, notwithstanding, proceed against the principal, to trial, judgment and execution. Provided nevertheless, That costs shall not be awarded in favour of any trustee, against whom the suit shall be discontinued as aforesaid, unless he come into court the first term, and declare that he had not in his hands or possession, any goods, effects or credits of the principal, at the time of the service of the original writ, and there-upon submit himself to an examination, upon oath, and such declaration be adjudged by the court to be true.

Sect. 5. And be it further enacted, That when the plaintiff shall recover judgment against the principal, and there shall be one or more trustees summoned, who shall not have come into court and discharged themselves upon oath of being trustees, as supposed in the writ, and against whom the suit shall not be discontinued; the court shall award execution against the goods, effects and credits of the principal in the hands and possession of every such trustee, as well as against the body, goods and estate of the principal; and the form of the execution may be as follows:

**Commonwealth of Massachusetts.**

[L. 8.] ss.

To the Sheriff of our County of , or his Deputy,

WHEREAS D. S. of R. within our county of S. [addition] by the consideration of our Justices of our Court of Common Pleas, holden at within and for our county of aforesaid, on the Tuesday of recovered judgment against R. F. of [addition] in the county of aforesaid, for the sum of debt or damage (as the case may be) and costs of suit; and whereas, by the consideration of the same court, execution was likewise awarded for the same sums against the goods, effects and credits of the said R. F. in the hands and possession of A. B. of [addition] and C. D. of [addition] trustees of the said R. F. as to us appears of record, whereof execution remains Court to award costs for the principal, as well as trustees who appear, when plaintiff does not support his action.

Plaintiff may proceed against principal, though trustees are discharged, &c.

1793 ch. 5.

No cost for trustees who do not appear, &c. the first term.

Court to award execution against principal and trustees who do not appear and discharge themselves.

Form of the execution.
to be done; We command you therefore, that of the goods, chattels, or lands of the said R. F. in his own hands and possession, and of the goods, effects and credits of the said R. F. in the hands and possession of the said A. B. and C. D. jointly and severally, you cause to be paid and satisfied unto the said D. S. at the value thereof in money, the aforesaid sums, being in the whole, with more for this writ, and thereof also to satisfy yourself for your own fees; and for want of goods, chattels or lands of the said R. F. in his own hands and possession, to be by him shewn unto you, or found in your precinct, to the acceptance of the said D. S. and for want of goods, effects and credits of the said R. F. in the hands and possession of the said trustees, to be by them discovered and exposed to you, to satisfy the several sums aforesaid, with your own fees: We command you that you take the body of the said R. F. and him commit unto our gaol in our county aforesaid, and detain in your custody within our said gaol, until he pay the full sums afore mentioned, with your fees, or that he be discharged by the said D. S. the creditor, or otherwise by order of law. Hereof fail not, and make return of this writ, and of your doings therein, into our Court of Common Pleas next to be held within and for our county of on the Tuesday of next, in the year of our Lord 17. J. S. Clerk.

And the form of the execution aforesaid shall be the form of a writ of execution upon a judgment recovered by virtue of this Act, in the Supreme Judicial Court, mutatis mutandis.

Sect. 6. And be it further enacted, That when any execution, issued as aforesaid, shall be returned not fully satisfied, by reason of the trustee not discovering and exposing sufficient goods, effects and credits of the principal, or by reason of the officer’s not finding sufficient goods and estate of the principal to the acceptance of the plaintiff, to satisfy the same, the plaintiff may sue out against the trustees, named in such writ of execution, or against any one or more of them, jointly or severally, a writ or writs of scire facias, in due form of law, requiring the defendant in such writs of scire facias named, to shew cause (if any they have) why judgment for the sums remaining unsatisfied should not be rendered against them; and if any one or more of the defendants in such writs of scire facias named, the same being returned duly served, shall come into court and declare, that he or they had not, at the time of the service of the original writ upon them, any goods, effects or credits of the principal in their hands or possession, and thereupon submit to an examination, upon oath; and if, upon such examination, the supposed trustee or trustees shall appear not to be chargeable, the court shall render judgment against him or them, if resident in the county where the original process was returnable, as the case may be, for costs only; and if not resident in such county, then the supposed trustee, so discharged, shall have costs; but if, upon such examination, it shall appear to the court that the said trustees, or any one or more of them, de-
fendants as aforesaid, had goods, effects or credits of the principal in his or their hands at the time of serving the original writ as aforesaid, other than such as he or they have discovered and exposed to be taken to satisfy the execution, on the first judgment, then the court shall enter up judgment against him or them to the amount of the sums returned unsatisfied upon the said execution, if there shall appear, upon such examination, to have been goods, effects or credits to that amount in his or their hands, not discovered and exposed, as aforesaid; but if not, then the court shall enter up judgment against him or them to the amount of the said goods, effects or credits in his or their hands not discovered and exposed, as aforesaid. Provided nevertheless. That where any trustee has come into court, upon the original process, and been examined upon oath, as aforesaid, and upon such examination, it has appeared to the court, that such trustee had goods, effects or credits of the principal, in his hands, at the time of serving the original writ, such trustee shall not be again examined upon the scire facias, but judgment shall be rendered upon his examination, had as aforesaid.

Sect. 7. And be it further enacted, That if any trustee, upon whom the writ of scire facias shall be served, shall not appear, but shall be defaulted, he having never been examined upon oath, under the original process, he shall be deemed and taken to have had in his hands and possession, at the time of the service of the original writ, goods, effects and credits of the principal, to the amount of the judgment rendered against him, and judgment shall be rendered against the trustee accordingly. And where there shall be more than one defendant, in any such writ of scire facias, the court may enter up joint or several judgments, according to the circumstances of the case; and upon all judgments rendered upon such writs of scire facias, executions shall issue in common form against the goods and estate, and for want thereof against the bodies of such person or persons against whom judgments shall be so rendered.

Sect. 8. And be it further enacted, That the goods, effects and credits of any person so taken as aforesaid, by process of law, out of the hands of his trustee, shall forever acquit and discharge such trustee from and against all suits, damages and demands whatever, to be commenced or claimed by his principal, his executors or administrators of and for the same: And if any trustee shall be troubled or sued on account of any thing by him done pursuant to this Act, he may plead the general issue, and give this Act in evidence; and any principal, against whom judgment shall be rendered, by force of this Act, shall be entitled to a review, in like manner as is or may be by law provided in other cases of personal actions, at any time within three years after judgment rendered, if he was absent from the Commonwealth during the whole time in which the action was pending; but if otherwise, then his review shall be sued out within the time in which reviews in other cases are directed by law to be sued out.
Trustee liable as in case of perjury, for wilful false answers—

—and to pay the judgment against the principal, &c.

_permitted to deliver specific articles on an execution._

—to be estimated by appraisal.

_Proviso for ascertaining the value by mode agreed on by contract, if any._

Such articles be sold as in other cases.

1783 ch. 57.

If part only are seized, trustee may deliver or tender the residue within 30 days, to the principal.

Executors or administrators

Sect. 9. _And be it further enacted_, That any person summoned as a trustee, as aforesaid, who shall upon such his examination, had as aforesaid, knowingly and wilfully answer falsely, shall, upon conviction thereof in the Supreme Judicial Court, be adjudged to be guilty of perjury, and be liable and subject to all the pains, penalties, forfeitures and disabilities thereby to law incident; and shall also, out of his own proper estate, be liable and subjected to pay to the plaintiff in the action, his executors or administrators, the full amount of such judgment as he, they, or any of them may have recovered against the principal, in case the same be unsatisfied; otherwise, such part thereof as may remain unsatisfied, together with the legal interest thereof, and double costs of suit, to be recovered in a special action on the case.

Sect. 10. _And be it further enacted_, That in every case where it shall appear, by the answer of the trustee, that he was, at the time of the service of the summons on him, holden or bound to deliver to the principal, at a then future day, any specific article or articles whatsoever, other than money, such trustee shall be and hereby is authorized and permitted, on demand made by the officer, having any execution in his hands, issued upon any judgment recovered by virtue of this Act, to deliver to him such specific article or articles, or so much and such part thereof as may be necessary to satisfy such execution, with the legal fees thereon; the value of such article or articles, as between the principal and trustee, to be estimated and ascertained by the appraisal of three disinterested and discreet men, one to be chosen by the trustee, one by the officer, and one by the principal, if he see cause; or if he neglect or refuse, then the officer shall appoint two of the said appraisers, who shall all be sworn before a Justice of the Peace in and for the county where such article or articles are to be delivered, faithfully and impartially to appraise the same: And the said justice and appraisers shall make, on such execution, a certificate of their respective doings: _Provided however_, That in all cases where by the terms of the contract between the principal and trustee, any mode is pointed out for ascertaining the value of such specific articles, the principal and trustee, or either of them, may have their value thus ascertained and estimated: And in either case, the officer shall proceed to sell such articles, and conduct in the sale thereof as in other cases of sales of personal property, on execution, as is already by law provided; the overplus monies (if any there should be) after satisfying the execution, and his fees, he shall pay over to the principal, if within the precinct of the officer; otherwise, to the trustee. And in all cases where a part only of such specific articles shall be taken in execution, as aforesaid, the trustee is hereby authorized to deliver the residue to the principal, or make tender thereof within thirty days after such execution shall have been satisfied, in the same manner as by law he might otherwise have delivered the whole.

Sect. 11. _And be it further enacted_, That whenever any person, who shall be summoned as a trustee as aforesaid, shall
die before he may have been examined as aforesaid, his executors or administrators may appear; or if the plaintiff think proper, be compelled to appear and make answer to the suit, in the same way and manner executors and administrators are allowed or compellable to appear and answer to suits and actions in other cases. And in case of the death of any trustee, after such his examination, and previous to the rendering of final judgment against the principal, the executors and administrators of such deceased trustee shall be liable and answerable to perform whatever such trustee, by his answer, would have been liable to do and perform, in case he had lived.

Sect. 12. And be it further enacted, That no person shall be considered or adjudged to be a trustee, within the intent and meaning of this Act, by reason, or on account of his having made, given, endorsed, negociated or accepted any negociable security whatever.

Sect. 13. And be it further enacted, That the Act made in the year of our Lord one thousand seven hundred and fifty-eight, "to enable creditors to receive their just debts out of the effects of their absent or absconding debtors," shall, after the first day of August next, be, and the same is hereby repealed, excepting so far as may be necessary to carry into final effect any processes which heretofore have been, or which may, on or before the said first day of August, be brought in virtue of said Act.

Sect. 14. And be it further enacted, That nothing herein contained shall be construed to repeal any part of the Act, entitled, "An Act to prevent fraud and perjury," excepting that all judgment-creditors who, by the provisions of that Act, are entitled to the process provided in the Act herein repealed, are and shall be hereby entitled to the process in this Act provided, under the same regulations and restrictions as are mentioned and expressed in the said Act, entitled, "An Act to prevent fraud and perjury." [Feb. 28, 1795.] Add. acts—1793 ch. 5. : 1817 ch. 148.

An Act to change the name of John Murdock, of Roxbury, in the County of Norfolk, to the name of Robert Pierpont. [Feb. 28, 1795.]


An Act prescribing the Duty of Constables and Collectors, in certain cases, previous to the Advertisement of non-resident Proprietors’ Lands for sale, for non-payment of taxes; and for perpetuating the Evidence of posting Notifications previous to such Sales.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That where any non-resident proprietor of any lands in any town, district or plantation, within this Commonwealth, shall have authorized, in writing, any person residing and dwelling in any such town, district or plantation, as his attorney, to pay the taxes imposed upon such lands, and such written authority shall have been lodged with, or recorded by the clerk of such

of trustee to answer the suit, in case of his death.

Negociable securities protected.

Act repealed. 32 Geo. II. ch.2.

Exceptions.

Act to prevent fraud and perjury not affected by this Act. 1798 ch. 16.

Chap. 66.

Chap. 67.

Chap. 68.

Chap. 69.

1755 ch. 70. When non-residents authorize persons in the place where lands lie, to pay taxes, and such authority is lodged with the clerk of the
place, collector shall not advertise lands for sale, till two months after demand of payment.

A fidavit of such demand to be legal evidence.

A fidavit of posting notifications, to be used in evidence upon trial of the validity of a sale.

1795.

An Act to set off from the Town of Dartmouth, and annex to the Town of Westport, certain Inhabitants, with their respective families and estates, lying within the boundary line of the Town of Westport. [Feb. 28, 1795.]

An Act setting off Part of the Town of Northfield, and annexing it to the Town of Gill, in the County of Hampshire. [Feb. 28, 1795.]

An Act to incorporate Samuel Cary, Esq. and others, for certain Purposes. [Feb. 28, 1795.]

An Act for extending the time for receiving, on Loan, the Debt of this Commonwealth. [June 3, 1795.] Time further extended—1795 ch. 56: 1796 ch. 45: 1797 ch. 72.

An Act to change the name of William Sheldon, of Hadley, in the County of Hampshire, to the name of Giles Crouch Kellogg. [June 4, 1795.]

An Act in addition to an Act, entitled, "An Act to prevent Damage being done on the Salt Marshes in the Town of Arundell, in the County of York, by Horses, Sheep and Cattle being suffered to run at large on certain Beaches, Flats and Necks of land adjoining said Marshes, from the first day of April, to the last day of November, annually"—passed in the year of our Lord one thousand seven hundred and eighty-nine. [June 8, 1795.]

An Act to change the name of the Town of Sherborn, in the County of Nantucket. [June 8, 1795.]
An Act to incorporate the owners of certain Lands in Stoughton, in the County of Norfolk, for the purpose of managing the same as a Common and general Field. [June 15, 1795.]

An Act for incorporating certain persons in the Town of Granby, for the purpose of managing a Common Field in said town. [June 15, 1795.]

An Act repealing a certain Clause of an Act, entitled, "An Act for the orderly Solemnization of Marriages."

WHEREAS in and by the Act, entitled, as aforesaid, among other things, the following clause is enacted, viz. "And if it shall so happen, that any one or more of the said justices or ministers shall not have joined together in marriage any person during the course of the year then last past, it shall be the duty of such justice or minister also to certify to the said town-clerk, in writing, under his hand, that he has not joined any persons in marriage within the course of the said year;" and a compliance with the said clause is found inconvenient:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the before recited clause be and it is hereby repealed. [June 15, 1795.]

An Act to regulate the Sale of Goods at public Vendue, and to repeal all Laws heretofore made for that Purpose.

Sect. 1. BE IT enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of July next, no person, unless he be licensed by the major part of the selectmen of the town to which he belongs, shall sell at public vendue or outcry, any goods or chattels whatsoever: And if any person, without such license, shall sell any goods or chattels at public vendue or outcry, he shall forfeit and pay a sum not exceeding six hundred dollars for each offence; and the selectmen, or the major part of them, at a meeting had for that purpose, are hereby empowered, by a writing under their hands, to license any suitable person or persons to make sale of goods or chattels, in manner aforesaid; for which license, the person or persons receiving the same shall pay to the selectmen granting it, for their use, the sum of two dollars: and the selectmen are hereby directed to record every license, they may so grant, in a book to be by them kept for that purpose.

Sect. 2. And be it further enacted, That if any person or persons, thus licensed, shall receive any goods for sale at public vendue or outcry, of any servant or minor, knowing such person to be a servant or minor, or shall sell any of his own goods before sun-rise, or after sun-set, at public vendue or outcry, he shall forfeit and pay a sum not less than fifty dollars, nor more than one hundred and seventy dollars, for each offence: And every person, thus licensed, shall keep a fair and particular account of all goods and chattels sold by him, as aforesaid, of whom the same were received, and of the names of the persons to whom the same shall have been sold: Provided, That nothing in this Act shall extend to sales made by sheriffs, deputy-sheriffs, coroners, constables, collectors of taxes, executors or administrators, or any other person who al-
ready is, or hereafter may be authorized or required, by law, to sell goods, chattels or lands at vendue or outcry.

Sect. 3. And be it further enacted, That no license granted, as aforesaid, shall be of any effect to exempt any person or persons from the penalties incurred by any breach of this Act, unless such license shall have been made and granted within one year next preceding such sale.

Sect. 4. And be it further enacted, That any penalty, incurred as aforesaid, may be recovered by an action of debt* in any court of record proper to try the same, and appropriated to the use of him who shall first sue for the same.

Sect. 5. And be it further enacted, That all laws herefore made for regulating the sale of goods and chattels, at public vendue or outcry, excepting as before excepted, be and they hereby are repealed: Provided, That all forfeitures and penalties, that may have been incurred by any breach of said laws, shall and may be recovered in the same manner as though this Act had not been made. [June 16, 1795.] Add. acts—1814 ch. 46: 1815 ch. 29: 1819 ch. 132.

Chap. 9. An Act to set off Eber Sheldon, and Silas Freeman, jun. with their estates, from the Town of Sheffield, in the County of Berkshire, and annex them and their estates to the Town of New-Marlborough, in the same County. [June 19, 1795.]

Chap. 10. An Act to prohibit, during the months of December, January and February, the taking of Salmon in Merrimack-River, and in the Waters running into the same. [June 26, 1795.]

Chap. 11. An Act for apportioning and assessing the Sum of one hundred and forty-nine thousand, seven hundred and fifty-nine Dollars and seventy-three Cents. [June 22, 1795.]

Chap. 12. An Act in addition to an Act, entitled, “An Act more effectually to prevent the Destruction of the Fish called Shad and Alewives, in the Rivers and Streams within the Towns of Lynn, Reading and Lynnfield,” passed February twenty-fourth, in the year of our Lord one thousand seven hundred and ninety-five. [June 23, 1795.] Repealed—1801 ch. 61.

Chap. 13. An Act for incorporating the Proprietors of certain Lands in the Town of Wilbraham, in the County of Hampshire, for the Purpose of conducting the concerns thereof as a Common Field. [June 23, 1795.]

Chap. 14. An Act for incorporating a Part of the Inhabitants of the Towns of Partridgefield and Dalton, in the County of Berkshire, into a Parish, and for confirming the Sale of a certain Lot of Land therein mentioned. [June 23, 1795.]

Chap. 15. An Act in addition to an Act, entitled, “An Act to incorporate certain persons, by the name of The north-west Congregational Society in North-Yarmouth. [June 23, 1795.]

Chap. 16. An Act to authorize a Sale, by the first Parish in Cambridge, in the County of Middlesex, of certain Lands given for the Use of the Ministry there, and to secure the Proceeds thereof, and of a former Sale of Lands by the said Parish, to the same Use. [June 23, 1795.]

Chap. 17. An Act giving the surname of Darling to Leonard Warfield, of Mendon. [June 23, 1795.]


Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That there be and hereby is granted unto the United States of America the light-house situate on Brant-Point, at the entrance of the harbour of Nantucket, together with the lands
and tenements thereunto belonging, the property of this Commonwealth, with the jurisdiction of the same; and the light-house aforesaid, together with the lands and tenements thereto belonging, the property of this Commonwealth, with the jurisdiction of the same, are hereby ceded to and vested in the United States of America:

Sect. 2. Provided nevertheless, and be it further enacted, That if the United States shall, at any time hereafter, neglect to keep lighted and in repair, the light-house aforesaid, then the grant herein made shall be void and of no effect. Provided also, That all civil and criminal processes, issued under the authority of this Commonwealth, or any officers thereof, may be executed on said lands, or in any of the buildings aforesaid, in the same way and manner, as if the jurisdiction had not been ceded, as aforesaid. [June 23, 1795.]

An Act to incorporate a number of the inhabitants of the first Precinct in Attleborough, in the County of Bristol, into a Society by the name of The Congregational Society of the first Precinct in Attleborough. [June 23, 1795.]

An Act establishing the Boundary Line between the Town of Williamstown, and the Towns of Chesterfield and Goshen. [June 24, 1795.]

An Act for incorporating Woodbury Storer, and others, by the name and style of The Proprietors of the Cumberland Canal. [June 25, 1795.] Add. acts—1803 ch. 68: 1804 ch. 28.

An Act to incorporate sundry Persons by the name of The Massachusetts Fire Insurance Company. [June 25, 1795.] Add. acts—1808 ch. 46: 1805 ch. 47.

An Act for incorporating Joseph Noyes, and others, by the name and style of The Proprietors of the Falmouth Canal. [June 25, 1795.] Add. acts—1803 ch. 69: 1804 ch. 42.

An Act to incorporate certain persons who have formed a Society for the Information and Aid of Foreigners in their Migration and Settlement, by the name of The Massachusetts Society for the Aid of Immigrants. [June 25, 1795.]

An Act to incorporate sundry persons by the name of The President and Directors of the Merrimack Bank. [June 25, 1795.] Name altered—1795 ch. 32. Add. act—1799 ch. 44. United with Newburyport Bank—1805 ch. 3.

An Act to alter the name of John Williams, to the name of John Davis Williams. [Jan. 20, 1796.]

An Act granting to the Proprietors of the Locks and Canals on Merrimack-River, a further Time to complete the Canal and Locks by Patucket-Falls. [Jan. 22, 1796.]

An Act for granting a Lottery for the Purpose of altering, making, and repairing certain Roads in the Town of Gloucester, in the County of Essex. [Jan. 26, 1796.]

An Act to set off Nathaniel Lawrence, with his estate, from the Town of Groton, and annex them to the Town of Dunstable. [Jan. 25, 1796.]

An Act for the Preservation of a Monument erected on the Heights of Charlestown. [Feb. 3, 1796.]

An Act to incorporate the Plantation of Washington, lying west of Sydney, in the County of Lincoln, into a Town by the name of Belgrade. [Feb. 3, 1796.]

An Act for altering the name of the Bank incorporated by an Act made and passed in the year one thousand seven hundred and ninety-five, entitled, "An Act to incorporate sundry persons by the name of The President and Directors of the Merrimack-Bank." [Feb. 3, 1796.]
Chap. 33. An Act to enable the Town of Natick to regulate and order the taking of the Fish called Shad and Alewives, within the limits of said Town. [Feb. 5, 1796.]

Chap. 34. An Act to alter the Times of holding the Courts of General Sessions of the Peace, and Courts of Common Pleas, in the Counties of Middlesex, Hampshire, Bristol, Worcester and Berkshire. [Feb. 6, 1796.]

Chap. 35. An Act to incorporate the Plantation called Jones' Plantation, in the County of Lincoln, into a Town by the name of Harlem. [Feb. 8, 1796.]

Chap. 36. An Act for incorporating certain persons for the purpose of building a Bridge over Kennebeck-River, at Fort-Western, in the Town of Hallowell. [Feb. 8, 1796.]

Chap. 37. An Act in addition to an Act passed in the year of our Lord one thousand seven hundred and eighty-three, incorporating the east Parish of South-Brimfield, into a District by the name of Holland. [Feb. 8, 1796.]

Chap. 38. An Act to incorporate the Plantations Number Twelve and Thirteen, west of Machines, in the County of Washington, into a Town by the name of Columbia. [Feb. 8, 1796.]

Chap. 39. An Act to divide the Town of Penobscot into two distinct Towns, and to incorporate the southerly part thereof into a Town by the name of Castine. [Feb. 10, 1796.]

Chap. 40. An Act to incorporate the northerly Part of the Plantation called Duck-Trap, in the County of Hancock, into a Town by the name of Northport. [Feb. 13, 1796.]

Chap. 41. An Act establishing and regulating the Fees of the several Officers, and other Persons hereafter mentioned; and for repealing the Laws heretofore made for that Purpose.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of April next, the fees of the several persons hereafter mentioned, for the services respectively annexed to their names, shall be as follows, viz.

JUSTICES' FEES.

For every blank writ of attachment and summons thereon, or original summons, seventeen cents. For the declaration in each writ of attachment and summons thereon, or original summons triable before a justice, forty cents. Every subpoena, for one or more witnesses, ten cents. For the entry of an action, or filing a complaint in civil causes, including filing of papers, examining, allowing and taxing the bill of costs, and entering up the judgments and recording the same, sixty-one cents. The trial of an issue, fifty cents. Copy of every evidence, original paper, or record, if under a page, ten cents, if upwards of a page, at the rate of twelve cents per page. Writ of execution, twenty-five cents. A recognizance to prosecute an appeal, including principal and surety, twenty cents. Taking affidavits out of court to be used in the trial of any cause actually depending, twenty cents; for the justices' travel therefor, both going out and returning home, at the rate of fifty cents for every ten miles; for writing the deposition, caption, and notification, at the rate of twelve cents per page; and the justice who shall take any deposition, shall certify his own and the deponent's fees. Taking affidavits, in perpetual remembrance of the thing, to each justice, twenty cents; and for his travel and the writing, the same as in the case last mentioned. Administering an oath to persons appointed to appraise estates, or to appraise
and divide real estates, together with certificates of the same, twenty cents. Administering an oath to one or more witnesses at the same time, before referees or arbitrators, twenty cents; and for travel for that purpose, the same as in the case of taking affidavits. Taking the acknowledgment of a deed with one or more seals, provided it be at one and the same time, and certifying the same, seventeen cents. Granting a warrant, swearing appraisers relating to strays, and entering the same, thirty-two cents. Administering oaths in all other cases, with certificates, except oaths to town, district or parish officers, twenty cents. Receiving a complaint and issuing a warrant in criminal cases, fifty cents. Entering a complaint in criminal prosecutions, rendering judgment and recording the same, examining, allowing, and taxing the costs and filing the papers, seventy-five cents. Recognizing persons charged with crimes, for their appearance at the Court of General Sessions of the Peace or at the Supreme Judicial Court, and for certifying and returning the same with or without sureties, twenty-five cents, to be paid by the person so recognizing. For a mittimus for the commitment of any person on a criminal accusation, twenty-five cents.

CORONERS' FEES.

For serving a writ, summons, or execution, and for collecting the monies due thereon, and for travel in returning precepts and inquisitions, the same allowance as is by this Act allowed to sheriffs for similar services. For a bail-bond, twenty-five cents. Every trial where the sheriff is concerned, twenty-five cents; and the same for attending the jury therein. Granting a warrant and taking an inquisition on a dead body, one dollar; if more than one at the same time, and who came to their death by the same means, twenty cents for each one after the first. Travel and expense for taking an inquisition, one dollar a day, to each of the jurymen for their travel, if above four miles out, three cents a mile each way, and for their services, seventy-five cents per day, including time and expenses. The constable, for his attendance and expenses in summoning a jury, ninety cents a day. And all the aforesaid charges of the inquisition shall be paid out of the county treasury, except such as are taken upon bodies of strangers, not belonging to this Commonwealth; and in such cases, the expenses shall be paid out of the treasury of this Commonwealth; an account of such expenses being first examined and allowed by the Court of General Sessions of the Peace, in the county in which such inquisition shall be taken.

FEES OF JUDGES OF PROBATE.

For granting administration, where there is no litigation, fifty cents; and in other cases, one dollar. Appointing or allowing guardians to minors, forty cents in each case, except in cases where one guardian is appointed for more than one minor, when the judge shall be entitled to five cents each, for all more than one minor. A decree respecting the probate of a will or codi-
cil, where the same is not contested, fifty cents; and in all other cases, one dollar. Examining and allowing an inventory, swearing the executor or executors, administrator or administrators, twenty cents. Swearing appraisers of an estate, fifteen cents. Examining and allowing accounts, not exceeding two pages, forty cents; and for all above two pages, at the rate of fifteen cents, each page. A decree for settling an intestate estate, forty cents. A citation, fifteen cents. A summons for one or more witnesses, ten cents. A quietus, twenty cents. A warrant to appraise or divide estates, thirty cents. Issuing a commission to receive and examine the claims of creditors, when an estate is represented insolvent, twenty cents. An order of distribution, twenty cents. Granting an appeal to the Supreme Court, twenty cents.

**REGISTER OF PROBATE'S FEES.**

For writing a bond and letter of administration, forty cents. Writing a bond and letter of guardianship, and making record thereof, for one minor, sixty cents; and if for more than one minor for whom the same guardian is appointed at the same time, ten cents for each minor more than one. Drawing a decree respecting the probate of a will or codicil, forty cents. Writing a bond for the executor, twenty cents. Writing a warrant to appraise the estate of a person deceased, twenty cents. A warrant to divide an intestate estate among the heirs; writing a warrant to set off a widow's dower, or a warrant to receive and examine the claims on an insolvent estate, twenty cents. Entering the account of an executor, administrator or guardian, and an allowance thereof, or for entering on an inventory the oath of an executor or administrator, fifteen cents. Drawing up a decree on the settlement or partition of an estate, twenty cents. For drawing an order of distribution, twenty cents. A quietus, twenty cents. A citation, fifteen cents. A summons for a witness or witnesses, ten cents. Proportioning an insolvent estate among the creditors thereto, at the rate of fifty cents for every twelve creditors, every creditor's proportion being distinguished. Recording any matter, at the rate of twelve cents each page, and the same for a copy of any paper. A bond of appeal, twenty cents. And no fee shall be demanded by the register of probate, for taking from the files in his office, or transporting to the place of the sitting of the Probate Court, such papers as are necessary in the settlement of any estate or account in the said court.

**IN THE COURT OF COMMON PLEAS.**

**JUSTICES' FEES.**

1813 ch. 11.

For the entry of an action, including the taxing of the bill of costs, eighty cents. And in every action where an issue in law or fact is joined, one dollar, in addition to the fee for entry. Granting an appeal, and taking a recognizance of the principal and surety or sureties, twenty cents. Proving a deed, twenty cents. Surrender of a principal into court, by his bail, twenty cents. Granting a writ of protection, twenty-five cents.
Entering a petition, and making an order thereon for the sale or partition of a real estate, seventy cents. Accepting partition of real estate, forty cents. Accepting a report of referees, where the acceptance thereof is contested, sixty cents; otherwise, thirty cents.

FEES OF THE CLERK OF THE COURT OF COMMON PLEASES.

For the entry of an action, including the taxing of the bill of costs, and filing the papers, fifty cents. Entering and recording a verdict or report of referees, twelve cents. Every action withdrawn or nonsuit, eight cents. Confessing judgment, or default, or joinder in demurrer, ten cents. Entering up judgment, and recording the same at large when no issue is joined, twenty cents; and where an issue in law or fact is joined, forty cents. Acknowledging satisfaction of a judgment on the record, eight cents. Entering an appeal, and recognizing principal and sureties, fifteen cents. Continuing each cause to the next term, twelve cents. Entering the surrender of a principal into court, and making a record thereof, fifteen cents. For entering a petition and order thereon for the partition or sale of real estate, twenty cents; and for recording such petition and order, at the rate of twelve cents a page. Entry of a rule of court, upon the parties' submitting a cause to referees, fifteen cents. Proving a deed in court, and certifying the same, twenty cents. Every blank writ of attachment, with summons thereon, fifteen cents. Every blank writ of scire facias, or original summons, fifteen cents. An original or alias writ of execution in personal matters, and filing the same, when returned, twenty-five cents. A writ of possession in real actions, forty cents. A writ of protection, or habeas corpus, twenty-five cents. A subpoena for one or more witnesses, ten cents. A duces tecum, twenty-five cents. Each venire facias, for jurymen to be paid out of the county-treasury, five cents. Opening and filing a deposition, eight cents.

IN THE COURT OF GENERAL SESSIONS OF THE PEACE.

TO EACH JUSTICE.

For each day's constant attendance in court, one dollar. And no justice shall be allowed pay for more than two days' attendance at any one term. To each justice who shall travel more than ten miles to the court-house or place where the courts sit, at the rate of one dollar for every twenty miles travel, computing out and home: The travel and attendance to be paid out of the county-treasury; except such justices as are sworn attorneys at law, or clerks of the several Courts of Sessions, who shall not be allowed for travel or attendance; the clerk of said courts shall keep an account of their attendance as aforesaid. And all fines that shall be assessed by said court, and are not otherwise appropriated by law, shall be paid into the county-treasury, for the use of the county.

FEES OF THE CLERK OF THE COURT OF GENERAL SESSIONS OF THE PEACE.

Entering an indictment, presentment, complaint or information, including the recording of the judgment of the court therein, examining and casting the bill of costs, and filing the papers, sixty-five cents. Discharging a recognizance, ten cents. Each warrant for a criminal, twenty cents. Each subpoena for witness or witnesses, ten cents. Each recognizance for an im-

1813 ch. 11.

1818 ch. 120.
holder or retailer, including principal and sureties, and for transmitting the name of the licensed person to the selectmen, and recording the license, fifteen cents. A warrant for county tax, twenty cents. Warrant to lay out or alter a road, twenty cents. Examining and casting the grand-jurors' account yearly, and the order thereon, thirty cents. Examining any other account, eight cents. Recording the reports of highways and other matters by order of the court, twelve cents a page. Copies of all papers or records, twelve cents a page. Entering an appeal, and recognizing principal and sureties, twenty cents. Keeping an account of the attendance of the justices of the Court of General Sessions, each term, to be paid out of the county-treasury, seventy-five cents.

IN THE SUPREME JUDICIAL COURT.

JUSTICES' FEES.

Entering an action or complaint, including the taxing of a bill of costs, one dollar and twenty cents. Taking special bail, forty cents. Allowing a writ of error, granting certiorari, habeas corpus, or other writ, on motion, forty cents. Granting a writ of protection, thirty cents. Proving a deed, twenty cents. Entering a petition, and making order thereon for the sale or partition of real estate, one dollar. Accepting a partition of real estate, forty cents. The foregoing fees to be paid to the clerk of said court; who shall, some time in the month of December annually, certify to the Governor and Council the sums by him so taken and received and paid over to the said justices, that the same may be deducted from the said justices' salary; and the Governor and Council are hereby empowered to deduct the same accordingly.

FEES OF THE CLERK IN THE SUPREME JUDICIAL COURT.

Entering each action for trial, seventy cents. Entering each complaint, thirty-five cents. Receiving and recording a verdict, forty cents. A writ of review, seventy cents. A writ of seire facias, forty cents. An original writ of execution, including the taxing of the costs, and filing of the papers, sixty-five cents. An original writ of habeas facias possessionem, including the taxing of the costs, and filing of the papers, eighty cents. An alias writ of execution, thirty-five cents. An alias writ of facias habeas possessionem, fifty cents. A writ of habeas corpus, forty cents. Copies of all papers containing less than one page, ten cents each; of all papers containing more than a page, at the rate of twelve cents a page. Entering a rule of court, fifteen cents. Confessing judgment or default, twenty cents. Every action withdrawn or nonsuit, twenty cents. Entering an appearance, ten cents. Acknowledging satisfaction of a judgment, on record, twelve cents. Continuing each cause, and entering the same next term, twenty cents. Proving a deed in court, and certifying the same, twenty cents. Entering up a judgment, and recording the same at large, in cases where judgment is rendered, on verdict, demurrer, or state of facts, sixty cents; and in all other cases, thirty cents. For each venire
for jurymen, to be paid out of the county-treasuries respectively, on the justices’ certificate, six cents. Every writ and seal, other than before mentioned, forty cents. Every subpoena, for one or more witnesses, ten cents. Each recognizance, including principal and sureties, twenty cents. Recording judgment in every criminal cause, forty cents. A writ of protection, twenty cents. Entering a discharge of a recognizance by proclamation, fifteen cents. For opening and filing a deposition, ten cents.

