

An Act for Regulating Government

THE

Statutes at Large,

From the Thirteenth Year of the Reign of

KING GEORGE the THIRD

To the Sixteenth Year of the Reign of

KING GEORGE the THIRD, inclusive.

To which is prefixed,

A TABLE of the TITLES of all the Publick and Private

Statutes during that Time.

With a COPIOUS INDEX.

VOLUME the TWELFTH.

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MDCCLXXVI.

CAP XLV.

An act for the better regulating the government of the province of the Massachuset's Bay, in New England.

WHEREAS by letters patent under the great seal of England, made in the third year of the reign of their late majesties King William and Queen Mary, for uniting, erecting, and incorporating, the several colonies, territories, and tracts of land therein mentioned, into one real province, by the name of Their Majesties Province of the Massachuset's Bay, in New England; whereby it was, amongst other things, ordained and established, That the governor of the said province should, from thenceforth, be appointed and commissioned by their Majesties, their heirs and successors: It was, however, granted and ordained, That, from the expiration of the term for and during which the eight and twenty persons named in the said letters patent were appointed to be the first counsellors or assistants to the governor of the said province for the time being, the aforesaid number of eight and twenty counsellors or assistants should yearly, once in every year, for ever thereafter, be, by the general court or assembly, newly chosen: And whereas the said method of electing such counsellors or assistants, to be vested with the

several powers, authorities, and privileges, therein mentioned, although conformable to the practice theretofore used in such of the colonies thereby united, in which the appointment of the respective governors had been vested in the general courts or assemblies of the said colonies, hath, by repeated experience, been found to be extremely ill adapted to the plan of government established in the province of the Massachuset's Bay, by the said letters patent herein-before mentioned, and hath been so far from contributing to the attainment of the good ends and purposes thereby intended, and to the promoting of the internal welfare, peace, and good government of the said province, or to the maintenance of the just subordination to, and conformity with, the laws of Great Britain, that the manner of exercising the powers, authorities, and privileges aforesaid, by the persons so annually elected, hath, for some time past, been such as had the most manifest tendency to obstruct, and, in great measure, defeat, the execution of the laws; to weaken and, in great measure, defeat, the execution of the laws; to weaken the attachment of his Majesty's well-disposed subjects in the said province to his Majesty's government, and to encourage the ill-disposed among them to proceed even to acts of direct resistance to, and defiance of, his Majesty's authority; And it hath accordingly happened that an open resistance to the execution of the laws hath actually taken place in the town of Boston, and the neighbourhood thereof, within the said province: And whereas it is, under these circumstances, become absolutely necessary, in order to the preservation of the peace and good order of the said province, the protection of his Majesty's well-disposed subjects therein resident, the continuance of the mutual benefits arising from the commerce and correspondence between this kingdom and the said province, and the maintaining of the just dependance of the said province upon the crown and parliament of Great Britain, that the said method of annually electing the counsellors or assistants of the said province should no longer be suffered to continue but that the appointment of the said counsellors or assistants should henceforth be put upon the like footing as is established in such other of his Majesty's colonies or plantations in America, the governors whereof are appointed by his Majesty's commission, under the great seal of Great Britain: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of August, one thousand seven hundred and seventy-four, so much of the charter, granted by their majesties King William and Queen Mary to the inhabitants of the said province of the Massachuset's Bay, in New England, and all and every clause, matter, and thing, therein contained, which relates to the time and manner of electing the assistants or counsellors for the said province, be revoked, and is hereby revoked and made void and of none effect; and that the offices of all counsellors and assistants, elected and appointed in pursuance thereof, shall from thenceforth cease and determine: And that, from and after the said first day of August, one thousand seven hundred and seventy-four, the council, or court of assistants of the said province for the time being, shall be composed of such of the inhabitants or proprietors of lands within the same as shall be thereunto nominated and appointed by his Majesty, his heirs and successors, from time to time, by warrant under his or their signet or sign manual, and with the advice of the privy council, agreeable to the practice now used in respect to the appointment of counsellors in such of his Majesty's other colonies in America, the governors whereof are appointed by commission under the great seal of Great Britain: provided, that the number of the said assistants or counsellors shall not, at any one time, exceed thirty-six, nor be less than twelve.

