

upon all or any of the said acts of assembly; to which books of accounts the committee of assembly hereafter to be appointed to audit the said trustees' accounts shall have free access at all reasonable times, and shall further have delivered to them for the use of the assembly a fair duplicate of the said tables by the aforesaid trustees, with a list of the receipts of all such moneys paid in with the days of payment, and likewise have access to the mortgage-deeds and enrollments of the same with the bonds given by the mortgagors, to the end they may be satisfied that there is due credit given to the province for the moneys or bills of credit paid in, and that the same have been again let out without delay to such persons as have had occasion to borrow, and that the said committee may from time to time be acquainted with the state of the whole transactions and affairs belonging to the said loan office. And such of the said trustees as shall undertake and execute the said trust shall each of them receive the same like salaries as are allowed and appointed by the aforesaid several acts of assembly to be paid to the former trustees.

Passed August 25, 1738. See Appendix XIII, Section I, and notes to the Acts of Assembly passed March 5, 1725-26, Chapter 289, and August 15, 1730, Chapter 317, and the Act of Assembly passed May 19, 1739, Chapter 353.

CHAPTER CCCXLVI.

AN ACT FOR LAYING AN EXCISE ON WINE, RUM, BRANDY AND OTHER SPIRITS.

Whereas the several acts for laying an excise on wine, rum, brandy and other spirits retailed within this province are now expired:

Therefore, to the end farther provision be made for the payment of the public debts and defraying the other necessary charges of government:

[Section I.] Be it enacted by the Honorable George Thomas,

Esquire, Lieutenant-Governor with the King's royal approbation under the Honorable John Penn, Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania, &c., by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That there shall be throughout this province raised, levied, collected and paid for all rum, brandy and other spirits sold, drawn or bartered by any person or persons whatsoever by any quantity under seventy gallons, and for all wine sold, drawn or bartered under the quantity of one hogshead and to be delivered at one time and to one person at any time after the first day of September, one thousand seven hundred and thirty-eight, and before the first day of September, one thousand seven hundred and forty-three, the rate or sum of four pence per gallon, and so proportionably for a greater or lesser quantity.

[Section II.] And be it further enacted by the authority aforesaid, That every retailer of all or any of the said liquors before he or they draw, sell or barter any of the said liquors shall enter his or her name and place of abode with the collectors of the respective counties hereinafter appointed or their deputies in books to be by them kept for that purpose, and shall also take and have from the said collectors or their deputies respectively a permit for drawing or selling such liquors, for which entry and permit they shall pay one shilling and no more.

Provided always, That no such permit be granted to any person or persons to retail the liquors aforesaid the rates and duties whereof (by this act imposed) do not amount to the value of three pounds per annum and so in proportion for a lesser time, unless such retailer or retailers at the time of their obtaining such permit as aforesaid will undertake and give security if thereunto required by the said collectors respectively well and truly to pay so much to the said collectors as shall make up the rates and duties by this act imposed the sum of three pounds per annum and so proportionably for a longer or shorter time.

And all such retailers and every one of them are hereby enjoined once in every three months or oftener if required to make

true and particular entries with the collectors or their deputies aforesaid respectively upon oath or affirmation (which the said collectors or their deputies are hereby fully empowered to administer) of all wine, rum, brandy and other spirits which they or any of them shall have vended, bartered or retailed within that time, and so from time to time during the continuance of this act. And shall and are hereby required to account and pay to the said collectors or their deputies respectively once in every three months or oftener if required all such sum and sums of money as shall become due and payable by virtue of this act.

[Section III.] And be it further enacted by the authority aforesaid, That all and every retailer of all or any of the liquors aforesaid shall on the entry of their names and places of abode with the officers aforesaid give unto the said collectors or their deputies an exact and true account of all wine, rum, brandy and other spirits which shall be in their possession at the time of entry aforesaid and of whom purchased, and shall also from time to time after the first day of September next, before they take into their houses, shops, cellars, vaults or stores any cask or quantity of liquors liable to pay the duties imposed by this act, make entry of all and every such cask or quantity of liquors with the collectors aforesaid or their deputies respectively, with the marks, numbers and contents thereof and of whom purchased, and shall receive from him a certificate or duplicate of such entry if required by the party, for which entry and certificate the said retailer shall pay six pence and no more.