ALLOWANCE TO PARTIES AND WITNESSES.

To parties recovering costs, for an attorney in all causes where an issue in law or fact is joined in the Supreme Judicial Court, two dollars fifty cents, and in all other causes in said court, one dollar twenty-five cents. And in all causes in the Court of Common Pleas, and Court of General Sessions of the Peace, where an issue in law or fact is joined, one dollar and fifty cents; and in all other causes in said court, one dollar. For the declaration in each writ, fifty cents. For parties recovering costs, whether in the Supreme Judicial Court, Court of Common Pleas, General Sessions of the Peace, or before a Justice of the Peace, thirty-three cents for each day’s attendance and travel, ten miles to be accounted as one day; no allowance shall be made for travel to or from the clerk’s office to take out a writ or summons, or carry the same to an officer; and no plaintiff shall be allowed for more than three days’ attendance when the defendant is defaulted, unless the defendant appears in court and makes answer to the plaintiff’s suit; in which case, if the defendant is defaulted, after the expiration of three days, no attendance shall be taxed for the plaintiff after the day when the default shall happen. Provided nevertheless, that when the party, recovering costs in any court, shall live more than forty miles from the place of holding such court, and such party shall not actually travel to attend the same court in such cause, there shall not be allowed for travel in taxing the bill of costs, more than forty miles distance, unless such party shall employ some agent or attorney, who shall in fact travel more than forty miles for the special purpose of attending such court in such cause. In a criminal cause, where one or more defendants are tried by the jury at the same time, in the Supreme Judicial Court, or where the cause is determined by an issue in law, for the attorney-general, or person attending for the Commonwealth, two dollars and fifty cents: And if there be no trial by the jury, and the cause be not determined by an issue in law, one dollar twenty-five cents; and in all causes in the Court of General Sessions of the Peace, one dollar and twenty-five cents. Drawing an indictment in the Supreme Judicial Court, one dollar and twenty-five cents; and in the Court of General Sessions of the Peace, sixty-five cents. Witnesses in civil or criminal causes, whether in the Supreme Judicial Court, Court of Common Pleas, or General Sessions of the Peace, seventy-five cents* for each day’s attendance, and four cents for each mile’s travel going out and returning home.

*one dollar—1805 ch. 63: 1817 ch. 38.
And before a Justice of the Peace, referees or arbitrators, thirty-three cents per day, and for their travel the same as at other courts; provided such witnesses do personally attend said courts respectively, and certify, in writing, their time and travel.

SHERIFFS' AND CONSTABLES' FEES.

For the service of an original summons or scire facias, either by reading the same, or by copy, on one defendant, thirty cents; if on more than one defendant, then for each other defendant so served, thirty cents. For the service of a capias, or attachment, on one defendant, with summons, thirty cents; if served on more than one defendant, then thirty cents for each defendant so served: And if the officer, by the written direction of the plaintiff or plaintiffs, his or their agent or attorney, shall make a special service of any such writ, either by attaching property, or taking the body therefor, for such special service on each defendant on whom such writ shall be so served, the sheriff shall be allowed fifty cents. And where the officer is, by law, directed to leave a copy in order to complete the service, or shall give a copy of any precept, upon demand thereof, he may charge at the rate of twelve cents a page. For a bail-bond, and writing the same, including principal and sureties, to be paid by the person admitted to bail, and taxed for him if he shall prevail, twenty cents. Serving a writ of possession exclusive of fees for collecting on the costs, one dollar and ten cents; if on more than one piece of land, seventy-five cents for each piece of land after the first. The fees for collecting the costs on a writ of possession, the same as on executions in personal actions. Serving a warrant, thirty cents. Sheriff's aid in criminal cases, to each person for every twelve hours' attendance, including expenses, one dollar, and so in proportion for a greater or less time, and four cents for each mile's travel going out and returning home. Summoning witnesses in criminal cases, ten cents for each witness, and travel as in civil causes, unless in special cases, when the court may increase the fee to what they may judge reasonable. For the sheriff's or constable's attending the court, and keeping the prison or in criminal cases, seventy-five cents for every twelve hours; and so in proportion for a greater or less time. Levy ing executions in personal actions, for the first one hundred dollars, four cents; for every dollar above that, and not exceeding two hundred dollars, two cents for every dollar; and for all above two hundred dollars, one cent for every dollar; travel for the service of such executions, and also of mesne processess or warrants to him directed, four cents a mile, the travel to be computed from the place of service to the court or place of return by the usual way; only one travel shall be allowed for one writ, execution or warrant, and if the same be served on more than one person, then the travel shall be computed from that place of service which may be most remote from the place of return, with all further necessary travel in serving such execution, writ or warrant. But if the travel from the place of service to the place of return be more than fifty miles, then only one cent a mile shall be allowed for all travel.
exceeding that distance. The travelling fees and fees of service shall be endorsed by the officer serving the same, otherwise they shall not be allowed. Serving an execution upon a judgment of court for partition of real estate, or assigning of dower, one dollar a day, and four cents a mile out from the place of his abode. And no sheriff shall demand or receive from any of his deputies, more than at the rate of twenty-five per cent. on the amount of fees for travel and service. Every trial in a court of record, fifteen cents. Every default, eight cents. For returning the certificates of votes of the several towns for a Governor, Lieutenant-Governor, Counsellors and Senators, to the Secretary’s office, eight cents a mile, computing from the place of his abode to the Secretary’s office, to be paid out of the treasury of the Commonwealth; and but one trial shall be allowed for the whole. To the officer attending the grand-jury, for each day’s attendance, seventy-five cents. The officer attending the petit-jury, for every cause, to be paid with the jury-fees, twenty-five cents. For dispersing venires for jurymen, treasurer’s warrants, and proclamations of all kinds, eight cents each. To each appraiser of real estate, for extending execution or assigning dower, one dollar a day, and travel at the rate of four cents a mile going out and returning home. For every deputy-sheriff or constable who shall attend the Supreme Judicial Court, or Court of General Sessions of the Peace, or Common Pleas, by their order, seventy-five cents a day, to be paid out of the county treasury. And for the encouragement of the sheriff in each county to take and use all possible care and diligence for the safe keeping of prisoners committed to his custody, he shall have such salary allowed him, as the Justices of the Court of General Sessions of the Peace within the same county shall order, not exceeding forty dollars a year for the county of Suffolk; and not exceeding twenty-five dollars a year for any of the other counties within the Commonwealth, to be paid out of the treasury of such county. To constables for the service of venires, twenty-five cents, and four cents a mile for travel to the clerk’s office, to be paid out of the county treasury.

CRIER’S FEES.

Calling a jury, eight cents, to be paid with the jury-fees. A default or nonsuit, a judgment affirmed on complaint, a verdict or demurrer, fifteen cents each. Discharging a recognizance by proclamation, eight cents. Said fees to be paid to the clerk for the use of the crier.

GAOLER’S FEES.

Turning the key for each prisoner committed or discharged, twenty cents. Dieting each prisoner, such sum weekly as the Court of Sessions shall, from time to time, judge reasonable.

FOR MARRIAGES.

To the town-clerk for publishing the banns of matrimony, recording the same, giving a certificate of the publishment, and
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recording the marriage upon receiving the justice's or minister's certificate thereof, fifty cents, to be paid by the man published, on receiving a certificate of the publication. And the town-clerk shall not in future be holden to return certificates of marriages to the clerks of the Courts of General Sessions of the Peace, nor clerks last mentioned to record the same. To every minister or Justice of the Peace, who shall lawfully solemnize a marriage, and certify the same, one dollar and twenty-five cents. To the town-clerk for recording births and deaths, eight cents each. For a certificate of a birth or death, ten cents. For a subpoena for one or more witnesses, ten cents.

FEES IN THE SECRETARY'S OFFICE.

For a certificate under the seal of the Commonwealth, for the benefit of particular persons, one dollar. For every order of notice from the General Court upon petition, forty cents. Every other order, forty cents. For all copies for the benefit of particular persons, at the rate of twelve cents a page. The Secretary shall keep an account of all fees by him received by virtue of this Act, that the General Court may once a year know the amount thereof, and take the same into consideration at the time of making a grant to him for his services. And it is to be understood that a page, as mentioned in this Act, should contain two hundred and twenty-four words.

MESSENGER OF THE GENERAL COURT.

Serving every warrant which the General Court or either House may issue for imprisoning or taking into custody any person, forty cents. For travel therefor each mile, out and in, six cents. Keeping and providing food for such person, forty cents a day. For the discharge or dismissal of such person, forty cents.

COUNTY-REGISTER'S FEES.

For entering and recording a deed, or other paper of the length of one page or under, twelve cents. And for certifying on the original the time when, and the book and page where, the same may be recorded, five cents. If the instrument recorded exceed the length of a page, at the rate of fourteen cents a page. The fees to be paid at the offering of the instrument. For all copies, at the rate of fourteen cents a page. For entering in the margin a discharge of a mortgage, to be signed by the person discharging the same, twelve cents.

ALLOWANCE TO JURORS.

Sect. 2. And be it further enacted by the authority aforesaid, That the grand-jurors attending at the Supreme Judicial Court and Court of General Sessions of the Peace, and the jurors for trials attending either of said courts or the Court of Common Pleas, shall each be allowed ninety cents a day for their attendance, and four cents a mile for their travel out and home, to be paid out of the county-treasury: And there shall be paid to the clerk of the Supreme Judicial Court, and to the clerk of the Court of Common Pleas, and the clerk of the Court of General Sessions of the Peace respectively, by the plaintiff or appellant, the sum of six dollars for the trial of each civil action, for the use of the county; and the said clerks respectively shall forthwith pay over the same to the county-treasurer.

Sect. 3. And be it further enacted by the authority aforesaid.
That any constable in any town or district within this Commonwealth, be, and he hereby is authorized and empowered to serve upon any person or persons in the town or district to which he may belong, any writ, summons or execution in any personal action where the damage sued for or recovered shall not exceed seventy dollars, and return thereof to make to the court to which the same may be returnable.

Sec. 4. And be it further enacted by the authority aforesaid, That the clerks of the several courts, and other persons keeping public offices, shall constantly have a list of the fees by this Act prescribed, so far as it relates to them respectively, printed or wrote out in legible characters, and hung in some convenient and conspicuous place in their respective offices. And the register of probate shall put and keep up, in some conspicuous part of the room, a list of fees for judge and register, in every other place besides his office as aforesaid, where a Probate Court may be holden during the holding of the said court in such place.

Sec. 5. And be it further enacted, That every officer or other person, upon receiving any such fees as are stated in this Act, shall, if required by the person paying the same, make out a particular account of such fees, in writing, specifying for what they accrued, upon pain of forfeiting to the party paying such fees, treble the sum by him or them so paid, to be recovered with costs by an action of debt in any court proper to try the same.

Sec. 6. And be it further enacted by the authority aforesaid, That if any person shall wilfully and corruptly demand and receive any greater fee or fees for any of the services aforesaid, than are by this Act allowed and provided, he shall forfeit and pay the sum of thirty dollars for every offence, to be recovered with costs, either by presentment in the Supreme Judicial Court or Court of General Sessions of the Peace; in which case, the forfeiture shall accrue to the Commonwealth; or by action of debt in the Court of Common Pleas; in which case, the forfeiture shall be for the use of any person who may sue for the same: But no such presentment or action shall be sustained, unless made or commenced within one year next after the time when the offence may be committed.

Sec. 7. And be it further enacted, That all laws hereforesaid for regulating and establishing fees for the services herein mentioned, shall, from and after the first day of April next, be and they hereby are repealed, except so far as respects any prosecution for an offence that is or may be committed against said Act before the said first day of April.

Sec. 8. And be it further enacted, That this Act shall continue and be in force for the term of two years from and after the first day of April next, and until the end of the then next session of the General Court. [Feb. 13, 1796.] Continued for short terms, by five subsequent acts—and without limitation by 1804 ch. 20.

An Act to annex Allen Dryer, and others, in the town of West-Stockbridge, in the County of Berkshire, to the first Baptist religious Society in said Town. [Feb. 13, 1796.]
An Act for incorporating the inhabitants of the easterly part of Tisbury, in the County of Dukes County, into a separate Precinct. [Feb. 13, 1796.]

An Act in addition to "an Act, for incorporating certain Persons for erecting a Bridge over Damariscotta River, in the County of Lincoln," passed February the eleventh, one thousand seven hundred and ninety-five. [Feb. 13, 1796.]

Repealed—1796 ch. 81.

An Act relating to the Place of Trial, standing Mute, and Challenges, in certain capital cases.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That where any person hereafter shall be feloniously stricken, poisoned or injured in one county in this Commonwealth, and die of the same stroke, poisoning or injury in another county thereof, that then an indictment thereof, found by the grand-jurors of the county where the death shall happen, before the Justices of the Supreme Judicial Court, there held, shall be as good and effectual in law, as if the stroke had been given, or poisoning or injury done in the same county where the party shall die, or where the said indictment shall be found.

Sect. 2. BE it further enacted, That where any person hereafter shall be feloniously stricken, poisoned, or injured, on the high seas and without the limits of this Commonwealth, and die of the same stroke, poisoning or injury, in any county thereof, that then an indictment thereof, found by the grand-jurors of the county where the death shall happen before the Justices of the Supreme Judicial Court there held, shall be as good and effectual in law as if the stroke had been given, or poisoning or injury done, in the same county where the party shall die.

Sect. 3. BE it further enacted, That if any person shall be indicted of any offence, except treason, against this Commonwealth, for which the punishment is or shall be declared to be death, and shall stand mute or refuse to plead; the court shall proceed to the trial of the person so standing mute, in the same manner as if he or she had pleaded not guilty; and render judgment accordingly. And no person, who shall be indicted of any such offence, shall be allowed to challenge peremptorily above the number of twenty persons of the jury. [Feb. 15, 1796.]

An Act altering the Christian Name of Samuel Gardner. [Feb. 15, 1796.]

An Act to change the name of Moses Porter Phelps, to the name of Charles Porter Phelps. [Feb. 15, 1796.]

An Act more effectually to preserve the Growth of Wood in the Plantation called Marshpee, in the County of Barnstable.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person, after the first day of May next, not an inhabitant of the said plantation or concerned in the government thereof, shall, without a written permit, cut down, fall or destroy, any tree standing or growing in the said plantation, or shall consent or direct that the same be cut down, fell
or destroyed, or shall carry away, or cause to be carried away, any wood or timber from the said plantation, or any part thereof, the person so offending shall forfeit and pay for every tree so cut, fell, or destroyed, and for every parcel of wood or timber so carried away, three times the value thereof; one third part thereof to the use of the said plantation, and the other two thirds to the use of him or them who shall inform and produce proof of the same offence.

Sect. 2. And be it further enacted, That if any inhabitant of the said plantation, after the said first day of May next, without a written permit, shall cut down, fall or destroy any tree standing or growing on the common and undivided lands of the said plantation, or shall consent or direct that the same be cut down, fell or destroyed, or shall carry away, or cause to be carried away, any wood or timber from the said common lands, or any part thereof, for any purpose whatever, except for his or her fire-wood, or for erecting, making or repairing his or her buildings, fences, or tools of his or her occupation; the person so offending shall forfeit and pay, for every tree so cut, fell or destroyed, and for every parcel of wood or timber so carried away, twice the value thereof; one half thereof to the use of the said plantation, and the other half to the use of him or them who shall inform and produce proof of the same offence.

Sect. 3. And be it further enacted, That the said forfeitures, in either case, with full legal costs, shall be recovered in an action of trespass, to be brought by the treasurer, for the time being, of the said plantation, and if need be, pursued by his successor in that office, in the Court of Common Pleas of the same county; and no inhabitant of the said plantation, officer or person concerned in the government thereof, shall be disqualified to be a witness in such actions on account of his or her interest, share, estate or office, in the said plantation or forfeitures aforesaid.

Sect. 4. And be it further enacted, That all permits which, after the said first day of May next, shall be given to any person, not an inhabitant of the said plantation, to cut and take any wood and timber on the same, or to any inhabitant of the said plantation, to cut and take any wood and timber on said common lands, shall be in writing, signed by the guardians, and approved by two, at least, of the overseers of the said plantation, and express the quantities of wood or timber to be cut and taken; at what times, and for what purposes; and be shown to the said treasurer and recorded by him, before any wood or timber shall be cut or taken, by virtue thereof; otherwise, the said permit shall be void. [Feb. 22, 1796.]

An Act in further addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex, and for supporting the same," passed February, one thousand seven hundred and ninety-two. [Feb. 23, 1796.] Toll further increased—1808 ch. 53.

An Act for repealing Part of an Act passed the twenty-eighth day of February, Anno Domini one thousand seven hundred and ninety-five, entitled, "An Act...
to set off a part of the Town of Windsor, in the County of Berkshire, and to annex the same to the Town of Dalton. [Feb. 23, 1796.]


Chap. 52. An Act dividing the Town of Mount-Desert, in the county of Hancock, into two distinct Towns, and for incorporating the northerly part of said Town into a separate Town by the name of Eden. [Feb. 23, 1796.]

Chap. 53. An Act directing that Pews and Rights in Houses of Public Worship, shall be considered as Real Estate, and for registering the same.

WHEREAS doubts have arisen, whether pews and rights in houses of public worship are real or personal estate: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all pews and rights in houses of public worship, shall be hereafter considered and deemed, in law, to be real estate;* but nothing in this Act shall be construed to affect in any manner the titles to any such pews and rights heretofore considered or acquired as of personal estate.

Sect. 2. And be it further enacted, That all deeds and conveyances of, and executions extended on such pews and rights, may be recorded by the clerk of the town, district or plantation wherein the same are situated, and being so recorded, shall have the same effect in law, as if the same had been recorded in the registry of deeds; and such clerk shall be entitled to the same fees as are or may be allowed to registers of deeds for similar services. [Feb. 23, 1796.] Add. act—1798 ch. 42.

Chap. 54. An Act in addition to an Act, entitled, "An Act for regulating and governing the Militia of the Commonwealth of Massachusetts, and for repealing all Laws heretofore made for that Purpose, excepting an Act, entitled, an Act for establishing Rules and Articles for governing the Troops stationed in Forts and Garrisons within this Commonwealth, and also the Militia when called into actual Service." [Feb. 24, 1796.] Further add. acts—1799 ch. 73: 1800 ch. 31: 1809 ch. 114. All repealed—1809 ch. 108.

Chap. 55. An Act for regulating Elections.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the inhabitants of every corporate town, having a right to choose a representative or representatives in the Legislature of this Commonwealth, shall be convened for that purpose annually in the month of May, ten days at least before the last Wednesday of the same month, by the selectmen of such town or the major part of them: And it shall be the duty of such selectmen, to summon and notify such meeting in the manner there legally established for calling other town-meetings; and the selectmen present shall preside in such meeting, and shall regulate the same, and shall openly receive, sort and count the written votes which shall there be given by the inhabitants present, qualified to vote for representatives; and shall forthwith publicly declare who is or are the person or persons elected; and shall cause the election to be recorded in the town records, together with the whole number of votes given in, and for whom they were given; and shall cause the
person or persons so elected, to be notified thereof by a constable of the town, or any other person specially authorized for that purpose by the selectmen, within three days next afterwards; and the selectmen present, or the major part of them, shall make and sign a certificate and return of such election, and shall cause the same to be delivered into the office of the Secretary of the Commonwealth, on or before the last Wednesday of the same month; or such election shall be certified to the House of Representatives to their acceptance; and such certificate may be in the form following, viz.

**Commonwealth of Massachusetts.**

**County of**

PURSUANT to a law of this Commonwealth, the freeholders and other inhabitants of the town of qualified according to the Constitution, having been duly convened in town meeting, on the day of May current, for the choice of representatives in the Legislature of this Commonwealth, did then and there elect A. B. being an inhabitant of said town, to represent them in the General Court, to be convened and holden on the last Wednesday of the same month. Dated at the day of in the year of our Lord 1795, and in the year of the Independence of the United States.

Selectmen

The person chosen as aforesaid was notified thereof, and summoned to attend, by me , Constable of .

And where the selectmen of any town entitled to choose a representative, as aforesaid, shall neglect to notify a meeting, or to preside or proceed therein as by this Act is required; and where any town-clerk shall refuse or neglect his duty therein, to the prejudice of the rights of the electors, each and every selectman and the town-clerk so offending therein, shall respectively forfeit a sum not exceeding eighty dollars, nor less than forty dollars, according to the aggravation of the offence, upon conviction thereof.

**Sect. 2. And be it further enacted.** That the selectmen of any corporate town or district, and the assessors of any unincorporated plantation in the several counties of this Commonwealth, who shall neglect to call meetings of the inhabitants and others privileged there to vote for the election of Governor, Lieutenant-Governor, Counsellors and Senators, and to give due warning of the time and place of such meetings as required by the Constitution of this Commonwealth, or who shall refuse or neglect to preside in any such meetings, or to receive the votes of the qualified electors present, or who shall neglect to ascertain, declare and certify the number of votes, or who shall wilfully make any false declaration or certificate thereof, to the prejudice of the rights of the electors, shall forfeit a sum not exceeding eighty dollars, nor less than forty dollars, to be recovered from each selectman or assessor who

**Certificate of return.**

Penalty.

1800 ch. 74.
shall offend in the premises, according to the aggravation of each offence. And every town-clerk, and the clerk or assessors of any unincorporated plantation, present at any such meeting, who shall neglect or refuse to make a fair record of the votes, or a fair copy of such record, or to attest the same, or who shall refuse or neglect to make due and seasonable return thereof to the sheriff of the county, or into the Secretary's office, as required by the Constitution of this Commonwealth, shall forfeit a sum not exceeding eighty dollars, nor less than forty dollars, for each offence.

Sect. 3. And be it further enacted, That the selectmen and assessors, authorized and required to preside in any meeting of a town or plantation which shall be convened for the election of Governor, Lieutenant-Governor, Counsellors and Senators, Electors of the President of the United States, Representatives in Congress, or Representatives in the Legislature of this Commonwealth, shall have all the powers which are legally vested in the moderator of town-meetings for the regulation thereof. And in such meetings, the selectmen or assessors presiding shall have power, and it shall be their duty to prevent and refuse the vote of any person not qualified to be an elector, whose qualifications shall be determined according to the Constitution of this Commonwealth, or the Constitution of the United States, as the case may be.

Sect. 4. And be it further enacted, That any elector who shall give in more than one vote in any one election, and any person who shall be disorderly in any such meeting, shall forfeit a sum not exceeding twenty dollars, nor less than ten dollars, according to the difference and aggravation of each offence.

Sect. 5. And be it further enacted, That if any sheriff, when required by law to make return to the Secretary's office, of the votes of the towns and plantations, or districts in their several precincts, for any election as aforesaid, shall neglect to make such return within the time prescribed, he shall forfeit and pay a sum not exceeding five hundred dollars, nor less than fifty dollars, for each offence.

Sect 6. And be it further enacted, That all forfeitures, incurred by any breach of this Act, may be recovered by indictment, or by action of debt, in the name and to the use of the Commonwealth, to be found or brought in any court proper to try the same.

Sect. 7. And be it further enacted, That an Act passed in April, in the year of our Lord one thousand seven hundred and eighty-one, entitled, "An Act empowering the selectmen to call town-meetings for the choice of Representatives," and an Act, passed March eighteenth, one thousand seven hundred and eighty-eight, entitled, "An Act to prevent neglect in sheriffs, selectmen and town-clerks, respectively, in not calling and presiding at town-meetings, receiving and returning the votes for Governor, Lieutenant-Governor, Senators and Counsellors, as is pointed out by the Constitution of this
Commonwealth," be and the same are hereby repealed: Provided however. That the said Acts shall continue and be in force for the recovery of any penalties or forfeitures already incurred by any person for the breach thereof. [Feb. 24, 1796.] Add. acts—1798 ch. 31: 1800 ch. 74: 1802 ch. 116: 1804 ch. 117: 1806 ch. 26: 1809 ch. 127.

An Act for extending the Time for receiving, on Loan, the Debt of this Commonwealth. [Feb. 24, 1796.] Time further extended—1796 ch. 45: 1797 ch. 72.

An Act to set off Thomas Gardner, of Cambridge, in the County of Middlesex, from the south Parish of Cambridge, and to annex him and his estate to the first Parish in said Town. [Feb. 25, 1796.]

An Act to incorporate Henry Prentiss, and others, herein after named, with their Associates, by the name of The Proprietors of the Calico Printing Manufacture. [Feb. 25, 1796.]

An Act to incorporate a number of the inhabitants of the Towns of Berwick and York, in the County of York, into a distinct religious Society. [Feb. 25, 1796.]

An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River at PetUCKET-Falls, between the Towns of Chelmsford and Dracut, in the County of Middlesex, and for supporting the same." [Feb. 25, 1796.]

An Act directing the Proceedings in Actions of Debt on Judgments. Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That upon the judgment for debt, damages or costs, which has been, or which shall be rendered and recorded by any court of record, or any Justice of the Peace, of this Commonwealth, and remaining in force and unsatisfied, an action of debt may be brought in the same court, or before the same justice where such record remains, or in any court of record, or before any Justice of the Peace, holding pleas for the county in which either of the parties to such judgment, their executors or administrators shall dwell and reside at the time of bringing such action, and proper to try the same. And such judgment may be certified by a true copy of the record thereof, attested by the clerk, for the time being, of the court, or by the Justice of the Peace, as the case may be, where, or with whom such record remains.

Sect. 2. And be it further enacted, That upon the judgment for debt, damages, or costs, which has been, or which shall be rendered and recorded by a court of record in any other of the United States, or by a court of record of the United States, and remaining in force and unsatisfied, an action of debt may be brought in any court of record of this Commonwealth holden for the county in which either of the parties to such judgment, their executors or administrators shall dwell and reside, or in which any valuable goods, credits, or estate of any debtor, in such judgment, shall be found at the time of bringing such action: Provided, That such judgment shall be certified in the form, and to the effect, which is, or shall be prescribed by any general Law of the Congress of the United States.

1795. — Chap. 56—61. 491

Proviso. chap. 56. 1793 ch. 29.

chap. 57.

chap. 58.

chap. 59.

chap. 60. 1791 ch. 21.

chap. 61. 13 Geo. III.—14 Geo. III.—

Action of debt upon domestic judgment may be brought in the same or any other court of record.

Debt on foreign judgments, &c. may be brought in any court in a county where either of the parties lives.
Sect. 3. And be it further enacted, That in the action of debt, which shall be duly maintained upon any judgment as aforesaid, lawful interest shall be allowed, as well upon the costs as upon the debt or damages, or the balance thereof due and recoverable; and judgment, in such action, shall be rendered accordingly, any law or custom to the contrary hereof notwithstanding.

Sect. 4. And be it further enacted, That this Act shall take effect and be in force on and after the first day of July next, and that all Acts passed before the first day of November, one thousand seven hundred and eighty, the subject-matter of which is included in this Act, as also a clause of an Act authorizing an action of debt on the judgment of a Justice of the Peace in another State, be and the same shall be repealed on and after the said first day of July next, as to all actions to be brought after that day. [Feb. 26, 1796.]

Chap. 62. An Act for appointing Commissioners of Sewers, and making Provision for the better Improvement of low Lands in certain Cases.

WHEREAS many tracts of meadow, low or swamp lands, belonging to several proprietors in several towns in this Commonwealth, are often damaged or spoiled by being flowed, and stagnant waters remaining thereon; to remove which, and the better to improve such lands, it is found necessary to remove obstructions in rivers, brooks and streams, leading therefrom, as also, at certain seasons of the year, to erect dams to flow the same:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when the major part, in interest, of the proprietors of any such lands shall find it necessary to flow or drain the same, they may apply to the Court of Common Pleas of the county wherein such lands, dams and obstructions may be; and when such lands, rivers, brooks and streams shall be situated in different counties, then to the Supreme Judicial Court to be held in either; and on such application, the said court shall notify the proprietors concerned in the said lands, to appear at the same court, at the same or the next term thereof, in such manner and form as the said court shall judge proper; and if, on hearing the said proprietors, it shall be deemed for their general benefit, by the said court, to have such dams erected, or such obstructions removed, the said court shall appoint and commission not less than three, nor more than seven discreet freeholders, commissioners, to view the premises, to notify and hear all concerned therein; which commissioners shall be sworn to a faithful discharge of their duties, and shall have power, from time to time, to meet and determine when, where, and in what manner such dams shall be erected, or such obstructions shall be removed, and to employ workmen to effect the same, for such reasonable wages as the said commissioners shall agree to give; unless the said proprietors themselves shall do the same in such time and manner as the said commissioners shall direct.
Sect. 2. And be it further enacted, That the said commissioners, from time to time, shall have power to assess the several proprietors of such lands, their respective proportions of the charges of erecting and continuing such dams, and of removing such obstructions, having regard to the quality, situation and quantity of each proprietor's part of such lands, and the benefit he or she will receive; and also to appoint and swear a collector or collectors, for collecting the said taxes of the said proprietors, and to pay the same to such person as the said commissioners shall appoint to receive them. And the said collector or collectors shall receive, from the said commissioners, a list or lists of the said assessments, with their warrant or warrants for collecting the same; and thereon such collector or collectors shall have the same powers to collect the said taxes, and to distrain therefor, as collectors have by law, in the collection of town taxes.

And the said commissioners shall have power to call before them the said collector or collectors, to render an account of the monies he or they shall collect as aforesaid; and on his or their neglect to render such account for the space of twenty days, he or they shall be liable to pay the whole amount of his or their list, to be recovered by the said commissioners in an action of debt, in any court proper to try the same.

Sect. 3. And be it further enacted, That the said commissioners shall be allowed out of the said assessments, for their services, so much as the court appointing them think reasonable; to which court the said commissioners shall be liable to render an account of all monies so assessed and collected, whenever thereto required; and the said collector or collectors shall have such a commission on the monies he or they shall so collect and pay over, as the said commissioners shall allow.

Sect. 4. And be it further enacted, That every tenant for years, in dower, by the curtesy, for life, mortgagor or mortgagee, in possession, shall be deemed a proprietor to all the purposes of this Act.

Sect. 5. And be it further enacted, That when the said commissioners, in order to form a just view of such lands, shall think it expedient to open the flood-gates of any mill, or to make other needful passages through or round the dam thereof, or to erect any dam on the land of any person, the more expeditiously to remove such obstructions, they shall have power to do the same, and for such time as they shall find necessary, to reduce or raise the said waters, for the purpose of forming such view or for removing such obstructions: And if the owner or occupant of any such mill, mill-dam or land, shall thereby sustain damages, he shall be reimbursed therefor by the said proprietors; and seasonably to make such reimbursement, the said commissioners shall assess the said proprietors their respective proportions thereof, in manner aforesaid, to be collected, paid and accounted for as aforesaid.

Sect. 6. And be it further enacted, That if any such proprietor or other person shall find him or herself aggrieved by the

Persons aggrieved, may appeal.

— to assess proprietors, &c.

— to appoint and swear collectors, and commit lists to them.

Collectors' powers.

1765 ch. 70.

Commissioners to call collectors to an account.

Compensation for services.

What constitutes a proprietor.

Commissioners may open passages, &c.

Proprietors to pay damages.
doings of the said commissioners, or any other persons, in pursuance of this Act, he or she shall have a right to appeal to the court which appointed the said commissioners; and where any issue of fact shall be joined in either of the said courts, it shall be tried by a jury; and if any party shall be dissatisfied with the decision made by any such Court of Common Pleas, of any question of law, the said party shall so state the facts on the record thereof, by a special plea, or otherwise, as to bring the same question of law into view, and shall thereon be entitled to a writ of error out of the Supreme Judicial Court.

Sect. 7. And be it further enacted, That this Act shall take effect and be in force from and after the first day of July next; and an Act passed in the first year of the reign of Queen Anne, entitled, "An Act for the appointing Commissioners of Sewers," and also an Act passed A. D. one thousand seven hundred and forty-four, in addition thereto, shall, on and after that day, be repealed; except so far as they shall respect any commission of sewers issued, or which shall be issued, before that time. [Feb. 26, 1796.]

Chap. 63. An Act for incorporating certain persons for building a Bridge over Androscoggin-River, between Brunswick and Topsham, and for supporting the same. [Feb. 26, 1796.] Add. act—1815 ch. 63.


Chap. 65. An Act for incorporating certain persons for the purpose of opening a Canal from the Harbour of Boston to Roxbury. [Feb. 26, 1796.]

Chap. 66. An Act to incorporate John Thorlo, and others, into a Society by the name of The Portland Marine Society. [Feb. 26, 1796.]

Chap. 67. An Act to make further Allowance to the Judge of Probate for the County of Suffolk, for his Services. [Feb. 26, 1796.]

Chap. 68. An Act to enable Sheriffs, Deputy-Sheriffs and Constables, to require Aid in the Execution of their respective Offices, in criminal Cases.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any sheriff, deputy-sheriff or constable, being in the execution of his office, for the preservation of the peace, or for the apprehending or securing any person or persons for breach of the same, or for any other criminal cause, shall have lawful authority to require suitable aid and assistance therein. And if any person, being required by any sheriff, deputy-sheriff or constable, in the name of the Commonwealth of Massachusetts, to aid and assist him in the execution of his office, as aforesaid, shall neglect or refuse so to do, and be thereof convicted before any court proper to try the same, such offender shall be fined, to the use of the county where the offence shall be committed, not less than three dollars, nor more than fifty dollars, according to the circumstances of the case; and if any such offender shall be unable, or shall not forthwith pay the said fine, such court may punish him by imprisonment, not exceeding thirty days.
Sect. 2. Be it further enacted, That if any person, not being really and bona fide a sheriff, deputy-sheriff or constable, shall pretend himself to be either of the said officers, and take upon himself to act as such, or to require any person or persons to aid or assist him in any matter appertaining to the duty of sheriff, deputy-sheriff or constable, he shall be fined not exceeding four hundred dollars, according to the circumstances of his offence; one moiety thereof to the use of the Commonwealth, and the other moiety to him or them who shall prosecute therefor.

