

the support of the government of this province; and the other half to him or them that shall inform and sue for the same in any of their majesties' courts of record within this province.

feitures to be unto their majesties, and the other half to the informer.

Be it further enacted by the authority aforesaid,

[SECT. 8.] That there be a measurer of salt and culler of fish in every seaport town within this province, to be appointed as aforesaid, who being likewise sworn for the faithful discharge of that office, shall cull all merchantable fish and measure all salt that shall be imported and sold out of any ship or other vessel, and shall have three half-pence for every hogshead of salt by him so measured, to be paid, the one-half by the buyer, the other half by the seller. And one penny per quintal, for every quintal of merchantable fish by him culled, to be paid, one-half by the buyer and the other half by the seller. [*Passed Nov. 8.*]

Measurer of salt and culler of fish.

CHAPTER 18.

AN ACT FOR THE PUNISHMENT OF CRIMINAL OFFENDERS.

Be it enacted and ordained by the Governour, Council and Representatives in General Court assembled, and by the authority of the same,

[SECT. 1.] That if any person or persons shall prophanely swear or curse in the hearing of any justice of the peace, or shall be thereof convicted by the oathes of two witnesses, or confession of the party, before any justice or justices of the peace, every such offender shall forfeit and pay unto the use of the poor of the town, where the offence shall be committed, the sum of five shillings; and if the offender be not able to pay the said sum, then to be set in the stocks, not exceeding two hours. And if any person shall utter more profane oaths or curses at the same time, and in hearing of the same person or persons, he shall forfeit and pay to the use aforesaid the sum of twelve pence for every oath or curse after the first, or be set in the stocks three hours: *provided*, that every offence against this law shall be complained of and proved as aforesaid within thirty dayes next after the offence committed.

Cursing and swearing.

Presumption.*

Further it is enacted by the authority aforesaid,

[SECT. 2.] That every person convicted of drunkenness by view of any justice of peace, confession of the party, or oaths of two witnesses, such person so convicted shall forfeit and pay unto the use of the poor of the town where such offence is committed, the sum of five shillings for every such offence; and if the offender be unable to pay the said sum, to be set in the stocks, not exceeding three hours, at the discretion of the justice or justices before whom the conviction shall be. And upon a second conviction of drunkenness, every such offender, over and above the penalty aforesaid, shall be bound with two sureties in the sum of ten pounds, with condition for the good behavior; and for want of such sureties, shall be sent to the common goal until he find the same: *provided*, that no person shall be impeached or molested for any offence against this act, unless he shall be thereof presented, indicted or convicted within six months after the offence committed. And the justice or justices before whom conviction of any of the aforesaid offences shall be, are hereby impowred and authorized to restrain or commit the offender, until the fine imposed for such offence be satisfied; or to cause the same to be levied by distress and sale of the offender's goods, by warrant directed to the constable, returning the overplus (if any be); all such fines to be levied within one week next after such conviction, and delivered to the selectmen or overseers of the poor, for the use of the poor as aforesaid.

Drunkenness
8 Gray, 486.

* *Sic*,—Prosecution ? or Proviso ?

It is further enacted and ordained by the authority aforesaid,

Theft.
8 Gray, 474.

[SECT. 3.] That whosoever shall steal or purloin any money, goods or chattels, being thereof convicted by confession or sufficient witness upon oath, every such offender shall forfeit treble the value of the money, goods or chattels so stolen or purloined unto the owner or owners thereof, and be further punished by fine or whipping, at the discretion of the court or justices that have cognizance of such offence, not exceeding the sum of five pounds, or twenty stripes. And if any such offender be unable to make restitution, or pay such threefold damages, such offender shall be enjoined to make satisfaction by service; and the prosecutor shall be, and hereby is impowred to dispose of said offender in service to any of their majesties' subjects, for such term as shall be assigned by the court or justices before whom the prosecution was. And every justice of peace in the county where such offence is committed, or where the thief shall be apprehended, is hereby authorized to hear and determine all offences against this law: *provided*, that the damage exceed not the sum of forty shillings.

Burglary.

[SECT. 4.] And if any person shall commit burglary, by breaking up any dwelling-house, warehouse, shop, mill, malt-house, barn, out-house, or any ship or other vessel, lying within the body of the county, or shall rob any person in the field or highway, every person so offending shall, upon conviction, be branded on the forehead with the letter B, and upon a second conviction, shall be set upon the gallows for the space of one hour, with a rope about his neck, and one end thereof cast over the gallows, and be severely whipt, not exceeding thirty-nine stripes; and upon a third conviction of the like offence, shall suffer the pains of death, as being incorrigible; and shall likewise upon the first and second convictions pay treble damages to the party injured, as is provided in case of theft.

Fornication

And it is further enacted by the authority aforesaid,

[SECT. 5.] That if any man commit fornication with any single woman, upon due conviction thereof they shall be fined unto their majesties not exceeding the sum of five pounds, or be corporally punished by whipping, not exceeding ten stripes apiece, at the discretion of the sessions of the peace who shall have cognizance of the offence. And he that is accused by any woman to be the father of a bastard child, begotten of her body, she continuing constant in such accusation, being examined upon oath, and put upon the discovery of the truth in the time of her travail, shall be adjudged the reputed father of such child, notwithstanding his denial, and stand charged with the maintenance thereof, with the assistance of the mother, as the justices of the quarter sessions shall order; and give security to perform the said order, and to save the town or place where such child is born, free from charge for its maintenance, and may be committed to prison until he find sureties for the same, unless the pleas and proofs made and produced on the behalf of the man accused and other circumstances be such as the justices shall see reason to judge him innocent and acquit him thereof, and otherwise dispose of the child. And every justice of the peace upon his discretion may bind to the next quarter sessions him that is charged or suspected to have begotten a bastard child; and if the woman be not then delivered, the sessions may order the continuance or renewal of his bond, that he may be forthcoming when the child is born.

Further it is enacted by the authority aforesaid,

Power of the
justice of peace.

[SECT. 6.] That every justice of the peace in the county where the offence is committed, may cause to be staid and arrested all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride, or go armed offensively before any of their majesties' justices or other their officers or ministers doing their office or elsewhere by night or by day,

in fear or affray of their majesties' liege people, and such others as shall utter any menaces or threatening speeches; and upon view of such justice or justices, confession of the party or other legal conviction of any such offence, shall commit the offender to prison until he find sureties for the peace and good behaviour, and seize and take away his armour or weapons, and shall cause them to be apprized and answered to the king as forfeited; and may further punish the breach of the peace in any person that shall smite or strike another, by fine to the king not exceeding twenty shillings, and require bond with sureties for the peace, or bind the offender over to answer it at the next sessions of the peace, as the nature or circumstance of the offence may be; and may make enquiry of forcible entry and detainer, and cause the same to be removed, and make out hue and crys after runaway servants, thieves and other criminals.

Breach of the peace.

Forcible entry and detainer.

And it is further enacted by the authority aforesaid,

[SECT. 7.] That if any person or persons of the age of discretion (which is accounted fourteen years or upwards) shall wittingly and willingly make or publish any lye or libel, tending to the defamation or damage of any particuler person or persons, make or spread any false news or reports with intent to abuse and deceive others, every such person or persons offending in any of the particulars before-mentioned, and being duly convicted thereof before one or more justices of the peace, shall be fined according to the degree of such offence, not exceeding the sum of twenty shillings for the first conviction, and find sureties for the good behaviour; and if the party be unable to pay the said fine, then to be set in the stocks not exceeding three hours, or be corporally punished by whipping, at the discretion of the justice or justices before whom the conviction shall be, according as the circumstances or nature of the offence shall be. And the said justice or justices may restrain and commit the offender until he pay the said fine and find sureties for the good behaviour, or may cause the fine to be levied by distress and sale of the offender's goods; and the party or parties grieved or injured by reason of any of the offences aforesaid shall or may take his or their suit against any such offender or offenders in any court of record.

Lying and libelling.

See 1699-1700, chap. 1, note, post.

It is further enacted by the authority aforesaid,

[SECT. 8.] That if any person or persons upon his or their own head or imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly and falsely forge or make, or subtilly cause, or wittingly assent to be forged or made any false deed, conveyance, or writing sealed, or the will of any person or persons in writing, to the intent that the state of freehold or inheritance, right, title, or interest of any person or persons of, in or to any lands, tenements or hereditaments shall or may be molested, troubled, defeated, recovered or charged; or shall as is aforesaid forge, make, or cause, or assent to be made or forged, any obligation, or bill obligatory, letter of attourney, or any acquittance, release, or other discharge of any debt, accompt, action, suit, demand, or other thing personal; or if any person or persons shall pronounce, publish, or shew forth in evidence any such false or forged deed, conveyance, writing, obligation, bill obligatory, letter of attorney, acquittance, release or discharge as true, knowing the same to be false and forged as is aforesaid, to the intent above remembered,* and shall be thereof convicted, either upon action or actions of forger of false deeds to be founded upon this act at the suit of the party grieved, or otherwise according to the order and due course of law, or upon bill or information, that then every such offender shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be; and also shall be set upon the pil-

Forgery.
2 Allen, 162.

* Sic.

lory in some market town, or other open place, and there to have one of his ears cut off, and also shall have and suffer imprisonment by the space of one whole year, without bail or mainprize. And the party or parties grieved by reason of any of the offences aforesaid may take his or their suit against any such offender or offenders in any court of record, where no essoign, injunction or protection shall be allowed the party defendant: *provided, always, and it is enacted by the authority aforesaid*, that this act, or anything therein contained, shall not extend to charge any judge of probate, or register, with any of the offences aforesaid, for putting their seal of office to any will to be exhibited unto them, not knowing the same to be false or forged, for writing of the said will or probate of the same, nor to any other person or persons that shall shew forth or give in evidence any false or forged writing for true or good, being not party or privy to the forging of the same, nor knowing the same to be false or forged, anything in this act to the contrary notwithstanding.

And it is further enacted and ordained by the authority aforesaid,

Wilful perjury.
4 Gray, 107.

[SECT. 9.] If any person or persons, either by the subornation, unlawful procurement, reward, sinister perswasion, or means of any other, or by their own act, consent, or agreement, shall wilfully and corruptly commit any manner of wilful perjury, by his or their deposition in any court of record, or being examined *ad perpetuam rei memoriam*, that then every person and persons so offending, and being thereof duely convict or attainted by law, shall for his or their offence loose and forfeit twenty pounds; the one moi[e]ty thereof unto their majesties, and the other moi[e]ty to such person or persons as shall be grieved, hindred or molested by reason of any such offence, that shall sue for the same by action of debt, bill, plaint, information or otherwise, in any court of record in the which no wager of law, essoign, protection or injunction to be allowed, and also to have imprisonment by the space of six months, without bail or mainprize. And the oath of such person or persons so offending not to be received in any court of record until such time as the judgment given against the said person or persons shall be reversed by attainr or otherwise, and upon every such reversal the parties agrieved to recover his or their damages against all and every such person and persons as did procure the said judgment so reversed to be given against them or any of them, by action or actions upon his or their case or cases, according to the course of the common law. And if it happen the said offender or offenders, so offending, not to have any goods or chattels to the value of twenty pounds, that then he or they be set on the pillory by the space of one whole hour, in some market town where the offence was committed, or next adjoining to the place where the offence was committed, and to have both his ears nailed; and from thenceforth to be discredited and disabled forever to be sworn in any court of record until such time as the judgment shall be reversed. And all and every person and persons who shall unlawfully and corruptly procure any witness or witnesses, by letters, rewards, promises, or by any other sinister and unlawful labour or means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause whatsoever depending, or that shall depend in suit and variance, by any writ, action, bill, complaint or information in any court of record, or to testifie in *perpetuam rei memoriam*, every such offender, being thereof duely convict or attainted by law, shall for his or their offence be proceeded against and suffer the like pains, penalties, forfeitures and disability in all respects as above-mentioned.

And it is further enacted by the authority aforesaid,

[SECT. 10.] That all the aforesaid forfeitures and sums of money arising for any offence mentioned in this act, and every branch thereof,

and not otherwise disposed of, shall be unto their majesties, for and towards the support of the government of this province and the incident charges thereof. [*Passed November 1.*]

CHAPTER 19.

AN ACT FOR THE PUNISHING OF CAPITAL OFFENDERS.

Be it ordained and enacted by the Governour, Council and Representatives in General Court assembled, and by the authority of the same,

That all and every of the crimes and offences in this present act here-
after mentioned be and hereby are declared to be felony; and every person or persons committing any of the said crimes or offences, being thereof legally convicted, shall be adjudged to suffer the pains of death.

Disallowed by
the privy coun-
cil, August 22,
1695.

[SECT. 1.] If any man shall have or worship any other god but the true God, he shall be put to death. Idolatry.

[SECT. 2.] If any man or woman be a witch, that is, hath or consulteth with a familiar spirit, they shall be put to death. Witchcraft.

[SECT. 3.] If any person shall presume to blaspheme the holy name of God, Father, Son or Holy Ghost, either by wilful or obstinate denying the true God or His creation or government of the world, or shall curse God in like manner, or reproach the holy religion of God, as if it were but a politick device to keep ignorant people in awe, or shall utter any other kind of blasphemy of the like nature or degree, he shall be put to death. Blasphemy.

[SECT. 4.] If any person or persons shall compass or imagine the death of our sovereign lord the king, or of our lady the queen, or shall levy war against our said lord and lady the king and queen, or adhere unto their enemies, giving to them aid and comfort, and thereof be attainted or convicted of open deed by their peers upon the testimony and deposition of two lawful and credible witnesses on oath, brought before the offender face to face at the time of his arraignment, or voluntary confession of the party arraigned, then every such person and persons so as aforesaid offending shall be deemed, declared and adjudged to be traitors, and shall suffer the pains of death, and also lose and forfeit as in cases of high treason. High treason.

[SECT. 5.] If any person shall commit wilful murder upon premeditated malice, hatred, cruelty or sudden heat of anger, every such person shall be put to death. Murder.

[SECT. 6.] If any person shall slay another through guile, either by poisoning or other devillish practice, every such person, their aiders, abettors, procurors and councillors, shall suffer death, as in case of wilful murder. Poisoning.

[SECT. 7.] If any woman be delivered of any issue of her body, male or female, which, if it were born alive, should by law be a bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself or the procuring of others, so to conceal the death thereof that it may not come to light, whether it were born alive or not, but be concealed, in every such case the mother so offending shall suffer death as in case of murder, except such mother can make proof by one witness at the least that the child whose death was by her so intended to be concealed was born dead. Concealment of
the death of a
bastard child
punished as in
case of murder.

[SECT. 8.] If any man lieth with mankind, as he lieth with a woman, they both shall be put to death. Sodomy.

[SECT. 9.] If any man or woman have carnal copulation with any beast or brut creature, they shall be put to death, and the beast shall be slain and burned. Bestiality.