[Section IV.] And be it further enacted by the authority aforesaid, That if any retailer shall presume to retail, draw, sell or barter any of the liquors aforesaid without having first entered his or her name and place of abode with the collectors or their deputies as this act directs, every such retailer shall forfeit and pay the sum of five pounds over and above the duties for all such liquors retailed by them as aforesaid; or if after such entry made any such retailer shall refuse or neglect to make true and particular entries every three months as directed by this act, or shall refuse or neglect to account with or

pay to the said collectors or their deputies what shall appear to be due by this act upon the entries made by them as aforesaid once in every three months or oftener if thereunto required, every such retailer shall forfeit and pay for so neglecting or refusing to enter the liquors drawn every three months respectively and to account and pay as aforesaid, for the first offense the sum of forty shillings, and for the second offense five pounds, and have their permit or license taken away, and are hereby declared incapable of retailing or selling any of the liquors aforesaid during the continuance of this act. And if the person or persons liable to pay the duties arising upon selling or retailing of the liquors mentioned in this act shall neglect or refuse to pay the same in the manner and at the times herein limited and appointed by the space of ten days after the same ought to be paid, it shall and may be lawful for the said collectors respectively, by virtue of a special warrant for that purpose signed and sealed by any one justice of the peace of the city or county where the offense is committed, to empower the said collector to levy the same by distress and sale of the goods and chattels of the offender, rendering the overplus (if any be) to the owner or owners after reasonable charges deducted.

[Section V.] And be it further enacted by the authority aforesaid, That if any person shall make short or fraudulent entries of the liquors in his or her possession [as] aforesaid, or shall neglect or refuse to enter and take permits for such liquors as he or she shall receive into his or her house, shop, cellar, vault, store or other place, after the said first day of September next, all such liquors not entered as aforesaid shall be forfeited, and the collectors hereafter named or their deputies are hereby respectively empowered to enter at any time when they shall see convenient the house, cellar, vault, store or shop of any retailer, and to compare the liquors in such house, cellar, vault, shop or store with the entries made, and to seize and take away all such liquors as shall be found not truly entered as aforesaid.

[Section VI.] And be it further enacted by the authority aforesaid, That the said collectors or their deputies may enter into any house, cellar, vault, store or other room to search,

examine and gauge the liquors of any person retailing with or without license or permit as often as he or they shall see fit, and upon their refusing him liberty so to do, he may force and break open doors to gauge and examine the same; and in case of opposition, if necessity requires, shall take to his assistance the sheriff or one or more constables of the town or county respectively, who without any other warrant are hereby, under the penalty of five pounds for every refusal or neglect, required to be aiding and assisting to the said collectors and their deputies therein for the better and more effectual collecting the duties, penalties and forfeitures imposed by this act.

Provided always, That there shall be allowed by the collectors or their deputies unto the several retailers of the liquors aforesaid fifteen per cent for leakage and wastage, and if any cask should happen to start or burst no duties shall be reckoned for so much of the said liquors as such retailers shall prove was lost thereby.

[Section VII.] And be it further enacted by the authority aforesaid, That Joseph Wharton, of Philadelphia, gentleman, shall be and is hereby appointed collector of the excise, &c., within the city and county of Philadelphia; and that William Atkinson, of Bucks county, gentleman, shall be and is hereby appointed collector of the excise, &c., for the county of Bucks; and that Thomas Cummings, of Chester county, gentleman, shall be and is hereby appointed collector of the excise, &c., for the county of Chester; and that James Mitchell, of Lancaster county, gentleman, shall be and is hereby appointed collector of the excise, &c., for the county of Lancaster; which said several collectors are hereby empowered, by themselves or their deputies to be by them duly constituted and for whom they shall be accountable, to demand, collect, receive, and recover the excise appointed to be paid by this act of and from all and every person or persons (within their respective counties and places for which they are appointed) retailing or vending any of the liquors by this act liable to pay the duties aforesaid, and also to recover and receive all and every the duties, fines and forfeitures laid or imposed or that shall happen to arise or become due for anything done contrary to the true intent and meaning of this act.

