

ACTS

PASSED AT THE SESSION BEGUN AND HELD AT BOSTON,
ON THE SEVENTH DAY OF AUGUST, A.D. 1723.

CHAPTER 9.

AN ACT IN AMENDMENT OF, AND ADDITION TO, AN ACT ENTITLED
“AN ACT AGAINST RECEIVING STOL’N GOODS,” MADE AND PASS[ED]
IN THE TENTH YEAR OF THE REIGN OF KING WILLIAM.

Preamble.
1693, chap. 8.

WHEREAS the penalty provided in and by the Act against the receiving stol[le]n goods, hath not only proved [*ineffectual*][insufficient] to deter persons from committing the said offence, but the party injured is often defeated of his just satisfaction by the offender’s avoiding to make satisfaction, by suffering corporal punishment,—

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

Persons that
receive stolen
goods to be
punished as in
case of theft.

That for the future, all persons offending against the said law, and being thereof convict by due course of law, that shall not make restitution as awarded, shall be ordered by the justices or court that may have cognizance thereof, to make satisfaction by service, and be disposed of for that purpose, in like manner as is provided in case of theft, and be further punished by whipping, not exceeding twenty stripes, at the discretion of the said court. [*Passed August 24; published September 3.*]

CHAPTER 10.

AN ACT IN ADDITION TO, AND FOR RENDERING MORE EFFECTUAL, AN
ACT MADE IN THE TENTH YEAR OF THE REIGN OF KING WILLIAM
THE THIRD, ENTITLED “AN ACT FOR PREVENTING OF TRESPASSES.”

1693, chap. 7.

WHEREAS the act or law already made for the preventing trespasses hath been found ineffectual for that purpose, so that a further provision is necessary to be made,—

Be it therefore enacted by the Lieutenant-Governour, Council and Represen[tati]ves in Gen[era]l[1] Court assembled, and by the authority of the same,

Fines for cutting
trees, timber,
underwood, &c.,
without license.

[SECT. 1.] That from and after the publication of this act, no person or persons do or shall cut[t], fell, destroy or carry away any trees, timber, wood or underwood whatsoever, standing, lying or growing on the land of any others, or off or from the commons of any town, other than that to which he or they doth or do belong, or within the same town, having no right or privilege there, without leave or licence from the major part of the propriety of such commons, or the owner or owners of the land whereon such trees, timber, wood or underwood was standing, lying or growing; on pain that every person so cutting,

elling, destroying or carrying away the same, or that shall be aiding or assisting therein, shall, for every such trespass, forfeit and pay to the party or parties injured or trespass[*e*]d upon, the sum of forty shillings for every tree of one foot over, and for all trees of greater dimensions three times the value thereof, besides forty shillings as aforesaid; and twenty shillings for every tree or pole under the dimension of one foot diameter; and for other wood or underwood treble the value thereof; which sev[*era*]l[1] penalties, forfeitures and damages shall [or] [*and*] may be recovered by action, bill, plaint or information, upon conviction of the trespasser or trespassers, as is hereafter specially provided and enacted, before any justice of the peace in the county where the trespass is committed, if the penalty or damage exceed not forty shillings; but if it be above that value then before the court of common pleas in the same county.

And be it further enacted,

[SECT. 2.] That if any person or persons shall throw or leave open any bar[*r*]s, gates, fence or fences belonging to or enclosing any lands held in propriety or common, or belonging to any particular person or persons within any town in this province, or that shall dig up or carry away any stones, oar, gravel, clay or land belonging to the proprietors of any common lands, or to any particular person or persons as aforesaid, shall, for every such trespass, upon conviction thereof as in and by this act is hereafter provided, forfeit and pay treble damages to the party or parties injured thereby, and also a sum not exceeding five pounds, according to the nature or aggr[*e*][*a*]vation of the trespass, to be recovered in manner as aforesaid.

Fine for throwing open fences, gates, &c.

And for carrying away stones, ore, gravel, &c.