Sect. 3. Be it further enacted, That any Justice of the Peace, for the preservation thereof, or upon view of the breach thereof, or upon view of any other transgression of law proper to his cognizance, done or committed by any person or persons whatever, shall have authority (in the absence of the sheriff, deputy-sheriff or constable) to require any person or persons to apprehend and bring before him such offender or offenders: And every person so required, who shall refuse or neglect to obey the said justice, shall be punished in the same manner as for refusing or neglecting to assist any sheriff, deputy-sheriff or constable in the execution of his office as aforesaid. And no person who shall refuse or neglect to obey such justice, to whom he shall be known, or declare himself to be a Justice of the Peace, shall be admitted to plead excuse on any pretence of ignorance of his office.

Whereas doubts have arisen whether a constable, unless empowered by statute, can lawfully convey any person by him apprehended, or things taken by writ or warrant to him directed, any farther than through his town or district:

Sect. 4. Be it further enacted, That any constable of any town or district within this Commonwealth shall have authority, in the execution of the warrant or writ to him directed by lawful authority, to convey, as we'1l any prisoner or prisoners, as things that they may have taken into their custody, either to the justice issuing such warrant or writ, or to the common gaol, or house of correction of the county where such constable is an inhabitant, according as in the writ or warrant may be directed.

Sect. 5. Be it further enacted, That all laws enacted in this Commonwealth before the first day of November, A. D. seventeen hundred and eighty, the subject-matter whereof is included in this act, be and the same are hereby repealed.

Feb. 26, 1796.]

An ACT for recording Births and Deaths by the Clerks of Towns and Districts.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That it shall be the duty of every town-clerk and every district-clerk, within this Commonwealth, to record all births and deaths which shall happen within his town or district and come to his knowledge, together with the time of such birth or death, and the names of his or her parents, if known, for the fees allowed, by law, to be paid by his town or district.

Sect. 2. And be it further enacted, That it shall be the duty
Parents, &c. to give notice to the clerk of the town or district in which they dwell, of all the births and deaths of their children; and it shall be the duty of every householder to give notice of every birth and death which may happen in his house; and of the eldest person next of kin to give such notice of the death of his kindred; and it shall be the duty of the master or keeper of any alms-house, work-house or prison, and of the master or commander of any ship or vessel, to give notice of every birth and death which may happen in the house or vessel under his care or charge, to the clerk of the town or district in which such event shall happen: And in case any person, whose duty it shall be, by virtue of this Act, to give notice as aforesaid, shall neglect to perform the same for the space of six months after the birth or death shall happen, the person so neglecting shall pay a fine of one dollar, to be recovered, with costs of suit, on complaint before any Justice of the Peace for the same county, to the use of any inhabitant of the same town who shall prosecute for the same; from which judgment there shall be no appeal.

Sect. 3. And be it further enacted, That this Act shall be in force on and after the first day of September next; and that an Act passed Anno Domini one thousand six hundred and ninety-two, for registering births and deaths, shall be and hereby is repealed, on and after that day. [Feb. 26, 1796.]

An Act to incorporate Lemuel Stewart, and others, for the purpose of conveying Water, by Pipes, into the Town-Street, near the College in Williamstown, by the name of The Proprietors of the Water-Works in the Town-Street in Williamstown. [Feb. 26, 1796.]

An Act to prevent the Destruction of Oysters and other shell Fish in this Commonwealth.

WHEREAS oysters and other shell fish have long been considered the property of the towns wherein their beds are situated respectively; and whereas, for the due regulation thereof, and preservation of the same, and especially to prevent the destruction thereof by strangers, and by those who encroach too far on such common property, some special provision is found necessary: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of May next, it shall not be lawful for any person to take any oysters from their beds, destroy them, or wilfully obstruct their growth therein, in any part of this Commonwealth, except as is herein after excepted; and every person who shall so take, destroy, or obstruct the same, shall forfeit and pay for every bushel of oysters, including the shells so taken or destroyed, the sum of two dollars: Provided however, and it shall, at all times, be lawful for the major part of the selectmen, for the time being, of any town wherein oyster-beds shall be, to give permits, in writing, to any person to take oysters from their beds, at such times, in such quantities, and for such uses, as they shall think reasonable and express in their permit: Provided further, and it shall also be lawful for every inhabitant of any such town without
such permit, to take oysters from their beds therein for the
use of his or her family, from the first day of September to the
first day of June, annually.

Sect. 2. Be it further enacted, That if any person, from
and after the first day of May next, shall take any other shell-
fish from their beds, destroy them, or wilfully obstruct their
growth therein, in any of the towns of Malden, Medford or
Charlestown, in the county of Middlesex; Rochester or Ware-
ham, in the county of Plymouth; Sandwich, Barnstable, Yarm-
outh, Eastham or Dennis, in the county of Barnstable; Nant-
tucket, in the county of Nantucket; Edgartown or Tisbury, in
the county of Dukes County; Dartmouth, Westport, Freetown,
Swanzey, New-Bedford or Somerset, in the county of Bristol;
or Wells or Arundell, in the county of York; or Portland, Fal-
mouth, North Yarmouth, Harpswell, Freeport, Scarborough, or
Cape-Elizabeth, in the county of Cumberland; or Hingham, in
the county of Suffolk; or Brookline or Weymouth, in the county
of Norfolk, except as is herein after excepted, the person so of-
fending shall forfeit and pay for every bushel of such other shell-
fish, including the shells so taken or destroyed, the sum of one
dollar. Provided nevertheless, That the major part of the se-
lectmen, for the time being, of each of the said towns, shall at
all times have power to give permits, in writing, to any person
to take such other shell-fish from their beds in their said towns,
at such times, in such quantities, and for such uses, as they shall
deem reasonable, and express in their permit. Provided also,
That every inhabitant of each of the said towns, without such
permit, shall have a right to take such other shell-fish from their
beds therein for the use of his or her family.

Sect. 3. And be it further enacted, That if any vessel, boat
or craft shall be found within the limits of any town, and not
owned therein, with any oysters on board, taken in such town
without such permit, or within the limits of any one of the
said specified towns, and not owned therein, with other shell-
fish on board, taken in such town without such permit, it shall
be lawful for any inhabitant or inhabitants of any town where-
in such vessel, boat or craft shall so be found trespassing, to
seize and detain the same, not exceeding forty-eight hours, in
order that the same, if need be, may be attached or arrested
by due process of law, in that time, to answer the said fines and
forfeitures, with costs of suit. Provided however, That as soon
as the owner or master of any such vessel, boat or craft, shall
pay said fines and forfeitures, and before sued, to the treasurer
of the town, to the use thereof, wherein the same shall be in-
curred, such vessel, boat or craft shall be discharged, with the
effects therein.

Sect. 4. And be it further enacted, That all fines and for-
feitures, which shall be incurred by virtue of this Act, and
shall be sued for, shall be, one half thereof to the use of the
town wherein the offence shall be committed, and the other
half to him or them who shall sue for the same: And the same
shall be recovered, with legal costs of suit, in an action of debt,
before any Justice of the Peace (not interested) in the county
wherein the offence shall be committed, in case the forfeitures so recovered in such action shall not exceed four pounds; and if above that sum, then in the Court of Common Pleas of the same county.

Sect. 5. And be it further enacted, That this Act shall take effect and be in force on and after the first day of May next; and that an Act passed A. D. one thousand seven hundred and sixty-five, entitled, "An Act to prevent the destruction of oysters in the several bays and rivers herein after mentioned within this province," and also the several Acts heretofore made relative to oysters and other shell-fish in the several specified towns aforesaid, shall, on and after that day, be repealed, so far as they shall respect all offences which shall be committed, actions commenced therefor, and permits given after that day. Provided, That nothing in this Act shall extend to deprive any native Indians of the privilege of digging shell-fish for their own consumption, or to prevent any fisherman from taking any quantity of shell-fish which he may want for bait, so that it do not exceed seven bushels, including their shells, at any one time. [Feb. 26, 1796.] Add. acts—1793 ch. 14: 1799 ch. 19: 1808 ch. 28.

Chap. 72.
1793 ch. 15.

An Act in addition to an Act, entitled, "An Act to establish a College in the County of Berkshire, within this Commonwealth, by the name of Williams College."

WHEREAS doubts have arisen, whether the rights and credits which, previous to passing the Act aforesaid, were vested in and belonging to the trustees of the donation of Ephraim Williams, Esquire, for maintaining a free-school in Williams-town, are, by virtue of the same Act, transferred to and vested in the corporation of The President and Trustees of Williams College:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said rights and credits be and hereby are transferred to and vested in the said corporation of The President and Trustees of Williams College, who are hereby authorized to commence and prosecute to final judgment and execution, any suit or action, in law or equity, which the said trustees of the donation of Ephraim Williams, Esquire, for maintaining a free-school in Williams-town might heretofore have commenced or prosecuted. [Feb. 26, 1796.]

Chap. 73.

An Act for setting off Noah Wiswall, and his estate, from the Town of Fitchburg to the Town of Westminster. [Feb. 27, 1796.]

Chap. 74.

An Act for the support and regulation of Mills.

WHEREAS the erection and support of mills, to accommodate the inhabitants of the several parts of the State, ought not to be discouraged by many doubts and disputes, and some special provisions are found necessary relative to flowing adjacent lands and mills held by several proprietors: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That where any person hath already erected or shall erect any water-mill on his own land, or on the land of any other
person, by his consent legally obtained, and to the working of such mill it shall be found necessary to raise a suitable head of water, and in so doing any lands shall be flowed not belonging to the owner of such mill, it shall be lawful for the owner or occupant of such mill to continue the same head of water to his best advantage, in the manner, and on the terms herein after mentioned.

Sect. 2. *And be it further enacted*, That if any person shall sustain damages in his lands by their being flowed as aforesaid, he may complain to the Court of Common Pleas of the county, wherein the lands so flowed shall be situated, and the said court shall issue a warrant to the sheriff of the same county; and if the sheriff shall be interested, then to some coroner of the same county not interested, such sheriff or coroner to be named by the court, directing him to summon and empanel a jury of twelve good and lawful men; which jury shall be sworn to make a true and faithful appraisement of the yearly damages done to the complainant by so flowing his lands, and how far the same may be necessary. And said jury shall try the cause; and their verdict, being returned by the officer to the same court, and there allowed and recorded, shall be a sufficient bar to any action to be brought for any such damages. And it shall be in the power of said court to assess such sum to the officer, for his services, as they may judge reasonable.

Sect. 3. *And be it further enacted*, That such verdict and judgment thereon, so recorded, shall be the measure of the yearly damages, until the owner or occupant of such mill, or the owner or occupant of such lands so flowed, shall, on a new complaint to the said court of the county, and by the form of process before prescribed, obtain an increase or decrease of the said damages. And the party entitled to any such yearly damages, whether the party to the record, his heirs, executors, administrators, or assigns, may have an action of debt grounded on such record, to recover the same. And the party prevailing, in any complaint or action aforesaid, shall be allowed his full legal costs, though the damages so assessed or debt recovered shall not amount to the sum of four pounds.

Sect. 4. *And be it further enacted*, That if any person, whose lands shall be flowed as aforesaid, shall, on his filing his complaint for ascertaining or increasing his damages, or on bringing his action of debt as aforesaid, move the said court to direct the owner or occupant of such mill to give security for the payment of the said damages from time to time, as they shall become due; and in that case, the said owner or occupant of such mill shall neglect or refuse to give such reasonable security as the said court shall order, he shall have no benefit of this Act, but shall be liable to be sued for so flowing the lands of the complainant or plaintiff; in the same manner as though this Act had not been passed. And when the said jury shall so inquire of the said yearly damages, they shall also inquire and make return, in their said verdict, what portion of the year the said lands ought not to be so flowed; and during such portion of the year as the said jury shall certify in their verdict, that and continue sufficient water.

Damages to be ascertained by verdict of jury.

Such verdict to be the full yearly damages ill increased or decreased on a new complaint.

Mill-owner to give security for payment of damages if desired, or to have no benefit of this Act.

Jury to state what portion of the year lands ought not to be flowed.
1795. — Chap. 74.

the public convenience and the circumstances of the case do not justify such flowing; and the said verdict being accepted by the court, this Act shall in no manner authorize the said owner or occupant of such mill so to flow the said lands of others.

Sect. 5. **And be it further enacted,** That when any mill, worked by wind or water, the under-works or appurtenances thereof shall want repairs or to be rebuilt, in whole or in part, in the opinion of the major part, in interest, of the proprietors, it shall be lawful for any one or more of the proprietors thereof to call a meeting of the whole, at said mill, to consult and agree about repairing or rebuilding the same, in whole or in part; which notice to the said proprietors may be in substance as follows, to wit:

**To A. B. of**

*in the county of*

[addition]

**Greeting.**

YOU are hereby notified, that our mill in wants repairs, or to be rebuilt, in order that the same may be of use to the concerned; and a meeting of the proprietors thereof will be held at the same mill, on the day of at o'clock in the noon, when and where your attendance is requested. Dated at

Which notification, signed by one or more of the proprietors, or a true copy thereof given to any other proprietor, or left at his place of last and usual abode, not more than thirty, nor less than ten days before the day of the said meeting, shall be deemed sufficient notice, and may be proved by the testimony of any disinterested witness who gave or left the same, or saw it done.

Sect. 6. **And be it further enacted,** That if any proprietor so notified shall neglect to attend the said meeting, or, being met, shall neglect or refuse to agree with the major part in interest of the proprietors of such mill, for repairing or rebuilding the same, in whole or part, so as to make the same serviceable, to pay his part of the charges of doing the same; the rest of the proprietors, being the major part in interest, may cause the same to be done, and shall be reimbursed and paid such sum or sums as they, or any of them, shall advance thereon, beyond their respective proportions, with interest for the same in the mean time, out of the said mill or the profits thereof; and to recover the same, it shall be lawful for those who shall so advance beyond their respective proportions, jointly or severally, to have their actions against each one who shall be deficient: Provided, That nothing in this Act contained shall be construed to make void any particular contract made or to be made for the repairing or rebuilding any mill or mills.

Sect. 7. **And be it further enacted,** That where any part or parts of such mill shall, at the time of such notice and meeting, be held and possessed by any minors, feme covert, tenant for years, in dower, by curtesy, for life, in tail, mortgagor or mort-
gagge; then the guardians of such minors legally appointed, husband of such feme covert in her right, such tenant, mortgagor or mortgagee in possession, shall be deemed, for all the purposes of this Act, in so repairing or rebuilding such mill, the proprietor or proprietors thereof, and such guardians, husbands, and persons having in possession such limited estates therein, shall be notified, vote and contribute accordingly; and all advances so made by them respectively, for and on account of such minors, heirs of such married woman, those in remainder or reversion, or the other party in the mortgage, if not adjusted and paid by agreement, shall be recoverable in a special action on the case, with interest.

Sect. 3. And be it further enacted, That every miller shall be provided with scales and weights to weigh corn, grain and meal to and from the mill, if required; and if he shall neglect to keep such scales and weights, or refuse so to weigh corn, grain, and meal, when required, he shall be fined for each neglect or refusal, not exceeding five dollars, to be recovered, with costs, by action of debt, by the party suing, to his use, before any Justice of the Peace of the county wherein the offence shall be committed.

Sect. 9. And be it further enacted, That the toll for grinding all sorts of grain shall not exceed one sixteenth part thereof.

Sect. 10. And be it further enacted, That this Act shall take effect and be in force, on and after the first day of July next; and that an Act passed A. D. seventeen hundred and six, for the upholding and regulating mills, and an Act made in addition thereto, A. D. seventeen hundred and thirteen, and a third Act made in further addition thereto, A. D. seventeen hundred and twenty-eight, shall, on and a ter that day, be repealed, except so far as they shall respect any complaints, actions or meetings then pending by force thereof. [Feb. 27, 1796.] Add. acts—1797 ch. 63: 1799 ch. 78: 1814 ch. 173.

An Act relating to Actions of Ejectment and Disclaimer, and for preventing Strip and Waste pending such Actions.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any person shall be arrested in trespass and ejectment or other real action, the defendant's own bond, and no other, shall be required for his appearance to answer the same.

Sect. 2. Be it enacted by the authority aforesaid, That when any person or persons shall be sued in ejectment, or other real action, for any lands, tenements or hereditaments, they shall be holden to answer for so much or such part of the premises demanded as they then hold, or are in possession of, which they shall distinguish and set forth by their plea, and disclaim in the rest; and if any of them disclaims in the whole, and the plaintiff cannot prove his the defendant's possession of the premises, or any part thereof, he shall recover his costs.

Millers to have scales and weights, and to weigh grain, if required, on penalty—

What toll.

[* 1709.]

Chap. 75.

3 Anne ch. 1.

12 Anne ch. 8.

I & 2 Geo. II. ch. 4.

Defendant's own bond only required for his appearance.

Persons sued in real action, answerable for so much as they then hold.
Sect. 3. Be it enacted by the authority aforesaid, That if any person or persons shall commence and prosecute any action of ejectment, or other real action, for recovering possession of any lands and real estate, unjustly withheld from him or them by any person, and such person in possession, or any other persons pending such action, and after the service of the writ therein, shall make strip or waste by cutting, felling or destroying the wood, timber, trees or poles standing or growing on such land sued for; he or they making such strip or waste shall, for every such offence, forfeit and pay to the party aggrieved, treble damages, to be recovered by action in any court proper to try the same, after the plaintiff or defendant has recovered his title and possession of such estate sued for.

Sect. 4. Be it enacted by the authority aforesaid, That two Acts, one passed A. D. one thousand seven hundred and twenty-seven, "for the more safe and easy prosecuting writs of trespass and ejectment," and the other passed A. D. one thousand seven hundred and forty, "to prevent strip and waste on lands while suits are depending in the law for the same," be and the same are hereby repealed, so far as they respect actions hereafter to be commenced. [Feb. 27, 1796.]

Chap. 76. An Act to alter the Appropriation of the Sum of two hundred pounds, payable annually by the Proprietors of West-Boston Bridge, to the University of Harvard College. [Feb. 27, 1796.] Altered—1799 ch. 41.

Chap. 77. An Act in further addition to an Act, entitled, "An Act for the regulating the Manufacture of Nails within this Commonwealth," made and passed the tenth day of March, Anno Domini one thousand seven hundred and ninety-one. [Feb. 27, 1796.] Repealed—1799 ch. 64.


Chap. 79. An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex at Bodwell's Fall, between Andover and Methuen, and for supporting the same," passed in the year of our Lord one thousand seven hundred and ninety-three. [Feb. 27, 1796.] Further add. acts—1799 ch. 22: 1801 ch. 46.

Chap. 80. An Act to repeal all the existing Excise Acts, and to provide for the Expenses of Justice in the several Counties.

WHEREAS several Acts heretofore made, still require the following excise duties to be collected and paid into the treasury of the Commonwealth, or to the Secretary thereof, to wit: For every license granted to an innholder, four dollars; for every deed recorded, one shilling; for the commission of a sheriff, forty dollars in certain cases, and twenty dollars in others; on the appointment of a clerk of the Supreme Judicial Court, forty dollars; on the appointment of a clerk of the Court of Common Pleas, forty dollars in certain counties, and twenty dollars in others; on the appointment of every register of deeds, twenty shillings; on the commission of each Judge of the Court of Common Pleas, Judge and Register of Probate, twenty shillings each; and of a Justice of the Peace, nine shillings; and for the admission of every attorney to practise in the Court of Common Pleas, twenty dollars, and in the Supreme Judicial Court, thirty dollars; and for the admission of every
person to the degree of barrister at law, forty dollars; and it being no longer necessary to continue the same for the purposes aforesaid:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said several Acts be, and the same, so far as they respect the aforesaid duties, are hereby repealed; except however, that the same shall remain in force, so far as shall be necessary to enforce and complete the collection of all the said duties which have already become due and payable, by virtue of the said Acts.

Sect. 2. And be it further enacted, That every person, who shall hereafter be licensed to an innholder,* shall, on such license being granted, pay to the clerk of the Court of General Sessions of the Peace, the sum of four dollars; and each clerk aforesaid shall, before the first day of May next, give bond, with sufficient sureties, in the penal sum of one thousand dollars, to the treasurer of the county and his successor in that office, to account for, on oath, and pay to him, from time to time, the sum of four dollars for each innholder in the county who shall be so licensed, within one month after he, the said clerk, shall receive the same.† And if any clerk shall neglect to give such bond, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by the county-treasurer, to the use of the county, in an action of debt, in any court proper to try the same. And such clerk shall be allowed, for so receiving and paying over to the county-treasurer, a commission of one per cent. thereon: And all such licenses shall be granted on condition, that the innholder so pay said four dollars before he or she shall recognize, as by law required.

Sect. 3. And be it further enacted, That from and after the passing of this Act, every register of deeds in this Commonwealth, for each deed or instrument made for the conveyance of land, or any title therein, brought to his office to be recorded, shall, before he record the same, demand and receive of the person bringing the same, seventeen cents; and on or before the first day of April, annually, shall account for and pay, to the treasurer of the same county, all the duties that shall be so received. And each register of deeds shall, on or before the first day of June next, give bond, with sufficient sureties, to the treasurer of the county, in the penal sum of five hundred dollars, to account, on oath, for the monies or duties he shall so receive, and to pay the same as aforesaid; and each register of deeds shall be allowed, for so receiving and paying over the said monies or duties, at the rate of two per cent. thereon. Provided however. Where the said register of any county shall also be treasurer thereof, the said bond shall be made to such person, and in such form, as the Court of General Sessions of the Peace of the same county shall direct.

Sect. 4. And be it further enacted, That no person who, from and after the passing of this Act, shall receive a commission appointing him to any of the offices following, in any county, shall receive any of the fees or profits thereof until he

* Duty on license.
† or retailer or confectioner—1819 ch. 131.
* Clerk’s commissions.
† additional bond—1819 ch. 131.
* Register of deeds to demand 17 cents, duty on deeds—
* to give bond to account for duties received by him.
* Proviso.
* Persons receiving commissions, to pay certain sums annexed to the office.
shall pay to the treasurer of the county the sum herein after
annexed to his office, and produce to, and lodge with the
Secretary of the Commonwealth the county-treasurer's cer-
tificate therefor, to wit: Each person who shall receive a com-
mission, appointing him sheriff of the counties of Suffolk, Essex,
Middlesex, Hampshire or Worcester, forty dollars; and of every
other county, twenty dollars; or appointing him a clerk of
the Court of Common Pleas in the counties of Suffolk, Essex,
Middlesex, Hampshire or Worcester, forty dollars; and in any
other county, twenty dollars; or appointing him Judge of
Probate, Register of Probate, or Judge of the said Court of
Common Pleas, four dollars; or appointing him a Justice of
the Peace, two dollars; and each person who shall be elect-
ed and appointed register of deeds in any county, four dol-
dors; nor shall any person who, after the passing of this Act,
shall be proposed to be admitted as an attorney
in the Court of Common Pleas in any county, have the oaths administered to him
until he shall produce the certificate of the treasurer of the county that he hath
paid to him twenty dollars, nor
in the Supreme Judicial Court until he shall produce a like
certificate of the payment of thirty dollars; nor be admitted to
the degree of barrister of law until he shall produce a like cer-
tificate of the payment of forty dollars.

And all the monies which shall be received by the respec-
tive county-treasurers, by virtue of this Act, shall be appropri-
ated to pay the travel and services of grand and petit-jurors. [Feb. 27, 1796.]

Chap. 31. An Act for giving to the Supreme Judicial Court, holden at Boston, within and
for the County of Suffolk, original Jurisdiction of certain Crimes committed with-
in the County of Nantucket.

Sect. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same,
That the Supreme Judicial Court which shall, at any time
within the month of August,* be holden at Boston, within and
for the county of Suffolk, shall have original jurisdiction and
cognizance of all crimes which have been committed, or
which shall be hereafter committed within the body of the
county of Nantucket, and which shall not be cognizable by the
Court of General Sessions of the Peace there, in the same, and
in as full and ample a manner as if the same Supreme Judicial
Court should be holden within and for the same county of
Nantucket: And shall have power to try the same, and to give
sentence and judgment therein, as fully, to all intents and pur-
poses, as if the same court should be holden within and for
the same county, by legal establishment. Provided always,
That when any person, who is an inhabitant or resident of the
county of Nantucket, shall be arraigned upon any charge, where-
of, if he shall be convicted, he may suffer the pain of death, and
such person shall, as soon as he shall have pleaded to such in-
dictment, request the court to issue a venire facias for jurors
from the county of Nantucket; that then the court shall issue
a venire for at least six persons, from said county, who shall
with others, be impannelled to try the same cause, subject,

| Repealed— |
| 1812 ch. 86: | 1814 ch. 178. |

| Appropriation. |

| Crimes com-
mitted in Nant-
tucket, cog-
nizable in the
Supreme Judi-
cial Court in
Boston. |
| [See 1804
ch. 105 : 1820
c. 14.] |

| Proviso that
prisoners in
capital cases,
may have half
the jury from
Nantucket. |
however, to challenge, in the same manner as other jurors; but the court shall not be obliged to issue more than one such venire in the same cause, but shall proceed to trial with such as shall not be challenged, and others of the county of Suffolk, according to law: Or, if the whole shall be challenged by the defendant, shall proceed with a jury from the county of Suffolk.

Sect. 2. And be it further enacted, That all recognizances of any persons charged with any offence, hereby made cognizable in the Supreme Judicial Court, to be holden for the county of Suffolk as aforesaid, shall be ordered and taken for appearance at that court; and any order of imprisonment, upon such charge, may be to the jail of the county of Suffolk; and the sheriff of the said county of Nantucket and his deputy, and any constable of the town of Nantucket in that county, shall have full power and authority, by virtue of the warrant of any Justice of the Peace of that county, to bring any person charged, and to be committed for trial as aforesaid, to the said gaol in the county of Suffolk.

Sect. 3. And be it further enacted by the authority aforesaid, That the third section of an Act passed in the year of our Lord one thousand six hundred and ninety-nine, entitled, "An Act for establishing a Superior Court of Judicature, Court of Assize, and General Gaol Delivery, within this Province," by which clause provision is made for holding such court, occasionally, within and for the county of Nantucket, shall be and hereby is repealed. [Feb. 27, 1796.]

An Act for giving a new Appellation to a Corporation instituted in the year of our Lord one thousand seven hundred and ninety-five, for bringing fresh Water into Boston by subterraneous Pipes. [June 10, 1796.]

An Act setting off Lemuel Rich, and others, from the Town of Standish, and annexing them to the Baptist Society in Gorham. [June 10, 1796.]

An Act to incorporate the Plantation called Sudbury-Canada, in the County of York, into a Town by the name of Bethel, and for dividing the same Town, and establishing therein two Parishes. [June 10, 1796.]

An Act to amend the "Act directing the Manner in which Inquests of Office shall be taken to revest Real Estate in the Commonwealth, or to entitle the Commonwealth thereto."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all cases wherein the Legislature hath already directed, or shall direct the attorney-general to institute an inquest of office, in order to revest the title and possession of any real estate, in the said Commonwealth, for the breach or breaches of any of the conditions of the leases, grants, or other conveyances thereof; it shall be the duty of the said attorney-general to assign such breach or breaches of conditions, in the information he shall file, as to him shall appear proper, though there shall be no Act of the Legislature directing or designating the same; any thing in the said Act to the contrary notwithstanding. [June 11, 1796.] Further add. act—1793 ch. 43.
Chap. 5. An Act for establishing a Turnpike-Gate on such Road as shall be made at the Place and according to the Provisions of this Act. [June 11, 1796.] Add. acts—1796 ch. 31: 1797 ch. 66: 1798 ch. 48: 1813 ch. 41: 1819 ch. 34.

Chap. 6. An Act for apportioning and assessing a Tax of one hundred and thirty-three thousand three hundred and ninety-four dollars and eighty-six cents, and providing for the Reimbursement of twenty thousand eight hundred and ninety-nine dollars and fifty cents, paid out of the public Treasury to the Members of the House of Representatives, for their Attendance the two last Sessions of the General Court. [June 13, 1796.]

Chap. 7. An Act to change the name of Ephraim Farrar, to the name of John Farrar. [June 13, 1796.]

Chap. 8. An Act to incorporate John Cleaves, and others, for the purpose of building a Sluice-Way, from a place called Dennett's Landing, on Saco-River, to Pepperell's Wharf. [June 14, 1796.]

Chap. 9. An Act altering the name of Thomas Amory, to the name of Thomas C. Amory. [June 14, 1796.]

Chap. 10. An Act to incorporate certain lands in the Towns of Boylston, Sterling and Holden, into a Precinct. [June 14, 1796.]

Chap. 11. An Act to incorporate Theodore Sedgwick, Esq. and others, for certain Purposes therein mentioned. [June 15, 1796.]

Chap. 12. An Act authorizing Calvin Whiting to conduct Water, in subterraneous Pipes, within the Town of Dedham, for the Accommodation of certain Inhabitants within said Town. [June 15, 1796.]

Chap. 13. An Act in further addition to an Act, entitled, "An Act concerning general and common Fields." BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That any person now owning, or who may hereafter own any lands lying within the limits of any general and common field within this Commonwealth, shall have the right to inclose his own land, at his own expense; and at all seasons of the year, to have the exclusive and separate right of using and improving his own lands so inclosed with a good and sufficient fence: Provided, That such proprietor shall be held to maintain his proportion of the general fence around said field. [June 15, 1796.] Further add. acts—1818 ch. 11: 1820 ch. 1.

Chap. 14. An Act in addition to, and in explanation of an Act passed January the twentieth-sixth, one thousand seven hundred and eighty-nine, entitled, "An Act to set off to the Patentees and other Purchasers, certain Lands in the Island of Chappaquidick, in the County of Dukes County, and finally to adjust and determine all Disputes between the said Patentees and other Purchasers, and the Indians on the said Island; and to prevent Cattle, Horses, Sheep, Goats and Swine from going at large on the said Island at certain Seasons of the Year." [June 16, 1796.]

Chap. 15. An Act in addition to an Act, entitled, "An Act for dividing the Commonwealth into Districts for the Choice of Representatives in the Congress of the United States, and prescribing the Mode of Election." [June 16, 1796.] Expired.

Chap. 16. An Act in addition to the Act ascertaining the Quality of Stone-Lime and the Size of Lime-Casks, and for repealing all Laws heretofore made relative thereto; passed February twenty-sixth, one thousand seven hundred and ninety-four. [June 16, 1796.] Further add. act—1802 ch. 121. All repealed—1803 ch. 62.

Chap. 17. An Act to incorporate the Owners of certain Lands in Southwick, in the County of Hampshire, bordering on the Line of the State of Connecticut, for the purpose of managing the same as a Common Field. [June 17, 1796.]

Chap. 18. An Act authorizing the first Parish in Newbury to discharge from Taxation, for the Support of Public Worship in said Parish, such persons within the limits of...

An Act to set off Samuel Hammond, and others, with their estates, from the second or northerly Parish in Kittery, and to annex them to the third or middle Parish in said Town. [June 17, 1796.] Amended—1796 ch. 34.

An Act in addition to an Act, entitled, "An Act to repeal all Laws of this Commonwealth, imposing Duties and Excise on Carriages, and inflicting Penalties for selling Wines and foreign distilled Spirits, so far as the same respect said Matters." [June 17, 1796.]

An Act to incorporate Daniel Wells, and others, Proprietors of the Aqueduct in Greenfield. [June 17, 1796.]

An Act specially providing for the Removal of poor Persons from the District of Marshpee, who have no legal Settlement there.

WHEREAS the inhabitants of Marshpee are mostly Indians, negroes and mulattos, people incapable of transacting the business of a corporation, or of taking due care of themselves or estates, whereby many vagrant, strolling and poor people, intrude and shelter themselves there, to the injury of the rightful inhabitants; and the general law for removing the poor is inapplicable to their circumstances:

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever it shall appear to the board of overseers of the district of Marshpee, that any person is resident in Marshpee who hath no legal settlement there, the said overseers may (if they shall judge it expedient) order any guardian of the inhabitants of Marshpee forthwith to cause any person, resident as aforesaid, to be removed to the town, district or plantation where he or they may belong or last resided; and also to prosecute for and recover reasonable damages and costs of any town, district or plantation to which such poor person belonged, if removed thereto; and the said guardian, in such case, is hereby invested with like authority as overseers of the poor are invested, in cases of removal of poor persons: And the said guardian, all courts, justices and officers, shall proceed in like manner as in other processes for removal of the poor, mutatis mutandis; and the said board of overseers shall be answerable for costs where judgment may be given against them, as towns are answerable, to be paid out of the funds of the said board. [June 17, 1796.]

An Act for incorporating certain persons for the purpose of building a Bridge over Connecticut-River, in the County of Hampshire, and for supporting the same. [June 18, 1796.] Add. acts—1799 ch. 40: 1801 ch. 52: 1803 ch. 18.

An Act to cede to the United States the Jurisdiction of the Tracts of Land which shall be required for the Light-Houses authorized by Congress to be erected upon Baker's-Island and Cape-Cod.

SECTION 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the United States of America may purchase or take as herein after is provided, any tracts of land which shall be found ne-
cessary and convenient for the light-houses authorized by
Congress to be erected upon Baker's Island and upon Cape-
Cod, within this Commonwealth; and during the continuance
of the use and appropriation aforesaid, the jurisdiction of such
tracts of land, not exceeding the quantity of ten acres for each
light-house, shall be and hereby is ceded to and shall be in
the said United States: Saving, and provided always, That
all civil and criminal processes issued under the authority, or
by any officers of this Commonwealth, shall have full force
and effect within the said tracts of land, and any buildings
which shall be there erected, this cession of jurisdiction not-
withstanding.

Sect. 2. And be it further enacted, That if the agent or
person employed for the United States, and the owner or own-
ers of any tract or tracts of land, which shall be found nec-
essary and convenient for the said light-houses, cannot agree
in a sale and purchase thereof, such agent or person employed
may apply to any Court of General Sessions of the Peace which
shall be holden within and for the county wherein such land
lies, who shall and may appoint a committee of three free-
holders, impartial men, to determine a just equivalent to the
owner or owners of such land; which committee shall be
sworn before some Justice of the Peace for the faithful dis-
charge of their trust, and shall forthwith proceed to view, set
off and appraise such tract or tracts of land, and shall make
return of their doings to the same court; and which award
and return being accepted by the court, and the amount of
such appraisement being paid to the owner or owners of the
land appraised and set off by such committee: Or, if the
owner or owners shall not appear, or shall refuse to receive the
same, to such person or corporation, for the use of the owner
or owners, as the same court shall order, the tract or tracts of
land so appraised and set off, shall be vested in the United
States, and shall and may be taken, possessed and appropriated
for the purposes aforesaid. Provided, That all charges of such
application and appraisement shall be paid by the United States;
and provided that the land, which may be set off for the pur-
poses of this Act, shall not exceed the quantity of ten acres in
the whole for each light-house, including and reckoning there-
with any land purchased for the same. [June 18, 1796.]
An Act in addition to, and for Amendment of the Act passed the eleventh day of June, one thousand seven hundred and ninety-six, establishing the first Massachusetts Turnpike Corporation. [Nov. 25, 1796.] Further add. Acts—1797 ch. 66: 1798 ch. 48: 1813 ch. 41: 1819 ch. 34.

