

# American Legal History – Russell

**The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts, at iii-50 (Harvard Univ. Press, facsimile ed. 1929) (1648).**

[\*iii] TO OUR BELOVED BRETHREN AND NEIGHBOURS the Inhabitants of the Massachusetts, the Governour, Assistants and Deputies assembled in the Generall Court of that Jurisdiction with grace and peace in our Lord Jesus Christ.

So soon as God had set up Politicall Government among his people Israel he gave them a body of lawes for judgement both in civil and criminal causes. These mere breif and fundamental principles, yet withall so full and comprehensive as out of them clear deductions were to be drawne to all particular cases in future times.

For a Common-wealth without lawes is like a Ship without rigging and steeradge. Nor is it sufficient to have principles or fundamentalls, but these are to be drawn out into so many of their deductions as the time and condition of that people may have use of. And it is very unsafe & injurious to the body of the people to put them to learn their duty and libertie from generall rules, nor is it enough to have lawes except they be also just. Therefore among other priviledges which the Lord bestowed upon his peculiar people, these he calls them specially to consider of, that God was neerer to them and their lawes were more righteous then other nations. God was sayd to be amongst them or neer to them because of his Ordnaances established by himselfe, and their lawes righteous because himselfe was their Law-giver: yet in the comparison are implyed two things, first that other nations had somthing of God's presence amongst them. Secondly that there was also some what of equitie in their lawes, for it pleased the Father (upon the Covenant of Redemption with his Son) to restore so much of his Image to lost man as whereby all nations are disposed to worship God, and to advance righteousness: which appears in that of the Apostle Rom. I. 21. They knew God &c: and in the 2. 14. They did by nature the things contened in the law of God. But the nations corrupting his Ordnaances (both of Religion, and Justice) God withdrew his presence from them proportionably whereby they were given up to abominable lusts Rom. 2. 21. Whereas if they had walked according to the light & law of nature they might have been preserved from such moral evils and might have

injoyed a common blessing in all their natural and civil Ordinances: now, if it might have been so with the nations who were so much strangers to the Covenant of Grace, what advantage have they who have interest in this Covenant, and may enjoye the special presence of God in the puritie and native simplicitie of all his Ordinances by which he is so neer to his owne people. This hath been no small priviledge, and advantage to us in New England that our Churches, and civil State have been planted, and growne up (like two twinnes) together like that of Israel in the wildernes by which wee were put in minde (and had opportunitie put into our hands) not only to gather our Churches, and set up the Ordinances of Christ Jesus in them according to the Apostolick patterne by such light as the Lord graciously afforded us: but also withall to frame our civil Politie, and lawes according to the rules of his most holy word whereby each do help and strengthen other (the Churches the civil Authoritie, and the civil Authoritie the Churches) and so both prosper the better without such amulation, and contention for priviledges or priority as have proved the misery (if not ruine) of both in some other places.

For this end about nine years since wee used the help of some of the Elders of our Churches to compose a modell of the Judiciall lawes of Moses with such other cases as might be referred to them, with intent to make use of them in composing our lawes, but not to have them published as the lawes of this Jurisdiction: nor were they voted in Court. For that book intituled The Liberties &c: published about seven years since (which conteines also many lawes and orders both for civil & criminal causes, and is commonly (though without ground) reported to be our Fundamentalls that wee owne as established by Authoritie of this Court, and that after three year experience & generall approbation: and accordingly we have inserted them into this volume under the severall heads to which they belong yet not as fundamentalls, for diversof them have since been repealed, or altered, and more may justly be (at least) amended heerafter as further experience shall discover defects or inconveniences for Nihil fimul natum et perfectum. [\*iv]

The same must we say of this present Volume, we have not published it as a perfect body of laws sufficient to carry on the Government established for future times, nor could it be expected that we should promise such a thing. For if it be no disparagement to the wisdom of that High Court of Parliament in England that in four hundred years they could not so compile their lawes, and regulate proceedings in Courts of justice &c: but that they had still new work to do of the same kinde almost every Parliament: there can be no just cause to blame a poor Colonie (being unfurnished of Lawyers and Statesmen) that in eighteen years hath produced no more, nor better rules for a good, and settled Government then this Book holds forth: nor have you (our Bretheren and Neighbours) any cause, whether you look

back upon our Native Country, or take your observation by other States, & Common wealths in Europe) to complaine of such as you have employed in this service; for the time which hath been spent in making lawes, and repealing and altering them so often, nor of the charge which the Country hath been put to for those occasions, the Civilian gives you a satisfactorie reason of such continuall alterations additions &c: *Crefcit in Orbe dolus.*

