

## CHAPTER MCLXI.

AN ACT TO REPEAL AND ALTER SUCH PARTS OF THE EXCISE LAWS AND OTHER TAX LAWS OF THIS COMMONWEALTH AS EMPOWER THE COLLECTORS OF THESE TAXES TO BREAK OPEN DWELLING HOUSES IN ORDER TO MAKE SEIZURES AND DISTRESSES BEFORE OATH OR AFFIRMATION BE FIRST MADE, AFFORDING SUFFICIENT FOUNDATION FOR SO DOING; THE ACTS OF ASSEMBLY WHICH AUTHORIZE THE SUPREME EXECUTIVE COUNCIL OF THIS STATE TO INFLICT FINES IN A SUMMARY MANNER UPON COMMISSIONERS OF COUNTIES; THE ACTS OF ASSEMBLY MADE FOR DISCOURAGING DESERTION, SO AS TO ALLOW TRIAL BY JURY TO PERSONS CHARGED WITH THE HARBORING OR AIDING DESERTERS FROM THE ARMIES OR SHIPS OF THE UNITED STATES OF AMERICA, OR OF HIS MOST CHRISTIAN MAJESTY; AND TO RESTORE THE [LIKE] PRIVILEGE TO PERSONS DAMAGED BY SHIPS RUNNING FOUL OF EACH OTHER.

(Section I, P. L.) Whereas the acts of assembly imposing an excise upon wine and spirituous liquors and for raising county rates and levies,<sup>1</sup> and also divers other acts of assembly for laying and assessing of taxes within the city of Philadelphia and the townships, districts and precincts within this state, empower the collectors of the taxes aforesaid, respectively, in certain cases, to break open dwelling houses without oath or affirmation first made, affording sufficient foundation for the same, in direct violation of the tenth section of the bill of rights, being a part of the constitution of this commonwealth:

Therefore:

[Section I.] (Section II, P. L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That no collector or deputy collector of excise, nor any collector of county rates and levies or of any other assessment on the real and personal estates of the people of this state, shall hereafter presume to break open any dwelling house in order to make seizure of any goods and chat-

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<sup>1</sup> Passed March 20, 1724, Chapter 284.

tels or in order to distrain the same for any tax, until oath or affirmation be made by some credible person affording sufficient foundation for the same, before some judge of the supreme court or justice of the peace of the proper county; or in case of county rates and levies or other tax upon real and personal estate, or poll tax therewith assessed before the commissioners of the proper county, wardens of the city of Philadelphia, commissioners for paving the streets of the said city, respectively, which judge, justice of the peace, and which commissioners and wardens or the major number thereof, for the tax they respectively superintend, shall have power and they are hereby authorized to administer such oath or affirmation, and thereupon to issue his or their warrant, under hand and seal, enabling the collector applying for the same to break open such dwelling house.

[Section II.] (Section III, P. L.) Provided always and be it further enacted by the authority aforesaid, That before any such warrant be granted as aforesaid, probable cause be shown that the goods and merchandises which shall be represented to be forfeited are lodged, and that the same may be found in such dwelling house, and in the case of other taxes aforesaid, that demand thereof and refusal or neglect to pay the same be first attested before such judge, justice of the peace or such commissioners and wardens, and no dwelling house shall be broken open after sunset, nor before sunrise in order to levy any such tax nor unless sufficient distress cannot be otherwise had within the ward, township or district; and the person or persons whose refusal or neglect to satisfy such tax shall give ground for such warrant, shall be liable to the cost of such warrant to be levied with the tax.

(Section IV, P. L.) And whereas in and by the act of assembly, entitled "An act to raise effective supplies for the year one thousand seven hundred and eighty-one,"<sup>2</sup> passed on the first day of June in the same year; and by an act of assembly, entitled "An act to raise supplies for the year one thousand seven hundred and eighty-two,"<sup>3</sup> passed on the twenty-fourth day of

<sup>2</sup> Passed June 21, 1781, Chapter 944.

<sup>3</sup> Passed March 27, 1782, Chapter 961.

March in the same year, and by another act, entitled "An act for providing the quota of federal supplies for the year one thousand seven hundred and eighty-three, and for the relief of the citizens of this state who have been creditors of the United States of America by loans of money or other means of furnishing public supplies,"<sup>4</sup> passed on the twenty-first day of March, one thousand seven hundred eighty [and] three, it is enacted, that the supreme executive council of this state should proceed in a summary way against county commissioners, neglecting or refusing to perform the duties upon the same commissioners, enjoined by the acts of assembly last recited, and to lay, impose and levy upon the same commissioners, severally, fines not exceeding five hundred pounds for each offence:

(Section V, P. L.) And whereas the authority so as aforesaid by the said acts vested in the supreme executive council is new and extraordinary and not warranted by the constitution of this commonwealth, which hath declared, "that trial by jury shall be as heretofore," and commissioners of counties are liable to be indicted and punished in the courts of law for their neglects and contempts of the acts of assembly of this state and other misdemeanors in office.

Wherefore,

[Section III.] (Section VI, P. L.) Be it enacted by the authority aforesaid, That the acts of assembly for raising and providing supplies above recited, as far as the same acts or any of them extend to enable the supreme executive council to proceed in a summary way and to lay and levy fines upon county commissioners as aforesaid, shall be and the same are hereby repealed and made void.

[Section IV.] (Section VII, P. L.) And be it enacted by the authority aforesaid, That in every case of neglect, contempt or refusal as aforesaid, the said commissioners shall severally be liable to be proceeded against by indictment and to be punished for the same by the justices of the peace or by the justices of oyer and terminer and general gaol delivery, by fine, according to the nature of the offence.