An Act for regulating Hackney-Carriages in the Town of Boston, and to repeal an Act heretofore made for that purpose. [Nov. 25, 1796.]

An Act altering the name of William White, to the name of William Charles White. [Nov. 25, 1796.]

An Act to amend an Act, entitled, "An Act to set off Samuel Hammond, and others, with their estates, from the second or northerly Parish in Kittery, and to annex them to the third or middle Parish in said Town," passed June seventeenth, one thousand seven hundred and ninety-six. [Feb. 7, 1797.]

An Act for incorporating certain Persons by the name of the Proprietors of the Social Library in Salem. [Feb. 7, 1797.]

An Act in further addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over Merrimack-River, in the County of Essex, and for supporting the same," passed March, one thousand seven hundred and ninety-three. [Feb. 7, 1797.] This Act relates to Haverhill Bridge—the title being wrong. Add. act—1799 ch. 16.

An Act establishing the Boundary-Line between the Town of Williamsburgh and the Towns of Chesterfield and Goshen. [Feb. 7, 1797.]

An Act to incorporate Chandler Robbins, and others, for the purpose of conveying Water in the south Parish in the Town of Hallowell. [Feb. 9, 1797.]

An Act for regulating the Alewive Fishery in the Town of Bridgewater, in the County of Plymouth, and for repealing all Laws heretofore made for that purpose. [Feb. 10, 1797.] Add. acts—1800 ch. 68: 1801 ch. 53. Repealed, with an exception—1818 ch. 83.

An Act to incorporate certain persons in the Town of Lancaster, for the purpose of conducting Water from the Springs at and about Quassapomkin-Hill (so called) to inhabitants in a Part of the Town called the Neck. [Feb. 14, 1797.]

An Act to incorporate the Plantation Number Six, west of Machias, in the County of Washington, into a Town by the name of Addison. [Feb. 14, 1797.]

An Act for regulating Ferries.

Sect. 1. BE it enacted by the Senate and House of Represent-atives, in General Court assembled, and by the authority of the same, That no person or persons whatever shall keep a ferry within this Commonwealth, so as to demand or receive pay, without a special license first had and obtained from the Court of General Sessions of the Peace of the County wherein such ferry may be; and the said court is hereby empowered to grant such licenses to such person or persons as shall be judged suitable for such service by the same court; and to state the fare or ferriage at each ferry for passengers, horses and other creatures, carriages, waggons, carts, teams and other things there transported, always having regard to the breadth and situation of, and the more or less passing at, any ferry; in all cases, taking bond, with sufficient sureties, of each ferryman for the faithful performance of the duties and services of his place; excepting, however, all such ferries as are already stated and settled by the court or town to whom they appertain.

Sect. 2. Be it further enacted, That all ferrymen at the several ferries in this Commonwealth, as well those stated and settled as aforesaid, as others, shall keep a good boat or boats

Chap. 31. 1796 ch. 5.
Chap. 32. 1796 ch. 51.
Chap. 33. 1796 ch. 20.
Chap. 34. 1792 ch. 71.
Chap. 35. 1790 ch. 37.
Chap. 36. 1790 ch. 37.
Chap. 37. 1790 ch. 37.
Chap. 38. 1790 ch. 37.
Chap. 39. 1790 ch. 37.
Chap. 40.
Chap. 41. 1797 ch. 14.
Chap. 42. Col. L. 1641. 44. 46. 47. 6 W. III. ch. 6. 8 W. III. ch. 7. 4 Geo. I. ch. 4. 33 Geo. I. —
Ferrymen to be licensed.
Fare regulated.
Bond to be required.
Exception.
Ferrymen to keep boats.
in good repair, suitable to the water they are to ferry over, and give ready and due attendance on passengers, on all occasions; for the times, and according to the regulations established at any ferry; and the keeper or keepers of each ferry, for every neglect of such attendance, shall forfeit and pay one dollar, and for every neglect in keeping such a boat, twenty dollars; one moiety thereof in each case, to the use of the Commonwealth, and the other moiety to him or them who shall inform and sue for the same; and be further liable to pay in an action on the case, all such special damages as any person shall sustain by such neglect.

Sect. 3. Be it further enacted, That if any person or persons shall keep a ferry or transport passengers over or across any stated ferry, so as to demand or receive pay, having no right or authority so to do, he shall forfeit and pay for every such offence, four dollars, one moiety thereof to the Commonwealth, and the other to him or them who shall inform and sue for the same; and be further liable, in a special action on the case, to pay such damages as may or shall accrue to the person or persons assigned and authorized to keep any such stated ferry or ferries.

Sect. 4. Be it further enacted, That whenever the Court of General Sessions of the Peace of any county in this Commonwealth shall judge it necessary to set up a ferry for the convenience of passing any river or waters, and no person shall appear to keep the same for the stated profits thereof, the town or district wherein such ferry may be shall take effectual care to provide suitable person or persons to keep and attend the same at such place, and in such times of the year, as the said court shall judge necessary; which person or persons shall be licensed by such court as aforesaid. And the said court shall take bonds, with sureties, of such persons for the faithful performance of the duties and services of their places, and state the fare or ferriage to be demanded and received at such ferry, having regard to the breadth and situation of, and the more or less passing at the same. And the person or persons, so appointed ferrymen at any ferry so set up, shall keep a good boat or boats in good repair, suitable to the waters they are to ferry over; and on failure at any time so to do, shall forfeit and pay twenty dollars for each neglect; and shall also give ready and due attendance on all passengers; and for each neglect so to do, shall forfeit and pay one dollar, one moiety thereof in each case, to the town or district wherein such ferry may be, and the other moiety to him or them who shall inform and sue for the same.

Sect. 5. Be it further enacted, That if any such ferry, so judged necessary, shall be over any river or water when one town or district joins thereto on one side, and another town or district on the other side; in such case the said towns and districts shall, either jointly or alternately, provide such person or persons to keep such ferry, as the said court shall order.

Sect. 6. Be it further enacted, That any town or district,
1796. — Chap. 43—47. 511

neglecting to provide suitable persons to keep ferries as aforesaid shall forfeit and pay forty dollars for each month's neglect; one moiety thereof to the use of the Commonwealth and the other moiety to him or them who shall inform and sue for the same. And all the forfeitures aforesaid which may be incurred, shall be recoverable in an action of debt, with costs of suit, before a Justice of the Peace or Court of Common Pleas of the county wherein the ferry may be, according to the amount of the forfeitures to be recovered.

Sect. 7. Be it further enacted, That this Act shall take effect and be in force on and after the first day of July next; and that three Acts relating to the subject-matter of this Act, one passed A. D. sixteen hundred and ninety-four, for regulating ferries; another in addition thereto A. D. seventeen hundred and twenty-six; and a third A. D. seventeen hundred and sixty, relating to ferries, and continued in force to the first day of November next, shall, on and after the said first day of July next, be repealed and cease to operate; excepting, however, they shall remain in force for the purpose of recovering any forfeitures that may accrue by virtue of them. [Feb. 14, 1797.]

An Act to incorporate Joshua Thomas, Esquire, and others, for the purpose of conveying fresh Water, by Pipes, in the Town of Plymouth. [Feb. 15, 1797.]

An Act confirming the Title of the Reverend Samuel Todd, and those holding under him, to certain Lots of Land in the Town of Adams. [Feb. 15, 1797.]

An Act extending the Time for receiving, on Loan, the Debt of this Commonwealth. [Feb. 20, 1797. Time further extended—1797 ch. 72.

An Act to incorporate a Town in the County of Berkshire by the name of Savoy. [Feb. 20, 1797.]

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person shall dig or break up the ground in any highway, street or lane in any town, for the laying, altering, repairing or amending of any drain or common shore without the consent of the selectmen of the town signified, in writing, under the hand of the town-clerk, such person shall forfeit and pay four dollars for each offence, to the use of the poor of the town, to be recovered, with costs of suit, in an action of debt, by the treasurer thereof, before any disinterested Justice of the Peace in the county.

Sect. 2. Be it further enacted, That all drains and common shores for the draining of cellars, which shall hereafter be made or repaired in any streets or highways, shall be substantially done with brick or stone, or with such other materials as the selectmen of the town shall permit, and in such manner as the said selectmen shall direct. And when any one or more of the inhabitants of any town shall, by the consent and under the direction aforesaid, at his or their own charge, make and lay any common shore or main drain for the benefit of themselves and others who may think fit to join therein, every person who afterwards shall enter his or her particular drain into

Penalty for towns' neglect.

Chap. 43.

Chap. 44.

Chap. 45. 1793 ch. 29.

Chap. 46.

Chap. 47.

3 Anne ch. 2. 3 Geo. III.—

Drains, &c. how to be made.

Persons benefitted, to share in the expense of making.

8 Anne ch. 2.
the same, or by any more remote means shall receive any
benefit thereby, for the draining of their cellars or lands, shall
be held to pay the owner or owners of such common shore or
main drain a proportionable part of the charge of making or
repairing the same, to be ascertained and determined by the
selectmen of the town or a major part of them, and certified
under their hands; saving always to the party aggrieved at
any such determination, a right of appeal to the Court of Gen-
eral Sessions of the Peace.

Sect. 3. Be it further enacted, That when any common
shore or main drain shall be stopped or gone to decay, so that
it shall be necessary to open the same in order to repair it or
remove such stoppage, all the persons who shall be benefited
by such repairs or removal of obstructions shall be held to
pay their proportionable parts of the expenses thereof, as well
those who do not as those who do cause such repairs to be
made or obstruction removed; to be ascertained and deter-
mined by the selectmen as aforesaid, saving an appeal as afores-
said. And each person so held to pay his or her part shall
have notice thereof of the sum, and to whom to be paid;
and if such person shall not pay the same within ten days after
such notice, to the person appointed by the selectmen to re-
duce it, he or she shall be held to pay the person so appointed
double the sum mentioned in such certificate, with all costs
arising upon such neglect; and such person is hereby empow-
ered to bring an action or actions for the same accordingly.
Provided always, That the person or persons, who shall have
occasion to open any common shore or main drain in order
to clear and repair the same, shall, seven days at least before
they begin to open the same, notify all persons interested
therein, by advertising in such manner as the selectmen may
direct, that they may (if they think proper) object thereto, and
lay their objections in person, or writing, before the select-
men: And if the selectmen, or the major part of them, shall
judge the objections reasonable, then the person or persons
making the same shall not be held to pay any part of such ex-
penses; but if they do not make their objections as aforesaid
to the selectmen, within three days after being so notified, or
if they shall deem the objections not to be sufficient, then they
shall, under their hands, give liberty, to the persons applying, to
proceed to open such common shore or main drain, and clean
and repair the same; and all interested therein shall pay their
proportions as is provided in this Act. Provided also, That
nothing in this Act shall be understood or construed to a-
ffect or make void any covenants or agreements already made,
or that may hereafter be made among the proprietors of such
drains or common shores.

Sect. 4. Be it further enacted, That this Act shall take ef-
fect and be in force on and after the first day of July next; and
that an Act passed A. D. one thousand seven hundred and
nine, for regulating drains and common shores; and another
Act passed A. D. one thousand seven hundred and sixty-three,
in addition thereto, and continued in force to the first day No-
An Act to incorporate Samuel Fisk Merrick, and others, for certain Purposes therein mentioned. [Feb. 20, 1797.]

An Act to divide the Town of Hallowell, in the County of Lincoln, into two Towns, and to incorporate the northerly Part thereof into a Town by the name of Harrington. [Feb. 20, 1797.] Name altered to Augusta—1797 ch. 1.

An Act to remedy an Omission of Form in the opening of the Court of General Sessions of the Peace for the County of Middlesex, at the November-Term thereof in the year of our Lord one thousand seven hundred and ninety-six. [Feb. 20, 1797.]

An Act for apportioning and assessing a Tax of one hundred and thirty-three thousand three hundred and eighty-one dollars and fifty-three cents, and providing for the Reimbursement of ten thousand three hundred and sixty-eight dollars, paid out of the public Treasury to the Members of the House of Representatives, for their Attendance the two last Sessions of the General Court. [Feb. 22, 1797.]

An Act to prevent the Destruction of the Fish called Bass, in the River Parker in Newbury, and in Rowley-River, and in the streams and waters running into the same, in the County of Essex. [Feb. 22, 1797.]

An Act to regulate the Price of Fish called Alewives, in the Town of Taunton. [Feb. 23, 1797.]

An Act to divide the Town of Stoughton, in the County of Norfolk, and to incorporate the northerly Part thereof into a Town by the name of Canton. [Feb. 23, 1797.]

An Act to incorporate the Wardens and Vestry-Men of the Episcopal Church of St. Andrew's, in Scituate, into a Society by the name of The Episcopal Protestant Society of St. Andrew's Church in Scituate. [Feb. 23, 1797.] Add. act—1810 ch. 74. See 1816 ch. 106.

An Act to incorporate a number of the inhabitants of the Town of Sandwich, in the County of Berkshire, into an Episcopal Society. [Feb. 27, 1797.] Add. act—1802 ch. 43.

An Act to repeal all former Laws made for the Preservation of Moose and Deer within this Commonwealth, except as is herein after excepted. [Feb. 27, 1797.]

An Act in addition to the several Acts now in force respecting Highways.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the inhabitants of plantations unincorporated, who are or shall be empowered and required to assess taxes upon themselves towards the support of government, or for defraying the charges of any county, shall be vested with like powers, be under the like obligations, and liable to like penalties, so far as such powers, obligations and penalties have any relation to the making, repairing or amending the highways, and for compensating any individual who may suffer damage by laying out any highway, as the towns within this Commonwealth have, are under, or subject to; and like proceedings shall be had by and against such plantations as may be had by or against said towns, in every case respecting the highways, mutatis mutandis. And the assessors of such plantations shall be held to perform all the duties required of the selectmen of towns relating to highways and invested with the same powers.
Sect. 2. And be it further enacted, That all highways laid out, or hereafter to be laid out, through any tracts of land in the Commonwealth, not comprehended within the bounds of any incorporated town or plantation aforesaid, shall be made passable and convenient for travelling, and kept in good repair by the owners or proprietors of the said tract of land, township or plantation; unless, in the judgment of the Court of General Sessions of the Peace for the county in which such lands lie, it may be deemed unreasonable; in which case the same shall be done at the expense of the county, or partly at the expense of the county and partly at the expense of the proprietors, as the said court shall order. And all the proprietors or owners of such tracts of land, townships or plantations last mentioned, shall be held to pay their proportions, according to their interest, of all cost and expenses of making and repairing the ways aforesaid through any part of the tracts, townships or plantations last mentioned. Provided nevertheless, That all lands reserved for the use of the first settled minister, the ministry, schools, or for the future appropriation of the General Court, in the said tracts, plantations and townships last mentioned, shall be and hereby are exempted from all taxes for making and repairing highways therein.

Sect. 3. Be it further enacted, That the Courts of General Sessions of the Peace in the several counties in this Commonwealth, whenever application shall be made to them to lay out any new highway through any such tract, township or plantation last mentioned, or for an order thereof to amend and repair any highway already laid out in the same, the said court shall cause notice thereof to be given, by publishing the substance of such application three weeks successively in one of the newspapers printed in the town of Boston and such other paper as the said court shall direct, in order that the proprietors of said lands may appear before said court, at such time as the court shall therein prefix, and shew cause why such highway should not be laid out or amended, as the case may be. And if such proprietors do not appear and shew cause, to the satisfaction of said court, that such highway ought not to be laid out or made or amended, at the expense of said proprietors, then the said court may proceed to lay out such highway in the manner prescribed by law; and to order the same to be made or amended at the expense of the said proprietors, as the case should require; and shall cause an assessment to be made on such tracts of land, township or plantation, at so much per acre, as they shall judge necessary for making or amending such highway and defraying the necessary expense attending the same; and the proprietors of the said tracts, townships or plantations last mentioned, where the lands therein are held in sev- eralty, shall be severally assessed their respective proportions in every tax which may be ordered for making or repairing the highways therein: Provided, Such proprietors shall previously furnish said court with proper documents for that purpose; and the treasurer of the county wherein the land so assessed may lie, shall forthwith cause such tax to be advertised in manner
Chap. 58.

In default of payment, land to be sold at auction.

Time of sale may be adjourned.

Meetings to be called for raising necessary sums.

Surveyors' limits to be assigned.

1796 ch. 51, § 2.

In default of payment, land to be sold at auction.

Meetings to be called for raising necessary sums.

Surveyors' limits to be assigned.

1796 ch. 51, § 2.

aforesaid, requiring each and every owner or proprietor of any part of the tract, township or plantation last mentioned, to pay said tax; or if the assessment is made in severalty, his part thereof, to said treasurer within six months from the first publishing said advertisement and notifying such proprietors, that unless the same shall be paid within the time specified, so much of the said land will be sold at public vendue, at a certain day and place in the said advertisement to be expressed: And when any proprietor or owner of any part of such tract, township or plantation last mentioned (the parts thereof not being severally assessed) shall pay his proportion of such tax, he shall take a receipt therefor describing the land for which he shall pay such tax; and so much of the remaining part of such land, for which said tax shall not be paid before the expiration of the said six months, shall be sold by the treasurer aforesaid or his successor in office, or such committee as the Court of General Sessions of the Peace aforesaid shall appoint for that purpose, at the time and place set forth in the advertisement, as may be necessary to pay the remaining part of said tax, with incidental charges. And the said treasurer or committee are hereby authorized to adjourn the time of sale of such land from day to day, if he or they shall judge it necessary, not exceeding three days, and make a good and sufficient deed or deeds of such lands, allowing the same time of redemption, and subject to the payment of the like interest, as is by law allowed in the cases of land sold for taxes; and the money so raised shall be applied by said court, or by a committee to be by them appointed for that purpose, to make and repair said highways. And a similar method shall be taken from time to time, by said court, for keeping in repair all highways leading through such tracts, townships or plantations last mentioned, in case the owners thereof shall neglect to keep said highway in sufficient repair. And the owners and proprietors of any such tract, township or plantation last mentioned, are hereby authorized to call meetings for the purpose of raising such sums of money as they may judge necessary for making and repairing such highways, and for choosing officers for assessing and collecting the same.

Sect. 4. Be it further enacted, That it shall be the duty of the selectmen of the several towns and districts, and of the assessors of the several plantations within this Commonwealth, before the first day of May annually, to assign to the several surveyors their divisions and limits for making and repairing the highways; and one half of the sum at least, which shall be agreed upon and granted by any town or district for making or repairing the highways, shall be laid out and expended for that purpose before the first day of July next after granting the same.

And when any town, district or plantation shall neglect to raise money for the purpose of making and repairing the highways and townways, as aforesaid, it shall be the duty of the several surveyors in such towns to cause so much labour to be done
1796. — Chap. 58.

to be done in certain cases.

Surveyors may be authorized to make contracts.

—and collect taxes.

Money remaining unexpended to be paid to treasurer.

—may be sued for.

Surveyor neglecting to exhibit rate-bills and accounts, liable to penalty.

Time to be allowed to make a new highway passable.

Proviso.

If towns neglect their duty, court may ap-

on the said ways in their respective districts before the first day of July, as shall amount to one half at least of the expenses of repairing said ways the year next preceding.

Sect. 5. And be it further enacted, That every town or district may, at their aforesaid annual meeting, or any meeting warned for that purpose, authorize their surveyors or any other person or persons, to enter into any contract or contracts for making or repairing the highways or townways within the same or any part thereof; and may also empower their surveyors of highways to collect taxes for making and repairing the ways which shall not be paid in labour or otherwise within the time limited by law, or such periods as may be agreed upon by such town or district; and for that purpose the assessors shall deliver to them warrants of distress, which shall be in the form prescribed by law for collecting other town or district taxes, mutatis mutandis; or they may deliver to the collector or collectors of taxes a warrant for collecting the deficiency in any highway tax, which the collector is hereby empowered and required to levy in the same way and manner as other taxes are by law to be collected, and pay the same over to the surveyor or surveyors, who shall be held to account with the selectmen for the expenditure thereof. And if any money shall remain unexpended in the hands of the surveyor or surveyors after the expiration of their office, they shall pay the same to the town-treasurer. And if any surveyor shall neglect to pay over such sums to the said treasurer upon demand, the said treasurer, or his successor in that office, shall have power to recover the same in action upon the case, with twenty per cent. in addition thereto, to the use of the town or district, and with costs of suit. And if, pending the action, another town or district-treasurer shall be appointed, he, on noting his appearance on the record, shall have power to pursue the same action to final judgment and execution. And if any surveyor, who shall receive his rate-bill of the selectmen or assessors of any town or district, shall neglect to exhibit the same to them on the first Monday of July annually, and also at the expiration of the term for which he shall be appointed, and at those times respectively to render an account of all monies that have been expended on the ways, he for each offence shall forfeit and pay twenty dollars, to be recovered in an action of debt, with costs of suit, by the said treasurer as aforesaid, and to the uses aforesaid.

Sect. 6. And be it further enacted, That when any new highway has been or shall have been laid out and accepted by the Court of General Sessions of the Peace, a reasonable time shall be allowed to the town or district, or any plantation assessed in any state or county tax, through which such highway shall lead, to make it passable, safe and convenient for travellers and others passing with their teams, waggons or other carriages: Provided, That such time shall not exceed twelve months from the time of such acceptance; unless said court shall, for reasons specially given, order a longer time. And if any town, district or plantation aforesaid, shall neglect their
duty in that respect, the said court, on application therefor, shall appoint a committee of three disinterested freeholders in the same county, to enter into any contract or contracts for making such new highway passable as aforesaid, the expense of which shall be immediately afterwards defrayed by the delinquent town, district or plantation last mentioned; and in default thereof, the said court shall issue a warrant of distress against such town, district or plantation.

Sect. 7. And be it further enacted, That the lands of nonresident proprietors shall be taxed for the making and repairing highways, in the same way they are taxed for other town or county taxes; and upon default of payment, the same proceedings shall be had as is provided for the collection of other taxes from such persons, and without any other notice.

Whereas by law it is made the duty of surveyors of the highways, when the same are blocked up or incumbered with snow, forthwith to cause so much thereof to be removed or trod down as will render the roads passable, which cannot be conveniently effected by a tax granted for that purpose:

Sect. 8. Be it therefore further enacted, That all such incumbrances may be removed in the manner the same might be done in any town or district who shall neglect to vote or agree upon a sum for the express purpose of repairing the highways and townways: Provided, That any town or district shall agree upon that mode of removing such incumbrances in the month of March or April annually; any law to the contrary notwithstanding. [Feb. 28, 1797.] Further add. acts—1797 ch. 30: 1802 ch. 135: 1812 ch. 121: 1818 ch. 121: 1819 ch. 44.

An Act to set off Part of the Town of Greenwich, which lies in the County of Worcester, and for annexing the same to the County of Hampshire. [March 1, 1797.]

An Act in addition to an Act, entitled, "An Act to incorporate sundry persons by the name of The President and Directors of the Nantucket Bank." [March 1, 1797.] Continued till October 1812—1805 ch. 6. 48. New corporation—1812 ch. 39. See 1816 ch. 17.

An Act altering the name of Isaac Davis, to Isaac P. Davis. [March 1, 1797.]

An Act for establishing an Academy in the Town of Deerfield by the name of Deerfield Academy. [March 1, 1797.]

An Act to incorporate Part of the Plantation called Waterford, in the County of York, into a Town by the name of Waterford. [March 2, 1797.]

An Act to divide the Town of Eastham, in the County of Barnstable, and to incorporate the southerly Part thereof into a Town by the name of Orleans. [March 3, 1797.]

An Act to regulate the going at large of Sheep and Rams and He-Goats, at certain Seasons of the Year.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any owner of any ram or he-goat shall suffer the same to go at large, or be out of his or her inclosure between the tenth of August and the twentieth day of November annually, such owner shall forfeit and pay two dollars to such point a committee to contract for the making of the way, at the expense of the town.

1795 ch. 70. 1796 ch. 81.

How snow may be removed.

Proviso.

1796 ch. 66.
person who shall find and take up such ram or he-goat, for each time he shall be so found at large out of the owner’s enclosure and taken up; and the same may be recovered by action of debt.

When the owner is not known, description to be lodged with town clerk—
to be recorded and posted.

Town clerk’s fee.

Owner entitled to restitution, on paying forfeiture within five days; otherwise the beast to be forfeited.

Provido repealed as to Barnstable—
1799 ch. 12.

Penalty for letting sheep go at large without a keeper.

Field-drivers’ duty.

Former laws repealed.

Chap. 66.
1787 ch. 58.

An Act in addition to, and for repealing a certain Clause in an Act passed March the twenty-eighth, in the year of our Lord one thousand seven hundred and eighty-eight, entitled, “An Act to prevent the Destruction of Alewives, and other Fish, in Ipswich-River, and to encourage the Increase of the same.”

An Act to prevent Fraud in Firewood, Bark or Coal exposed to Sale.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all cord-wood exposed to sale, shall be four feet long, including half of the carf; and the cord being well and close laid together, shall measure eight feet in length, four feet in width, and four feet in height.

Sect. 2. Be it further enacted, That in each town or district in this Commonwealth where the inhabitants shall, in town-meeting legally assembled, judge and vote the same to be necessary, and wherein firewood or bark is usually sold, the selectmen shall annually, or as occasion may require, appoint one or more suitable persons, and conveniently situated in the town or district, to be measurers of wood and bark there exposed or brought in for sale, and shall give public notice thereof; which measurer or measurers shall be sworn to the faithful and diligent discharge of their office, and shall receive such fees or allowance for their service as the selectmen shall appoint, to be paid by the driver of the wood or bark, and repaid by the buyer, where brought in by land, and by the wharfinger where brought in by water, and the measurer shall be entitled to his action therefor, accordingly.

Sect. 3. Be it further enacted, That if any firewood or bark brought by land into any town or district for sale where-in such measurers shall be so appointed, shall be offered for sale before the same shall be measured by such measurer and a ticket signed by him and delivered to the driver, certifying the quantity of wood the load contains, the name of the driver, and the town in which he resides, such wood or bark shall be forfeited, two thirds to the use of the poor of the town where offered for sale, and the other third part thereof to the measurer or any other person who shall prosecute for the same:

Provided, That no person shall be obliged to measure any firewood or bark when the quantity shall be agreed on by the buyer and seller.

Sect. 4. Be it further enacted, That if any wharfinger or carter shall cart or carry any firewood from any wharf or landing place in any town or district (except for the use and consumption of such wharfinger or carter) before the same shall have been measured by some measurer appointed as aforesaid, he shall forfeit and pay one dollar for every load of wood so carried off, one moiety thereof to the use of the poor of the town where the offence shall be committed, and the other moiety to any person who shall prosecute for the same.

Sect. 5. Be it further enacted, That all baskets, used in measuring charcoal brought into any town or district for sale, shall contain two bushels, and be of the following dimensions, to wit: nineteen inches in breadth in every part thereof, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and that the basket be well heaped, and also be sealed by the sealer of the town or district where the person so using the same shall usually inhabit or reside; and every person who shall measure the charcoal offered for sale in any basket of less dimensions or not
Selectmen may appoint a person to examine coal-baskets.

This proviso repealed—1799 ch. 26.

Forfeitures how recovered. 1788 ch. 12.

Former acts repealed.

4 Anne ch. 4. 9 Anne ch. 4. 32 Geo. II.—

12 Geo. III.—Oct. 8, 1779.

1796. — Chap. 68—69.

An Act for incorporating certain persons for the purpose of building a Bridge over the Eastern-River, in Dresden, in the County of Lincoln, at or near Call's-Ferry, and for supporting the same. [March 7, 1797.]

Chap. 69.

Preamble.

An Act to make perpetual sundry temporary Acts.

WHEREAS sundry Acts have been passed in the late Province, State, and now Commonwealth of Massachusetts, and continued in force from time to time to the first day of November next, and other periods; and the same Acts from experience have been found necessary and beneficial; Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the following Acts and Laws, and every clause thereof, be and the same are hereby made perpetual, and shall remain in force until the same shall be respectively repealed by the Legislature of this Commonwealth, to wit: An Act passed in the year of our Lord seventeen hundred and eighty-one, entitled, "An Act to prevent damage being done on the meadows lying in the township of Yarmouth, called Nobscusset-Meadow, and a small commonage of land, and beaches thereto adjoining:" an Act passed in the year of our Lord one thou-

sealed as aforesaid, shall forfeit and pay for each offence fifty cents, to the uses mentioned in the fourth section aforesaid; and such basket shall be destroyed.

Sect. 6. Be it further enacted, That the selectmen of any town, where coal is usually sold, shall have power to appoint, as occasion may require, some suitable person to seize and secure all baskets improved for measuring coal that shall not be of the dimensions aforesaid, and sealed as aforesaid, and to prosecute such person or persons as shall be guilty of a breach of this Act.

Provided, That no person shall be obliged to measure charcoal when the quantity shall be agreed on by the buyer and seller.

Sect. 7. Be it further enacted, That all the forfeitures aforesaid may be recovered, with costs of suit, by action, bill, plaint or information before any court proper to try the same.

Sect. 3. Be it further enacted, That this Act shall take effect and be in force, on and after the first day of December next, and that five Acts relating to the subject-matter of this Act, one passed A. D. seventeen hundred and five; another, A. D. seventeen hundred and ten; another, A. D. seventeen hundred and fifty-nine, and continued to the first day of November next; another passed A. D. seventeen hundred and seventy-two, and another the eighth day of October A. D. seventeen hundred and seventy-nine, and continued in force, shall, on and after the said first day of December, be repealed and cease to operate; except the two clauses in said Acts, passed A. D. seventeen hundred and fifty-nine and seventeen hundred and seventy-two, which clauses relate only to the town of Boston; and except the said Acts shall remain in force for the recovery of all forfeitures that shall accrue under the same before that time. [March 7, 1797.]


Chap. 68.