II. And it is hereby further enacted, That the said assistants or counsellors, so to be appointed as aforesaid, shall hold their offices respectively, for and during the pleasure of his Majesty, his heirs or successors; and shall have and enjoy all the powers, privileges, and immunities, at present held, exercised, and enjoyed, by the assistants or counsellors of the said province, constituted and elected, from time to time, under the said charter, (except as herein-after excepted); and shall also, upon their admission into the said council, and before they enter upon the execution of their offices respectively, take the oaths, and make, repeat, and subscribe, the declarations required, as well by the said charter as by any law or laws of the said province now in force, to be taken by the assistants or counsellors who have been so elected and constituted as aforesaid.

III. And be it further enacted by the authority aforesaid, That from and after the first day of July, one thousand seven hundred and seventy-four, it shall and may be lawful for his Majesty's governor for the time being of the said province, or, in his absence, for the lieutenant-governor, to nominate and appoint, under the seal of the province, from time to time, and also to remove, without the consent of the council, all judges of the inferior courts of common pleas, commissioners of Oyer and Terminer, the attorney general, provosts, marshals, justices of the peace, and other officers to the council or courts of justice belonging; and that all judges of the inferior courts of common pleas, commissioners of Oyer and Terminer, the attorney general, provosts, marshals, justices, and other officers so appointed by the governor, or, in his absence, by the lieutenant-governor alone, shall and may have, hold, and exercise, their said offices, powers, and authorities, as fully and completely, to all intents and purposes, as any judges of the inferior courts of common pleas, commissioners of Oyer and Terminer, attorney general, provosts, marshals, or other officers, have or might have done heretofore under the said letters patent, in the third year of the reign of their late majesties King William and Queen Mary; any law, statute, or usage, to the contrary notwithstanding.

IV. Provided always, and be it enacted, That nothing herein contained shall extend, or be construed to extend, to annul or make void the commission granted before the said first day of July, one thousand seven hundred and seventy-four, to any judges of the inferior courts of common pleas, commissioners of Oyer and Terminer, the attorney general, provosts, marshals, justices of the peace, or other officers; but that they may hold and exercise the same, as if this act had never been made, until the same shall be determined by death, removal by the governor, or other avoidance, as the case may happen.

V. And be it further enacted by the authority aforesaid, That, from and after the said first day of July, one thousand seven hundred and seventy-four, it shall and may be lawful for his Majesty's governor, or, in his absence, for the lieutenant-governor for the time being of the said province, from time to time, to nominate and appoint the sheriffs without the consent of the council, and to remove such sheriffs with such consent, and not otherwise. VI. And be it further enacted by the authority aforesaid, That, upon every vacancy of the officers of chief justice and judges of the superior court of the said province, from and after the said first day of July, one thousand seven hundred and seventy-four, the governor for the time being, or, in his absence, the lieutenant-governor, without the consent of the council, shall have full power and authority to nominate and appoint the persons to succeed to the said offices; who shall hold their commissions during the pleasure of his Majesty, his heirs and successors; and that neither the chief justice or judges appointed before the said first day of July, one thousand seven hundred and seventy-

four, nor those who shall hereafter be appointed pursuant to this act, shall be removed, unless by the order of his Majesty, his heirs or successors, under his or their sign manual.

VII. And whereas, by several acts of the general court, which have been from time to time enacted and passed within the said province, the freeholders and inhabitants of the several townships, districts, and precincts, qualified, as is therein expressed, are authorised to assemble together, annually, or occasional[y], upon notice given, in such manner as the said acts direct, for the choice of select men, constables, and other officers, and for the making and agreeing upon such necessary rules, orders, and bye laws, for the directing, managing, and ordering, the prudential affairs of such townships, districts, and precincts, and for other purposes: and whereas a great abuse has been made of the power of calling such meetings, and the inhabitants have, contrary to the design of their institution, been misled to treat upon matters of the most general concern, and to pass many dangerous and unwarrantable resolves: for remedy whereof, be it enacted, That from and after the said first day of August, one thousand seven hundred and seventy-four, no meeting shall be called by the select men, or at the request of any number of freeholders of any township, district, or precinct, without the leave of the governor, or, in his absence, of the lieutenant-governor, in writing, expressing the special business of the said meeting, first had and obtained, except the annual meeting in the months of March or May, for the choice of select men, constables, and other officers, or except for the choice of persons to fill up the offices aforesaid, on the death or removal of any of the persons first elected to such offices, and also, except any meeting for the election of a representative or representatives in the general court; and that no other matter shall be treated of at such meetings, except the election of their aforesaid officers or representatives, nor at any other meeting, except the business expressed in the leave given by the governor, or, in his absence, by the lieutenant-governor.

