

American Legal History – Russell

4 Laws of New Hampshire: Including Public and Private Acts and Resolves (Revolutionary Period 1776-1784) (Henry Harrison Metcalf ed., Musgrove Printing House 1916).

Colony of New Hampshire

An Act for Establishing the Stile of Commissions which shall hereafter be Issued, and for altering the Stile of Writs, Processes, and all Law proceedings within this Colony; and for directing how Recognizances to the use of this Colony shall in future be taken & Prosecuted.

[Passed July 2, 1776. Original Acts, vol. 7, p. 7; recorded Acts, vol. 3, p. 250, Laws, 1780 ed., p. 4. Repealed June 20, 1792.]

Whereas the hostile & Vindictive proceedings of the British Administration against the United Colonies have Obtained the Sanction of the King of Great-Britain, Notwithstanding the frequent & dutifull Remonstrances of these Colonies, against Such Cruel Measures; and by his Command a powerfull Navy and Army are come & Coming with avowed Purposes of Spreading Slaughter and Desolation through this Continent, by which the Good People of this Colony have been Necessitated to have Recourse to Arms to Repel Such force & to protect their Lives & fortunes; And whereas under such Circumstances, the Absurdity of Issuing Commissions, Writs, Processes, or other Proceedings in Law, and in Courts of Justice within this Colony, in the Name & Stile of the King of Great-Britian is very Apparent, and Tends to keep up Ideas inconsistent with the Form, and Safety of this Government and to give the People of this Colony great Uneasiness.

Be it therefore Enacted, by the Council and house of Representatives in General Court Assembled & by the Authority of the Same, That all civil Commissions, Writs and Precepts, for Convening the General Court or Assembly which hereafter Shall be made out in this Colony, shall be in the Stile and Name of the Government and People of the Colony of New Hampshire: And all Commissions both Civil & Military shall be dated in the Year of the Christian Era, and shall not bear the Date of the Year of the Reign of any King or Queen of Great-Britain.

And that all Writs, Processes & Proceedings in Law, and in any of the Courts of Justice in this Colony, which have been used or Accustomed, or by any Laws of this Colony, are Required to be issued, used or practiced in Law, and in any of the

Courts of Justice in this Colony, in the Name & Stile of the King of Great-Britian, France and Ireland, Defender of the faith &^c or in any other Words implying or intending the same, shall from and after the passing this Act, be made, Issued used and practiced in the Name and Stile of the Government and People of the Colony of New Hampshire, and no Other, and shall bear the Date of the Year of the Christian Era, and shall not bear the date of the Year of the Reign of any King or Queen of Great-Britian, untill some Accomodation of the American Congress, or Act, order or Resolve of a General American Legislature, or of the Legislature of this Colony, shall be made and passed, otherwise directing and Prescribing.

And be it Enacted, That all Commissions, Civil and Military, which have been Issued by the Congress or General Assembly of this Colony before the passing of this Act, shall have the same Force & Effect as if this Act had never been made, the Stile and Date therein Notwithstanding.--

State of New Hampshire.

An Act against Treason and Misprision of Treason, and for regulating Trials in such cases, and for directing the mode of executing Judgments against persons convicted of those Crimes.--

[Passed Jan. 17, 1777. Original Acts, vol. 7, p. 23; recorded Acts, vol. 3, p. 311. Laws 1780 ed., p. 65; Perpetual Laws, 1789 ed., p. 226. Repealed June 20, 1792. See additional act of April 6, 1781, Laws, 1780 ed., p. 247.]