And the said collectors are hereby required to keep true and fair accounts in writing of all their doings in the premises, which accounts they shall when thereunto required submit to the view and inspection of the provincial treasurer for the time being, and thereupon settle and adjust the said accounts and also lay the same before the assembly of this province when and so often as they shall be thereunto required.

And the said collectors and each of them shall once in three months or oftener if required pay unto the provincial treasurer all such sums of money as they shall receive by virtue of this act, to be disposed of as the assembly of this province shall think fit to direct, deducting out of the same ten per cent for all the sums by them received in the counties of Bucks, Chester and Lancaster, and seven and a-half per cent for the city and county of Philadelphia, for their trouble and care in collecting and paying the same, and deducting also one moiety of all the forfeitures by them recovered for any offense committed against this act after charges paid and satisfied; and shall be further allowed in the final adjusting their accounts with the assemblies of this province all reasonable charges which may have accrued in prosecuting persons offending against this act.

[Section VIII.] And be it further enacted by the authority aforesaid, That if the said collectors or any of them shall refuse or neglect to collect the said excise respectively or any part thereof and pay the same unto the provincial treasurer within the time limited in this act, every such collector so refusing or neglecting shall pay all the arrearages of such excise which he ought to have collected, which shall be levied by a warrant under the hand and seal of any two magistrates of the city of Philadelphia for the time being (whereof the mayor or recorder always to be one) or of any two magistrates of the respective counties where the offense is committed directed to the sheriff of the county, who is hereby empowered and required to execute such warrant upon the goods and chattels of the collector so offending, and in case goods and chattels sufficient to make satisfaction cannot be found, then to imprison such offender until payment be made; and the collector being so distrained on and having made full satisfaction

as aforesaid, is hereby empowered without any other warrant to distrain for his own use upon all such persons as shall refuse or neglect to pay the said arrearages.

And the said respective collectors before they enter upon the execution of their said respective offices are hereby required to give bonds with two sufficient sureties to the said treasurer for the time being in manner following: (That is to say) that the said Joseph Wharton, collector of the excise, &c., for the city and county of Philadelphia, in the sum of five hundred pounds; the said William Atkinson, collector of the excise, &c., for the county of Bucks, in the sum of one hundred pounds; the said Thomas Cummings, collector of the excise, &c., for the county of Chester, in the sum of two hundred pounds; and the said James Mitchell, collector of the excise, &c., for the county of Lancaster, in the sum of one hundred pounds, for the faithful discharge of their respective duties and for their respective accounting and paying all such sums of money as they shall from time to time receive by virtue of this act.

And the said collectors are hereby required to give public notice by printed advertisements fixed on convenient public places, certifying the time of the commencement of this act and also the duties hereby imposed, with notice to the constables of their duty and full directions how and when entries are to be made in pursuance of this act.

[Section IX.] Provided always, and be it further enacted, That in case the said Joseph Wharton, William Atkinson, Thomas Cummings and James Mitchell or any of them shall refuse to take upon him or them to be the collector or collectors of the said duties, or having taken the same upon him or them shall afterwards neglect or decline the same or misbehave him or themselves therein or die during the continuance of this act, that then and in any such case the provincial treasurer shall appoint another or others in the place and stead of such person or persons [so] refusing, neglecting, misbehaving or dying, who shall have the same power and authority and shall be liable to the same restrictions and penalties as by this act is given to the collectors herein named until others shall be appointed by the assembly.