VIII. And whereas the method at present used in the province of Massachuset's Bay in America, of electing persons to serve on grand juries, and other juries, by the freeholders and inhabitants of the several towns, affords occasion for many evil practices, and tends to pervert the free and impartial administration of justice: for remedy whereof, be it further enacted by the authority aforesaid, That, from and after the respective times appointed for the holding of the general sessions of the peace in the several counties within the said province, next after the month of September, one thousand seven hundred and seventy-four, the jurors to serve at the superior courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferior court of common pleas, in the several counties within the said province, shall not be elected, nominated, or appointed, by the freeholders and inhabitants of the several towns within the said respective counties nor summoned or returned by the constables of the said towns; but that, from thenceforth, the jurors to serve at the superior courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferior court of common pleas within the said province, shall be summoned and returned by the sheriffs of the respective counties within the said province; and all writs of Venire Facias, or other process or warrants to be issued for the return of jurors to serve at the said courts, shall be directed to the sheriffs of the said counties respectively, any law, custom, or usage, to the contrary notwithstanding.

IX. Provided always, and be it further enacted by the authority aforesaid, That wherever the sheriff of any country shall happen to be a party, or interested or related to any party of person interested in any

prosecution or suit depending in any of the said courts; that then in such case, the writ of Venire Facias, of other process or warrant for the summoning and return of a jury, for the trial of such prosecution or suit, shall be directed to, and executed by, the coroner of such county and in case such coroner shall be also a party, or interested in, or related to, the Venire Facias, or other process or warrant, for the summoning and return of a jury for the trial of such prosecution or suit shall be directed to, and executed by, a proper and indifferent person, to be appointed for that purpose by the court wherein such prosecution or suit shall be depending.

X. And that all sheriffs may be the better informed of persons qualified to serve on juries at the superior courts of judicature, courts of assize, general gaol delivery, general sessions of the peace, and inferior court of common pleas, within the said province, be it further enacted by the authority aforesaid, That the constables of the respective towns, within the several counties of the said province, shall, at the general sessions of the peace to be holden for each county, next after the month of September in every year, upon the first day of the said sessions, return and deliver to the justices of the peace, in open court, a true list, in writing, of the names and places of abode of all persons within the respective towns for which they serve, or the districts thereof, qualified to serve upon juries, with their titles and additions, between the age of one and twenty years and the age of seventy years; which said justices or any two of them, at the said sessions in the respective counties, shall cause to be delivered a duplicate of the aforesaid lists, by the clerk of the peace of every country, to the sheriffs, or their deputies, within ten days after such session; and cause each of the said lists to be fairly entered into a book by the clerk of the peace, to be by him provided, and kept for that purpose amongst the records of the said court; and no sheriff shall impanel or return any person or persons to serve upon any grand jury, petit jury, whatsoever, in any of the said courts that shall not be named or mentioned in such list: and, to prevent a failure of justice, through the neglect of constables to make such returns of persons qualified to serve on juries, as in and by this act is directed, the clerks of the peace of the said several counties are hereby required and commanded, twenty days at least next before the month of September, yearly, and every year, to issue forth precepts or warrants, under their respective hands and seals, to the respective constables of the several towns within the said respective counties, requiring them, and every of them, to make such return of persons qualified to serve upon juries as hereby respectively directed; and every constable failing at any time to make and deliver such return to the justices in open court, as aforesaid, shall forfeit and incur the penalty of five pounds sterling to his Majesty, and his successors: to be recovered by bill, plaint, or information, to be prosecuted in any of the courts aforesaid; and, in order that the constables may be the better enabled to make complete lists of all persons qualified to serve on juries, the constables of the several towns shall have free liberty, at all seasonable times, upon request by them made to any officer or officers, who shall have in his or their custody any book or account of rates or taxes on the freeholder or inhabitants within such respective towns, to inspect the same, and take from thence the names of such persons qualified to serve on juries, dwelling within the respective towns for which such lists are to be given in and returned pursuant to this act; and shall, in the month of September, yearly, and every year, upon two or more Sundays, fix upon the door of the church, chapel, and every other publick place of religious worship within their respective precincts, a true and exact list of all such persons intended to be returned to the said general sessions of the peace, as qualified to serve on juries, pursuant to the directions of this act; and leave at the same time a duplicate of such list with