An Act for incorporating certain persons for the purpose of building a Bridge over the Eastern-River, in Dresden, in the County of Lincoln, at or near Call's-Ferry, and for supporting the same. [March 7, 1797.]
sand seven hundred and eighty-three, entitled, "An Act for preventing the unnecessary destruction of Shad, Alewives, and other fish, in Cathance and Abagadesset-Rivers, in the town of Bowdoinham:" also an Act made in the year of our Lord one thousand seven hundred and fifty-seven, entitled, "An Act to prevent damage being done unto Billingsgate-Bay, in the town of Eastham, by cattle and horse-kind and sheep feeding on the beach and lands adjoining thereto:" also an Act made in the year of our Lord one thousand seven hundred and forty-six, entitled, "An Act to prevent damage being done unto Nosset-Meadow, by cattle and horse-kind feeding on the beach adjoining thereto:" also an Act made in the year of our Lord one thousand seven hundred and forty-nine, entitled, "An Act to prevent damage being done on the beach in Biddeford, and meadows adjoining said beach, commonly known by the name of Winter-Harbour-Beach:" also an Act made in the year of our Lord one thousand seven hundred and fifty-three, entitled, "An Act to prevent cattle and horses running at large and feeding on the beaches and meadows below the banks in the town of Truro, from the house of Joshua Atkins to Bound-Brook, and also in the common meadow at and about Pamit-Harbour and River, as far up as the wading-place by John Lumbart's:" also an Act made in the year of our Lord one thousand seven hundred and fifty-eight, entitled, "An Act for altering a clause in an Act made in the thirteenth year of his present Majesty's reign, entitled, "An Act to prevent damage being done on the Billingsgate-Bay, in the town of Eastham, by cattle and horse-kind and sheep feeding on the beach and islands adjoining thereto:" also an Act made in the year of our Lord one thousand seven hundred and fifty-seven, entitled, "An Act to prevent damage being done on the meadows and beaches lying in the township of Barnstable, on the south side of the harbour contiguous to the common field in said town:" also an Act made in the same year, entitled, "An Act to prevent neat cattle, horses and sheep running at large and feeding on the beaches between Wells and Ogunquit Harbour, in the town of Wells, and to prevent the mowing of the same:" also, an Act made in the year of our Lord one thousand seven hundred and sixty-one, entitled, "An Act to prevent damage being done on the meadows and beaches lying in and adjoining on the north side of the town of Harwich, between Skeket-Harbour on the east, and Quivet-Harbour on the west:" also an Act made in the same year, entitled, "An Act in addition to an Act made and passed this present year, entitled, an Act to prevent damage being done on the meadows and beaches lying in and adjoining to the north side of the town of Harwich, between Skeket-Harbour on the east, and Quivet-Harbour on the west:" also an Act made in the year of our Lord one thousand seven hundred and forty-nine, entitled, "An Act for preventing mischief by unruly dogs on the island of Nantucket:" also an Act made in the year of our Lord one thousand seven hundred and sixty-five, entitled, "An Act to prevent damage being done in the woods in Plymouth.
Sandwich, Barnstable, Falmouth and Wareham, by hunting with hounds and dogs; also an Act made in the year of our Lord one thousand seven hundred and seventy-two, entitled, "An Act for regulating town-meetings in the town of Danvers;" also an Act made in the year of our Lord one thousand seven hundred and sixty-five, entitled, "An Act for the preservation and increase of Moose and Deer on Tarpaulin-Cove-island and Nenemesset-Island, lying and being in the county of Dukes County;" also an Act made in the year of our Lord one thousand seven hundred and forty-eight, entitled, "An Act to prevent damage by fire in the towns of Boston and Charlestown;" also an Act made in the year of our Lord one thousand seven hundred and forty-nine, entitled, "An Act to prevent any person's obstructing the fish in the passing up into Monatiquot-River, within the town of Braintree;" also an Act made in the year of our Lord one thousand seven hundred and sixty-two, entitled, "An Act in addition to the several Acts made to prevent damage by fire in the town of Boston;" also an Act made in the year of our Lord one thousand seven hundred and sixty-four, entitled, "An Act to enable the Collectors of Taxes in the town of Boston to sue for and recover the rates and taxes given them to collect, in certain cases;" also an Act made in the year of our Lord one thousand seven hundred and sixty-four, entitled, "An Act in addition to the Act, entitled, an Act to prevent the unnecessary destruction of Alewives in the town of Middleborough;" also an Act made in the year of our Lord one thousand seven hundred and seventy-one, entitled, "An Act to prevent the taking of the fish called Bass, in the river Parker, in the town of Newbury, in a certain season of the year;" also an Act made in the year of our Lord one thousand seven hundred and seventy-three, entitled, "An Act to empower the inhabitants of the town of Rochester, in the county of Plymouth, to regulate the taking of fish within the harbour and cove of the said township;" also an Act made in the year of our Lord one thousand seven hundred and sixty, entitled, "An Act to prevent damage being done on a beach at Monument-Ponds, in the township of Plymouth, lying between the lands of the late Thomas Clark and Joseph Bartlett, deceased, and on a certain tract of marshy ground lying under water there;" also an Act made in the year of our Lord one thousand seven hundred and forty-six, entitled, "An Act to prevent the destruction of the meadow called Sandy-Neck-Meadow, in Barnstable, and for the better preservation of the harbour there;" also an Act made in the year of our Lord one thousand seven hundred and fifty, entitled, "An Act providing for the support of Ministers in new plantations;" also an Act made in the year of our Lord one thousand seven hundred and fifty-five, entitled, "An Act to prevent damage being done on the beach, hummocks and meadows, belonging to the town of Scituate, lying between the southerly end of the Third-Cliff (so called) and the mouth of the North-River;" also an Act made in the year of our Lord one thousand seven hundred and seven-
ty-two, entitled, "An Act to prevent the destruction of oysters in Charles and Mystic River:" also an Act made in the year of our Lord one thousand seven hundred and forty-one, entitled, "An Act for the better regulating porters employed within the town of Boston:" also an Act made in the year of our Lord one thousand seven hundred and forty-eight, entitled, "An Act to prevent damage being done on the beach and meadows in Plymouth, adjoining to said beach, commonly known by the name of Plymouth-Beach:" also an Act made in the year of our Lord one thousand seven hundred and sixty-five, entitled, "An Act for the preservation of the beach and harbour in the town of Plymouth:" also an Act made in the year of our Lord one thousand seven hundred and seventy-three, entitled, "An Act for regulating lamps already set up, or that may hereafter be set up, for enlightening the streets, lanes, alleys or passage-ways in the town of Boston, and to prevent the breaking or otherwise damming the same, and also establishing the method for paying the expenses that may arise in supporting and maintaining said lamps:" also an Act made in the year of our Lord one thousand seven hundred and sixty-three, entitled, "An Act to exempt the people called Quakers from the penalty of the law for non-attendance on military musters:" also an Act made in the year of our Lord one thousand seven hundred and fifty-one, entitled, "An Act to empower the proprietors of the Meeting-House in the first parish in Salem, where the Rev. Mr. John Sparhawk now officiates, to raise money for defraying the ministerial and other necessary charges:" also an Act made in the year of our Lord one thousand seven hundred and sixty-one, entitled, "An Act for the preventing the stealing and clandestinely conveying sheep away from the island of Martha's-Vineyard, in Dukes County:" also an Act made in the year of our Lord one thousand seven hundred and fifty-four, entitled, "An Act for securing the growth and increase of a certain parcel of wood and timber in the townships of Ipswich and Wenham, in the county of Essex:" also an Act made in the year of our Lord one thousand seven hundred and sixty-seven, entitled, "An Act to prevent damage being done on the meadows and beaches lying in and adjoining on the south side of the towns of Tisbury and Chilmark, in the county of Dukes County, between the lands of Matthew Mayhew, Esquire, on the west, and the creek of water that divides the land of Thomas Waldron from the beach on the east:" also an Act made in the year of our Lord one thousand seven hundred and sixty-eight, entitled, "An Act to prevent damage being done on Bound-Beach-Island and Griffith's-Islands, within the district of Wellfleet, by cattle, horse-kind and sheep:" also an Act made in the year of our Lord one thousand seven hundred and sixty-eight, entitled, "An Act to prevent the destruction of the Salt-Meadow, lying in the towns of Tisbury and Chilmark:" also an Act made A. D. one thousand seven hundred and seventy-four, entitled, "An Act to prevent neat cattle, horses, sheep, goats and swine from going at large
upon the island of Chabequiddick, at certain seasons of the
year, and for preventing other trespasses being done on any of
the Indian lands on said island for the future:" also an Act
made in the year of our Lord one thousand seven hundred and
forty-nine, entitled, "An Act to prevent the unnecessary de-
struction of Alewives in the town of Middleborough:" also an
Act made in the year of our Lord one thousand seven hundred
and eighty-one, entitled, "An Act to provide more effectually
for the preservation of the fish called Alewives, in the streams
running into Merrimack-River, within the town of Andover:" also
an Act made in the year of our Lord one thousand seven hundred
and forty-four, entitled, "An Act to prevent neat cattle and
horses running and feeding on the beaches adjoining to
Eastern-Harbour-Meadows, in the town of Truro:" also an Act
made in the year of our Lord one thousand seven hundred and
sixty-nine, entitled, "An Act to empower the east precinct
in Salem, where the Rev. James Dimond now officiates, to
raise money for defraying ministerial and other charges of said
precinct:" also an Act made in the year of our Lord one
thousand seven hundred and ninety-three, entitled, "An Act
in addition to an Act for the preservation and increase of
Moose and Deer on Tarpaulin-Cove-Island and Nenemesset-
Islands, lying and being in the county of Dukes County:" also
an Act made in the year of our Lord one thousand seven hundred
and ninety-three, entitled, "An Act for securing the growth of wood and timber in a certain tract of wood-
land, situated in the towns of Ipswich, Wenham, Beverly and
Manchester:" also an Act made in the year of our Lord one
thousand seven hundred and eighty-seven, entitled, "An Act
to prevent the destruction of oysters and all other shell-fish ly-
ing within the harbours, rivers and bays within the limits of
the towns of Sandwich, in the county of Barnstable, and Ware-
ham, in the county of Plymouth, and the towns of Dartmouth
and Westport, in the county of Bristol:" also an Act made in
the year of our Lord one thousand seven hundred and eighty-
eight, entitled, "An Act for the better regulation of the in-
dian, mulatto and negro proprietors in Marshpee, in the county
of Barnstable:" also an Act made in the year of our Lord
one thousand seven hundred and seventy-one, entitled, "An
Act to prevent damage being done to the proprietors of the
meadow, upland and beach, called Great and Little-Scipuiset,
in the town of Falmouth, in the county of Barnstable:" also
an Act made in the year of our Lord one thousand seven hun-
dred and seventy-three, entitled, "An Act for regulating the
Alewise-fishery in the town of Halifax, in the county of Ply-
mouth:" also an Act made in the year of our Lord one thou-
sand seven hundred and eighty, entitled, "An Act in addition
to an Act, entitled, an Act in further addition to and explana-
tion of an Act in addition to an Act for erecting a powder-
house in Boston," § [March 7, 1797.] Repealed in part—1797
ch. 15.
An Act for the Amendment of an Act, entitled, "An Act for regulating Swine," made and passed on the thirteenth day of February, in the year of our Lord one thousand seven hundred and eighty-nine.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person shall suffer his swine to go at large, under a vote of any town, without incurring the forfeiture therein provided, unless such swine be sufficiently yoked at all times when permitted to go at large, as aforesaid, between the fifteenth day of March and the first day of December annually, any thing in the aforesaid Act to the contrary notwithstanding. [March 7, 1797.]

An Act for the Limitation of Actions against Sheriffs for the Misconduct and Negligence of their Deputies.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all actions against sheriffs, for the misconduct and negligence of their deputies, shall be commenced and sued within four years next after the cause of action. [March 8, 1797.]


An Act to cede to the United States the Jurisdiction of the remaining Part of the Island of Seguin.

WHEREAS it has been found that the land heretofore ceded to the United States on the island of Seguin, for the accommodation of a light-house, and on which one has been erected, does not embrace all the objects to be desired, and which have been found necessary and convenient:

BE it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the remaining part of the said island of Seguin, in the Commonwealth of Massachusetts, containing about ten acres, be ceded to the United States, and during the continuance of the use and appropriation aforesaid, the jurisdiction of the whole of said island: Saving and provided always, That all civil and criminal processes, issued under the authority or by any officer of this Commonwealth, shall have full force and effect within the limits of said island, and any building which shall be there erected, this cession of jurisdiction notwithstanding. [March 8, 1797.]

An Act for incorporating certain persons for the purpose of building a Bridge over Eastern-River, near Lithgow's Mills, in the Town of Dresden. [March 8, 1797.]
Add. act—1799 ch. 72.

An Act to incorporate Solomon Vose, and others, Proprietors of an Aqueduct in Northfield. [March 9, 1797.]

An Act to incorporate William Gray, jun. and others, for the purpose of bringing fresh Water into the Towns of Salem and Danvers, by subterraneous Pipes. [March 9, 1797.]

An Act to incorporate several Tracts or Grants of Land situate in the County of Cumberland, into a Town by the name of Norway. [March 8, 1797.]

An Act establishing the Third Massachusetts Turnpike Corporation. [March 9, 1797.] Add. acts—1798 ch. 8: 1813 ch. 22. Name altered to The Worthington Turnpike Corporation—1814 ch. 2.
Chap. 79. An Act to incorporate certain persons Trustees to manage the Funds subscribed for the permanent Support of the Ministry in the south Parish in New-Marlborough. [March 9, 1797.]

Chap. 30. An Act to divide the Town of Vassalborough, in the County of Lincoln, into two separate and distinct Parishes. [March 10, 1797.]

Chap. 31. An Act for repealing two former Acts relative to building a Bridge over Damarscotta-River, in the County of Lincoln, and for incorporating certain persons for the aforesaid purpose. [March 10, 1797.]

Chap. 32. An Act for keeping Watches and Wards in Towns, and for preventing Disorders in Streets and public Places.

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all male persons of the age of eighteen years or upwards, being able of body or having estate sufficient to hire, shall, in their respective towns and districts, be liable to watch and ward, either in their own persons, or by some other sufficient person or persons in their room, when duly warned to attend the same in the manner herein after mentioned, except all persons who shall live more than two miles from the place where the watch or ward is kept; and except also the Justices of the Peace and the selectmen of the town or district, and the sheriff of the county, and settled ministers of the Gospel.

Sect. 2. Be it further enacted, That when and so often as a military watch shall not be appointed to be kept, the Justices of the Peace (qualified to act) together with the selectmen of each town and district in this Commonwealth, and in such towns and districts where no Justice of the Peace, so qualified, dwells, the selectmen alone, shall have power from time to time, to direct and order a suitable watch or watches to be kept nightly within such town or district, from and after nine o'clock in the evening until sunrising in the morning; and also a ward to be kept in the day-time and evenings, when they shall think the same watch or ward necessary; and to appoint the number of persons whereof the same shall consist, the place or places wherein they shall be kept, and the hour or hours for keeping the same, and to give orders, in writing, accordingly, signed by a major part of such justices and selectmen, or selectmen alone, as the case may be, directed to any constable or constables of the town or district, empowering and requiring him or them from time to time to warn such watch or ward, and to see that all persons so warned by him or them do attend and do their duty in such manner as shall be required; and in the warning thereof, to take care that some able householders or other sufficient persons be joined in each watch or ward. And such constable or constables shall charge the watch to see that all disturbances and disorders in the night be prevented and suppressed; and to examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention or design, of their business abroad at such season, and whither they are going; and in case they give not reasonable satisfaction therein, then to secure, by imprisonment or otherwise, all such disorderly
and suspicious persons, to be safely kept until morning; then to
carry them before one of the next Justices of the Peace to be
examined, and proceeded against, according to the nature of
their offences, as is by law directed. And such watchmen
shall walk the rounds in and about the streets, wharves, lanes
and principal inhabited parts within such town or district, to
prevent any danger by fire, and to see that good order is kept,
taking particular observation and inspection of all houses and
families of evil fame, and shall strictly observe the charge to be
given them as aforesaid. And each constable, when attend-
ing watch or ward, shall carry with him the usual badge of
his office.

Sect. 3. Be it further enacted, That in any town wherein
the said justices and selectmen, or selectmen alone (as the
case may be) shall judge that a watch may be kept more for
the benefit and safety thereof in any other manner than is
herein before directed, and the inhabitants thereof shall agree
to support the charge of the same; the Justices in the Court
of General Sessions of the Peace within the county wherein
such town lies, upon application made, are hereby empowered
to direct and order the rule for apportioning and levying such
sum upon the inhabitants and residents in such town as shall
be granted by the town for that purpose, in such manner as
they shall judge most equal and just, by poll, estate, or both,
to be applied accordingly.

Sect. 4. Be it further enacted, That whenever a watch
shall be so appointed and agreed upon different from a consta-
ble’s watch, the number and qualifications of the persons,
whereof it shall consist, shall also be agreed upon by the said
inhabitants of the town, observing the rule prescribed in the
first section of this Act; and one sober, discreet, able-bodied
householder shall be appointed officer of the watch, by said
justices and selectmen, or selectmen alone (as the case may
be) to take the charge and command of such watch, who, as
the badge of his office, shall carry a quarter-pike, with a spire
on the top thereof; and every watchman, as well in this as
in the constable’s watch, shall carry a staff with a bill fasten-
ed thereon, as is usual. And the powers and duties of the
said officer and watchmen shall be the same as are before
prescribed in the second section of this Act, in the case of a
constable’s watch.

Sect. 5. Be it further enacted, That if any person liable to
watch or ward as aforesaid, being duly warned by the officer
of the watch or constable, or by another person appointed by
such officer or constable, shall refuse or neglect to appear and
attend his duty in that respect, either by himself or some other
sufficient person in his stead, and be thereof convicted before a
Justice of the Peace, either by the oath of the constable, offi-
cer or other sufficient testimony, on oath, without a just and
reasonable excuse to be made and given for the same, he shall
forfeit and pay for each offence the sum of one dollar, to the
use of the poor of the town or district; the same, with costs
of prosecution, to be levied by distress and sale of the goods

Constable to
carry a badge.

Court of ses-
sions may di-
rect apportion-
ment of ex-
panse of watch-
es upon towns
that agree to
support them
in a manner
not provided
for by this act.

Officer of each
night’s watch,
to be appoint-
ed, when con-
stable’s watch
is not kept.

His equip-
ments.

Penalty for re-
using to
watch.
Penalty for neglect in an officer of the watch.

Selectmen to be attended when they walk by night.

Gaoler's fee for commitments under this law.

Penalty for riding with naked scythes.

Assembling armed or in disguise, with imagery, &c. prohibited.

Sect. 6. Be it further enacted, That when the said Justices of the Peace and selectmen shall think fit to walk by night to inspect the order of the town wherein they dwell, such of said constables and watchmen shall attend them as shall be required to do the same, and obey their lawful commands.

Sect. 7. Be it further enacted, That the fee to the gaoler for each person taken up in the night and committed to be secured only till the next day, shall be twenty-five cents and no more.

Sect. 8. Be it further enacted, That if any person shall ride with a naked scythe on the highways or through any lanes, streets or alleys, the person so offending shall forfeit and pay for each offence two dollars.

Sect. 9. Be it further enacted, That if any three or more persons, being any or all of them armed with sticks, clubs or any kind of weapons, or being in any manner disguised, shall assemble together, having any imagery or pageantry as a public shew, in any of the streets or lanes in any town or district in this Commonwealth; or if any person or persons of or belonging to any company, having any kind of imagery or pageantry for a public shew, shall, by menaces or otherwise, exact, require, demand or ask any money or other thing of value, from any person in the streets, lanes or houses in any such town or district, every person being of or assembled with such company shall for each offence forfeit and pay eight dollars, or be imprisoned not exceeding one month.

Sect. 10. Be it further enacted, That if any persons, to the number of three or more, between sunsetting and sunrising, being assembled together in any of the streets or lanes in any town or district, shall have any kind of imagery or pageantry for a public shew, although none of the company so assembled shall be armed or disguised, or exact, demand or ask any money or thing of value, every person being of such company shall forfeit and pay the sum of eight dollars, or be imprisoned not exceeding one month.

Sect. 11. Be it further enacted, That if any person or persons shall set fire to any pile or combustible stuff, or be any ways concerned in causing or making a bonfire in any street or lane, or any other part of any town or district within this Commonwealth, such bonfire being within ten rods of any house or building, every person so offending, shall for each offence forfeit and pay the sum of eight dollars, or be imprisoned not exceeding one month. The several fines in the eighth, ninth, tenth and eleventh sections of this Act, shall be recovered, with costs of prosecution, one moiety of said fines to the
use of the poor of the town or district wherein the offence shall be committed, and the other moiety to him or them who shall sue for the same; and all masters are hereby made liable to pay the several fines as aforesaid, in this and the two next preceding sections, for the offences of their servants; and all parents for the offences of their children under age and not being servants.

Sect. 12. Be it further enacted, That the six Acts, the subject matter whereof is included in this Act, to wit: An Act passed A. D. sixteen hundred and ninety-nine, for keeping watches in towns; another Act passed A. D. seventeen hundred and three, to prevent disorders in the night; a clause in an Act passed seventeen hundred and eleven, to prevent riots and disorders in streets in the night; another Act in addition to said Act respecting watches in towns, passed A. D. seventeen hundred and twelve; another Act passed A. D. seventeen hundred and twenty-six, to prevent persons from riding with naked scythes; and another Act passed A. D. seventeen hundred and fifty-two, and continued in force to November first, seventeen hundred and ninety-seven, to prevent tumultuous and other assemblies, and bonfires in streets and lanes in towns, be and the same are hereby repealed; except, however, the same shall remain in force, for the purpose of collecting any fines incurred by virtue thereof. [March 10, 1797.]

An Act for regulating the taking of Shad, Alewives, and other Fish in Neponset-River, and the several streams from the ponds called Punkapog and Massapog. [March 10, 1797.] Add. act—1798 ch. 53. Repealed—1809 ch. 46.

An Act to incorporate certain Proprietors of Meadow Lands lying on Charles River, within the Towns of Newton, Dedham and Needham, for the purpose of Draining off the stagnant Waters, and for the better improving the same. [March 10, 1797.]

An Act in addition to an Act, entitled, “An Act for regulating Pilotage in several Ports in this Commonwealth,” and for otherways regulating the Pilotage of the Port of Boston.

WHEREAS the provisions in said Act made for regulating the pilotage for the port of Boston, have been found insufficient to answer the purposes intended:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That so much of the Act passed on the eleventh day of July, one thousand seven hundred and eighty-three, entitled, “An Act for regulating Pilotage in several Ports in this Commonwealth,” as relates to the appointing and regulating of pilots and pilot-boats for the port of Boston, be and is hereby repealed.

Sect. 2. Be it further enacted by the authority aforesaid, That from and after the first day of April, one thousand seven hundred and ninety-seven, no person shall undertake to pilot any vessel drawing nine feet of water or more (coasters and fishing vessels excepted) into or out of harbour of Boston without having first obtained a commission or branch, as is here-in after provided, under the penalty of fifty dollars for each offence.

Chap. 83. 1791 ch. 45.

Chap. 84. 1793 ch. 13.

Chap. 85. Part of a former Act repealed.

Preamble. 1793 ch. 13.

Penalty for piloting without authority. Altered—1819 ch. 45.
Inward and outward pilots of Boston, to be appointed:
Not to interfere with each other, under penalty.

Pilots to be recommended by the Marine Society.

Pilots and deputies to be sworn.

Form of the oath.

YOU, A. B. do swear (or affirm, as the case may be) that you will perform the duties of an inward or outward bound pilot (as the case may be) for the harbour of Boston, according to your best skill and judgment, agreeably to the laws of this Commonwealth. So help you God.

To give bonds.

And each of said branch-pilots, of both divisions, shall enter into bonds, with sufficient sureties, to the Treasurer of this Commonwealth, in the sum of two thousand dollars, for the faithful discharge of duty both for themselves and every one employed under them: And also that he will give up his commission or branch whenever demanded as aforesaid. And each pilot, of both divisions, being commissioned and qualified as aforesaid, is hereby empowered and directed by himself or his deputy, to take charge of any vessel drawing nine feet of water and upwards (coasting and fishing vessels excepted) bound into or out of the port aforesaid, and shall pilot such vessel accordingly, first shewing to the master thereof his branch or warrant, and stating to him the amount of his fees.

Sect. 5. Be it further enacted, That every pilot and deputy, appointed as aforesaid, shall, before his entering upon the business of his office, take the following oath or affirmation before some Justice of the Peace, viz.

To take charge of vessels.

1799 ch. 59.

Inward pilots to keep a decked boat of 12 tens.

Sect. 6. Be it further enacted, That each branch of the inward pilotage shall always keep one staunch decked boat, not less than twelve tons, in good repair and calculated to ply in
the bay in all weathers, for the purposes aforesaid, to be furnished with at least three good pilots, and shall be stationed in some place near the entrance of the harbour, convenient for the purpose aforesaid.

Sect. 7. Be it further enacted, That the Governor, with the advice of Council, be and he hereby is empowered and requested to determine and fix the fees of pilotage of the several pilots for said harbour of Boston, from time to time, having respect to the different risk and hazard of the inward and outward divisions, and according as the circumstances of peace or war and the seasons of the year may severally require, and to specify the same on their respective warrants, and also to transmit to the custom-house for the port of Boston and Charlestown a schedule of said fees, to be hung up in that office for public inspection and information.

Sect. 8. Provided nevertheless, and be it further enacted, That any master of a vessel from a foreign port, who may choose to hazard the pilotage of his vessel into the said harbour, shall be at liberty so to do, subject however to pay such pilot as shall first come or offer to come on board his vessel without the light-house, at the entrance of said harbour, one half pilotage, according to the fees specified in his warrant: And such pilot is hereby empowered, on the refusal of the payment thereof, by action on the case, to sue for and recover the same.

Sect. 9. Be it further enacted, That any master of a vessel bound into the port aforesaid, whose vessel shall not be boarded or offered to be boarded by a pilot of the inward division aforesaid until he shall arrive within the light-house aforesaid, may, if he see fit, be the pilot of his own vessel into the port aforesaid, without being subject to the payment of any pilotage whatever: And if such master of any vessel shall receive a pilot within the light-house aforesaid, he shall not be compelled to pay more than half pilotage, according to the fees specified on the warrant.

Sect. 10. Be it further enacted, That if any vessel, while under the charge and direction of a branch or warrant-pilot or his deputy, of the port aforesaid, shall be lost, cast away or run aground through the unskilfulness or neglect of such branch or warrant-pilot or his deputy, in that case such branch or warrant-pilot shall be liable, not only for himself but for his deputy, to pay the just value of the vessel and her cargo or whatever damage may be sustained thereby, to be sued for and recovered by the owner or owners, insurer or insurers thereof, in any court proper to try the same.

Sect. 11. And be it further enacted, That it shall be the duty of every pilot or his deputy of the inward division of the port aforesaid, after having brought any vessel into the port aforesaid, to see such vessel properly moored in the stream or secured at the wharf, at the option of the master, within twenty-four hours after the arrival of such vessel.

Sect. 12. And be it further enacted, That the hull and appurtenances of all vessels so pilot ed into or out of the harbour

Governor and Council to fix fees of pilotage.

Captains refusing a pilot, to pay half pilotage.

Altered—1819 ch. 45.

Pilots to offer themselves without the light-house; or may be refused.

Altered—1819 ch. 45.

Pilots to pay for vessels lost or injured through their unskilfulness, &c.

Inward pilots to secure vessels they bring in.

Hulls of vessels liable for pilotage.
1796. — Chap. 86—88.

Aforesaid, shall at all times within the space of sixty days, be liable for the charges of pilotage, agreeably to the terms herein before expressed. [March 10, 1797.] Add. acts—1797 ch. 13: (1818 ch. 125 repealed) 1819 ch. 45.

Chap. 86.
1798 ch. 18.

An Act to repeal an Act passed the twentieth day of June, one thousand seven hundred and eighty-eight, entitled, "An Act to prevent the Destruction of Salmon and Shad in Connecticut-River." [March 11, 1797.]

Chap. 87.

An Act to authorize the Supreme Judicial Court, now sitting in Boston, again to convene the Grand-Jury thereof. [March 10, 1797.]

Chap. 88.
10 Ann. ch. 2.
25 Geo. III. ch. 2.

Fire-wards to be chosen in town meetings.

Penalty for not serving.

To attend at fires.

Power of fire-wards, &c. to order the pulling down of buildings—

—to require assistance—

—to direct engine-men.

Penalty for not obeying fire-wards.
fire-wards or officers in the premises, the person so offending shall forfeit and pay for each offence ten dollars.

Sect. 3. Be further enacted, That if the pulling down or demolishing of any house or building, by the directions aforesaid, shall be the means of stopping the said fire; or if the fire stop before it come to the same, then every owner of such house or building shall receive a reasonable compensation and be paid for the same by the inhabitants of the town in which the fire shall happen: And it shall be the duty of the qualified voters in such town, to grant such sum or sums of money as shall be thought necessary and proper by the selectmen of the same town, and of the assessors to assess the same: Provided always, That when it shall be adjudged fit that the house or building where the fire shall first begin and break out should be pulled down or demolished to prevent the further spreading and increase of the same fire, then the owner of such house or building shall receive no compensation for the same. Provided also, That if any person shall find him or herself aggrieved by the doings of the town, selectmen or assessors thereof, in estimating, voting or assessing such sum or sums, he or she shall have a right to appeal and complain to the next Court of General Sessions of the Peace to be holden in the county; and the said court thereon shall have power, on a consideration of all the circumstances of the case, to confirm said doings of said town, selectmen or assessors, or to alter the same in such manner as the said court shall judge proper; and in either case to award legal costs, as the justice of the case may require; and the collectors, to whom the said assessments shall be committed to collect, shall have the same powers, and be subject to the same duties, as in the collection of other town taxes, as well in collecting an assessment so confirmed or altered, as in cases wherein there shall be no appeal.

Sect. 4. Be it further enacted, That if any person shall, in such case of fire, plunder, purloin, embezzle, convey away or conceal any furniture, goods or chattels, rights or credits, merchandize or effects of the inhabitants whose houses or buildings shall be on fire or endangered thereby, and said inhabitants shall be put upon removing the same, and shall not restore or give notice thereof to the owner (if known) or to one of the fire-wards of the town, or bring them into such public place as shall be assigned by the selectmen of the town within two days after public notice shall be posted in some public place in the town by the selectmen thereof for that purpose; the person or persons so offending, and being thereof convicted, shall be deemed guilty of larceny, and punished accordingly.

Sect. 5. Be it further enacted, That if any person shall occupy or improve any tenement or building whatever, in any part of any maritime town in this Commonwealth, for the business or employment of a sail-maker, or rigger, or keeper of a livery-stable, except only in such parts of the town as the selectmen thereof, or a major part of them, shall direct and determine, such sail-maker or rigger so offending shall forfeit and pay for each offence ten dollars; and such keeper of a livery-
stable shall forfeit and pay for each offence fifty dollars for every month so occupying the same, and so in proportion for a longer or shorter time.

Sect. 6. Be it further enacted, That the several fines or forfeitures aforesaid shall be two third parts thereof to the use of the poor of the town where the offence shall be committed, and the other third thereof to him or them who shall inform and sue for the same; and shall be recoverable, with costs of suit, in any court proper to try the same.

Sect. 7. Be it further enacted, That if any person or persons shall wittingly and willingly set fire to any woods or lands lying in common, or to wood-land or other land held in severity and not his own, within this Commonwealth, without leave first had and obtained from the owners of the land or those who have a right to give the same leave, excepting in cases in which it may become necessary to make back-fires to stop the progress or subdue any fire that may be spreading, the person so offending shall forfeit and pay for each offence ten dollars, one moiety thereof to the use of the Commonwealth, and the other moiety thereof to the use of him or them that shall inform and sue for the same; and shall be liable, in a special action on the case, to pay damages to all persons injured by such fire, including the injury which may be done by any necessary back-fire made for the purpose aforesaid. And in case any person under age shall offend against this Act, such penalty shall be recovered of the parent or master respectively, of such person under age, unless it shall appear such person under age was employed or directed by some person other than the parent or master; in which case the person so employing or directing shall be liable therefor; and the fines in this section mentioned may be recovered in an action of debt, with costs of suit.

Sect. 8. Be it further enacted, That this Act shall take effect and be in force on and after the first day of July next; and that an Act passed Anno Domini seventeen hundred and forty-four, for the speedy extinguishment of fire and preserving goods endangered by it; and another Act passed Anno Domini seventeen hundred and fifty-three, and continued in force to November next, to prevent firing woods; and another Act passed Anno Domini seventeen hundred and sixty-two, and continued in force to November next, to prevent damage by fire in the maritime towns; and a clause in an Act passed Anno Domini sixteen hundred and ninety-two, empowering two or three chief military or civil officers of the town to direct the pulling down or demolishing of houses in certain cases of fire, shall, on and after the said first day of July next, be repealed; except the same shall remain in force for the collection of such fines as shall accrue under the same before that time. [March 10, 1797.]
An Act in addition to an Act, entitled, "An Act providing for the due Observation of the Lord's Day, and repealing the several Laws heretofore made for that purpose."

WHEREAS in the first, second, third and fifth enacting clauses in the said Act, the several penalties annexed to the several offences therein described, are found to be too low, and not so appropriated as to answer the purposes intended thereby: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the penalties aforesaid be and the same hereby are increased as follows, to wit: The penalties annexed to the offences described in the said first and second enacting clauses shall be not more than six dollars and sixty-six cents, nor less than four dollars, for each offence. And the penalties of ten shillings, annexed to the offences first mentioned in said third enacted clause, shall be increased to three dollars and thirty-three cents; and the said fine in the same clause, not exceeding ten shillings, nor less than five, shall be not less than two dollars, nor more than four, for each offence; and the said fine of twenty shillings, last mentioned in the same clause, shall be six dollars and sixty-six cents, for each offence; and the said fines of ten shillings, twice mentioned in said fifth enacted clause, shall be, for each offence in each case, three dollars and thirty-three cents.

Sect. 2. Be it further enacted, That the fines and penalties aforesaid shall be one moiety thereof to the town* wherein the offence shall be committed, and the other moiety thereof to any person or persons who shall inform and sue for the same; to be recovered by a complaint to a Justice of the Peace, with costs of suit, or the said fines may be recovered by presentment of the grand jury before the Court of General Sessions of the Peace in the county wherein the offence or offences shall be committed; and when thus recovered, shall enure to the town wherein the offence shall be committed.

Sect. 3. And be it further enacted, That no owner or driver of any hackney-carriage, belonging to the town of Boston, shall drive said hackney-carriage into or from said town on the Lord's Day, without first having obtained a certificate of permission from some Justice of the Peace within said town for himself and each and every passenger by him so carried, on the pain and penalty of forfeiting his license for setting up, keeping and driving said hackney-carriage, for the term of three years next after committing such offence. [March 11, 1797.] Further add. act—1815 ch. 135.

An Act in Explanation of and in addition to an Act, entitled, "An Act for incorporating a certain Part of the Town of Lee into a School District by the name of The Hopland School District." [March 11, 1797.] Further add. acts—1798 ch. 7: 1810 ch. 48.

An Act in addition to an Act passed March ninth, seventeen hundred and ninety-two, entitled, "An Act regulating the taking of the Fish called Alewives, in the several Streams emptying into Merrimack-River in the Town of Andover." [March 11, 1797.]
An Act to incorporate Isaac Lane, and others, for the purpose of building a Smow-Way from a place called Buxton-Mill-Dam, to a place called Cook's-Eddy, in the Plantation of Little Falls. [March 11, 1797.]

An Act for incorporating Michael Little, and others, by the name and style of The Proprietors of the Ten Mile Falls Canal. [March 11, 1797.]

An Act to secure the Town of Boston against Damage from Fires. [March 11, 1797.] Repealed—1797 ch. 31.

An Act in addition to an Act, entitled, "An Act establishing a Supreme Judicial Court within the Commonwealth."

WHEREAS in the practice under the said Act it has been found inconvenient, that the records of the proceedings of the Supreme Judicial Court in the distant counties should be kept in the town of Boston:

Sect. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the first day of August next, the clerks of the Courts of Common Pleas, in their respective counties, excepting those of Lincoln, Hancock, Washington, Dukes County and Nantucket, shall become clerks of the Supreme Judicial Court, and shall have the keeping of the records of the doings and proceedings of the said court in their respective counties, and shall do and perform all the services now done and performed by the clerk of said court within the town of Boston, and receive the same fees for said services as provided in the fee-bill for the clerks of the courts of Common Pleas.

Sect. 2. And be it further enacted, That it shall be the duty of the said clerks of the Courts of Common Pleas, in their respective counties, to attend on the Justices of the Supreme Judicial Court, at the term next to be holden therein after the first day of August next; and after having given bonds in the same manner as clerks of the Supreme Judicial Court are by law required to do, for the faithful discharge of their trust, and being sworn to the faithful discharge of the duties of their office (which oath shall be administered by the eldest justice of said court present) shall proceed to do and perform all the services now done and performed by the clerk of said court within the town of Boston. And the circuit-clerk of said court shall continue to discharge that part of the duty heretofore performed by him,* and to receive and keep to his own use that part of the clerk's fees which he has usually so received and kept, and pay over the residue of the clerk's fees to the other clerks respectively.

Sect. 3. And be it further enacted, That such of the persons now holding the office of clerk of the Court of Common Pleas, in the respective counties (except in the five counties excepted as aforesaid) as the Justices of the Supreme Judicial Court may consider incompetent, unsuitable or unqualified to discharge the duties of that office, may be by them removed and others appointed in their stead: And that on the death, resignation or removal of any such clerk in future, the Justices of the Courts of Common Pleas, in their respective counties, may appoint a clerk, who, after having given bonds as aforesaid.
and being sworn to the faithful discharge of the duty of the office by one of the justices of said court, shall discharge said duty until the Justices of the Supreme Judicial Court shall have opportunity to fill the vacancy, which they are hereby authorized to do.

**Sect. 4.** *And be it further enacted,* That the clerks who shall be appointed by the Justices of the Supreme Judicial Court as aforesaid, shall be the clerks of the Courts of Common Pleas for the respective counties in which they shall be appointed.

**Sect. 5.** *And be it further enacted,* That the clerk of the Court of Common Pleas for the county of Suffolk, for the time being, shall be the clerk of the Supreme Judicial Court for the counties of Suffolk and Nantucket; that the clerk of the Court of Common Pleas for the county of Barnstable, for the time being, shall be the Clerk of the Supreme Judicial Court for the counties of Barnstable and Dukes County, until such time as shall be otherwise provided for by law.

**Sect. 6.** *And be it further enacted,* That after the said first day of August next, the files and records of the said Supreme Judicial Court, now kept in the office of the clerk of said court in the town of Boston, shall be removed to and kept in the office of the clerk of the Court of Common Pleas, by the clerk of said court for the time being, within the county of Suffolk, who shall have the custody and care of said files and records, and shall forever hereafter be the proper person to make out copies of and certify the same, and to make out any execution which may be necessary to carry into effect any judgment recovered in the Supreme Judicial Court in any county previous to the first day of August.