[Section X.] And be it further enacted by the authority

aforesaid, That no person or persons within this province shall during the continuance of this act retail less than one quart of rum, wine, brandy or other spirits to be delivered at one time and to one person, unless such person or persons shall be regularly recommended to the governor for the time being and by him licensed according to the direction of an act of assembly of this province in that case made and provided. And if any person or persons shall presume during the continuance of this act to retail within this province less than one quart of wine, rum, brandy or other spirits to be delivered at one time and to one person without being legally recommended and licensed as aforesaid, he, she or they so offending shall forfeit and pay the sum of five pounds over and above the duties for all such liquors by them retailed as aforesaid, or be committed to the workhouse or prison of the respective county where the offense shall be committed, there to be kept at hard labor for the space of five months, anything herein contained to the contrary notwithstanding.

[Section XI.] And be it further enacted by the authority aforesaid, That all and every such person and persons who by virtue of licenses obtained from the governor shall be allowed to retail wine, rum, brandy or other spirits in less quantity than a quart as aforesaid, every such retailer or retailers who shall apply him, her or themselves to the justices of the court of quarter-sessions of the counties to which he, she or they respectively do belong for a recommendation to the governor to renew their licenses for keeping a public house or houses and retailing as aforesaid, every such person and persons shall on every such application and before any recommendation obtained produce certificates from the collectors of the said counties respectively to which he, she or they belong of having discharged all arrearages of money due to the said collectors or any of them for the rates and duties by this act imposed, or otherwise the said justices are hereby enjoined and required not to recommend such person or persons for the purpose aforesaid, and every such person and persons are hereby declared incapable of retailing any of the liquors aforesaid in less quantities than one quart as aforesaid, and in case any person or persons shall notwithstanding retail in less quantities than one

quart as aforesaid, he, she or they so offending shall be liable to such and the same penalties and forfeitures as by this act is imposed on other persons.

And for the better discovery of frauds and abuses:

[Section XII.] Be it further enacted by the authority aforesaid, That it shall and may be lawful for any justice of the peace in this province upon application made by any one of the said collectors or other person to summon any person or persons to appear before such justice at such time and place as he shall appoint, to give evidence upon oath or affirmation for discovery of frauds and abuses committed against this act. And if any person or persons summoned as aforesaid shall neglect or refuse to appear and give evidence as aforesaid, he, she or they so offending shall for every such offense be fined by the justice that issued out the summons in any sum not exceeding twenty shillings and be committed to prison until paid.

[Section XIII.] And be it further enacted by the authority aforesaid, That all the forfeitures and offenses made, done and committed against this act or any clause or article therein contained shall be heard, adjudged and determined by such person or persons and in such manner and form as herein is directed: (That is to say) all such forfeitures and offenses made and committed within the city of Philadelphia shall be heard, adjudged and determined by any two or more of the aldermen of the said city, and all such forfeitures and offenses made and committed within any of the counties within this province shall be heard and determined by any two or more of the justices of the respective counties where such forfeitures shall be made or offenses committed.

And if the party finds him or herself aggrieved by the judgment given by the said aldermen or justices, he or she may appeal to the justices of the peace of the next court of general quarter-sessions of the peace to be held for the respective city or county where the judgment shall be given, which court is hereby empowered and authorized to hear and determine the same and whose judgment therein shall be final.

Provided always, That no alderman or justice who shall sit on the first hearing of any such cause shall sit to hear and de-

termined in the same cause in case any appeal shall happen to be made therein.

And the said aldermen and justices of the said city and counties of this province are hereby authorized and strictly enjoined and required, upon any complaint or information exhibited and brought of any such forfeiture made and offense committed contrary to this act, to summon the party accused, and upon his or her appearance or contempt to proceed to examination of the matters of fact, and upon due proof thereof, either by confession of the party or by oath or affirmation of one or more credible witnesses, to give judgment or sentence as before is directed, and to award and issue out warrants under their hands and seals for the levying of such forfeitures, penalties and fines as by this act is imposed for any such offenses committed upon the goods and chattels of such offender, and to cause sale to be made of such goods and chattels (if they are not redeemed within five days), rendering to the parties the overplus (if any be), the charges of distress and sale being first deducted, and for want of sufficient distress to imprison the party offending until satisfaction be made.