Whereas all persons passing through visiting, or making a temporary stay in this state, and enjoying the protection of its Laws during their residence therein, as well as the inhabitants of this state owe Allegiance to the same

Be it enacted by the Council and House of Representatives in General-Court Assembled that all such persons as above described who shall, either within, or without the limits of this state, levy war, or conspire to levy war against the same, or against any other of the united States of America or shall in any way whatsoever aid the Enemies of either, or all the said united states in carrying on war against them or either of them, and thereof be convicted, such person shall be deemed and adjudged guilty of Treason against this State, and shall suffer Death without benefit of Clergy.--

Be it further enacted by the Authority aforesaid that all persons owing Allegiance to any other of the said united-states, who shall within this State, levy war or conspire to levy war against this or any other of the said united-states, or shall in

any way whatsoever aid the Enemies of either or all the said united-States in carrying on war against them, or either of them, and thereof be convicted, such persons shall be deemed and adjudged guilty of Treason against this state and shall suffer as is afore-mentioned.--

And be it further enacted by the Authority aforesaid that the concealing or keeping secret any such Treason be deemed Misprision of Treason and the Offender therein shall forfeit to the use of this state all his Goods & Chattels, and the proffits of his lands during his life, and shall be imprisoned at a term not exceeding Five Years at the discretion of the Court before whom he shall be convicted.

And be it further enacted by the Authority aforesaid that any person who shall know of any such Treason committed or intended to be committed, and shall not within fourteen days give information thereof to one of the Justices of the Superior-Court of Judicature, or some Justice of the Peace within this State shall be deemed guilty of Misprision of Treason.--

And be it further enacted by the Authority aforesaid that all Treasons & Misprisions of Treasons against this state which shall hereafter be committed by any person or persons without this state shall be enquired of, heard and determined before the Justices of the Superior-Court of Judicature within this state in the County where such Offender or Offenders last dwelt, in like manner and form as if such Treasons or Misprisions of Treasons had been committed within the same County.

And be it further enacted by the Authority aforesaid that no person, or persons whatsoever shall be tried for such Treasons or Misprisions of Treason within this state until a Bill of Indictment for any such offences against him or them be found by fifteen at least of the Grand-Jurors for the said Superior Court within the County where such Trial is to be had.--

And be it further enacted by the Authority aforesaid that any person or persons residing without this state being indicted for any of the Treasons or Misprisions of Treasons before described, or any person or persons who after being so indicted shall flee to avoid a Trial such persons may be outlawed and thereupon adjudged for any of the said offences, but if the party so outlawed, within one year next after the said Outlawry pronounced or Judgment given thereon, yield himself unto the Chief-Justice of this state for the time being, and offer to traverse the Indictment whereupon such outlawry is pronounced, that then he shall be admitted to the said Traverse, and being thereupon found not Guilty by the verdict of Twelve good and

lawful men he shall be acquitted & discharged of the Outlawry, and of all penalties and Forfeitures by reason of the same. And where after such Outlawry the party Outlawed shall come in and be tried as aforesaid he shall upon such Trial have the full benefit of this Act as tho' no such Outlawry had been adjudged.

And be it further enacted by the Authority aforesaid, that if such person or persons shall not yield himself or themselves within one year next after sentence of Outlawry he or they shall forfeit to the use of this state their whole Interest and Property real & personal wherever the same may be found--of which real property this state shall be deemed and adjudged to be seized and possessed without any Office found of the same.

And be it further enacted by the Authority aforesaid that every person whatsoever that shall be accused and indicted for Treason, or for Misprision of Treason shall have a true Copy of the whole indictment delivered unto him or them by the Clerk, forty eight hours at least before he or they shall be arraigned for the same, and also a Copy of the panel of the Jurors who are to try him or them for the like space of time before Trial, and shall be admitted to make his or their defence by Counsel learned in the Law which, if requested, the Court shall assign him or them, to whom such Counsel shall have free access at all seasonable hours.--

And be it further Enacted by the authority aforesaid that no person or persons shall be convicted of Treason or Misprision of Treason but upon the testimony of two lawful witnesses at least both of them testifying to the same Treason unless the person indicted voluntarily in open Court, confess the same.