the town clerk of the said place, perused by the freeholder and inhabitants thereof, to the end that notice may be given of persons duly qualified who are omitted, or of persons inserted by mistake who ought to be omitted out of such lists and it shall and may be lawful to and for the justices, at the general sessions of the peace to which the said lists shall be so returned, upon due proof made before them of any person or persons duly qualified to serve on juries being omitted in such lists, or of any person or persons being inserted therein who ought to have been omitted, to order his or their name or names to be inserted or struck out, as the case may require: and in case any constable shall wilfully omit, out of such list, any person or persons, whose name or names ought to be inserted, or shall wilfully insert any person or persons who ought to be omitted, every constable so offending, shall, for every person so omitted or inserted in such list, contrary to the true intent and meaning of this act, be fined by the said justices, in the said general sessions of the peace, in the sum of forty shillings sterling.

XI. Provided always, and be it enacted by the authority aforesaid, That in case default shall at any time hereafter be made, by any constable or constables, to return lists of persons qualified to serve on juries within any of the said towns to the said court of general sessions of the peace; then, and in such case, it shall be lawful for the sheriff of the county, in which such default shall be made, to summon and return to the several courts aforesaid, or any of them, such and so many persons dwelling in such towns, or the districts thereof, qualified to serve on juries, as he shall think fit to serve on juries at such respective courts; any thing herein contained to the contrary thereof in any-wise notwithstanding.

XII. And be it further enacted by the authority aforesaid, That every summons of any person, to serve upon any of the juries at the said courts, or any of them, shall be made by the sheriff, or other person, ten days at the least before the holding of every such court; and in case any jurors, so to be summoned, be absent from the usual place of his habitation at the time of such summons, notice of such summons shall be given, by leaving a note, in writing, under the hand of such sheriff, or person, containing the contents thereof, at the dwelling-house of such juror, with some person inhabiting in the same

XIII. Provided always, and be it further enacted by the authority aforesaid, That in case a sufficient number of persons qualified to serve on juries shall not appear at the said courts, or any of them, to perform the service of grand or petit jurors; that then, and in such case, it shall be lawful for the said court to issue a writ or precept to the sheriff, requiring him to summon a sufficient number of other persons qualified to serve on juries, immediately to appear at such court, to fill up and compleat the number of jurors to serve at such court; and such persons are hereby required to appear and serve as jurors at the said courts accordingly.

XIV. And be it further enacted by the authority aforesaid, That no person who shall serve as a juror, at any of the said courts, shall be liable to serve again as a juror at the same court, or any other of the courts aforesaid, for the space of three years then next following; except upon special juries.

XV. And, in order that sheriffs may be informed of the persons who have served as jurors, it is hereby further enacted by the authority, aforesaid, that every sheriff shall prepare and keep a book, or register, wherein. the names of all such persons who have served as jurors, with their additions and places of abode, and the times when, and the courts in which they served, shall be alphabetically entered and

registered; which books or registers shall, from time to time, be delivered over to the succeeding sheriff of the said county; within ten days after he shall enter upon his office; and every juror, who shall attend and serve at any of the courts aforesaid, may at the expiration of the time of holding every such court, upon, application to the sheriff, or his deputy, have a certificate immediately, gratis, from the sheriff, or his deputy, testifying such his attendance and service; which said certificate the said sheriff or his deputy, is required to give to every such juror.

XVI. And be it further enacted by the authority aforesaid, That if, by reason of challenges, or otherwise, there shall not be a sufficient number of jurors for the trial of any prosecution for any misdemeanour, or any action depending in any of the said courts; then, and in such case, the jury shall be filled up de Talibus Circumstantibus, to be returned by the sheriff, unless he be a party, or interested or related to any party or person interested in such prosecution or action; and, in any of which cases, to be returned by the coroner, unless he be a party, or interested or related to any party or person interested in such prosecution or action; and, in any of these cases, to be returned by a proper and indifferent person, to be appointed by the court for that purpose.