(Section VIII, P. L.) And whereas the acts of assembly of this state heretofore passed to discourage desertion and to punish

such persons as should harbor, entertain, conceal or assist deserters, or promote desertion from the armies, or from the ships of war of the United States, or of his most Christian Majesty, have deprived the persons who may be charged with such offences of trial by jury, and subjected such persons to heavy fines, and to imprisonments, and even whipping, to be inflicted by justices of the peace, proceeding after a summary way:

And whereas the authority so given as aforesaid, being unusual and odious, is seldom exerted, and is moreover contrary to the constitution of this commonwealth:

[Section V.] (Section IX, P. L.) Be it therefore enacted by the authority aforesaid, That any person who now is or hereafter shall be charged with knowingly harboring, entertaining, concealing or assisting deserters, or in promoting desertion from the armies or ships of war, of the United States of America, or of his most Christian Majesty, contrary to the provisions and prohibitions of the acts last aforesaid, or any of the said acts, shall suffer the pains and penalties of the same upon conviction in the proper court of quarter sessions of the peace or court of oyer and terminer and general gaol delivery, and not upon the summary authority aforesaid.

(Section X, P. L.) And whereas in and by the act of the general assembly, entitled "An act for the further regulation of the port of Philadelphia, and for enlarging the power of the wardens thereof,"<sup>1</sup> which was passed on the first day of April in the year of our Lord one thousand seven hundred and eighty-four, it is enacted that in case of ships running foul of each other the said wardens should hear, determine and award to the party injured or damaged such recompense for any damages thereby sustained as they or any three of them should deem reasonable, and the parties, severally, are by the same act debarred of trial by jury and concluded by the award of the said wardens, in direct violation of the bill of rights which hath established that in controversies respecting property and in suits between man and man the parties have a right to trial by jury, which ought to be held sacred.

[Section VI.] (Section XI, P. L.) Be it therefore enacted by

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<sup>1</sup> Passed April 1, 1784, Chapter 1095.

the authority aforesaid, That in all cases of ships and vessels running foul of each other, concerning which the wardens of the port of Philadelphia, shall in pursuance of the said act, make any award, or pass any judgment, either of the parties, who may be dissatisfied with such award or judgment may appeal therefrom to the supreme court within five days after he, she or they [shall] have notice of such award or judgment, and not afterwards, and the party so appealing as aforesaid shall within the three first days of the next ensuing term cause an entry of such appeal to be made with the prothonotary of the said court and the said court shall proceed therein as nearly as may be after the manner in which the county courts of common pleas are directed to proceed in appeals from justices of the peace in the case of debts and demands above forty shillings, and not exceeding five pounds by an act of assembly, entitled "An act for the more easy and speedy recovery of small debts,"<sup>2</sup> passed in the late province of Pennsylvania on the first day of March, one thousand seven hundred and forty-five.

(Section XII, P. L.) Provided always, That if the judgment of the said wardens in any case be affirmed, the party appealing as aforesaid shall be adjudged to pay double costs to the party appealed, together with lawful interest on the sum by the same wardens in such case awarded, from the time of making such award.

[Section VII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That nothing in the same "Act for the further regulation of the port of Philadelphia and for enlarging the powers of the wardens thereof,"<sup>1</sup> shall debar the party who shall be injured or damaged by the running foul of any ships or vessels as aforesaid from commencing a suit or action for the damages thereby done as in other cases, without first applying to the said wardens for redress.

(Section XIV, P. L.) Provided nevertheless, That if any person or persons shall commence any such action as aforesaid and shall recover less than fifty pounds as damages, he, she or they, shall not recover any costs of suit.

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<sup>2</sup> Passed March 1, 1745, Chapter 365.

<sup>5</sup> Chapter 1095.

[Section VIII.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That all and every of the acts of assembly herein before recited which may be affected or altered by this act shall be and the same are and is hereby repealed so far and no further than shall be required to give effect and operation to this act.

Passed April 5, 1785. Recorded L. B. No. 2, p. 514. See the note to the Act of Assembly passed March 20, 1724-25, Chapter 284, and the Act of Assembly passed March 24, 1786, Chapter 1218.

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## CHAPTER MCLXII.

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AN ACT TO EMPOWER THE SUPREME EXECUTIVE COUNCIL TO DRAW ON THE TREASURER OF THIS STATE FOR THE SUM OF FIVE HUNDRED POUNDS IN FAVOR OF THOMAS PAINE, ESQUIRE.

(Section I, P. L.) Whereas during the late revolution, and particularly in [the] most trying and perilous times thereof, many very eminent services were rendered to the good people of Pennsylvania, and other parts of the United States by Thomas Paine, esquire, accompanied with sundry distinguished instances of fidelity, patriotism and disinterestedness:

(Section II, P. L.) And whereas the said Thomas Paine, did, during the whole progress of the revolution, voluntarily devote himself to the service of the public, without accepting recompense therefor, and moreover did decline taking or receiving the profits, which authors are entitled to, on the sale of their literary works, but relinquished them for the better accommodation of the country, and for the honor of the public cause:

(Section III, P. L.) And whereas besides the knowledge which this house has of the services of the said Thomas Paine, the same have been recommended to us, by message of his excellency the president and the supreme executive council of this state, of the sixth day of December last past, and by the friendly offices of the late patriotic commander-in-chief, General Washington: