

ACTS

PASSED AT THE SESSION BEGUN AND HELD AT BOSTON,
ON THE TWENTY-FOURTH DAY OF DECEMBER, A. D.
1746.

CHAPTER 17.

AN ACT MORE EFFECTUALLY TO PREVENT PROFANE CURSING AND
SWEARING.

Preamble.

FORASMUCH as the horrible, impious and execrable vices of profane cursing and swearing, so highly displeasing to Almighty God, and offensive to every Christian, are become so frequent and notorious, that unless speedily and effectually punished, they may justly provoke the divine vengeance to increase the many calamities this people now labour under. And whereas the laws now in being for punishing those crimes have not answered the good intentions for which they were designed,—

Be it therefore enacted by the Governour, Council and House of Representatives,

Penalty for profane cursing or swearing.

[SECT. 1.] That from and after the twentieth day of February, instant, if any person or persons that have arrived at discretion, in the judgment of the justice before whom the conviction may be, shall profanely curse or swear in the hearing of any justice of the peace, or, being charged therewith, shall confess such offence, or be otherwise convicted thereof on the oath of any sheriff, deputy-sheriff, coroner, constable, grand juror or tythingman, where such evidence shall be satisfactory to the justice that shall take cognizance of the offence, or on the oath of any one or more witness or witnesses, where the evidence shall be satisfactory as aforesaid, every person so offending, shall forfeit and pay, for the use of the poor of the town where such offence is committed, a sum not exceeding eight shillings, nor less than four, according to the aggravations of the offence and the quality and circumstances of the offender, in the judgment of the justice or court before whom the conviction is; and in case the same person or persons shall, after conviction, offend a second time, such offender or offenders shall forfeit and pay double, and if a third time, treble the sum forfeited on the first conviction, and the like sum on every conviction afterwards. And if, on any trial and conviction, proof shall be made that more than one profane oath or curse were uttered by the same person at the same time, and in the presence or hearing of the same witness or witnesses, the person so offending, for every profane oath or curse so uttered, after the first, shall forfeit and pay a sum not under one shilling, nor exceeding two shillings. And in case any person convicted of profane cursing or swearing, shall not immediately pay the sum or sums so forfeited, he shall be committed to the common goal or house of correction, there to remain not exceeding ten days, nor less than five days.

Provided always,—

And it is hereby enacted,

[SECT. 2.] That in case any common soldier in his majesty's service, or any common sailer or seamen belonging to any ship or vessel, shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty by him forfeited, such common soldier or seaman, instead of being committed as aforesaid, shall, by the said justice of the peace, be ordered to be publicly set in the stocks or cage, for the first offence not exceeding three hours, and for the second or any after offence, shall be publicly whipt, not exceeding twenty nor less than ten stripes. And if any Indian, negro or molatto slave, shall be convicted of profane swearing and cursing, and the fine is not immediately paid, such slave shall be publicly whipt by order of such justice, not exceeding twenty stripes, nor less than ten.

And be it further enacted,

[SECT. 3.] That if any person or persons shall profanely swear or curse in the hearing of any sheriff, deputy-sheriff or constable, they and each of them are hereby authorized and required to apprehend and secure such offender or offenders, being unknown to them, and to require suitable aid therein, and him or them forthwith to carry before some justice of the peace for the same county, that so such offender or offenders may be convicted and punished for the said offence. And in case any person profanely swearing or cursing in the hearing of any sheriff, deputy-sheriff, coroner, constable, grand juror or tythingman, shall be known to any or either of them, such sheriff, under-sheriff, coroner, constable, grand juror or tythingman, shall and is hereby required forthwith to give information thereof to some justice of the peace of the same county, in order that the offender or offenders may be convicted and punished for the same in manner and form as in and by this act is directed.

And be it further enacted,

[SECT. 4.] That every justice of the peace before whom any person or persons shall be convicted of profane cursing or swearing, shall cause the conviction to be drawn up in the form following:—

Suffolk ss. BE IT REMEMBERED, that on the day of , in the year of his majesty's reign, A. B. was convicted before me, one of his majesty's justices of the peace for the county of , of swearing one [or more] profane oath [or oaths], or of uttering one [or more] profane curse or curses [as the case shall be]. Given under my hand and seal the day and year aforesaid.

—which said form and conviction shall be deemed and taken to be final to all intents and purposes, saving as herein after is expressed; and the said justice before whom such conviction shall be, shall cause the same to be fairly wrote over, and returned to the then next court of general sessions of the peace for the county where the offence is committed, there to be read in open court, and to be filed by the clerk of the peace, and remain and be kept amongst the records of said court.

Saving always,—

And it is hereby provided and enacted,

[SECT. 5.] That when any person shall be convicted before a justice of the peace of profane cursing or swearing, if the defendant shall confess the words alledged to have been uttered, and shall plead specially that the words spoken do not amount to or import a profane oath or curse within the meaning and intention of this act, in such case it shall and may be lawful for such defendant to appeal from the sentence of the justice before whom he was convicted, to the justices of the same

county in their then next general sessions of the peace, who shall hear and finally determine the same, the appellant claiming his appeal at the time of declaring the said sentence, and recognizing with sureties in a reasonable sum, not exceeding five pounds, to prosecute his appeal with effect, and to perform the order of the said court thereon.

And be it further enacted,

Penalty for justices' neglecting their duty.

[SECT. 6.] That if any justice of the peace, upon due information and complaint made against any person or persons for profane cursing or swearing, shall wittingly and wilfully omit the performance of his duty in the execution of this act, he shall forfeit and pay the sum of five pounds; one moiety thereof to the informer that shall sue for the same, and the other moiety to the use of the poor of the town where he resides, to be recovered by action or information in any of his majesty's courts of record within the respective counties where such offence is committed; and no essoin, protection or wager of law shall be allowed, or more than one imparlance.

And be it further enacted,

Penalty for constables, &c., omitting their duty.

[SECT. 7.] That if any constable, grand juror, tythingman, or other officer enjoined by this act to inform against the violaters of it, shall wittingly and willingly omit the performance of his duty in the execution of this act, and be thereof duly convicted before any justice of the peace for the county where such offence is committed, he shall forfeit and pay the sum of forty shillings, to be levied and recovered by distress and sale of the offender's goods and chattels by virtue of a warrant, under the hand and seal of such justice, to be disposed of, one moiety thereof to the informer, the other moiety to the use of the poor of the town where the offence is committed; and in case such offender shall not have sufficient goods and chattels whereon to levy the said penalty, it shall and may be lawful for such justice of the peace to commit the offender to goal for the space of six days, there to remain without bail or mainprize.

And be it further enacted,

Penalty for such who shall neglect to give aid, &c.

[SECT. 8.] That if any person being required to give aid to any sheriff, deputy-sheriff or constable, as by this act is provided, shall neglect or refuse the same, and be thereof convict before any justice of the peace, by the oath of any such sheriff, deputy-sheriff or constable, or other legal witness or witnesses to the satisfaction of such justice, such person so refusing shall forfeit and pay the sum of forty shillings; the one-half to the informer, and the other half to the poor of the town where the offence is committed; and every person giving aid, as before is provided in this act, shall receive the same allowance therefor as is by law made to witnesses in civil causes.

Provided always,—

And it is hereby enacted,

Proviso.

[SECT. 9.] That no person shall be prosecuted or troubled for any offence against this law, unless the same be proved or prosecuted within twenty days next after the offence is committed.

And, that no person may plead ignorance of this law, but that it may be generally known,—

Be it further enacted,

This act recommended to be read, &c.

[SECT. 10.] That immediately after the publication of it from the court-house in Boston, a printed copy of this act shall be transmitted to every minister within the government, to whom it is hereby recommended to read, or cause the same to be publickly read, before their several congregations immediately on his receiving the same; and also on the Lord's Day next succeeding the choice of town officers, yearly during the continuance of this act.

And be it further enacted,

[SECT. 11.] That the justices of the court of assize and general goal delivery, and the justices of the peace for the several counties within this province at their general sessions, shall cause this act to be publickly read at the opening of their respective courts from time to time. This act to be read at the opening of the courts.

[SECT. 12.] This act to continue and be in force for the term of three years from the publication thereof, and to the end of the then next session of the general court, and no longer. Limitation. [*Passed February 10; published February 13, 1746-47.*]

CHAPTER 18.

AN ACT TO ENABLE THE PROPRIETORS OF PRIVATE WAYS TO REPAIR THEM IN AN EQUAL MANNER.

WHEREAS there are many private ways in this province which are seldom used but by the purchasers or proprietors of them, or the owners of the lands to which such ways lead, and are therefore not repaired by the towns in which they respectively lie; nor have the proprietors or rightful occupants of such ways any power by the laws of this province to compel their being repaired by or among themselves; to prevent, therefore, the inconvenienc[*i*]es which do or may thence arise,— Preamble.

Be it enacted by the Governour, Council and House of Representatives,

[SECT. 1.] That when and so often as any number of the proprietors and rightful occupants of any private way, where there are more than four of them, shall judge a proprietors' meeting necessary, three of them applying to a justice of the peace in the county where said way lies, such justice is hereby impowered to grant a warrant for calling the same, or otherwise one-fourth part of the said proprietors may of themselves call such meeting; in either case to be done by warrant under the hand of said justice or fourth part respectively, posted up in some publick place or places in the town or towns where such way is, seven days before the time appointed for such meeting, signifying the time, place, and business thereof; and the major part of the proprietors and rightful occupants so assembled shall have full power to agree on any other way of calling future meetings, to choose a clerk and a surveyor, who shall be sworn to the faithful discharge of their respective trusts as town officers are; and such surveyor shall have the same power with respect to such ways as the surveyors of highways are by law invested with, and shall be governed by the same rules as are prescribed by law for their direction; each proprietor's and occupant's proportion of labour to be determined by a major vote of those present at such meeting. And in case of the default of any proprietor or occupant in attending said work by himself or other sufficient person in his stead, to be subject to the same fines and penalties as in case of highways, and be recovered in the same manner, and applied to the same uses. Proprietors and occupants of private ways may apply for a meeting, &c.

[SECT. 2.] This act to continue and be in force for the space of three years from and after the publication thereof, and no longer. Major part may agree for calling future meetings. [*Passed February 13; published March 2, 1746-47.*]