And be it further enacted by the Authority aforesaid that if any person indicted for treason or Misprision of Treason and being arraigned thereupon, shall stand mute a Jury shall forthwith be impanelled and sworn to try whether the person so standing mute standeth mute by the providence of God, or fraudulently, wilfully and obstinately. and if they shall return their Verdict that he standeth mute by the providence of God, the Court shall thereupon cause him to be remanded to prison and shall not proceed against him until he shall have recovered therefrom; But if the Jury shall return their verdict that the Prisoner standeth mute fraudulently, wilfully and obstinately then the Court shall cause to be entered upon the Indictment against the Prisoner the plea of Not Guilty, and shall proceed upon his Trial in like manner in all respects as if the Prisoner had voluntarily pleaded the same plea, and put himself upon the Country for his Trial except that the Prisoner shall not be admitted to make any challenges to the Jurors.

And be it further enacted by the Authority aforesaid that every person indicted for Treason or Misprision of Treason who shall have duly pleaded to such Indictment and put himself upon the Country for trial shall be admitted to challenge without assigning any reason, twenty three of the Jury and no more, and as great a number further as he can show good cause for challenging. And if any person indicted as above, after having voluntarily pleaded as aforesaid shall refuse to put himself upon the Country for Trial, or shall peremptorily challenge a greater number than twenty three the Court shall disallow of all such Challenges over and above the said number of Twenty three, and the Jury shall be charged and the Trial shall proceed in like manner in all respects as if the person so indicted and having pleaded as aforesaid, had duly put himself upon the Country for his Trial and had not peremptorily challenged a greater number than twenty three of the Jury as aforesaid.--

And be it further enacted by the Authority aforesaid That the Attorney-General or any other person prosecuting for and in behalf of this state shall not be admitted in any case whatsoever, peremptorily to challenge any Juror about to be impaneled for the Trial of any Criminal Accusation or Charge.

And be it further enacted by the Authority aforesaid that no person or persons whatsoever shall be indicted or tried for any Treason or for Misprision of Treason that shall be committed in violation of this Act unless the indictment for the same be found within two years next after the offence committed.

And be it further enacted by the same Authority that every person who shall be convicted of Treason within this state and adjudged to suffer death shall be hanged by the Neck, till dead, Any Law, or Custom to the contrary notwithstanding.

And be it further enacted by the Authority aforesaid that any person who shall be found guilty of Treason or Misprision of Treason against this State may be pardoned by the Council & House of Representatives of this state by warrant under the seal of this state.

And be it further enacted by the Authority aforesaid that no person upon whom any judgment or sentence of death shall be passed by the Justices of the Superior-Court of Judicature for this state shall be put to death in pursuance of such Judgment or sentence until the whole Record of the Case be certified by the Clerk of the same Court under the seal thereof, to the said Council & House of Representatives, nor till they shall issue a warrant under the seal of this state with a Copy of said Record annexed, directed to the sheriff of the County wherein the Trial of the person so

condemned was had commanding the same sheriff in the name of the Government and people of said State to cause execution to be done upon the person so condemned in all things according to the Judgment against him. And the sheriff to whom such warrant shall be directed is hereby authorized and required to execute the same in due form of Law.

State of New Hampshire.

An Act for preventing and punishing such Offences against the state as do not amount to Treason or Misprision of Treason.--

[Passed Jan. 17, 1777. Original Acts, vol. 7, p. 24; recorded Acts, vol. 3, p. 308. Laws, 1780 ed., p. 63. Repealed June 20, 1792. See additional act of April 6, 1781, Laws 1780 ed., p. 247.]

Whereas this state, in conjunction with the other united-states of America, is now at war with Great-Britain, in defence of all that is dear and sacred to men, and there is but too much reason to fear that many among ourselves are not only disaffected to the cause but are daily striving, by every means in their power, to injure it, and ruin their Country

Be it therefore enacted by the Council and House of Representatives in General-Court assembled, that if any person or persons within this state, shall in anyway whatsoever discourage, or attempt to discourage any person or persons from enlisting in the American Army or joining and assisting their Arms either by sea or land in prosecuting the war aforesaid or from continuing in such service after being engaged therein--such person or persons shall be deemed guilty of a misdemeanor against this State, unless the party accused shall make it appear upon the Trial that he was not influenced by any motives inconsistent with the public-good but was a friend and well-wisher to the common cause aforesaid--upon which he shall be acquitted and discharged.--

And be it further enacted by the Authority aforesaid that if any person or persons within this state, shall publicly and openly speak against the common-cause before-mentioned, or endeavour by any methods, public or private to disaffect the minds of others towards it, such person or persons shall be deemed guilty of a misdemeanor against this state.