**Sect. 7.** *And be it further enacted,* That there shall be appointed, by the Justices of the Supreme Judicial Court, a suitable person to be clerk of the Supreme Judicial Court for the counties of Lincoln, Hancock and Washington, to reside and keep the records of said court at such place within the county of Lincoln as the said court shall direct; which clerk shall perform all the services, and be entitled to all the fees which are by this Act required of and provided for the clerks of the Court of Common Pleas, who are by this Act made clerks of the Supreme Judicial Court.

And to preserve uniformity in the keeping of the said records:

**Sect. 8.** *Be it further enacted,* That it shall be the duty of the circuit-clerk from time to time to give such directions to the clerks for the respective counties, as he may judge necessary to effect that object, subject at all times to the same control which the Justices of the Supreme Judicial Court now exercise relative thereto. [March 11, 1797.] Further add. act—1801 ch. 6.

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**An Act to alter name of the Town of Harrington, in the County of Lincoln, and to designate the Parishes in said Town.** [June 9, 1797.]

**An Act to change the name of James Cody, to the name of James Cody Athorp.** [June 9, 1797.]

**Chap. 1.**

1796 ch. 49.

**Chap. 2.**

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Chap. 3. An Act to prevent the destruction of the Eel Fishery in the Town of Orleans, in the County of Barnstable, and to preserve and regulate the same in the several Cores and Salt-Ponds within the said Town. [June 17, 1797.]

Chap. 4. An Act to incorporate Plantation Number Five, west of Machias, in the County of Washington, into a Town by the name of Harrington. [June 17, 1797.]

Chap. 5. An Act in addition to an Act, entitled, "An Act to incorporate the Congregational Society in the town of Norton, into a distinct Parish, and also to incorporate a Committee of the said Society for certain purposes," passed March fourth, one thousand seven hundred and eighty three. [June 17, 1797.]

Chap. 6. An Act for establishing the Rates of Toll at the Patucket-Canal, and for other purposes. [June 17, 1797.]

Chap. 7. An Act to prevent the catching Fish with Seines in Fresh-Pond (so called) in the Towns of Cambridge and Watertown. [June 17, 1797.]


Chap. 9. An Act to erect Derby-School, in the north Parish in Hingham, into an Academy by the name of Derby Academy. [June 17, 1797.]

Chap. 10. An Act to incorporate the South Eleven Thousand Acres (so called) in the County of Berkshire, into a District by the name of Southfield. [June 19, 1797.] Sandisfield and Southfield made one town by the name of Sandisfield—1818 ch. 52.

Chap. 11. An Act to incorporate a number of inhabitants of Woolwich and Bowdoinham, in the County of Lincoln, into a Society by the name of The Baptist Society in Woolwich and Bowdoinham. [June 20, 1797.]

Chap. 12. An Act for incorporating a number of the inhabitants of North-Yarmouth and Freeport, in the County of Cumberland, into a distinct and separate religious Society by the name of The Baptist Religious Society in North-Yarmouth and Freeport. [June 20, 1797.]

Chap. 13. An Act in addition to an Act, entitled, "An Act in addition to an Act, entitled, An Act for regulating Pilotage in several Ports in this Commonwealth, and for otherways regulating the Pilotage of the Port of Boston."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the penalties, incurred by any breach of said Act, may be recovered in an action of debt, to be brought in any court proper to try the same, by any person who shall first sue for the recovery thereof, to his own use. [June 21, 1797.]

Chap. 14. An Act to enable the Treasurer of this Commonwealth, and the Treasurers of Counties, Towns, and other Corporations for the time being, to commence and prosecute Suits at Law, upon Securities given to their Predecessors.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the Treasurer of this Commonwealth, the treasurers of counties, towns, parishes, and other corporations for the time being, be and hereby are authorized and empowered, in their own names and capacities, respectively, to commence and prosecute to final judgment and execution any suit or suits at law, upon any bonds, notes or other securities which have been or shall be given to them or their predecessors in said capacity; and to prosecute to final judgment and execution any suits which have been or shall be commenced by their said predecessors in said capacity, during their continuance in office, and pending at the time of their removal therefrom. [June 22, 1797.]
**An Act to prevent the spreading of contagious Sickness.**

**Sect. 1.** BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That for the better preventing the spreading of infection, when it shall happen that any person or persons coming from abroad, or belonging to any town or place within this State, shall be visited, or shall lately before have been visited with the plague, small-pox, pestilential or malignant fever, or other contagious sickness, the infection whereof may probably be communicated to others; the selectmen of the town, where such person or persons may arrive or be, are hereby empowered to take care and make effectual provision in the best way they can, for the preservation of the inhabitants, by removing such sick or infected person or persons, and placing him or them in a separate house or houses, and by providing nurses, attendance, and other assistance and necessary for them; which nurses, attendance, and other assistance and necessary shall be at the charge of the parties themselves, their parents or masters (if able) or otherwise at the charge of the town or place whereunto they belong; and in case such person or persons are not inhabitants of any town or place within this State, then at the charge of the Commonwealth.

**Sect. 2.** And be it further enacted, That any person or persons coming from any place out of this State, where the small-pox or other malignant distemper is prevailing, into any town within this State, shall, when thereto required by the selectmen of such town, within the space of two hours from the time they shall be first informed of their duty by law in this particular, give notice to one or more of the selectmen or the clerk of such town, of their coming there, and of the place from whence they came, upon pain of forfeiting, in case of neglect, the sum of one hundred dollars. And such person or persons, if not disabled by sickness, shall, within the space of two hours after warning given to him or them by the selectmen of such town for that purpose, depart from this State in such manner, and by such road, as the said selectmen shall direct; and in case of refusal, it shall be lawful for any Justice of the Peace in the county where such town may lie, by
warrant directed to a constable or other proper officer, or other person whom the justice shall judge proper, to cause such person or persons to be removed into the State from whence he or they may have come. And any person removed by warrant as aforesaid, who, during the prevalence of such distemper, shall presume to return into any town of this State without liberty first obtained from such justice, shall forfeit and pay the sum of four hundred dollars; and any inhabitant of this State, who shall entertain in his house any person warned to depart as aforesaid, for the space of two hours after notice given him of such warning by one or more of the selectmen aforesaid, shall forfeit and pay the sum of two hundred dollars.

Sect. 3. And be it further enacted, That it shall and may be lawful for the selectmen of any town near to, or bordering upon either of the neighbouring States, to appoint, by writing, under their hands, some meet person or persons to attend at ferries or other places by or over which passengers may pass from such infected places; which person or persons, so appointed, shall have power to examine such passengers as they may suspect to bring infection with them, and, if need be, to hinder and restrain them from travelling, until licensed there-to by a Justice of the Peace within such county, or by the selectmen of the town in which such person or persons may come; and any passenger who, coming from such infected place, shall (without license as aforesaid) presume to travel within this State, unless it be to return by the most direct way to the State from whence he came, after he shall be cautioned to depart by the person or persons appointed as aforesaid, shall forfeit and pay the sum of one hundred dollars; the several forfeitures aforesaid to be recovered by action of debt in any court of record proper to try the same, one moiety to and for the use of the town where the offence shall be committed, the other moiety to the use of the person who may sue for the same.

Sect. 4. And be it further enacted, That if need be, any two Justices of the Peace may make out a warrant directed to the sheriff of the county or his deputy, or constables of the town or place where any such sick person or persons may be, requiring them or any of them, in the name of the Commonwealth, with the advice and direction of the selectmen of the same, to remove such infected person or persons, or to impress and take up convenient houses, lodging, nurses, attendance and other necessaries, for the accommodation, safety and relief of the sick. And such sheriff, his deputy and constable, are hereby authorized and required to execute such warrant accordingly.

Sect. 5. And be it further enacted, That whenever there shall be brought into any town within this State, either from any other town therein, or from parts without the State, any baggage, clothing or goods of any kind whatsoever, and it shall be made to appear by the selectmen of the town to which such baggage, clothing or other goods shall be brought, or by
the major part of such selectmen, to the satisfaction of any Justice of the Peace, that there is just cause to suspect baggage, clothing or other goods to be infected with the plague, small-pox, pestilential fever, or other malignant contagious distemper, it shall be lawful for such Justice of the Peace, and he is hereby required, in such case, by warrant under his hand and seal, directed to the sheriff or his deputy, or any constable of the town in which such baggage, clothing or other goods shall be, requiring him to impress so many men as said justice shall judge necessary to secure such baggage, clothing or other goods, and said men to post as a guard and watch over the house or other place or places where such baggage, clothing or other goods shall be lodged; which guard and watch are hereby required to take effectual care to prevent such baggage, clothing or other goods being removed or intermeddled with by any persons, whatsoever, until due inquiry be made into the circumstances thereof, requiring likewise the said sheriff, his deputy or the constable aforesaid, if it shall appear necessary, with the advice and direction of said selectmen, to impress and take up convenient houses or stores, for the receiving, lodging and safe keeping of such baggage, clothing or other goods, until the same shall be sufficiently cleansed from infection: And in case it shall appear highly probable to the said justice that such baggage, clothing or other goods are infected as aforesaid, he is hereby empowered and directed to issue his warrant in manner as aforesaid, requiring said sheriff, his deputy or any constable, or other person therein specially named, to remove said baggage, clothing or other goods, to some convenient place where there shall be the least danger of the infection spreading; there to remain until the same shall be sufficiently aired and freed from infection, in the opinion of said selectmen: And the said sheriff, deputy-sheriff or constable, in the execution of said warrants, are empowered and directed, if need be, to break up any house, warehouse, shop or other place particularly mentioned in said warrant, where such baggage, clothing or other goods shall be; and in case of opposition, to require such aid as shall be necessary to effect the execution of said warrants and repel such opposition; and all persons are hereby required, at the commandment of either of the said officers, having either of the warrants aforesaid, under penalty of ten dollars, to be recovered before any Justice of the Peace in the county where such opposition may happen, to assist such officer in the execution of the same warrant against any opposition as aforesaid; and the charges of securing such baggage, clothing or other goods, and of airing and transporting the same, shall be borne and paid by the owners thereof, at such rates and prices as shall be set and appointed by the selectmen of the town where such baggage, clothing or other goods shall be, to be recovered by action of debt, by any person or persons who may have been employed in the business aforesaid, in any court of record proper to try the same.

To be guarded.

If necessary, to be stored till free from infection.

Or may be removed to a distance.

Warehouses, &c. may be broken in search of infected baggage &c.

Citizens to afford assistance if called upon.

Expenses of removed, &c. to be paid by the owner.
Inquiry to be made of vessels passing the castle.

Vessels to be detained if conceived infectious.

[Castle-Island ceded to the U. States—1798 ch. 13. and powers of selectmen transferred to the Board of Health.]

Penalty for falsely answering at the castle.

Goods supposed free from infection, may be permitted to be landed.

Persons landing or holding communication with persons on shore, forbidden till legally permitted.

SECTION 6. And be it further enacted. That inquiry shall be made by the officer or other person on duty at the castle in the harbour of Boston, of every vessel coming from sea, and passing by the said castle, whether any infectious sickness be on board, or has been on board since such vessel left the port from whence she last came: And if any such vessel has any sickness on board, or has had any on board since her leaving such port, in such case, orders shall be given by said officer, or other person on duty, to the master or commander of such vessel, immediately to anchor and to remain at anchor until a certificate shall be obtained from the major part of the selectmen of the town of Boston, that they are of opinion such vessel may come up to the town without danger to the inhabitants, or until the said master or commander shall receive orders from the said selectmen to anchor his vessel near the hospital on Rainsford's Island, in the harbour of Boston. And in case any master or commander of a vessel shall, by himself, or the people on board, make false answer, when inquired of as aforesaid by the officer or other person on duty as aforesaid, or, after orders are given as aforesaid, shall neglect or refuse to anchor near the castle as aforesaid, or come on shore, or suffer any passenger or other person belonging to the vessel to come on shore, or any goods to be taken out before the vessel shall have anchored, or without liberty from the selectmen as aforesaid; or in case any master or commander of a vessel ordered to anchor near the hospital aforesaid shall neglect or refuse so to do; in every such case, every master or commander so offending shall forfeit and pay for each offence the sum of four hundred dollars, or suffer six months' imprisonment.

SECTION 7. And be it further enacted. That upon application made to the selectmen of the town of Boston by any master or commander of any vessel at anchor near the hospital as aforesaid, the said selectmen are hereby empowered to permit such passengers, goods or lading, as they shall judge free from infection, to come on shore, or to be taken out and disposed of as the owners shall see fit; and such passengers and goods, as shall not be permitted as aforesaid, shall remain on board, or be landed on said island. And if any master or commander of any such vessel, for the time being, shall come on shore, or suffer any of his people or passengers to come on shore, or any boat to come on board, or suffer any goods to be taken out of his vessel, unless permitted as aforesaid, or shall come up to said town with his vessel, until by a certificate under the hands of said selectmen, or the major part of them, it shall appear, that said vessel, company and goods are clear of infection, and the orders for stopping the same be removed or taken off, he shall, for every such offence, forfeit the sum of two hundred dollars; and in case he be not able to pay that sum, he shall suffer three months' imprisonment. And if any sailors or passengers coming in said vessel shall, without the knowledge or consent of the master or commander, presume to come on shore, or up above the castle aforesaid, or if any person shall
knowingly presume to go on board from shore, or go to the aforesaid house or island in time of infection there, without leave as aforesaid, or if any person put sick into the said house, or sent there on suspicion of being infected, shall presume to go off the said island without leave as aforesaid; any person, offending in any of the particulars above mentioned, shall forfeit the sum of two hundred dollars; and in case such person be not able to pay said forfeiture, he shall suffer two month's imprisonment: All prosecutions for offences contrary to this and the preceding section, shall be by indictment or information in the Supreme Judicial Court or Court of General Sessions of the Peace; and one moiety of all fines, mentioned in said sections, shall be to the use of the town of Boston, and the other moiety to the use of the selectmen of said town for the time being, whose particular duty it is hereby made to prosecute therefor.

Sect. 8. And be it further enacted, That whenever any ship or vessel, wherein any infection or infectious sickness hath lately been, shall come to any harbour within this State; or whenever any person or persons belonging to, or that may either by sea or land come into any town or place near the public hospital aforesaid, shall be visited, or shall lately before have been visited with any infectious sickness; two of the Justices of the Peace, or selectmen of such place, be and hereby are empowered immediately to order the said vessel and sick persons to the said hospital, there to be taken care of according to the directions of this Act. And where any such ship, vessel or persons cannot, without great inconvenience and damage, be ordered to the aforesaid hospital; in any such case, the rules and directions are to be observed, which are provided in the first enacting clause of this Act. And in case the master or mariners of any vessel, ordered to the hospital as aforesaid, shall refuse or delay for the space of six hours after such order being given to said master, or either of the owners of said vessel, or of the factors, or either of said owners of the goods, to come to sail, if wind and weather permit, in order to proceed to said hospital; such master so refusing shall forfeit and pay the sum of four hundred dollars, and each mariner so refusing, the sum of one hundred dollars; and in case they be not able to pay said sums, they shall suffer six months' imprisonment; one half of said fine to be to the informer, and the other half to the poor of the town or district to which such port or harbour belongs, and to be recovered in any court of record proper to try the same, by indictment or information.

Sect. 9. And be it further enacted, That if any master, seaman or passenger belonging to any vessel, on board which any infection is or may have lately been, or suspected to have been, or which may have come from any port where any infectious, mortal distemper prevails, shall refuse to make answer on oath to such questions as may be asked him or them relating to such infection, by the selectmen of the town to

1803 ch. 154, § 3.

Vessels may be ordered to Hospital Island.

Penalty for refusing to go to the hospital.

Penalty for refusing to answer properly, when questioned by the selectmen.
which such vessel may come (which oath the said selectmen are hereby empowered to administer) such master, seaman or passenger so refusing, shall forfeit the sum of two hundred dollars; and in case he be not able to pay said sum, he shall suffer six months' imprisonment; said penalty to be adjudged on prosecution by indictment on information in any court proper to try the same, one moiety of said fine to the use of the town where the offence may be committed, and the other moiety to the use of the selectmen thereof, whose particular duty it is hereby made to prosecute therefor.

And the selectmen of Boston are hereby authorized and directed to provide nurses, assistance and other necessaries, for the comfort and relief of such sick persons as may be sent to said hospital as aforesaid: The charge thereof to be borne by the said persons themselves, if able, or if poor and unable, by the towns to which they respectively belong; or if not inhabitants of any, particular town or other place within this State, then by the Commonwealth.

Sect. 10. And be it further enacted, That whenever the small-pox or other mortally infectious distemper shall prevail in any of the towns wherein the Supreme Judicial Court of this Commonwealth, the Courts of Common Pleas, or General Sessions of the Peace are to be held, at the times prescribed by law, or by their own adjournment, for their sitting in such town; the justices of the said courts, respectively, are hereby empowered to adjourn and hold said courts in any town within the same county, by proclamation to be made in the shire town, or as near the same as safety will, in their opinion, permit.

Sect. 11. Be it further enacted, That each town or district in this Commonwealth may, at their meeting held in March or April annually, or at any other meeting legally warned for the purpose, when they shall judge it to be necessary, choose and appoint a health-committee* to consist of not less than five, nor more than nine suitable persons, or one person to be a health-officer, whose duty it shall be to remove all filth of any kind whatever which shall be found in any of the streets, lanes, wharves, docks, or in any other place whatever within the limits of the town to which such committee or health-officer belongs, whenever such filth shall, in their judgment, endanger the lives or the health of the inhabitants thereof: All the expenses whereof to be paid by the person or persons who placed it there, if known; or if not, by the town by which said committee or health-officer was appointed. And whenever any filth as aforesaid shall be found on private property, said committee or health-officer shall notify and order the owner or occupier thereof, after twenty-four hours' notice, to remove the same, at their own expense; and in case said owner or occupier shall neglect to remove such filth from his or her property, after the expiration of the time aforesaid, he or they so offending shall forfeit and pay a fine of one hundred dollars, to be sued for and recovered, with costs of suit, by said committee or health-officer, before any court proper to try the

Nurses, &c. to be provided.

Courts may adjourn from infectious towns.

Health committee or officer may be appointed.

[* Repealed as to Boston—1799 ch. 10, § 18: as to Salem—1799 ch. 14: as to Marblehead—1801 ch. 43: as to Plymouth—1809 ch. 63. See 1818 ch. 12:1821 ch.21.]

Their power and duty. 1799 ch. 59.

Forfeiture for not removing filth.
same, for the use of the poor of the town in which such offence is committed: And said owner or occupier as aforesaid shall be liable and obliged to repay to said town all cost and charges which the said committee or health-officer may have incurred in removing the filth from his or her property; and in case of refusal to pay the same, he or they may be sued in the same way as is provided in this Act for the recovery of fines as aforesaid.

Sect. 12. And be it further enacted, That whenever any vessel shall arrive at any port other than Boston, within this Commonwealth, having on board any person visited with the plague, small-pox, malignant fever, or any other pestilential disease, the master, commander or pilot thereof, shall not bring such vessel up near the town of the port where she first arrives, until liberty be first granted, in writing, by the selectmen thereof; but they may bring such vessel to an anchor, in such place below the town as will be most for the safety of the inhabitants thereof, and the preservation of the vessel and the people on board, there to wait for orders from the selectmen of such town, before any passenger or person belonging to, or any thing on board the same, be brought on shore: And any master or commander of such vessel, who shall be found guilty of a breach of the law contained in this section, shall forfeit and pay a fine of two hundred dollars for every such offence, upon conviction thereof before any court proper to try the same. And any pilot who may go on board any such vessel and pilot the same up to the town, without liberty first had and obtained from the selectmen thereof as aforesaid, shall, upon conviction in manner as aforesaid, forfeit and pay a fine of fifty dollars for every such offence: All which fines contained in this section may be sued for and recovered, with costs of suit, in manner as aforesaid, by the selectmen of the town where the offence is committed, to and for the use of the same town.

Sect. 13. And be it further enacted, That a Law of this Commonwealth, made in the year one thousand seven hundred and one, providing in case of sickness; one other Law made in addition thereto in the year one thousand seven hundred and fifty-one; one other Law made in the year one thousand seven hundred and thirty, empowering Courts to adjourn and remove from the towns appointed by law for holding Courts, to other towns, in case of sickness by the small-pox; one other Law made in the year of our Lord one thousand seven hundred and fifty-seven, for regulating the Hospital on Rainsford's Island, and further providing in case of sickness; one Law passed the next year, in addition thereto; one other Law made in the year one thousand seven hundred and forty-two, to prevent the spreading of the small-pox, and other infectious sickness, and to prevent the concealing the same, be and they are hereby repealed, except that the same shall remain in force for the purpose of recovering all fines incurred by force thereof. [June 22, 1797.] Add. act—1799 ch. 59.
Chap. 17. An Act for incorporating certain persons for the purpose of building a Bridge over Deerfield-River (so called) where Williams'-Ferry is now kept, and for supporting the same. [June 22, 1797.] Add. act—1811 ch. 135.

Chap. 18. An Act empowering Seth Spring to build a Bridge across the main Branch of Saco-River, from Spring's-Island, in Biddeford, to Peppercornborough. [June 22, 1797.]


Chap. 20. An Act to incorporate certain persons by the name of The West Congregational Society in Dracut. [June 22, 1797.] Name altered—1819 ch. 96.

Chap. 21. An Act for removing Doubts which have arisen in the Construction of an Act passed in the year of our Lord one thousand seven hundred and eighty-four, entitled, “An Act describing the Power of Justices of the Peace.”

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That every Justice of the Peace, in his county, shall have full power and authority to hear and determine all debts, trespasses quare clausum fregit, and other trespasses and matters not exceeding the value of thirteen dollars and thirty-three cents and a third, excepting actions wherein the title to real estate is in question, and shall be specially pleaded by the defendant.

Sect. 2. Be it further enacted, That the amount of the sum or several sums specified, expressed, or supposed to be demanded by the plaintiff in his declaration, shall not be considered as any objection against the justice’s jurisdiction, provided the ad damnum, or damage, is not laid or stated to exceed thirteen dollars thirty-three cents and a third. [June 22, 1797.] Add. act—1807 ch. 123.

Chap. 22. An Act for altering the Boundary Line between the Towns of Needham and Natick, and for permitting sundry persons to annex themselves to certain Parishes. [June 22, 1797.]

Chap. 23. An Act to exempt the People called Quakers, from paying Taxes for the Support of Public Worship.

WHEREAS the Act for exempting persons called Quakers, from paying ministerial taxes, has expired:

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That all such persons as are of the religious sect or denomination of Christians called Quakers, within this Commonwealth, who allege a scruple of conscience relative to the right of paying taxes, assessed for the support of the settled ministers of churches or religious societies, be and they hereby are exempted from taxation, both for their polls and estates in their own hands and under their actual improvement, in any tax or assessment hereafter made for the raising any monies for the purpose of settling or supporting any such minister or ministers, or for building or repairing any meeting-house or other place for public worship; and are likewise exempted from collecting any taxes, granted for the purpose aforesaid: And to the intent that it may be better known who are to be exempted from taxation as aforesaid by this Act:
Sect. 2. Be it enacted, That no person or persons in any town, or district, or precinct, in this Commonwealth, shall hereafter be deemed or taken to be of the religious sect or denomination aforesaid, so as to have his, her or their poll or polls, or any estate to him, her or them belonging, exempted, by virtue of this Act, from paying any such ministerial or other taxes described as aforesaid—other than such persons whose names shall be contained in a list or lists taken and signed by the clerk, and two other members of some society of the aforesaid denomination, who shall be chosen by such society for that purpose, who shall therein certify in substance as followeth, viz.

WE, the subscribers, being a committee chosen and appointed by a religious sect or denomination of Christians called Quakers or Friends, to exhibit a list or lists of the names of such persons as belong to said society, do hereby certify, that do belong to said society, and they do frequently and usually, when able, attend with us in our stated meetings for religious worship, and we verily believe are of our religious persuasion.

Which certificate so signed, the said committee shall cause to be delivered to the town, district or precinct clerk where such person or persons named in such list or lists dwell, or have estates liable to be taxed, on or before the first day of September annually; and the clerk, on receiving such certificate, shall enter the same at large in the town, district or precinct book in his keeping, with the time when the same was delivered to him; and shall deliver an attested copy of such certificate, specifying the time when the same was delivered to him, to any person desiring the same, receiving therefor twelve and an half cents; which copy shall be received and taken as evidence on any trial respecting the taxing of the persons, whose names are contained in said certificate, for any ministerial charge or charges, or for building or repairing any meeting-house or other place for public worship.

Sect. 3. Be it further enacted, That no person, being of the sect or denomination aforesaid, shall be allowed the right of voting in any matter relating to the settlement or support of any minister, or for building or repairing any meeting-house or place for public worship in any town, district or precinct, in which he shall be inhabitant at the time of holding the meeting or meetings for such purpose, and who is at the same time exempted from taxes as aforesaid, except at a meeting of the religious society to which he belongs.

Sect. 4. Be it further enacted, That all taxes or assessments heretofore made for the purpose of settling or supporting any public teacher of piety, religion and morality, or building or repairing any house of public worship wherein the aforesaid denomination of Christians, called Quakers, have been omitted and not taxed, shall be considered and deemed as legal assessments, such omission notwithstanding: Provided, such taxes and assessments are in other respects legal. [June 23, 1797.] Add. act—1802 ch. 129.

Chap. 25. An Act to incorporate certain persons, Trustees to manage the Funds subscribed for the Permanent Support of a Minister of the Congregational Denomination in the east Parish in Granville, in the County of Hampshire. [June 23, 1797.]

Chap. 26. An Act to incorporate a number of the inhabitants of the Town of Uxbridge, in the County of Worcester, into a Society for religious purposes. [June 23, 1797.]

Chap. 27. An Act to incorporate certain persons by the name of The First Congregational Society in Dudley. [June 23, 1797.] Add. acts—1797 ch. 43: 1815 ch. 69.

Chap. 28. An Act to incorporate certain inhabitants of the Towns of Freetown, Taunton and Berkley, in the County of Bristol, by the name of The Baptist Society, composed of Inhabitants of the Towns of Freetown, Taunton and Berkley. [June 23, 1797.]

Chap. 29. An Act for incorporating a Charitable Association in the middle Parish in the Town of Granville. [June 23, 1797.]

Chap. 30. An Act in addition to an Act, entitled, "An Act directing the Method for laying out Highways."

WHEREAS doubts have arisen whether the Courts of General Sessions of the Peace, in their respective counties, are authorized by said Act to discontinue highways; for the removal thereof,

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That any Court of General Sessions of the Peace, upon petition or otherwise, may discontinue any highway or public road within the same county, in part or whole, whenever they shall be fully satisfied that it is not expedient that the same should be continued any longer.

SECT. 2. Be it further enacted, That all orders and determinations of the several Courts of General Sessions of the Peace heretofore had and passed, for the discontinuance of any highway or public road, shall be had and considered as good and valid, to all intents and purposes, as if said act, to which this is in addition, had explicitly vested said authority in said courts. [June 23, 1797.] Add. acts—1802 ch. 135: 1812 ch. 121: 1813 ch. 121: 1819 ch. 44.

Chap. 31. An Act to secure the Town of Boston against Damage from Fires. [June 23, 1797.] Repealed—1798 ch. 23.

Chap. 32. An Act to alter the Times of the Sitting of some of the Judicial Courts. [June 23, 1797.]

Chap. 33. An Act to ascertain and establish the Dividing Line between the Town of Dunstable and District of Tyngsborough, in the County of Middlesex. [Jan. 29, 1798.]

Chap. 34. An Act to incorporate Tobins Lord, Oliver Keating, Thacher Goddard, and others, for the purpose of keeping in repair a Pier at the Mouth of Kennebec-River, and to grant them a Duty for reimbursing the expense of erecting the same. [Feb. 2, 1799.] Add. acts—1609 ch. 8: 1619 ch. 110.

Chap. 35. An Act prescribing the Mode of taking Depositions, and administering Oaths and Affirmations.

SECT. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any civil cause shall be pending in any court, or before any Justice of the Peace in this Commonwealth, and the writ, original summons, or complaint therein shall have been served on the defendant, or be pending before referees
or arbitrators, and either party in the cause shall think it necessary to have the testimony therein of any person who shall live more than thirty miles from the place of trial by a court, jury, referees or arbitrators, or shall be bound on a voyage to sea before, or be about to go out of the Commonwealth and not to return in time for the trial, or shall be so sick, infirm or aged, as not to be able to travel and attend at the trial; then the deposition of such person may be taken before any Justice of the Peace, not being of counsel or attorney to either party, or interested in the event of the cause: Provided, notice be given, and proceedings be had, as herein after directed.

Sec. 2. Be it further enacted, That when either party in the cause shall apply to a Justice of the Peace to take such deposition, he shall give notice to the adverse party, if living within twenty miles of the place of taking the same, in substance as follows, to wit:—

To [addition] ss. in the county of [addition] Greeting.

WHEREAS A. B. of [addition] in the county of [addition] has requested me to take the deposition of [addition] in the county of [addition] to be used in an action of pending between you and the said A. B. and the house of in and the day of in the year of our Lord at of the clock in the noon are appointed the time and place for the said deponent to testify what he knows relating to the said action; you are hereby notified that you may then and there be present, and put such interrogatories as you may think fit. Given under my hand and seal, at on the day of in the year of our Lord Justice of the Peace.

And the service of this notification on the said adverse party, or his attorney, by leaving an attested copy thereof at his last and usual place of abode, allowing time for his attendance after being notified, not less than at the rate of one day, Lord's days exclusive, for every twenty miles' travel; and such service being proved by the affidavit of a disinterested witness, or by the return on said notification of the sheriff or his deputy of the county, or of the constable of the town where the said adverse party or his attorney shall live, shall be deemed sufficient notice. And when the said adverse party, in any case, shall live more than twenty miles from the place of taking any deposition, and his or her attorney shall live within that distance, such attorney shall be notified as aforesaid, mutatis mutandis. But no person, for the purposes of this Act, shall be considered as the attorney of another, until such attorney shall have endorsed the writ, or endorsed his name on the summons, to be left with the defendant in the cause, or until he shall have appeared for his principal in the cause, before the Justice of the Peace, referees or arbitrators, or in the court where the said action shall be pending, or shall have given notice, in
writing, stating he is attorney in the cause, to the other party or his attorney. And where there are several plaintiffs or defendants in any action, such notice to one of them, or the notice aforesaid to be given by the said justice, given to one of them, shall be deemed sufficient.

Sect. 3. Be it further enacted, That every person, deposing as aforesaid, shall be carefully examined, and cautioned, and sworn, or affirmed, to testify the whole truth and nothing but the truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing; which shall be done only by the justice taking the deposition, or by the deponent, or some disinterested person in justice's presence.

Sect. 4. Be it further enacted, That such justice, when requested by the party applying as aforesaid, shall issue his summons to the deponent in substance as follows, to wit.

--- ss.

ON the day of the year of our Lord the aforesaid deponent was examined, and cautioned, and sworn (or affirmed) agreeable to law, to the deposition aforesaid by him subscribed, taken at the request of and to be used in an action of now pending between him and before [here name the court, justice, referees or arbitrators] and the adverse party was, or was not present (as the case may be) or living more than twenty miles from the place of caption, was not notified, the said deponent living more than thirty miles from the place of trial, or being about to go out of the Commonwealth, and not to return in time for the trial, or being bound on a voyage to sea, or being so sick, or being so infirm, or being so aged as to be unable to travel and attend at the trial, is the cause of taking this deposition.

Justice of the Peace.

--- ss.

To of in the county of [addition] Greeting.

WHEREAS A. B. of in the county of [addition] has requested me to take your deposition, to be used in an action now pending between him and the house of in and the day of in the year of our Lord at of the clock in the noon
are appointed the time and place for taking the same deposition: You are hereby required, in the name of the Commonwealth of Massachusetts, then and there to appear, to testify what you know relating to the said action. Hereof fail not. Given under my hand and seal at the day of in the year of our Lord Justice of the Peace.

Which summons, when served, and the service thereof proved as before prescribed in the case of the said notification, shall be deemed good and sufficient: And if any deponent so summoned shall neglect to appear at the time and place appointed in the summons, and having tendered to him or her thirty-four cents for his or her time, and four cents a mile for his or her travel, computing from the deponent's said place of abode to the place of caption, and back, such deponent shall be subject to like actions, forfeitures and attachment, as are provided by law where witnesses are summoned to court and do not appear.

Sect. 5. Be it further enacted, That if, on the trial of any cause, either party shall make it appear probable to the court, that it will not be in his power to produce the witnesses, there testifying, on the appeal or review of the cause, and shall move that their testimony be taken down in writing, it shall be done by the clerk of the said court, or by such Justice of the Peace as the court shall appoint; and if any appeal or review be had, such testimony may be used, if it shall appear to the satisfaction of the court, that the witnesses are then living more than thirty miles from the place of trial, or dead, or gone out of the State, or on a voyage to sea, or so sick, infirm, or aged, as then to be unable to travel and attend at the trial, and not otherwise. And in every case (as oral testimony examined and cross-examined in open court is to be preferred to depositions, when it can be reasonably had) where the deposition of a witness shall have been taken, it shall not be used in the cause at the trial, by the court, justice, referees or arbitrators, if the adverse party shall then make it appear that the reasons for taken the said deposition no longer exist, but that the witness is within the said distance, and able personally to appear.

Sect. 6. Be it further enacted, That all depositions taken out of this Commonwealth, before any Justice of the Peace, Public Notary, or other person legally empowered to take depositions in the State or county where such depositions shall be taken and certified, may be admitted as evidence in any civil action, or rejected, at the discretion of the court. Provided nevertheless, That if the adverse party, or his attorney shall live within twenty miles of the place of caption, no deposition shall be admitted, unless it shall appear by the caption or affidavit, that such adverse party or his attorney was notified at the time and place of caption.

Sect. 7. Be it further enacted, That the Justices of the Supreme Judicial Court, and of the Court of Common Pleas, may Judges may allow depositions to be ta-
grant a *dedimus postestatem*, to have depositions taken either within or without the Commonwealth, in any action, suit or controversy pending in said courts respectively, on such terms and conditions as they from time to time shall prescribe.