And forasmuch as it is very hard and difficult to detect and convict any trespasser or trespassers against this act, in the ordinary method or course of the law, by reason the trespasses are generally committed where positive evidences can scarcely ever be had,—

Be it therefore further enacted by the authority aforesaid,

[SECT. 3.] That, in case any dispute arise upon any action, bill, plaint or information, brought as afores[*ai*]d, where the plaintiff, complainant or informer shall charge the defend[*an*]t in trespass, for cutting, felling, destroying or carrying away any particular tree or trees, parcels of timber, wood or underwood, or for throwing down or leaving open any fence or fences, gates or bar[*r*]s, or for digging up or carrying away any stones, oar, gravel, clay or sand off or from any such lands as aforesaid, or of being aiding or assisting therein; then, and in such case, if the plaintiff, complainant or informer shall make oath, *bona fide*, that there hath been cut[*t*], fell'd, destroyed or carried away such and so many trees, parcels of wood or underwood, or that any fence or fences, gates or bars have been thrown down or left open, or that any stones, oar, gravel, clay or sand hath been dug up or carried away, as mentioned in the writ[*t*], and that he suspects the defend[*en*]t to have committed the said trespass,—and altho' the plaintiff, complainant or informer may not be able to produce any other evidence thereof, than such circumstances as render it highly probable in the judg[*e*]ment of the court or justice before whom the tryal is—then and in every such case, unless the defend[*en*]t shall acquit himself upon oath (to be administ[*e*]r[*e*]d to him by the court or justice that shall try the cause), the plaintiff shall recover against the defend[*en*]t damages and costs; but if the defend[*en*]t shall acquit himself upon oath as afores[*ai*]d, the court or justice may and shall enter up judg[*e*]m[*en*]t for the defend[*en*]t to recover against the plaintiff double his costs occasioned by such prosecution.

And whereas several ill-minded persons, of late, as well in the night time as in the day (being disguised and painted), have pillaged and

committed great spoil in the cedar swamps and other lands, and have laid open the inclosures of particular persons by destroying the fences about them, not only to the great damage of the proprietors or persons interested, but also to the injury of the publick—

Be it therefore enacted by the authority aforesaid,

Punishments for persons disguised or painted, that commit trespasses.

[SECT. 4.] That if any person or persons having their faces black'd, painted or any ways disguised, shall either by day or night commit any of the trespasses aforesaid, or shall beat and abuse any of his majestie's good subjects, and be thereof convicted by due course of law, such persons so trespassing shall, over and above the damages aforesaid in this act, be whip[t]d at the publick whipping post, not exceeding twenty stripes, as the nature of the trespass may require; any law, usage or custom to the contrary notwithstanding.

Provided,

Proviso.

[SECT. 5.] That nothing in this act shall be construed so as to debar or hinder the surveyo[u]rs of highways of doing any thing necessary and convenient in and about their duty as by law impow[er]d.

Term of the act's continuance.

[SECT. 6.] This act to continue in force for the space of three years after the publication thereof, and no longer. [*Passed August 27; published September 3.*]

CHAPTER 11.

AN ACT FOR PREVENTING ABUSES IN DISTILLING OF RUM AND OTHER STRONG LIQUORS, WITH LEADEN HEADS OR PIPES.

WHEREAS the strong liquors and spirits that are distill[e]d through leaden heads or pipes are judged on good grounds to be unwhol[e]-som[e] and hurtful; notwithstanding which some persons to save charge may be led into the making or using of such heads, worms or pipes; for remedy and prevention whereof,—

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

No leaden heads or worms to be used in distilling, upon penalty.

[SECT. 1.] That no person whatsoever shall make use of any such leaden heads or worms, for the future; and that whosoever shall presume to distil, or draw off any spirits or strong liquors thro' such leaden heads or worms, upon legal conviction thereof before any of his majest[y]s courts of record, shall forfeit and pay a fine of one hundred pounds.

And be it further enacted by the authority aforesaid,

No braziers, &c., to make worms or heads of base pewter or lead. Penalty.

[SECT. 2.] That no brazier, pewterer or other artificer whatsoever, shall presume to make any worm or head, for distilling, of coarse and base pewter, or such as hath any mixture of lead in it, under the penalty of one hundred pounds.

And be it further enacted,

Assay-masters, their duty.

[SECT. 3.] That in each town within this province, where the distilling trade is carried on, it may be lawful for the inhabitants thereof, at their annual town meeting in March for choice of town officers, to choose two or more assay-masters, whose business it shall be to inspect and make tryal of any such heads and worms as shall be suspected by them; and if, upon their assaying and tryal of them, they be found to be made of lead or of other base metall, or to have an alloy of lead or of other base metall in them, they shall give notice thereof to the distiller or owner thereof, who is hereby forbidden to make any further use thereof in distilling, under the aforesaid penalty of one hundred pounds.