

CHAPTER 49.

AN ACT FOR CONFISCATING THE ESTATES OF CERTAIN PERSONS
 COMMONLY CALLED ABSENTEES.

Preamble.
 1 Mass., 360.
 2 Mass., 236, 244.
 4 Mass., 299.

WHEREAS* every government hath a right to command the personal services of all its members whenever the exigencies of the state shall require it, especially in times of an impending or actual invasion, no member thereof can then withdraw himself from the jurisdiction of the government, and thereby deprive it of the benefit of his personal services, without justly incurring the forfeiture of all his property, rights and liberties, holden under and derived from that constitution of government to the support of which he hath refused to afford his aid and assistance; and whereas the king of Great Britain did cause the parliament thereof to pass divers acts in direct violation of the fundamental rights of the people of this and of the other United States of America, particularly one certain act to vacate and annul the charter of this government, — the great compact made and agreed upon between his royal predecessors and our ancestors, — and one other act, declaring the people of said states to be out of his protection; and did also levy war against them for the purpose of erecting and establishing an arbitrary and d[e]spotic government over them; whereupon, it became the indispensable duty of all the people of said states forthwith to unite in defence of their common freedom, and, by arms, to oppose the fleets and armies of the said king; yet, nevertheless, divers of the members of this and of the other United States of America, evilly disposed, or regardless of their duty towards their country, did withdraw themselves from this and other of the said United States, into parts and places under the acknowledged authority and dominion of the said king of Great Britain, or into parts and places within the limits of the said states but in the actual possession and under the power of the fleets or armies of the said king, thereby abandoning the liberties of their country, seeking the protection of the said king, and of his fleets or armies, and aiding or giving encouragement and countenance to their operations against the United States aforesaid, —

† *Be it enacted by the Council and House of Representatives in General Court assembled, and by the authority of the same,*

Persons who have aided and assisted the enemy since the 19th of April, 1775, and have withdrawn themselves, to be considered as aliens.

[SECT. 1.] That every inhabitant and member of the late province, now state, of Massachusetts Bay, or of any other of the late provinces or colonies, now United States of America, who, since the nineteenth day of April, *Anno Domini* one thousand seven hundred and seventy-five, hath levied war, or conspired to levy war, against the government and people of any of the said provinces or colonies, or United States, or who hath adhered to the said king of Great Britain, his fleet or armies, — enemies of the said provinces or colonies, or United States, — or hath given to them aid or comfort, or who, since the said nineteenth day of April, *Anno Domini* one thousand seven hundred and seventy-five, hath withdrawn, without the permission of the legislative or executive authority of this or some other of the said United States, from any of the said provinces or colonies, or United States, into parts and places under the acknowledged authority and dominion of the said

* *Sic*: "as," or "since," omitted.

† § 1. The sections noted in the margin are from the engrossment.

king of Great Britain, or into any parts or places within the limits of any of the said provinces, colonies, or United States, being in the actual possession and under the power of the fleets or armies of the said king; or who, before the said nineteenth day of April, A[*nno*] D[*omini*] one thousand seven hundred and seventy-five, and after the arrival of Thomas Gage, Esq[ui]re, late commander-in-chief of all his Brit[*t*]an[*n*]ic[*k*] majesty's forces in North America, at Boston, the metropolis of this state, did withdraw from their usual places of habitation within this state, into the said town of Boston, with an intention to seek and obtain the protection of the said Thomas Gage and of the said forces then and there being under his command, and who hath died in any of the said parts or places, or hath not returned into some one of the said United States and been received as a subject thereof, and, if required, taken an oath of allegiance to such states, shall be held, taken, deemed and adjudged to have freely renounced all civil and political relation to each and every of the said United States, and be considered as an alien.

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

[SECT. 2.] That all the goods and chatt[*l*]e[*l*]s, rights and credits, lands, tenements and hereditaments, of every kind, of which any of the persons hereinbefore described were seized or possess[*e*]d, or were entitled to possess, hold, enjoy or demand, in their own right, or which any other person stood or doth stand seized or possess[*e*]d of, or are, or were, entitled to have or demand, to and for their use, benefit and behoof, shall escheat, enure and accrue to the sole use and benefit of the government and people of this state; — and are accordingly hereby declared so to escheat, enure and accrue.

Estates of persons described, shall escheat, enure and accrue to the full use and benefit of the government and people of this state.

Provided, always, —

[SECT. 3.] That the escheat shall not be construed to extend to, or operate upon, any goods, chatt[*l*]e[*l*]s, rights, credits, lands, tenements [or] [and] hereditaments, of which the persons aforesaid, or some other in their right, and to their use, have not been seized or possessed (or were intitled to be seized or possessed of, or to have or demand as aforesaid), since the nineteenth day of April, *Anno Domini* one thousand seven hundred and seventy-five, and at or after the time of the offence committed.

Proviso.

And whereas it is necessary that some mode of trial should be instituted whereby to determine what estates are forfeited and do escheat by force of this act, and whereby those persons who may be accused of offences in this act described may have their property defended in the best manner that their situation will admit of, —

† *Be it therefore enacted by the authority aforesaid,*

[SECT. 4.] That the attorney-general of this state, or such other person as he shall especially appoint for that purpose, may and shall exhibit to the justices of any inferior court of common pleas, for any county within this state wherein such estate lies, a complaint against any person who hath offended in manner, before, in this act, described, and who, at the time of such offence committed (or at any time, whereby the same is or may be forfeitable, according to this act), owned or held any lands, tenements or chattels-real, whatsoever, within such county, therein setting forth, clearly and plainly, the offence such person is charged with, and a full and true description of the estate in such complaint demanded as forfeited and escheated; and the justices of the same court shall thereupon continue the same suit to the

Attorney-general to exhibit to the justices of inferior courts of common pleas within this state, complaints against persons so described.

An attested copy to be left at the mansion-house, or, in case.

then next court, and shall order their clerk to make out a notification thereof, containing description of the lands and tenements alledged to have escheated, and to be forfeited, as aforesaid, and shall cause the sheriff of the same county, his undersheriff or deputy, or any constable of the town wherein such lands or tenements lie, to leave an attested copy thereof at the mansion-house on the premis[s]es demanded, or, in case there be no mansion-house thereon, to post up the same in some public place in the towns, district or plantation in which such lands and tenements lie; and shall also cause an attested copy of such notification to be left, as aforesaid, at the last and usual place of abode of the person charged, if any he had within this state, thirty days at least before the sitting of the court to which the same suit shall be continued.

No person appearing, the cause to be continued, unless.

[SECT. 5.] And if no person shall then appear to take upon him the defence of the suit, the court shall further continue it to the then next court, where the same shall be tried, unless the court shall then have good and sufficient cause again to continue the same suit; and, before they proceed to the trial of the same, shall cause proclamation to be made for any person or persons who have claim to the same estate, in such complaint mentioned, described and demanded, either in their own right, or on the part and behalf of the person accused, or of any person whomsoever, to come and defend the same suit; and such court shall admit as a party, any person or persons who shall appear to take the defence of the same upon him or them, as aforesaid: and the issue shall be tried by a jury, in the known and ordinary course of law, used and approved in this state, to try whether such estate demanded, or any part of it, is forfeited, and ought to escheat, by force of this act; and if such jury shall return their verdict that they find the same estate, or any part thereof, forfeited as aforesaid, the court shall proceed to give judg[c]ment thereon, and issue a writ of *habere facias possessionem* in behalf of the government and people, to cause them to be seized and possessed of the same.

The issue to be tried by a jury.

Provided, nevertheless, —

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

Proviso.

[SECT. 6.] That an appeal shall be allowed from the judgment of any inferior court of common pleas, to the superior court of judicature, court of assize and general goal delivery, as in other real actions.

And be it further enacted by the authority aforesaid,

The question in consequence of forfeiture.

[SECT. 7.] That when judgment shall be given by the superio[u]r court of judicature, court of assize and general goal delivery, for the forfeiture of the estate of any person charged as aforesaid, that in all prosecution[s] for other parts of such person's estate, in that or any other county, the only question shall be, whether the premis[s]es demanded are the property of the person a part of whose estate hath been adjudged forfeited, as aforesaid; and all complaints, pleas and issues shall be regulated accordingly; and no evidence of such adjudication shall be allowed, other than the record of the same, or an authenticated copy thereof.

Provided, always, —

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

Proviso.

[SECT. 8.] That all the debts justly due before the time of the offence committed, to any subject of the said United States, from any of the persons aforescribed, shall be payable out of their respective estates.

And be it further enacted by the authority aforesaid,

[SECT. 9.] That where the wife, or widow, of any of the persons aforescribed, shall have remained within the jurisdiction of any of the said United States, and in part[s] under the actual authority thereof, she shall be entitled to the improvement and income of one third part of her husband's real and personal estate (after payment of debts), during her life and continuance within the said United States; and her dower therein shall be set off to her, by the judges of probate of wills, in like manner as it might have been if her husband had died, intestate, within the jurisdiction of this state.

The wife, or widow, to be entitled to one-third of the improvement of her husband's estate.

To be set off by the judge of probate.

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

[SECT. 10.] That if any person whose estate shall be adjudged to have escheated as aforesaid, and who shall not have any wife, or widow, entitled to any part thereof by virtue of this act, and shall have within this state any relations (collateral kindred excepted) who may not be of sufficient ability to support themselves without some allowance out of the estate of such person to whom they stand related, as aforesaid, that the judge of probate, etc., who shall have the right of appointing agents for such estate, be and hereby is authori[z][s]ed and directed to fix a competent allowance, from time to time, for the comfortable support of all such relations as are aforementioned, having respect to the value of such estates.

Enacting clause.

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

[SECT. 11.] That nothing in this act contained shall be construed to prevent the full operation of the act entitled "An Act against treason and mispris[i]on of treason, and for regulating trials in such cases, and for directing the mode of executing judgments against persons attainted of felony," but every part thereof shall be and remain in as full force and effect as if this act had never been made. [Passed May 1, † 1779.]

1776-77, chap. 32.

CHAPTER 50.

AN ACT FOR DIVIDING AND SETTING OFF THE SOUTHERLY PART OF THE FIRST PRECINCT IN THE TOWN OF CAMBRIDGE, IN THE COUNTY OF MIDDLESEX, INTO A SEP[E][A]RATE PRECINCT BY THE NAME OF THE SOUTH PRECINCT.

WHEREAS, for the greater conveniency of attending the public worship of God, and the promotion of the Christian religion, it is thought necessary to divide and set off the southerly part of the first precinct in Cambridge into a sep[e][a]rate precinct, —

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

[SECT. 1.] That the inhabitants of the first precinct in the town of Cambridge, living on the south side of Charles River, with all the lands in said town laying on the south side of said river, be and hereby is set off into a sep[e][a]rate precinct, as the river runs, by the name of the South Precinct.

Boundaries of the South Precinct in the town of Cambridge.

* § 6.

† § 7.

† Passed April 30, according to the printed act.