[Section XIV.] And be it further enacted by the authority aforesaid, That if the said magistrate, officer or any sheriff or constable shall be sued and prosecuted for anything done by them in pursuance of this act, he or they may plead the general issue and give this act and special matter in evidence for his or their justification; and in case a verdict shall be given against the prosecutor, or he shall become nonsuit or suffer a discontinuance, the defendant shall recover treble costs, to be recovered as is usual in other cases.

[Section XV.] And be it further enacted by the authority aforesaid, That all and every the constables of the respective townships or districts in this province shall and [are] hereby required, under the penalty of the forfeiture of twenty shillings for every refusal or neglect, to return on oath or affirmation unto the court of quarter-sessions in their respective counties the names and places of abode of all persons in their several townships or districts retailing or vending any liquors liable to pay the duties imposed by this act, and that the collector of

such respective county may and shall have recourse to the returns of the constables for the better collecting the duties, fines and forfeitures arising upon this act.

And whereas it has been the practice of divers persons who were not retailers of the said liquors formerly to draw off certain quantities of wine, rum and other spirits and distribute the same amongst their neighbors on purpose to elude the payment of excise:

For prevention whereof for the future:

[Section XVI.] It is hereby enacted and declared, That the drawing, distributing or sharing of any rum, wine, brandy or other spirits out of any cask or casks whatsoever into any quantity or quantities less than seventy gallons each, under pretense of making it convenient for carriage or otherwise, shall be deemed and taken [to] be retailing within the meaning of this act.

Provided always nevertheless, It shall and may be lawful to and for any distiller in this province to sell to any retailer or retailers any quantity of spirits of his own distilling not less than five gallons to one person and to be delivered at one time, first making entry thereof with the collector of the county where he resides, with the retailer's name and place of abode to whom sold and number of gallons, and also at the same time taking an oath or affirmation that the same spirits by him sold as aforesaid were *bona fide* distilled in this province and from materials of the growth or produce of the said province, and are clear of all mixtures of rum or any other foreign spirits whatsoever, and the said retailer shall pay and account for the duty thereof to the said collector pursuant to the direction of this act, anything herein contained to the contrary in anywise notwithstanding.

Provided also, That the collectors of the excise aforesaid or any of them nor their or any of their deputies, nor any other person or persons to be appointed in their or any of their places or stead, shall during the continuance of this act vend, barter, sell, exchange or trade in any of the liquors aforesaid made excisable by this act under the penalty of fifty pounds, to be recovered by action of debt, bill, plaint or information by any person who will sue for the same to effect, one-half thereof to

the use of the person so suing, the other half thereof to be paid in to the provincial treasurer aforesaid toward the support of the government of this province; and the person or persons duly convicted of any such offense or offenses against this act is and are hereby disabled from acting any longer in their respective offices; and the treasurer aforesaid is hereby authorized and required to name another or others in lieu or stead of the person or persons so offending, who shall have the same powers and authorities and be liable to the same restrictions and penalties as the collectors named in this act until others are appointed by the general assembly of this province.

And whereas there are sundry sums of money which became due by virtue of the former act of excise still outstanding and not received by the former collectors:

[Section XVII.] Be it enacted by the authority aforesaid, That the provincial treasurer for the time being shall deliver unto the officers appointed by this act a true list of all such outstanding sums of money as became due upon the former acts of excise, together with the names and places of abode of the person or persons from whom the same are due; and the said collectors are hereby authorized and empowered to demand, recover and receive the same in the same manner as the excise arising upon this act is directed to be received and recovered, and shall upon receipt thereof pay the same to the provincial treasurer for the uses and in the manner as the other moneys are directed to be paid by this act.

[Section XVIII.] And be it further enacted by the authority aforesaid, That this act shall continue in force until the first day of September, which will be in the year one thousand seven hundred forty-three, and from thence until the end of the next sessions of assembly and no longer.

Passed August 25, 1738. See Appendix XIII, Section I, and the Act of Assembly passed May 26, 1744, Chapter 360.