

be sueable after the end of twelve months from the time of giving the same. [*Passed July 14; published July 15.*]

"we have called before us Mr. Brenton, collector & Surveyor of New England * * * and we have together with him considered the s^d Acts, and as to that for coasting vessells ¶mitting Sugar, Tobacco," &c., "to be transported," &c., "within y^e Province by Land or Water, on pretence of supplying the inhabitants and trade therein, without any entry or clearing bond or certificate to be given or taken out," &c. "We do humbly observe to your Lords^{ps} that this is not only contrary to the usage and practice in other plantations, but the Acts of Navigation and Trade," &c.—"the Port and Bay of Boston, as the said Mr. Brenton informeth us, having more than a hundred sloops, shallops and lighters employed thereat, and by this privilege of lading to the quantity of six hogsheads of the enumerated Commodities on each sloop, shalop or lighter without entry or clearing bond or certificate, [it] will not be difficult in a very little time thereby to load and unload any foreign ships of how great Burthen soever," &c., "the Province from the Narragansett Bay to Port Royall being about 300 leagues on y^e Sea Coast, in which space are contained some hundreds of Harbours, Creeks and Coves," &c.

"and whereas the Bond directed by this Act may not be sued after the end of 12 months from y^e time of giving the same, We humbly acquaint yo^r Lord^{ps} that this would prove inconvenient in many respects, and such Bonds tho' forfeited might by y^e neglect or death of officers intrusted therewith prove oftentimes useless, and therefore, on y^e whole matter, in our humble opinion the said Act is by no means fit to be approved by his Ma^{ty}."—*Report of the Lords Commissioners of the Treasury to the Privy Council, Dec. 17, 1695.*

CHAPTER 8.

AN ACT FOR THE PARTITION OF LANDS, &C., AND THE RECOVERY OF LEGACIES AT THE COMMON LAW.

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

Partition of lands betwixt coparceners, &c., to be forced by the common law.

4 Mass. 635.
15 Mass. 156.
30 Maine, 142.

[SECT. 1.] That all persons having or holding or that hereafter shall have or hold any lands, tenements, or hereditaments, as coparceners, joint tenants, or tenants in common, may be compelled by writ of partition, at the common law, to divide the same, where the parties cannot agree to make partition thereof by themselves: *provided*, this act shall not be understood to repeal or any wayes alter, any clause or clauses in the act for regulating of townships, referring to undivided or common lands.

And it is further enacted by the authority aforesaid,

Legacies to be recovered at the common law.

[SECT. 2.] That where any certain legacy is or shall be bequeathed and given by any person in his or her last will and testament, as, also, where any residuary or uncertain legacy is, or shall, by the accompt of any executor, be reduced to a certainty, every such legacy and legacies as aforesaid may be sued for and recovered at the common law, any law, custom or usage to the contrary notwithstanding. [*Passed July 14; published July 15.*]

CHAPTER 9.

AN ADDITIONAL ACT FOR THE PUNISHING OF CRIMINAL OFFENCES.

WHEREAS the breach of sundry criminal laws of this province is only punishable by fines, and many times the breakers of them have not money to satisfy the same,—

Be it, therefore, enacted, by the Governour, Council and Representatives, convened in General Assembly, and by the authority of the same,

That henceforward it shall be in the power of any justice of the peace that shall have cognizance thereof, to punish breakers of the peace, prophaners of the Sabbath, and unlawful gamesters, drunkards,

See 1692-3, chap. 22, and p. 107, note, ante.
Criminal offences to be punished by stocking, &c.,

or prophane swearers or cursers, by setting in the stocks, or putting into the cage, not exceeding three hours, or imprisonment twenty-four hours, or by whipping, not exceeding ten stripes, as the case may deserve, and where the offender has not wherewithall to satisfy the law in that case provided. [*Passed July 14; published July 15.*]

where the offenders cannot otherwise satisfy the law.

The general court, convened May 31, 1693, held two sessions only, and was dissolved July 15; and a new court was convened on the eighth of November following.

The foregoing nine chapters comprise all the acts passed at the two sessions above mentioned, and the original MSS. of all these acts are still preserved. Three of these acts, it will be seen, were disallowed by the Privy Council; for, although the first of these (chapter 2), had received the approval of the Committee on Trade, Oct. 1, 1695, the Lords Commissioners for Trade and Plantations, appointed the next year, raised the objections stated in their opinion quoted in the note at the end of that chapter. Their letter communicating the fact of disallowance and the reasons therefor, bearing date Jan. 20, 1696-7, contains the following passages, relating, respectively, to the chapters given at the beginning of the paragraphs:—

[*Chap. 2.*] “—That act not only lays a certain charge upon the builders of Ships which seems to be unnecessary, and consequently an obstruction of such building, but it also opens a door to great partiality in the overseers, and is, therefore, apprehended to be rather a prejudice than advantage to those concerned. Nevertheless if, in the time that it has been in force the Province has found any considerable benefit by it, upon your acquainting us particularly therewithall we shall be ready hereafter to promote the passing of another act to the same purpose, according as it shall appear reasonable.”

[*Chap. 3.*] “—That act is judged prejudicial to the office of His Majesty's Post Master General and inconsistent with Patents already granted; But, instead thereof, we are preparing a draught of another act to the same purpose and not liable to those objections, which we intend to send to you as soon as we can finish it, That your general Assembly may, if they think fit, pass it in that manner and then transmit it hither for His Majesty's approbation.”—See pp. 263 and 420, *post*.

Notice of the disallowance of these chapters was ordered to be given to Sir Henry Ashurst, the agent of the province, Nov. 23, 1696, and his written receipt therefor was required; which was filed the seventh of December following.

On the 20th of June, 1694, the General Court, “upon the petition of Duncan Campbell, in behalf of Andrew Hamilton, esq., postmaster-general of North America,” voted an allowance of £25, per annum, for the two years next ensuing, for the encouragement of the post-office. Similar votes, granting various sums, were passed in subsequent years; for instance, June 11, 1696; July 22, 1703; April 12, and Oct. 30, 1706; Oct. 19, 1711; and Jan. 5, 1727. These, and other curious and interesting papers relating to postal affairs in New England, previous to the Revolution have been printed in the Collections of the Mass. Hist. Soc., 3d series, vol. VII., pp. 48-89.

Objections had been raised against chap. 3, in the Committee on Trade, and a draught of a new act, proposed by the Governor of the general post-office in London, had been referred by the Committee, to the Attorney-General, Jan. 31, 1695-6, who suggested the addition of a clause which, on the 21st of February following, he was desired by the Committee to prepare for their consideration “together with Mr Neal, Govern^r of y^e Post office in America.”

The report of the Lords of the Treasury, upon chap. 7, appears to have been received as conclusive.