XVII. And be it further enacted by the authority aforesaid, That in case any person summoned to serve upon the grand or petit jury, at any of the courts aforesaid, or upon the jury in any prosecution, action, or suit, depending in any of the said courts, shall not appear and serve at the said courts, according to the said summons, (not having any reasonable excuse to be allowed by the judges or justices at such court,) he shall be fined by the judges or justices of such court in any sum not exceeding the sum of ten pounds, nor less than twenty shillings sterling.

XVIII. And be it further enacted by the authority aforesaid, That every sheriff, or other officer, to whom the Venire Facias, or other process or warrant, for the trial of causes, or summoning of juries, shall be directed, shall, upon his return of every such writ, or other process or warrant, (unless in cases where a special jury shall be struck by order or rule of court, pursuant to this act,) annex a pannel to the said writ, or process, or warrant, containing the christian and surnames, additions, and places of abode, of a competent number of jurors, named in such lists, which number of jurors shall not be less than twenty-four, nor more than forty-eight, without direction of the judges or justices of such court or session, or one of them, who are hereby respectively impowered and required, if he or they see cause, by order, under his or their respective hand or hands, to direct a greater number; and then such number as shall be so directed shall be the number to be returned to serve on such jury.

XIX. And be it further enacted by the authority aforesaid, That for the trials of all actions or suits depending in any of the said courts, the name of each and every person who shall be summoned and returned as aforesaid, with his addition, and the place of his abode, shall be written in several and distinct pieces of parchment, or paper, being all as near as may be of equal size and bigness. and shall be delivered unto the officer to be appointed by the court for that purpose, by the sheriff, under sheriff, or some agent of his; and shall, by direction and care of such officer, be rolled up all as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose; and when any cause shall be brought on to be tried, some indifferent person, by direction of the court, may and shall, in open court, draw out twelve of the said parchments or paper, one after another; and if any of the

persons, whose names shall be so drawn, shall not appear, or shall be challenged, and such challenge allowed, then such person shall proceed to draw other parchments or papers from the said box, till twelve indifferent persons shall be drawn; which twelve indifferent persons being sworn shall be the jury to try the said cause: and the names of the persons so drawn and sworn shall be kept apart by themselves in some other box or glass, to be kept, for that purpose, till such jury shall have given in their verdict and the same is recorded, or until such jury shall, by consent of the parties, or leave of the court, be discharged; and then the same names shall be rolled up again, and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn, and so toties quoties, as long as any cause remains then to be tried.

XX. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the superior court of assize, and court of common pleas upon motion made on behalf of his Majesty, his heirs or successors, or on the motion of any prosecutor or defendant, in any indictment or information for any misdemeanor depending, or to be brought or prosecuted in the said court, or on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause, or suit whatsoever, depending, or to be brought and carried on in the said court, and the said court, is hereby authorized and required, upon motion as aforesaid, in any of the cases before mentioned, to order and appoint a jury to be struck for the trial of any issue joined in any of the said cases, and triable by a jury of twelve men, by such officer of the said court as the court shall appoint; and for that purpose the sheriff, or his deputy, shall attend such officer with the duplicate of the lists of persons qualified to serve on juries; and such officer shall thereupon take down, in writing, from the said duplicate, the names of forty-eight persons qualified to serve on juries, with their additions, and places of abode, a copy whereof shall forthwith be delivered to the prosecutors or plaintiffs, their attornies or agents, and another copy thereof to the defendants, their attornies or agents, in such prosecutions and causes; and the said officer of the court aforesaid shall, at a time to be fixed by him for that purpose, strike out the names of twelve of the said persons, at the nomination of the prosecutors or plaintiffs, their attornies or agents, and also the names of twelve others of the said persons, at the nomination of the said defendants in such prosecutions and suits; and the twenty-four remaining persons shall be struck and summoned, and returned to the said court as jurors, for the trial of such issues.

XXI. Provided always, That in case the prosecutors or plaintiffs, or defendants, their attornies or agents, shall neglect or refuse to attend the officer at the time fixed for striking the names of twenty-four persons as aforesaid, or nominate the persons to struck out; then, and in such case, the said officer shall, and he is hereby required to strike out the names of such number of the said persons as such prosecutors or plaintiffs, or defendants, might have nominated to be struck out.

XXII. And be it further enacted, That the person or party who shall apply for such special jury as aforesaid, shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all the expences occasioned by the trial of the cause by such special jury, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be intitled unto in case the cause had been tried by a common jury, unless the judge, before whom the cause is tried, shall, immediately after the trial, certify, in open court, under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury.