**Sect. 8. Be it further enacted,** That where any deposition shall be taken in perpetual remembrance of a thing, it shall be done by two Justices of the Peace, *quorum unus*, and they shall cause such as they know to be interested, to be duly notified of the time and place of the caption, if within twenty miles thereof; and if without that distance, their attorney, if any they have; and the deposition being reduced to writing by one of the justices, or by the deponent, in their presence, and subscribed, the said justices shall administer the oath, and certify the caption, in substance as follows, to wit:

**Commonwealth of Massachusetts.**

**ss. Town of**

**THIS** day of in the year of our Lord personally appeared before us, the subscribers, two Justices of the Peace in and for the county of *quorum unus*, the aforesaid deponent, and after being carefully examined, and duly cautioned to testify the whole truth and nothing but the truth, made oath, or affirmed, that the foregoing deposition, by him subscribed, is true. Taken at the request of to be preserved in perpetual remembrance of the thing. And we duly notified all persons, living within twenty miles of this place of caption, we knew to be interested in the property to which the said deposition relates; and attended (if any person so notified did attend) or we not knowing any persons, living within twenty miles of said place of caption, interested in the property whereeto the aforesaid deposition relates, did not notify any persons to attend.

And the same deposition and caption shall within ninety days be recorded in the office of the register of deeds in the county where the land lies, if the deposition respected real estates; and if the same respected personal estates, then in the said office of the county where the person lives for whose use such deposition was taken; and such certificate shall be certified on the deposition, and the same deposition so certified, or a copy of the said record, may, in the case of the death of such deponent, absence out of the State, or inability to attend the court as aforesaid, be used as evidence in any case to which it may relate.

**Sect. 9. Be it further enacted.** That every Quaker who, on any lawful occasion, shall be required to take an oath as a witness in any cause, or as a juror in any civil cause, shall, instead of the usual form, be permitted, to affirm in these words, to wit: "I, A. B. do solemnly and sincerely affirm, under the pains and penalties of perjury;" which affirmation shall be deemed of the same force and effect his or her oath would have been on the same occasion, taken in the usual form.
And if any Quaker making such affirmation shall be convicted wilfully, falsely and corruptly to have testified in any matter or thing, he or she so offending shall incur the same penalties and forfeitures as by the laws of this Commonwealth are enacted against persons convicted of wilful and corrupt perjury.

Sect. 10. Be it further enacted, That if any person shall wilfully, falsely and corruptly swear or affirm, in giving or making any deposition or affidavit in this Act provided to be taken, he or she shall incur the same penalties as if the testimony had been taken in open court, and wilful perjury committed in giving the same. And in the administration of oaths in this Commonwealth, the ceremony of lifting up the hand, as heretofore used, shall be practised, with such exceptions as to Mahometans and other persons, who believe that an oath is not binding unless taken in their accustomed manner, as the several courts shall find necessary in the execution of the laws.

Sect. 11. Be it further enacted, That this Act shall take effect and be in force on and after the first day of July next; and that all laws enacted in this Commonwealth on the subject-matter of this Act before the first day of November, Anno Do mini one thousand seven hundred and eighty, shall, on and after the first day of July next, be repealed, so far as they shall relate to all depositions and affidavits which shall be taken on and after that day. [Feb. 3, 1798.] Add. act—1817 ch. 131.

An Act to annex several Grants of Land, in the County of Berkshire, to the Town of Becket, within the said County. [Feb. 3, 1798.]

An Act altering the name of William Gray the fifth, to the name of William Shepard Gray. [Feb. 5, 1798.]

An Act to set off certain Land from the Town of Groton, and annex the same to the Town of Shirley. [Feb. 6, 1798.]

An Act to set off that Part of the Farm in possession of Jacob Cole, which lies in the District of New-Ashford, to the Town of Cheshire. [Feb. 6, 1798.]

An Act for setting off the north-easterly Part of the Town of Sheffield, in the County of Berkshire, and annexing the same to the Town of New-Marlborough, in the same County. [Feb. 7, 1798.]

An Act to empower the Inhabitants of the Town of Middleborough, in the County of Plymouth, to regulate the Price of the Fish called Alewives, taken in said Town, and for repealing all the Laws heretofore made, so far as they respect the Regulation of the Price of said fish taken in said Town. [Feb. 8, 1798.] Further act—1801 ch. 25. All repealed—1815 ch. 111.

An Act to set off Part of the Parish in the Town of Stoughton, in the County of Norfolk, and to annex the same to the north Parish in the Town of Bridgewater, in the County of Plymouth. [Feb. 8, 1798.]


An Act to incorporate the Plantation called New-Sandwich, in the County of Lincoln, into a Town by the name of Wayne. [Feb. 12, 1799.]

An Act to incorporate the Proprietors of Mills on Charles River. [Feb. 12, 1799.] Add. acts—1803 ch. 2: 1817 ch. 56.

An Act in addition to, and for Explanation of an Act, passed in the year of our Lord one thousand seven hundred and seventy-four, for dividing the Town of

1797. — Chap. 47—50.

An Act for establishing a Toll, for the purpose of repairing and maintaining the great Bridge over the River Parker, in the Town of Newbury, and County of Essex. [Feb. 13, 1798.] See 1802 ch. 97, § 15.

An Act for incorporating certain persons for building a Bridge over Chickapee-River, between Wilbraham and Ludlow, and for supporting the same. [Feb. 16, 1798.]

An Act for incorporating certain persons for the purpose of building a Bridge over York-River, at a place called Trafon's Ferry. [Feb. 17, 1799.] See 1804 ch. 29.

An Act relating to Suits against Defendants out of the State, also to giving Notice to Defendants sued.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same. That when the goods or estate of any person shall be attached at the suit of another in any civil action, a summons, in form prescribed by law, shall be delivered to the party whose goods or estate are attached, or left at his or her dwelling-house or place of last and usual abode, fourteen days before the day of the sitting of the court where such attachment is returnable; and in case the defendant was at no time an inhabitant or resident within this Commonwealth, then such summons to be left with his or her tenant, agent or attorney; and the serving thereof, in either case, to be certified by a sworn officer that executed the attachment, or by some other sworn officer, or by affidavit made in court by the person that delivered the same, and by one other credible witness then also present; otherwise the writ shall abate.

Sect. 2. Be it enacted by the authority aforesaid, That in all suits wherein the process is by original summons, as against executors, administrators or guardians, in ejectment, dower, scire facias, error, review, and all other civil actions wherein the law does not require a separate summons to be left with the defendant, the service thereof by the proper officer shall be good and valid in law, either by his reading the writ or original summons to the defendant, or by leaving a true copy thereof at his or her house or place of last and usual abode, attested by such officer, fourteen days before the day of the court's sitting whereto the same process shall be returnable.

Sect. 3. Be it enacted by the authority aforesaid, That in all actions wherein the process shall be by original summons as aforesaid, and in which the defendant was at no time an inhabitant or resident within this Commonwealth, then the service thereof shall be in like manner by the proper officer's reading the same to, or leaving a like copy duly attested with the tenant, agent or attorney of the defendant, the like number of days before the day of the court's sitting whereto the same process shall be returnable.

Sect. 4. Be it enacted by the authority aforesaid, That in actions of dower, and other real actions, wherein it shall so happen that the possession of land or buildings shall be demanded in the writ not of the tenant in the actual possession or oc-
cupancy thereof, in addition to a service on the defendant in the writ or summons as aforesaid, there shall be a service on such tenant or occupant in possession, the like number of days before the day of the court's sitting, by the proper officer's reading to him or her the same writ or original summons, or leaving a like attested copy at his or her house or place of usual abode on the premises, which shall also be certified by the proper officer; or the writ shall abate.

Sect. 5. Be it enacted by the authority aforesaid, That when a suit shall be brought against the party defendant, and no one of the defendants named therein shall, at the time of the service thereof, be an inhabitant or resident within this Commonwealth, or then be present within the same, and shall not return before the time of trial; or if the action shall be grounded on a tort, and any one of the defendants shall so be absent, or not inhabitant or resident, and not return; then the court, wherein such suit shall be pending, shall continue the same to the next term, on a suggestion of the fact being made on the record. And if the defendant, whose absence was noted on the record, shall not then appear by himself or attorney, and be so remote that the notice of such suit pending could not probably be conveyed to him or her during the vacancy, the said court may further continue the action to the next term, and no longer. And in such cases where judgment shall be entered up by default after one or two continuances as aforesaid, execution or writ of seisin shall be stayed and not issue forth until the plaintiff or demandant shall have given bond, with one or more sufficient sureties, in double the value of the estate or sum recovered by such judgment, to make restitution, and to refund and pay back such sum as shall be given in debt or damages, or so much as shall be recovered upon a suit therefor, to be brought in one year next after entering up the first judgment; if upon such suit the judgment shall be reversed, annulled or altered; the security aforesaid to be no further answerable than for the recovery that shall be made on such suit, to be had within one year as aforesaid: Provided nevertheless, If any plaintiff or plaintiffs in any such suit shall, at any time after the service of the original writ or summons as aforesaid, and thirty days before the term of said court, in which judgment may be rendered in manner aforesaid, cause the defendant or defendants in the case (being out of this Commonwealth) to be notified of such suit, by serving him or them with an attested copy of such writ or summons, and the officer's return thereon, and shall file in said court the deposition of one witness, being an inhabitant of this Commonwealth, that such copy of said writ or summons was left with said defendant or defendants, or at his or their last and usual place of abode; in such case, the plaintiff or plaintiffs may have his or their writ of execution or seisin, in the same manner as though the said defendant or defendants had appeared in said court and made answer in said action, without such bond being given in manner aforesaid. Provided also, That no real estate taken in execution, granted upon such first judgment, shall be alienated

When defendant cannot be easily notified, decision to be deferred one term.

Plaintiff to give bond, in certain cases.

Except, when he proves the summoning of the defendant.

Real estate, in certain case,
not to be passed away within a year.

Joint contractors to be considered summoned, when one is notified.

Former Acts repealed.
12 & 13 W. III. ch. 7.
10 Geo. II. ch. 1.

Sect. 6. And be it further enacted, That when two or more are jointly obligated by act of law or agreement, and one or more of them are without the Commonwealth, having property or estate, but no tenant, agent, trustee or attorney within the same, the property or estate of those so without the Commonwealth may be attached, and the summons being left by the officer serving the writ, with those within the Commonwealth, shall be deemed a legal service on those without the same: Provided, One continuance shall be granted, unless the plaintiff can shew that notice has been given to the person so out of the Commonwealth; in which case the court may proceed, at their discretion, without granting a continuance.

Sect. 7. Be it enacted by the authority aforesaid, That an Act passed A. D. one thousand seven hundred, entitled, "An Act providing that in suits where goods or other estate is attached, the defendant be summoned;" and also an Act passed A. D. seventeen hundred and thirty-six, entitled, "An Act for making more effectual provision for the service of original summons upon mesne process." be and the same are hereby repealed, so far as they shall respect all suits to be commenced on and after the first day of July next; and that this Act shall take effect and be in force on and after that day. [Feb. 17, 1798.]

Chap. 51. An Act for incorporating a number of the inhabitants of Becket, in the County of Berkshire, into a Society, for religious purposes. [Feb. 17, 1798.] Explanatory act—1802 ch. 4.

Chap. 52. An Act altering the name of Peter Greene, to Peter W. Greene. [Feb. 19, 1798.]

Chap. 53. An Act to lessen the dangerous Evils of canine Madness, and other Injuries occasioned by Dogs. [Feb. 19, 1798.] Repealed—1798 ch. 54.

Chap. 54. An Act to incorporate the Plantation called Otisfield, in the County of Cumberland, into a Town by the name of Otisfield. [Feb. 19, 1798.]

Chap. 55. An Act to prevent Damage being done on the Meadows and Beaches lying in and adjoining on the northeast part of the Town of Dennis, between Quivit-Harbour on the east, and Sessuit-Harbour on the west. [Feb. 22, 1798.]

Chap. 56. An Act to set off that Part of the Town of Sydney which lies west of West-Pond, and to annex the same to the Town of Belgrade. [Feb. 23, 1798.]

Chap. 57. An Act for incorporating the Owners of certain Lands in Long-Meadow, in the County of Hampshire, for the purpose of managing the same as a Common and general Field. [Feb. 23, 1798.]

Chap. 58. An Act to incorporate the Township Number Two, in the first range of townships, north of and adjoining to the Plymouth-Patent, on the east side of Kennebec-River, in the County of Lincoln, into a Town by the name of Cornville. [Feb. 24, 1798.]

Chap. 59. An Act to incorporate the Plantation called Number-Eight, in the County of Washington, in the bay of Passamaquoddy, into a Town by the name of Eastport. [Feb. 24, 1798.]

Chap. 60. An Act to apportion and assess a Tax of one hundred thirty-three thousand, three hundred and eighty-one dollars and fifty-three cents; and providing for the Re-
An Act for incorporating the plantation of Little-Falls, in the County of York, into a Town by the name of Phillipsburg. [Feb. 27, 1798.] Name altered to Hollis—1811 ch. 85.

An Act in addition to an Act, entitled, "An Act for suppressing Rogues, Vagabonds, common Beggars, and other idle, disorderly and lewd Persons."


SECT. 3. BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, THAT WHEN IT SHALL BE MADE TO APPEAR TO ANY TWO JUSTICES, QUORUM VIVIS, THAT ANY PERSON, BEING WITHIN THEIR COUNTY, IS LUNATIC, AND SO FURIOUSLY MAD AS TO RENDER IT DANGEROUS TO THE PEACE OR THE SAFETY OF THE GOOD PEOPLE FOR SUCH LUNATIC PERSON TO GO AT LARGE; THE SAID JUSTICES SHALL HAVE FULL POWER, BY WARRANT UNDER THEIR HANDS AND SEALS, TO COMMIT SUCH PERSON TO THE HOUSE OF CORRECTION, THERE TO BE DETAINED TILL HE OR SHE BE RESTORED TO HIS RIGHT MIND, OR OTHERWISE DELIVERED BY DUE COURSE OF LAW. AND EVERY PERSON SO COMMITTED, SHALL BE KEPT AT HIS OR HER OWN EXPENSE, IF HE OR SHE HAVE ESTATE; OTHERWISE, AT THEIR OWN EXPENSE, IF ABLE; OTHER-
the charge of the person or town upon whom his maintenance was regularly to be charged, if he or she had not been committed; and he or she shall, if able, be put to work during his or her confinement.

Sect. 4. Be it further enacted by the authority aforesaid, That all privileges granted to towns to provide work for their inhabitants at the county house of correction, and also to provide for their support there, shall remain in force, notwithstanding this Act; but the persons confined shall be wholly under the government of the overseers and master, to be appointed by the Court of Sessions as herein provided; and all charges attending the business more than the wages of the prisoners, or such expenses as arise and ought to be borne by the individual out of their estates, shall be paid out of the county-treasury, when allowed by the Court of Sessions. [Feb. 27, 1798.]

Further add. act—1802 ch. 22.

An Act in addition to an Act, entitled, "An Act for the Support and Regulation of Mills."

WHEREAS in said Act no provision is made for ascertaining the right of owners or occupants of mills to flow the lands of others without payment of any sum, by way of damages therefor, or for trying the title of complainants, therein mentioned, to the lands for flowing of which they may complain: Therefore,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That whenever any person shall complain to the Court of Common Pleas, that he sustains damage in his lands, by their being flowed in the manner mentioned in said Act, the said court shall order the complainant to notify the owner or occupant of the mill complained of, by serving him with an attested copy of such complaint (together with such order thereon) fourteen days at least before the then next term of said court, that he may then appear and shew cause, if any he have, why a warrant should not issue in the manner, and for the purposes prayed for in such complaint. Or such complainant may, fourteen days at least before the sitting of the court to which he intends to prefer his complaint, cause the owner or occupant of such mill to be served with an attested copy of such complaint. And such service or notification, certified by the proper officer, shall be deemed sufficient evidence of proper notice.

Sect. 2. Be it further enacted, That if any owner or occupant of any mill shall plead to such complaint, and in his plea shall dispute the statement made by the complainant, or shall deny the complainant's title to the lands said to be damaged by flowing, or shall claim a right to flow such lands without payment of damages, or for an agreed composition; the court shall order a trial of the issue, which may be joined by the parties, by a jury at the bar of said court; or if the issue be an issue in law, shall determine the same themselves,
reserving to each party the liberty of appealing to the Supreme Judicial Court, as in other cases.

Sect. 3. Be it further enacted, That if the owner or occupant of a mill, notified as aforesaid, shall not appear, or appearing, shall not shew sufficient cause, the said Court of Common Pleas shall issue a warrant, and such proceedings shall be had in all things, as are prescribed by the Act to which this is an addition. Provided, That whenever there shall be an appeal to the Supreme Judicial Court, and a determination shall there be had against the respondent, a certificate of such determination shall first be exhibited to said Court of Common Pleas.

Sect. 4. Be it further enacted, That if the complainant shall fail to prosecute his complaint in any stage of the proceedings, or the issue joined shall be determined against him, the respondent shall recover his costs, as in other cases. [Feb. 28, 1798.] Further add. acts—1799 ch. 78: 1814 ch. 173.

An Act for altering the Times of holding the Courts of General Sessions of the Peace and Common Pleas, within and for the County of Hancock. [March 1, 1798.]

An Act to incorporate the Township Number One, on the west side of Kennebec River, in the first range, north of and adjoining to the line of Plymouth-Claim, in the County of Lincoln, into a Town by the name of Anson. [March 1, 1798.]

An Act in addition to an Act, entitled, "An Act in addition to, and for the Amendment of the Act passed the eleventh day of June, one thousand seven hundred and ninety-six, establishing the first Massachusetts Turnpike Corporation," and for other purposes herein mentioned. [March 1, 1798.] Further add. acts—1798 ch. 48: 1813 ch. 41: 1819 ch. 34.

An Act incorporating the Massachusetts Mutual Fire Insurance Company. [March 1, 1798.]

An Act to prevent the Destruction of Fish in Concord-River, in the County of Middlesex. [March 1, 1798.]

An Act for the Preservation of the Fish called Alewives in Weweantit-River, in the County of Plymouth, and for regulating the taking said Fish, and for repealing all Laws heretofore made for that purpose. [March 1, 1798.] Add. act—1819 ch. 118.

An Act for the preservation of the Fish called Salmon, Shad and Alewives in the rivers, streams and waters within the Counties of Lincoln and Cumberland, and for repealing all other Laws heretofore made for that purpose, so far as respects their Operation in the said Counties. [March 1, 1798.] Repealed in part—1801 ch. 2. Add. acts—1799 ch. 33. 67. Certain streams exempted from the operation of this act—1799 ch. 86: 1800 ch. 14: 1802 ch. 18. See 1812 ch. 14.

An Act for the better Preservation of the Fish called Alewives, in Mill-River (so called) in Taunton, in the County of Bristol, and for regulating the taking of said Fish in said River. [March 2, 1798.]

An Act to extend the Time for receiving, on Loan, the Debt of this Commonwealth. [March 2, 1798.] See 1817 ch. 147.

An Act authorizing Daniel Goulding to conduct Water, in subterraneous Pipes, from a certain spring in his own land, within the Town of Worcester, for the accommodation of himself and some other inhabitants of the said Town. [March 2, 1798.]

An Act to prevent the Destruction, and to regulate the catching of the Fish called Alewives, in the rivers and streams in the Town of Falmouth, in the County of Barnstable. [March 2, 1798.] Add. act—1798 ch. 81.
An Act authorizing the Inhabitants of the Towns of Watertown, Weston and Waltham, in the County of Middlesex, to regulate the taking of the Fish called Shad and Alewives within the limits of the said towns. [March 2, 1798.]

An Act to incorporate a Gore of Land lying north of Adams, in the County of Berkshire, into a Town by the name of Clarksburg. [March 2, 1798.]

An Act to incorporate the Proprietors of Mills on Mill-Creek, in Dedham, and Neponset-River, in Dorchester and Milton. [March 3, 1798.]

An Act for establishing an Academy in the Town of Milton, by the name of Milton Academy. [March 3, 1798.]

An Act for incorporating Israel Waters, and others, Inhabitants of the Town of Charlton, into a religious Society by the name of The Proprietors of the New Congregational Centre Meeting-House in Charlton, and for repealing two Acts heretofore made for incorporating the Congregational Church in said Town. [March 3, 1798.]

An Act to incorporate certain persons as Trustees of the Funds raised by subscription for the Support of Religion, Piety and Morality, in the Town of Raynham, in the County of Bristol. [March 3, 1798.]

An Act to incorporate certain Proprietors of Meadow-Lands lying on each side of Neponset-River, in the Towns of Dedham, Milton and Canton, and for drawing off the stagnant waters, and for the better improving said Meadow-Lands. [March 3, 1798.]

An Act to enable the Proprietors of Social Libraries to manage the same. [March 3, 1798.]

An Act to incorporate the Plantation called East-Butterfield, in the County of Cumberland, into a Town by the name of Hartford. [June 13, 1798.]

An Act to incorporate the Plantation called West-Butterfield, in the County of Cumberland, into a Town by the name of Summer. [June 13, 1798.]

An Act to incorporate John Worthington, Esquire, and others for conveying Water, in subterraneous Pipes, in Springfield. [June 14, 1798.]

An Act for assessing and collecting Taxes on the Pews in the Meeting-House, where the Rev. John Tompson officiates, in the first or south Parish in Berwick, for the repair and amendment of said house. [June 14, 1798.]

An Act in addition to an Act, entitled, "An Act to enable Creditors to receive their just Demands out of the Goods, Effects and Credits of their Debtors, when the same cannot be attached by the ordinary Process of Law."

WHEREAS in and by the Act aforesaid, it is among other things enacted, that where all the supposed trustees, or any one or more of them, come into court, and are discharged upon examination on oath, or where the suit shall be discontinued by the plaintiff against them, or against any one or more of them, the plaintiff may, notwithstanding, proceed against the principal to trial, judgment and execution: And whereas doubts have arisen and may arise to what cases the clause aforesaid, of the Act aforesaid, does extend: for the prevention whereof,

Sect. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That in all processes which may hereafter be brought in any court by virtue of the Act aforesaid, wherein all the supposed trustees shall be discharged as aforesaid, or wherein the plaintiff shall discontinue his suit against all of them, or wherever it shall appear from the record, that there is not any trustee in such suit; in all such cases the plaintiff shall not proceed in his
suit against the principal, unless there shall have been such service of the original writ upon the principal as would have authorized the court to proceed to render a judgment against him, in an action brought and commenced in the common and ordinary mode of process. Provided however, That the principal in such case may, if he think proper, come into court and take upon himself the defence of the said suit.

And whereas it often happens, after a process has been served on one or more trustees, that effects are discovered in the hands of some other agent or trustee, not known to the plaintiff at the time of issuing the writ:

Sect. 2. Be it therefore enacted by the authority aforesaid, That in all such cases it shall and may be lawful for the plaintiff or his attorney, to insert into the process, which shall or may have been served on one or more trustee or trustees, the name or names of any person or persons in whose hands or possession he or they may suspect that any goods, effects, rights or credits of the absconding debtor or principal shall have been, or may be placed or concealed: Provided however, That no such name or names shall be inserted after the said writ or process shall have been served upon the principal or absconding debtor or debtors. [June 16, 1798.] Further add. act—1817 ch. 148.

An Act providing Compensation for Services of the Sheriff of the County of Hancock. [June 19, 1798.]


An Act in addition to an Act, entitled, "An Act to incorporate the east part of Greenfield, in the County of Hampshire, into a Town by the name of Gill," passed the twenty-eighth day of September, in the year our Lord one thousand seven hundred and ninety three. [June 19, 1798.]

An Act in addition to, and explanatory of an Act passed in the year of our Lord one thousand seven hundred and seventy-eight, entitled, "An Act for dividing and setting off the westerly part of the Town of Newton, in the County of Middlesex, into a separate Precinct, by the name of The West Precinct." [June 20, 1798.]

An Act to incorporate certain persons in the Town of Wrentham, for the purpose of conducting Water, by subterraneous Pipes, in said Town. [June 21, 1798.]

An Act to continue in Force an Act passed in the year of our Lord one thousand seven hundred and ninety-six, entitled, "An Act establishing and regulating the Fees of the several Officers, and other Persons hereafter mentioned; and for repealing the Laws heretofore made for that purpose."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said Act be, and hereby is continued in force until the first day of May next, any thing therein contained to the contrary notwithstanding. [June 21, 1798.] Further continued—1798 ch. 66: 1800 ch. 21. 65: 1802 ch. 26: 1803 ch. 52: 1804 ch. 20.

An Act to set off Richard Rogers, of Kittery, in the County of York, from the first Parish in Kittery, and to annex him and his estate to the third Parish in said Town. [June 21, 1798.]

An Act providing for the Cession of Castle-Island, in the Harbour of Boston, to the United States, and for other purposes therein mentioned.

Sect. 1. BE it enacted by the Senate and House of Representa-
tatives, in General Court assembled, and by the authority of the same, That an island in the harbour of Boston, called Castle-Island, be and hereby is granted and ceded to the United States, for the purpose of erecting forts, magazines, arsenals, dock-yards, and other needful buildings thereon, for the defence of the United States; reserving the ordnance and all the warlike stores now on said island, which are the property of this Commonwealth.

SECT. 2. Be it further enacted, That the consent of this Commonwealth be and hereby is granted to the United States, to purchase an island in the harbour of Boston, called Governor's-Island, and also a tract of land not exceeding six hundred and forty acres, situated in the town of Springfield, in the county of Hampshire, for the sole purpose of erecting forts, magazines, arsenals, dock-yards, and other needful buildings; the evidence of the purchases aforesaid to be entered and recorded in the registry of deeds in the counties where the same lands are respectively situated. Provided always, and the cession and consent aforesaid are granted upon the express condition, that this Commonwealth shall retain a concurrent jurisdiction with the United States, in and over the islands and tract of land aforesaid, so far as that all civil and such criminal processes as may issue under the authority of this Commonwealth, against any person or persons charged with crimes committed without the said islands and tract of land, may be executed therein in the same way and manner as though this cession and consent had not been made and granted: Provided also, That the officers and soldiers stationed on Castle-Island shall remain there for the purpose of guarding the convicts, and for the defence of this Commonwealth, under the command of the Governor thereof, until the United States shall accept of the cession herein made, and shall take possession thereof for the purposes expressed in this Act.

SECT. 3. And be it further enacted, That if the agent employed for the United States, and the owner or owners of said island or tract of land so to be purchased, cannot agree in the sale and purchase thereof, such agent may apply to any Court of General Sessions of the Peace which shall be holden within and for the county wherein said Governor's-Island, or tract of land, is situated; which court, after due notice given to the said owner or owners, are hereby empowered and directed to hear and finally determine the value of the same island or tract of land, by a jury under oath, to be summoned by the sheriff or his deputy for that purpose, or by a committee of three persons, if the parties aforesaid can agree upon them: And the value thereof being thus ascertained by the verdict of such jury, or the report of such committee, who are also to be under oath, faithfully and impartially to value said island or tract of land; and such verdict or report being accepted and recorded by said court, and the amount thereof being paid or tendered to the owner or owners of said island or tract of land, with his or their reasonable costs, the said island or tract of land shall forever be vested in the United States; and shall
and may be by them taken, possessed and appropriated to the purposes aforesaid. [June 25, 1798.] Add. act—1807 ch. 125.

An Act in addition to the Act, entitled, "An Act to prevent the Destruction of Oysters and other shell Fish in this Commonwealth."

SECT. 1. BE it enacted by the Senate and House of Representations, in General Court assembled, and by the authority of the same, That all the provisions, restrictions and penalties of, and proceedings directed in the said Act, passed in the year of our Lord one thousand seven hundred and ninety-six, be and the same are hereby extended to the town of Wellfleet, in the county of Barnstable.

SECT. 2. And be it further enacted, That no fisherman shall take from said town of Wellfleet, or any town mentioned in the Act to which this is an addition, any such fish exceeding the quantity of seven bushels in a week, including the shells, any thing in the Act to which this is an addition notwithstanding. [June 25, 1798.] Further add. acts—1799 ch. 19: 1808 ch. 28.

An Act in addition to an Act, entitled, "An Act regulating the taking of the Fish called Alewives, in the Town-Brook (so called) in the Town of Plymouth," passed the twentieth day of June, in the year of our Lord one thousand seven hundred and eighty-nine. [June 25, 1798.]

An Act in addition to the several Acts respecting the Proprietors of Middlesex Canal. [June 25, 1798.] Further add. acts—1799 ch. 32: 1802 ch. 98: 1812 ch. 113. 115: 1814 ch. 100.

An Act to incorporate certain persons, Trustees to manage the Funds for the permanent Support of a Pædobaptist Congregational Minister, that may officiate in the Meeting-House near the four corners, in the southerly part of Brighton, in the County of Bristol. [June 25, 1798.]

An Act to incorporate a number of inhabitants in each of the Towns of Marshfield, Scituate, Duxborough, Pembroke and Hanover, into a separate religious Society, by the name of The Baptist Religious Society in Marshfield. [June 25, 1798.]

An Act for setting off a certain Tract of Land belonging to the Town of Hancock, in the County of Berkshire, and annexing the same to the District of New-Ashford, in said County. [June 26, 1799.]

An Act more effectually to prevent the pernicious Practice of Gaming.

SECT. 1. BE it enacted by the Senate and House of Representations, in General Court assembled, and by the authority of the same, That no innholder, tavern-keeper, victualler, or person licensed as a retailer of spirituous liquors, shall keep, or suffer to be kept, any table for the purpose of playing at billiards, in any house, yard, garden, or other appendages to him or her belonging, or by him or her occupied or improved. And if any innholder, tavern-keeper, victualler, or retailer of spirituous liquors, licensed as aforesaid, shall keep, or suffer to be kept, in any house, building, yard, garden, or other appendages to him or her belonging, or by him or her occupied or improved, any such table for the purpose of playing at billiards, or shall suffer, or wittingly and willingly allow any person to play therein at billiards, cards, dice, or any other unlawful game, he or she so offending, upon conviction thereof on an indictment of the grand-jury, before the Court of General Sessions of the Peace, or the Supreme Judicial Court, shall, for each
and every such offence, forfeit and pay the sum of fifty dollars, to the use of the town where such offence shall be committed, and shall be deprived of his or her license for the remainder of the year, and shall not obtain a renewal thereof for the space of three years next ensuing.

Sect. 2. Be it further enacted, That if any person not licensed as an innholder, tavern-keeper, victualler, or retailer of spiritual liquors, shall keep, or suffer to be kept, in any house, building, yard, garden, or other appendages thereof, by him or her actually occupied or improved, any tables for the purpose of playing at billiards for hire, gain or reward, or shall for hire, gain or reward, allow and suffer persons to resort to the same for the purpose of playing at billiards, cards or dice, or at any other unlawful game, such person so offending, on conviction thereof as aforesaid, shall, for each and every such offence, forfeit and pay the sum of fifty dollars, to the use of the town where the offence shall be committed, and further shall be obliged to recognize, with sufficient surety or sureties, in a reasonable sum, for his or her good behaviour, and particularly that he or she will not be guilty of a breach of this Act for the space of three years next ensuing.

Sect. 3. Be it further enacted, That if any person shall play at billiards at any table kept or made use of for the purpose aforesaid, he shall, on conviction thereof, forfeit and pay a fine of six dollars for each and every such offence, to be recovered by action or complaint, before any justice of the Peace in and for the county where the offence shall be committed, to the use of him or them who may prosecute or sue for the same.

Sect. 4. And be it further enacted, That it shall be the duty of all selectmen, sheriffs, deputy-sheriffs, constables, tythingmen and grand-jurors, to complain of any breaches of this Act. [June 27, 1798.]

Chap. 21.

An Act authorizing James Bayley, and others, to conduct Water, in subterraneous Pipes, within the Town of Amesbury. [June 27, 1798.]

Chap. 22.

1796 ch. 73.

An Act in addition to the Act establishing the Third Massachusetts Turnpike Corporation. [June 27, 1798.] Further add. act—1813 ch. 93. Name altered—1814 ch. 2.

Chap. 23.

1797 ch. 31.

An Act to secure the Town of Boston from Damage by Fire. [June 27, 1798.] Repealed in part by an add. act—1802 ch. 58: Further add. acts—1810 ch. 21: 1811 ch. 72: 1817 ch. 119. All repealed—1817 ch. 171.

Chap. 24.

1792 ch. 11.

An Act in addition to an Act, entitled, "An Act establishing Courts of Common Pleas."

BE it enacted by the Senate and House of Representations, in General Court assembled, and by the authority of the same, That where, in any Court of Common Pleas, there are not now, or hereafter may not be four justices in commission, His Excellency the Governor, with advice of Council, shall appoint a chief-justice; and hereafter the said Court of Common Pleas shall consist of a chief-justice, and three other justices, qualified as the law directs, appointed by His Excellency the Governor, with the advice of Council: And that all writs and processes, issuing from the several Courts of Common Pleas, shall bear test of the first or chief justice; and in case the said first or chief justice shall be a party, then such writ or process shall bear test of the next senior justice, if he is not a party. [June 27, 1798.] Repealed—1811 ch. 33: 1814 ch. 20. See 1829 ch. 79.

Chap. 25.

An Act for incorporating a number of the inhabitants of the Towns of Harwich, Dennis and Chatham, in the County of Barnstable, into a distinct and separate religious society. [June 27, 1798.]
An Act to incorporate a Part of the first Precinct in Rochester, in the County of Plymouth, into a separate Precinct, by the name of The Fourth Congregational Precinct in Rochester. [June 27, 1798.]

An Act to incorporate certain persons in the Town of Hopkinton, for the purpose of conducting Water from a certain spring in said Town, for the Use of a number of Inhabitants thereof, by subterraneous Pipes. [June 27, 1798.]

An Act to set off William Watson and James Watson, with their estates, from the Town of Warren, in the County of Lincoln, to the Town of Thomastown. [June 29, 1798.]

An Act for the Preservation of the Fish called Alewives, in Agawam and Halfway Pond Rivers, in the County of Plymouth, and for the regulating the taking said Fish, and for repealing all Laws heretofore made for that purpose. [June 28, 1798.

An Act in addition to an Act, entitled, "An Act for incorporating certain persons for the purpose of building a Bridge over the river between Salem and Beverly, and for supporting the same." [June 29, 1798.

An Act in Addition to the several Laws regulating Elections,

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That it shall not be lawful for the selectmen of any town or district to appoint a meeting for the election of a representative to the General Court, on any day on which by law the militia of this Commonwealth are specially required to military duty; and the selectmen, thus appointing any such meeting, shall severally forfeit and pay a sum not exceeding one hundred dollars.

Sect. 2. Be it further enacted, That no officer or soldier of the militia shall be holden to do any military duty on any day (except on days which are or may be specially prescribed by law) on which the selectmen or assessors of any town or district shall appoint a meeting for the election of a representative to the General Court, or on the day pointed out in the Constitution for the election of Governor, Lieutenant-Governor and Senators of this Commonwealth, or on any day which is or may be appointed for the choice of electors of President and Vice-President of the United States, or representatives to Congress: And it shall not be lawful for any such officer to exercise any military command on either of said days, unless in case of sudden invasion made or threatened, or in obedience to the orders of the commander in chief, except as is herein before excepted; and every officer offending herein shall, for each offence, forfeit and pay a sum not less than ten or more than three hundred dollars.