And be it further enacted by the Authority aforesaid that if any person or persons within this state shall wittingly and willingly make, or spread any false news, or reports with intent to deceive any of the inhabitants or people of this state and to

injure the common-cause--such person, or persons shall be deemed guilty of a misdemeanor against this state.

And be it further enacted by the Authority aforesaid that every person convicted of either of the misdemeanors aforesaid shall be punished by a fine not exceeding forty shillings for the first offence, and double that sum for each offence afterwards at the discretion of the Justice before whom such trial is had, and shall recognize in the sum of ten pounds, with two sureties, for his or their good behaviour and to appear at the next Court of Quarter Sessions to be holden within the County where such offence is committed. And shall stand committed until sentence be performed. And in default of the payment of such fine, or fines shall be imprisoned for a term not exceeding six, nor less than three months. saving to the party so convicted, the liberty of appealing to the next Sessions of the peace within the same County. He or they giving Bonds in a reasonable sum to prosecute said Appeal to Effect.--

And be it further enacted by the Authority aforesaid that every Justice of the peace within his respective County in this state is hereby empowered to try either of the offences or misdemeanors before-mentioned, on Complaint or any other certain information who may issue his warrant to apprehend such offender--And proceed in the same manner and form as hath heretofore been practised in this state in other offences against the Peace.--

And be it further enacted by the Authority afore said that if any person or persons within this state, shall wilfully refuse to submit to the Government & Laws thereof, or to the authority of any Magistrate or Officer of the same--such person or persons, so offending--upon conviction thereof before the Court of Sessions for the county where such offender dwells--(who are empowered to try the same on presentment thereof by the Grand Jury for said Court) shall be punished by a fine, not exceeding ten pounds at the discretion of s^d Court--& may be imprisoned for a term not exceeding six months--saving to the party so convicted, the liberty of appealing to the superior-Court of Judicature within this State. he giving Bonds in a reasonable sum to prosecute the same to Effect.

And be it further enacted by the Authority aforesaid that all fines arising by virtue of this Act--be paid to the several County-Treasurers within this state--for the use of the respective Counties where such offences may be committed.

State of New Hampshire.

An Act for the re-establishing the general System of Laws heretofore in force in this State--

[Passed April 9, 1777. Original Acts, vol. 7, p. 31; recorded Acts, vol. 3, p. 329. Laws, 1780 ed., p. 84; Perpetual Laws, 1789 ed., p. 160. Repealed June 20, 1792. Robinson, "History of Taxation in New Hampshire," pp. 184, 198.]

Whereas Doubts have arisen whether the several Acts and Laws in force in this State before the Assumption of the present f

orm of Government were not thereby, or by the subsequent Declaration of Independence, vacated abrogated & disannulled: for the removal whereof--

Be it enacted by the Council & house of Representatives in general Court convened, and by the Authority of the same it is hereby Enacted That all the Acts & Laws in force in this State (at the Time the present form of Government as Assumed) with every article Direction and Power in the same contained, so far as they are not repugnant to, and incompatible with the present Form of Government in this State and its Independence on great Britain, or are not repealed & disannulled, or altered by any Act or Law made & passed by the Council and House of Representatives of this State since the said Assuming of Government, be revived reenacted directed and ordered to abide and remain in full force and accordingly to be exercised practised and put in Execution and that all the Fines & Forfeitures thereby appropriated to the Kings Use shall be applied to the Use of the County wherein the same shall be imposed & become due.