Sect. 3. Be it further enacted, That it shall not be lawful for the selectmen or assessors of any town, district or plantation, presiding at a meeting for either of the elections aforesaid, to receive any vote, unless delivered in writing by the voter in person, and the selectmen or assessors, who shall offend herein, shall severally forfeit and pay a sum not exceeding one hundred dollars.

Sect. 4. Be it further enacted, That all fines and forfeitures, for any breach of this Act, may be recovered by indictment before the Supreme Judicial Court, or by action of debt before any court proper to try the same, one half to the use
1798. — Chap. 32—33.

An Act establishing an additional Term of the Supreme Judicial Court for the County of Norfolk. [June 29, 1798.]

CHAP. 32.

An Act to prevent profane Cursing and Swearing.

WHEREAS the horrible practice of profane cursing and swearing is inconsistent with the dignity and rational cultivation of the human mind, with a due reverence of the Supreme Being and his Providence, and hath a natural tendency to weaken the solemnity and obligation of oaths lawfully taken in the administration of justice; to promote falsehood, perjuries, blasphemies and dissoluteness of manners, and to loosen the bonds of civil society:

SECT. 1. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That if any person, who has arrived at discretion, shall profanely curse or swear, and shall be thereof convicted, such person so offending shall forfeit and pay a sum not exceeding two dollars, nor less than one dollar, according to the aggravation of the offence, and the quality and circumstances of the offender, in the judgment of the court or Justice of the Peace before whom the conviction may be; and in case the same person shall, after one conviction as aforesaid, offend a second time, such offender shall forfeit and pay, upon such second conviction, double the sum forfeited on the first conviction; and in case the same person shall, after two convictions as aforesaid, again offend, such offender shall forfeit and pay, upon each and every subsequent conviction, treble the sum forfeited on the first conviction; and if, on any trial and conviction, proof shall be made that more than one profane oath or curse were sworn or uttered by the same person at the same time, and in the presence or hearing of the same witness or witnesses, the person so offending, for every profane oath or curse, after the first, shall forfeit and pay a sum not exceeding fifty cents, nor less than twenty-five cents, in addition to the sum forfeited as first above specified; one moiety of the several forfeitures aforesaid to be to the use of the poor of the town in which the offence shall have been committed, and the other moiety thereof to the use of the person or persons who shall make complaint thereof, or prosecute for the same. And in case any person, convicted of profane cursing or swearing, shall not immediately pay the sum or sums so forfeited, such person shall be committed to the common gaol or house of correction, there to remain not less than one day, nor more than five days. Provided nevertheless, That when any person shall have been convicted of profane cursing or swearing, before any Justice of the Peace, and having appeared before such justice, and pleaded the general issue, or demurred to the charges in the complaint against him, it shall be lawful for such defendant to appeal from the sentence of such justice to the Justices of the next Court of General Sessions of the Peace, to be
holden in and for the county wherein the offence was committed, who shall hear and finally determine the same; the appellant claiming such appeal at the time of declaring such sentence by said justice, and then and there recognizing, with sufficient surety or sureties, in a reasonable sum not exceeding twenty dollars, to prosecute his said appeal with effect, and to perform the order of said court therein.

Sect. 2. And be it further enacted, That if any person shall profanely curse or swear in the hearing of any sheriff, deputy-sheriff, coroner, constable, grand-juror or tythingman, it shall be the duty of such officers, respectively, forthwith to give information thereof to some Justice of the Peace of the county wherein the offence may be committed, in order that the offender may be taken, convicted and punished for the same; which conviction shall be drawn up in the form following:

—— ss.

BE it remembered, That on the day of in the year of our Lord A. B. was convicted before me, of one of the Justices of the Peace for the county of of swearing one (or more) profane oath (or oaths) or of uttering one (or more) profane curse (or curses) as the case shall be. Given under my hand the day and year aforesaid.

Sect. 3. Provided always, and it is hereby further enacted, That no person shall be convicted or troubled for the offence of profane cursing or swearing, unless the prosecution for such offence shall be commenced within twenty days next after the offence shall be committed.

Sect. 4. And be it further enacted, That the clerks of the several towns, districts and plantations in this Commonwealth shall cause this Act to be publicly read at the opening of their respective annual meetings in the month of March or April; and if the clerk of any town, district or plantation, shall neglect so to do, he shall forfeit and pay the sum of ten dollars for each neglect, to be recovered by an action of debt in any court proper to try the same, one moiety thereof to the use of the person or persons suing therefor, and the other moiety thereof to the use of this Commonwealth.

Sect. 5. And be it further enacted, That the Secretary shall cause to be transmitted a printed copy of this Act to each of the public teachers of religion within this Commonwealth, to whom it is hereby recommended to read, or cause the same to be publicly read to their several congregations annually, on the day of the public fast.

Sect. 6. And be it further enacted, That all laws, heretofore made for preventing profane cursing and swearing, be and hereby are repealed. [June 29, 1798.]

An Act in addition to an Act which passed on the twenty-sixth day of February, in the year of our Lord one thousand seven hundred and ninety-four, entitled, "An Act to incorporate a Society by the name of The Trustees of the Baptist Education Fund." [Jan. 22, 1799.] Further add. act—1817 ch. 101.

1817 ch. 101.
Chap. 35. An Act limiting the Time within which Petitions for Wages, which have been
drawn by Forged Orders, shall be sustained. [Jan. 29, 1799.]

Chap. 36. An Act in addition to an Act for confirming the Records of a Plantation called
Bridgeaton. [Jan. 29, 1799.]

Chap. 37. An Act to incorporate a number of the inhabitants in each of the Towns of Syd-
ney, Belgrade and Augusta, in the County of Lincoln, into a distinct religious So-
ciety, by the name of The First Baptist Society in Sydney. [Feb. 1, 1799.]

Chap. 38. An Act to incorporate sundry inhabitants of the Town of Blanford, in the County o
Hampshire, and of the Towns adjoining thereto, into a religious Society by
the name of The Protestant Episcopal Society in Blanford. [Feb. 3, 1799.]

Chap. 39. An Act repealing the fourth enacting Clause of an Act, passed June, one thousand
seven hundred and ninety-six, entitled, "An Act for incorporating certain
persons for the purpose of building a Bridge over Acushnet-River, in the Town o
New-Bedford." [Feb. 4, 1799.]

Chap. 40. An Act in addition to an Act, entitled, "An Act for incorporating certain persons
for the purpose of building a Bridge over Kennebec-River, at Fort-Western, in
the Town of Hallowell." [Feb. 5, 1799.]

Chap. 41. An Act exempting Mile-Stream, in the Towns of Vaissalborough, Winslow and
Harlem, from the Operation of all Laws regulating the Salmon, Shad and Ale-
wife Fisheries in said Towns. [Feb. 5, 1799.]

Chap. 42. An Act in addition to an Act, entitled, "An Act directing that Pews and Rights
in Houses of public Worship shall be considered as Real Estate, and for regis-
tering the same."

BE it enacted by the Senate and House of Representatives, in
General Court assembled, and by the authority of the same, That
all pews, and rights in houses of public worship in the town of
Boston, shall be considered and deemed in law to be personal
estate; any thing in the Act to which this is in addition not-
withstanding. [Feb. 5, 1799.]

Chap. 43. An Act in addition to an Act made and passed in the year of our Lord one thou-
sand seven hundred and ninety-one, entitled, "An Act directing the Manner in
which Inquests of Office shall be taken to revest Real Estate in the Common-
wealth, or to entitle the Commonwealth thereto."

SECT. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same,
When it shall be found by the attorney-general, for the time being, that there are any lands, tenements or heredi-
ments, which, for want of legal heirs, have accrued to the
Commonwealth, that it shall be the duty of the attorney-
genral to prosecute a suit by inquest of office in the Supreme Judicial Court in the county wherein such estate is situated, in
order to cause the Commonwealth to become seized thereof;
and that on such process and trial, the person, against whom
such process and suit shall be so brought, shall not be allowed
to give in evidence, or to avail himself of the title or right of
any alien, or subject of another nation or sovereign, unless he
can shew that he is tenant to, agent, servant or bailiff of such
alien.

SECT. 2. And be it further enacted, If after the Common-
wealth shall become so seized of such estate, as having accrued thereto for want of legal heirs, any person shall appear and
make out his right to the same, and shall, in due process of
law, recover the same against the Commonwealth, its grantee,
assignee or tenant, that the same estate shall, nevertheless, be
liable to all expenses of improvement thereon made over and

Pews in Bos-
ton made per-
sonal estate.

Attorney-
genral to pro-
secute.

Defendants not
to have benefit
of an alien's ti-
tle—unless—

Heirs recover-
ing estates of the Com-
monwealth—
to pay for all
improvements.
above the rents and profits thereof; and the attorney-general, or the tenant, grantee or assignee of the Commonwealth, shall be empowered to file a bill in equity in the Supreme Judicial Court of the county where the land is, for the recovery of the same; and a summons shall be issued, with a copy of such bill thereto annexed, and served on the owner of such land, or on his tenant, fourteen days before the sitting of the court to which it may be returnable; and that the Supreme Judicial Court shall proceed to try the same by a jury or otherwise, according to the principles of the laws and Constitution of the Commonwealth, and shall issue an execution against such estate for the payment of such sum as shall be adjudged on such process; and the sheriff or other officer, to whom the same shall be directed, shall, at public auction, sell so much of the same lands as shall be sufficient to pay the same, with all charges, unless the same shall be otherwise discharged.

Sect. 3. And it is further enacted, That if it shall appear to the court that the person, against whom such estate shall be demanded, had, at the time of the service of the process upon him, a good and valid title in himself to the premises demanded, or that he then was in the possession of the same as the tenant, agent, servant or bailiff of any alien who had a right thereto, or to any part thereof, then the court shall award the defendant his full cost, which shall be paid out of the public treasury, according to the Constitution of the Government: But if such party had not a title in himself when the process was served upon him, nor was the tenant, agent, servant or bailiff of such alien at that time, but shall have afterwards acquired a title, been made a tenant, or become the agent, servant or bailiff of any alien, in whom such estate is, then judgment shall be awarded against him for the full cost, and the attorney-general shall cease to prosecute further on the process. [Feb. 6, 1799.]
Chap. 52. An Act in addition to an Act, entitled, "An Act for dividing and separating the Interest or Propriety in the Locks and Canals, opening and proposed to be opened on Connecticut-River, in the County of Hampshire, called the Upper and Lower Canals." [Feb. 19, 1799.]

Chap. 53. An Act in addition to an Act, entitled, "An Act for regulating the taking of Shad, Alewives and other Fish, in Neponset-River, and the several streams from the ponds called Punkapog and Massapog." [Feb. 19, 1799.] Original act repealed—1809 ch. 46.

Chap. 54. An Act in addition to an Act, entitled, "An Act to prevent Damage by mischievous Dogs," passed February twenty-fifth, one thousand seven hundred and ninety-two.


Chap. 56. An Act to divide the County of Lincoln, and to constitute the northerly part thereof of a separate County, by the name of The County of Kennebec. [Feb. 20, 1799.] Add. act—1799 ch. 13.

Chap. 57. An Act to alter the name of Jeremiah Williams, to the name of Jeremiah Wadsworth Williams. [Feb. 21, 1799.]

Chap. 58. An Act to incorporate a number of the inhabitants in the Town of Wrentham, in the County of Norfolk, into a religious Society by the name of The Congregational Society in Wrentham. [Feb. 21, 1799.]
An Act enabling Proprietors of Aqueducts to manage the same.

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That when any number of persons shall, by writing, associate and become proprietors of any aqueduct, or of any funds raised for making and constructing the same, for the purpose of conveying fresh water, by subterraneous or other pipes, into any town or place within this Commonwealth, it shall be lawful for the proprietors of a major part of the shares to apply, in writing, to some Justice of the Peace for the county in which the said aqueduct may be or is proposed to be placed, stating in such written application the name and style of their association, the objects of their proposed meeting, and requesting such justice to issue his warrant to some one of the proprietors so applying, directing him to call such meeting: And such justice is hereby authorized to issue his warrant accordingly, therein stating the time, and place, and objects of the said meeting. And such proprietor shall notify and warn such meeting, by posting up the said warrant or a true copy thereof, with his notice, seven days at least before the said meeting, in some public place in the town and towns in which the said aqueduct may be, or is proposed to be placed.

Sect. 2. Be it further enacted, That the proprietors of any such aqueduct or fund, duly met and assembled in pursuance of any such warrant, and their successors, shall be a corporation and body politic, by the name and style aforesaid; and at such meeting of said proprietors, or of any number of them, they shall have power to agree upon the method of calling future meetings of the corporation.

Sect. 3. Be it further enacted, That at any legal meeting of said proprietors, or of any number of them, they shall have power to choose a clerk, whose duty it shall be fairly and truly to enter and record, in a book or books to be provided and kept for that purpose, this Act, and all rules, by-laws, votes and proceedings of such corporation; which book and books shall, at all times, be subject to the inspection of any person appointed for that purpose by the Legislature. And the said clerk shall be sworn to the faithful discharge of the duties of his office; and at any such meeting, the said proprietors, or any number of them duly met as aforesaid, shall have power to elect a moderator, and any such number of directors, to manage the prudential business of said corporation, as to them may appear expedient; and such directors, or a major part of them, are hereby authorized from time to time to assess such taxes on the proprietors of the shares in such aqueduct, or in the funds which may be raised for making and constructing such aqueduct, as they shall find necessary; and on the neglect or refusal of any proprietor to pay such tax, to sell at public vendue so many of his or her shares as will be sufficient to pay such taxes, with necessary intervening charges; first advertising the sale of such share or shares in some newspaper printed in the county, or by posting up notifications thereof.
in some public places in the town and towns wherein such aqueduct may be, or is proposed to be placed, twenty days at least previous to such sale; and the overplus monies (if any there may be) arising from such sale, shall be paid to the owner or owners of the share or shares so sold. And the said proprietors, or any number of them duly met as aforesaid, may, at any of their meetings, elect any other officer or officers, or act upon any other thing necessary for carrying into effect the objects of their institution: Provided, That the subject-matter thereof be expressed in the warrant or notification for such meeting.

Sect. 4. Be it further enacted, That in all meetings of such proprietors, each proprietor shall be entitled to one vote for each and every share he or she may hold in such aqueduct or fund; and they are also hereby respectively empowered to dispute and appoint any other person to appear and vote for him or them in such meetings; the appointment to be in writing, signed by the person or persons to be represented, and filed with or recorded by the clerk of such corporation.

Sect. 5. Be it further enacted, That the said proprietors, or any number of them duly met as aforesaid, may, at any of their meetings, enjoin and order fines and penalties, for the breach of any by-law of such corporation, not exceeding thirty dollars for any one breach.

Sect. 6. Be it further enacted, That any such corporation shall have power to purchase, take and hold any real estate necessary for the purpose of their institution: Provided, That the real estate, which any one aqueduct corporation may hold, shall not exceed thirty thousand dollars in value. And all such real estate shall, during the continuance of such corporation, be deemed and considered, to all intents and purposes, as personal estate, and as such, with the other interest and estate in such propriety, shall be transferable by such mode of transfer as such corporations, at any of their meetings, shall agree on and determine: Provided however, That the transfer shall be in writing, and recorded by the clerk of the corporation, in the book or books aforesaid, within three months next after such transfer shall be made.

Sect. 7. Be it further enacted, That such proprietors or corporation, when they shall find it necessary, shall have power to enter upon, dig up and open any such parts of the streets, highways or townways, in any place within this Commonwealth, for the purpose of placing such pipes as may be necessary for making and constructing such aqueduct, or for repairing or extending the same, as the selectmen of the town, or the major part of them for the time being, shall, in writing, authorize and allow: Provided, Such selectmen shall not have power to authorize and allow any such streets, highway or townway to be entered upon, dug up or opened, so as to obstruct or hinder the citizens of the Commonwealth or others from conveniently passing therein with their teams and carriages.

Sect. 8. Be it further enacted, That to the end that the
proprietors of the shares in any such corporate property may be known, it shall be the duty of the clerk of any such corporation, at or immediately after the first meeting, to enter in the book or books aforesaid the names of the several proprietors, and the shares and parts of shares each proprietor shall own; and when any share or part of a share shall afterwards be sold for taxes or otherwise transferred, such sale or transfer shall be entered by said clerk in such book or books, in such form, and for such fees, as the directors shall appoint; and no person shall be deemed a proprietor whose share or interest shall not be so entered.

Sect. 9. Be it further enacted, That notwithstanding the dissolution of any such corporation, all contracts made by or with such corporation shall remain in full force, and the last proprietors or share-holders shall have a corporate capacity, until all contracts and agreements made by or with them, prior to such dissolution, shall be performed, and are and shall be capable and liable, in and by the same name and capacity as before such dissolution, to sue and be sued, and, by their agent or agents, to prosecute and defend in all actions, suits and demands, respecting such contracts and agreements, until final judgment and execution. And if no corporate property can be found to satisfy any judgment which may be recovered against them as aforesaid, and such judgment shall not be satisfied within six months after the same shall have been recovered; it shall be lawful for the judgment-creditor to satisfy his judgment and execution out of the private estate of such proprietors or any of them, in the same way and manner as if the judgment had been against him or them in his or their private capacity: Provided, That each and every such action shall be commenced within six years next after such dissolution, or within the like time next after such right of action shall accrue. And in case any such corporation shall, at its dissolution, be seized or possessed of any estate, the several proprietors, at such dissolution, shall become tenants in common thereof, in such proportions, as they shall respectively then hold their shares and parts of shares therein, and upon such tenure as the corporation would have held the same, had not provision been herein made for making all their property personal estate. And all shares in such aqueducts shall be liable to be attached on mesne process, and taken in execution for the debts of the owner thereof: Provided, That when any share or part of a share or shares shall be so attached, an attested copy of the process shall be left with the clerk of the corporation fourteen days before the day of the sitting of the court to which the same shall be returnable. And when any such share or part of a share or shares shall be taken and sold on execution, the officer shall leave with such clerk an attested copy of the execution, and of his return thereon, within ten days next after such sale.

Sect. 10. Be it further enacted, That if any person shall maliciously or wantonly injure any such aqueduct, he or she shall forfeit and pay a sum not exceeding twenty dollars, to
be recovered by indictment in the Supreme Judicial Court or Court of General Sessions of the Peace, one moiety thereof to the prosecutor, and the other moiety thereof to the use of the town in which such offence shall have been committed; and shall also be liable to pay treble damages to the corporation so injured, to be recovered by action in the case, with costs of suit.

Sect. 11. Be it further enacted, That any town, in which any such aqueduct shall be placed, shall have the privilege of placing conductors into and from the pipes and conductors laid by any such corporation, for the purpose of drawing such water therefrom, as may be necessary when any building shall be on fire in such town, and of drawing water therefrom on such occasions, without paying such corporation any price therefor: Provided, That every such town shall be holden to secure such conductors so by them placed, in such manner that water cannot be drawn therefrom unless by the orders of the selectmen or firewards of the town wherein the same may be placed.

Sect. 12. Be it further enacted, That when any such aqueduct shall be or proposed to be placed so as to extend into several counties, application may be made to, and a warrant issued by a Justice of the Peace of either of such counties, in the manner, for the purpose, and with the effect provided and enacted in the first section of this Act. [Feb. 21, 1799.]

An Act to cede to the United States a Tract of Land at Gay-Head, for a Light-House.

Sect. 1. BE it enacted by the Senate and House of Representa-
tives, in General Court assembled, and by the authority of the same, That there be and hereby is granted to the United States of America a tract of land, and the jurisdiction thereof, not exceeding four acres of land, situated at that part of Martha’s Vineyard called Gay-Head, for the purpose of erecting a light-house on the same; which quantity of land shall be laid out by the United States at the time of erecting said light-house, and a description thereof, in writing, entered in the registry of deeds in the county wherein the same shall be situated.

Sect. 2. Provided nevertheless, and be it further enacted, That if the said United States shall neglect, for the term of four years from the date of this grant, to erect a light-house on some part of the said four acres, and after the same shall be erected shall neglect to keep the same in good repair, and a state useful to navigation; then this grant shall be void. Provided also, That this Commonwealth shall retain and hereby does retain a concurrent jurisdiction with the said United States, in and over the same four acres, so far as that all civil and criminal processes issued under the authority of this Commonwealth or any officers thereof, may be executed in any part of the same four acres granted as aforesaid, or in any building thereon to be erected, in the same way and manner as if the jurisdiction had not been granted as aforesaid. And provided further, That if the said United States shall, at any time hereafter, make any com-
Compensation to any of the United States for any cession made for the purposes of this grant, like compensation to be made to this Commonwealth by the United States for the present grant, according to its value. [Feb. 22, 1799.]

**Chap. 61.**

An Act to incorporate the inhabitants of the northerly part of the Town of Wrentham, in the County of Norfolk, into a separate Parish. [Feb. 26, 1799.]

**Sect. 1.** BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That on the death, resignation or removal from office of any notary-public within this Commonwealth, the records of the said notary-public, together with all the papers relating to the business of the office, shall be deposited in the office of the clerk of the Court of Common Pleas for the same county in which the said notary-public resided. And any notary-public who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars. And if any executor or administrator of any deceased notary-public shall neglect to lodge said records or papers as aforesaid, which shall come into his hands, in the clerk's office, for the space of three months after his acceptance of that trust, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars. And if any person shall knowingly destroy, deface or conceal any records or papers of any notary-public, he shall forfeit and pay a sum not less than two hundred dollars, nor more than one thousand dollars, and shall be moreover liable to an action for damages by the party injured.

**Sect. 2.** And be it further enacted by the authority aforesaid, That it shall be the duty of the several clerks of the Courts of Common Pleas, to receive and safe-keep all the records and papers directed by this Act to be deposited in their offices, and give attested copies of any of said records or papers, when required; for which service, each clerk shall be allowed the same fees as are or may be allowed by law to notaries-public. And copies, so given by the said clerks, are hereby declared to be as valid as if the same had been given by the said notaries. And all forfeitures under this Act shall be, one half to the Commonwealth, the other half to him or them who shall sue for the same, to be recovered in an action of debt, in the county where such notary-public resided. [Feb. 26, 1799.]

**Chap. 62.**

Disposal of records, in case of death, resignation or removal.

Penalty for neglect of notaries-public on resignation, &c.

Penalties for neglect of executors, &c.

Penalty for destroying, &c. notaries' papers.

Clerks of Common Pleas to receive and keep records.

Fees allowed.

Appropriation of fines.

**Chap. 63.**

An Act to incorporate a Society, by the name of the Roxbury Charitable Society, [Feb. 26, 1799.]

**Chap. 64.**

An Act specifying the Evidence to accompany Accounts exhibited for the Support of the Poor of the Commonwealth.

**Sect. 1.** BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the selectmen or overseers of the poor in the several towns and districts within this Commonwealth, when they shall make
application to the General Court for payment of any expenses which may have accrued for supporting any poor person, shall be required to make and exhibit a certificate, setting forth the place from whence such person came, the time of his or her coming into this Commonwealth, and where he or she shall have resided subsequent to his or her coming into the same, and that he or she has not gained a settlement in any town or district within the Commonwealth, in any of the ways pointed out in an Act passed February eleventh, in the year of our Lord seventeen hundred and ninety-four, specifying what shall constitute a legal settlement: And also, that he or she has no kindred within the Commonwealth by law obliged to support him or her. And in case such person came into this Commonwealth before the tenth day of April, in the year of our Lord seventeen hundred and sixty-six, whether he or she was warned according to law to depart from the town or district wherein he or she resided. And if such application be for payment of expenses incurred for the support of a woman who shall have married a person not an inhabitant of this Commonwealth, or for the child of such woman, then the said selectmen or overseers shall be required to certify, that such woman or child has no legal settlement in any place in this Commonwealth, according to the existing laws for determining questions of habitancy; in all which certificates, the said selectmen or overseers shall certify that they make the same on the best evidence they can obtain.

Sect. 2. Be it further enacted, That a Resolve passed the twenty-ninth day of February, in the year of our Lord one thousand seven hundred and ninety-six, establishing the evidence to accompany accounts exhibited for the support of the state poor, be and hereby is repealed. [Feb. 26, 1799.]

Chap. 65. An Act to set off a Tract of Land from the Towns of Athol and Gerry, and to annex the same to the Town of Royalston. [Feb. 26, 1799.]

Chap. 66. An Act to continue in Force an Act passed in the year of our Lord one thousand seven hundred and ninety-six, entitled, "An Act establishing and regulating the Fees of the several Officers and other Persons hereafter mentioned, and for repealing the Laws heretofore made for that purpose."

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the said Act be and hereby is continued in force until the last day of August, in the year of our Lord one thousand and eight hundred; any thing in any Act to the contrary notwithstanding. [Feb. 26, 1799.] Further continued—1800 ch. 21: 65: 1802 ch. 26: 1803 ch. 52: 1804 ch. 20.


Chap. 68. An Act to confirm the Sales by the south Parish in Scituate, in the County of Plymouth, of certain Lands given for the Use of the Ministry in said Parish, and to incorporate certain persons as Trustees to manage the Funds raised by said Sales for the permanent Support of the Gospel Ministry in said Parish. [Feb. 26, 1799.]

Chap. 69. An Act to set off Part of the Town of Dighton, in the County of Bristol, and to annex the same to the Town of Berkley, in said county. [Feb. 26, 1799.]

Chap. 70. An Act altering the name of William Roberts, to William Leate Roberts. [Feb. 26, 1799.]
Chap. 71—77.

An Act for establishing an Academy in the south Precinct of Bridgewater, by the name of Bridgewater Academy. [Feb. 26, 1799.]

Chap. 71.

An Act to annex the Township Number Four, in the first Range, north of the Waldo Patent, to the County of Kennebec. [Feb. 28, 1799.]

Chap. 72.

An Act to prohibit the taking of Stones, Gravel or Sand from the Beaches in the Town of Chelsea. [Feb. 28, 1799.]

Chap. 73.

An Act to set off Part of the Town of Woburn, in the County of Middlesex, and to incorporate it into a Town by the name of Burlington. [Feb. 28, 1799.]

Chap. 74.

An Act to apportion and assess a Tax of one hundred and thirty-three thousand, four hundred and thirty-five dollars and thirteen cents; and providing for the Reimbursement of twenty-one thousand four hundred and thirty-eight dollars, paid out of the public Treasury to the Members of the House of Representatives for their Attendance the two last Sessions of the General Court. [Feb. 28, 1799.]

Chap. 75.

An Act to alter the Time of holding the Courts of General Sessions of the Peace and Court of Common Pleas in the County of Washington. [March 1, 1799.]

Chap. 76.

An Act in addition to an Act, entitled, "An Act for giving Remedies in Equity."

Sect. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That where any mortgagee or vendee, claiming any lands or tenements granted upon condition by force of any deed of mortgage or bargain and sale with defeasance, or any person claiming and holding under them, have lawfully entered and obtained, or shall lawfully enter and obtain the actual possession of such lands or tenements, for the condition broken, the mortgagor or vendor, or other person lawfully claiming under them, shall have right to redeem the same, at any time within three years next after such possession obtained, and not afterwards; and upon payment, or tendering of payment of the original debt and damages, with lawful interest and costs, or performing, or tendering performance of such other condition, as the case may require, or such part thereof as was remaining unpaid or unperformed at the time of such entry, together with such further reasonable sums as may have been disbursed and expended in necessary repairs of fences and buildings, and for the advancing and bettering such estate, over and above what the rents and profits thereof, upon a just computation, shall amount to, to such mortgagee, vendee or person lawfully claiming and holding under them, and in possession as aforesaid, within the time aforesaid; such mortgagee, vendee, or other person claiming and in possession as aforesaid, to whom such tender has been or shall be made, shall be obliged to accept such payment, or other performance of the condition, and thereupon to restore and deliver possession of such estate, and seal, execute, acknowledge and deliver a good and sufficient deed in the law of release and quitclaim, and all his right therein, to the person making such tender, having lawful right to redeem the same. And if, on payment or tendering of payment, performing or tendering of performance as aforesaid, such mortgagee, vendee, or person lawfully claiming or holding under them, and in possession as aforesaid,
doth or shall refuse or neglect to deliver possession, and release his right in such estate as aforesaid; such mortgagor, vendor, or other person lawfully claiming as aforesaid, may have his bill in equity originally triable in the Supreme Judicial Court or Court of Common Pleas in the county where the estate lies, and shall insert the same in a writ of attachment or original summons, returnable to the court whose seal it shall bear, and shall cause such writ to be served on the adverse party, as other writs of attachment or original summons are by law to be served.

Sect. 2. Be it further enacted by the authority aforesaid. That the justices of either of said courts are hereby empowered and authorized to receive and hear every such cause as shall be brought before them as aforesaid; and on consideration of the several pleas and allegation made by either party (or by the party complaining, only in case the other party upon being duly called does not appear, but makes default) to decree and enter up judgment therein, agreeably to equity and good conscience, and to award execution accordingly; and in case of the non-appearance of the party complained of, or of his refusal to accept such sum as the court shall adjudge to be due, or to accept such other Act or thing as the court shall adjudge a reasonable and equitable performance of the condition of the deed, and thereupon to restore possession and execute a release as aforesaid, such sum being left in the custody of the court, on behalf and for the use of such party, or such other act or thing as the court shall order and direct being done by the complainant; judgment shall be entered up for the complainant to recover possession of such estate, and execution shall issue accordingly; and the court may, at their discretion, award costs to either party, as equity may require. Provided, That nothing herein contained shall be construed to prevent an appeal from the judgment of any Court of Common Pleas rendered upon any process given by force of this Act.

Sect. 3. Be it further enacted, That all rights in equity, of redeeming real estate mortgaged, shall be liable to be attached on mesne process, and taken in execution upon judgment for the payment of the just debts of the mortgagor or owner; and the officer having such execution is hereby authorized to make sale of the same at public vendue, and to make, execute, acknowledge and deliver to the highest bidder good and sufficient deed or deeds of any estate so sold, in manner as is herein after expressed.

Sect. 4. Provided always, and be it further enacted, That the officer shall give notice, in writing, of the time and place of sale, to the debtor in person, or by leaving the same at his last and usual place of abode, and public notice of the said time and place of sale, by posting up notifications thereof in two or more public places in the town, district or plantation in which such mortgaged estate is situated, and also in one or more public places in two adjoining towns, thirty days at least before the time of sale; and further, shall cause an advertisement of the time and place of sale to be published three weeks
successively before the day of sale in some public news-paper printed in the county in which such real estate lies, if any such news-paper shall be there printed. And the notifications aforesaid, being given or posted up within the space of thirty days after judgment given, whereon such execution shall issue, the attachment shall hold the equity, attached as aforesaid, until the levy of such execution can be completed in manner hereinafter described. And in case the estate notified for sale as aforesaid, shall not be disposed of at the time and place appointed, the officer shall adjourn the vendue, not exceeding three days, and so from time to time until the sale shall be completed. And the surplus monies (if any there shall be) arising from such sale, beyond satisfying the debt, costs and necessary intervening charges, the officer shall return to the debtor.

Sect. 5. Be it further enacted, That all deeds made and executed as aforesaid, shall be as effectual, to all intents and purposes, to convey the debtor's right in equity aforesaid, to the purchaser, his heirs and assigns, as if the same had been made and executed by such debtor or debtors:

Provided always, That every such debtor shall have liberty to redeem the right in equity so sold, within three years next after the time of executing the deed or deeds thereof, in manner aforesaid, by paying the sum which may by such sale have been satisfied on such execution, with the interest thereof, and also such sum, with the interest thereof, as the purchaser may have paid to the mortgagee, his heirs and assigns, deducting the rents and profits the purchaser or any under him may have received over and above the repairs and betterments made by the purchaser or any under him.

Sect. 6. Be it further enacted, That when any action shall be brought and prosecuted on any bond or other specialty, with penalties, for the payment of sums of money, performance of covenants, contracts, agreements, matters or things to be done at several times, and the plaintiff recover the forfeiture of such penalty, the court shall enter up judgment for the whole of such forfeiture, and award execution only for so much of the debt or damage as is due or sustained at that time, so always that the said judgment shall stand and be a security to the plaintiff, his executors and administrators for any further and after payment or damages he or they may have just right to, by the non-performance or breach of the covenants, contracts, agreements, or things in such bonds or other specialties contained, and who may have a writ or writs of seire facias on said judgment, from such court where the same was obtained, against the defendant, his heirs, executors or administrators, suggesting other and further damages sustained by non-performance or breach of such covenants, contracts, and agreements, and to summon him or them to shew cause why execution should not be awarded upon said judgment for other and further damages, as set forth in the writ, and made out to the court; upon which the court shall proceed as aforesaid, as often as such damage shall accrue, and be sued for as aforesaid; or may have his action of debt, or on the case, as the case may require, for such payment or damages as aforesaid.

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Officer may adjourn the sale not exceeding three days at once.

The debtor further allowed to redeem.

Repealed—1815 ch. 137.

In recoveries on breach of bonds, &c., court to enter judgment for the whole forfeiture, and award execution for so much debt or damage as is due or sustained—and the judgment to stand as security for future damages, &c.
SECT. 7. And be it further enacted, That an Act for hearing and determining cases in equity, passed A. D. one thousand six hundred and ninety-eight, an Act in addition thereto, passed A. D. one thousand seven hundred and thirty-five, and an Act in explanation of and further addition to the Act for making lands and tenements liable to the payment of debts, passed the same year one thousand seven hundred and thirty-five, be and they hereby are repealed. Provided nevertheless, That with regard to all suits and causes of suits, and all rights depending, existing or required, under and by force of said Acts, or any of them, they shall be considered as in full force. [March 1, 1799.] Further add. acts—1815 ch. 137: 1817 ch. 87: 1818 ch. 98: 1821 ch. 85.


Chap. 79. An Act for establishing an Academy in the Town of Framingham, by the name of Framingham Academy. [March 1, 1799.]

Chap. 80. An Act for changing the name of William Boardman, to that of William Henderson Boardman. [March 1, 1799.]

Chap. 81. An Act in addition to, and for the Amendment of an Act, entitled, "An Act to prevent the Destruction, and to regulate the catching of the Fish called Alewives, in the rivers and streams in the Town of Falmouth, in the County of Barnstable." [March 1, 1799.]

Chap. 82. An Act for regulating the Fishery in the Town of Woolwich, in the County of Lincoln. [March 1, 1799.] Repealed—1799 ch. 68.

Chap. 83. An Act regulating the taking of the Fish called Alewives, in Island-Creek-Brook (so called) in the Town Duxbury. [March 1, 1799.]