These Lawes which were made successively in divers former years, we have reduced under severall heads in an alphabeticall method, that so they might the more readilye be found, & that the divers lawes concerning one matter being placed together the scope and intent of the whole and of every of them might the more easily be apprehended: we must confesse we have not been so exact in placing every law under its most proper title as we might, and would have been: the reason was our hasty indeavour to satisfie your longing expectation, and frequent ecomplaints for want of such a volume to be published in print: wherin (upon every occasion) you might readily see the rule which you ought to walke by. And in this (we hope) you will finde satisfaction, by the help of the references under the severall heads, and the Table which we have added in the end. For such lawes and orders as are not of generall concernment we have not put them into this booke, but they remain still in force, and are to be seen in the booke of the Records of the Court, but all generall laws not heer inserted nor mentioned to be still of force are to be accounted repealed.

You have called us from amongst the rest of our Bretheren and given us power to make these laws: we must now call upon you to see them executed: remembring that old & true proverb, The execution of the law is the life of the law. If one sort of you viz: non-Freemen should object that you had no hand in calling us to this worke, and therefore think yourselvs not bound to obedience &c. Wee answer that a subsequent, or implicit consent is of like force in this case, as an expresse precedent power: for in putting your persons and estates into the protection and way of subsistance held forth and exercised within this Jurisdiction, you doe tacitly submit to this Government and to all the wholesome lawes therof, and so is the common repute in all nations and that upon this Maxim. *Qui sentit commodum sentire debet et onus.*

If any of you meet with some law that seemes not to tend to your particular benefit, you must consider that lawes are made with respect to the whole people, and not to each particular person: and obedience to them must be yeilded with respect to the common welfare, not to thy private advantage, and as thou yeildest obedience to the law for common good, but to thy dis-advantage: so another must observe some

other law for thy good, though to his own damage; thus must we be content to bear  
 oanothers burden and so fullfill the Law of Christ.

That distinction which is put between the Lawes of God and the lawes of men,  
 becomes a snare to many as it is mis-applied in the ordering of their obedience to  
 civil Authoritie; for when the Authoritie is of God and that in way of an Ordinance  
 Rom. 13. I. and when the administration of it is according to deductions, and rules  
 gathered from the word of God, and the clear light of nature in civil nations, surely  
 there is no humane law that tendeth to commõn good (according to those  
 principles) but the same is mediately a law of God, and that in way of an  
 Ordinance which all are to submit unto and that for conscience sake. Rom. 13. 5.

By order of the Generall Court.

INCREASE NOWEL

SECR.

\*[1] THE BOOK OF THE GENERAL LAUUES AND LIBERTYES  
 CONCERNING & c.

FORASMUCH as the free fruition of such Liberties, Immunities,  
 priviledges as humanitie, civilitie & christianity call for as due to  
 everie man in his place, & proportion, without impeachment &  
 infringement hath ever been, & ever will be the tranquility & stability  
 of Churches & Comon-wealths; & the deniall or deprivall therof the  
 disturbance, if not ruine of both:

It is therefore ordered by this Court, & Authority therof, That no mans life shall be  
 taken away; no mans honour or good name shall be stayned; no mans person shal  
 be arrested, restrained, bannished, dismembred nor any wayes punished; no man  
 shall be deprived of his wife or children; no mans goods or estate shal be taken  
 away from him; nor any wayes indamaged under colour of Law or countenance of  
 Authoritie unles it be by the vertue or equity of some espresse law of the Country  
 warranting the same established by a General Court & sufficiently published; or in  
 case of the defect of a law in any particular case by the word of God. And in  
 capital cases, or in cases excõmunicate, condemned or other, shall have full power  
 and libertie to make their Wills & Testaments & other lawfull Alienations of their  
 lands and estates.[1641] see children.

Actions.

All Actions of debt, accounts, slaunder, and Actions of the case concerning debts and accounts shall henceforth be tryed where the Plaintiffe pleaseth; so it be in the jurisdiction of that Court where the Plantiffe, or Defendant dwelleth: unles by consent under both their hands it appeare they would have the case tryed in any other Court. All other Actions shal be tryed within that jurisdiction where the cause of the Action doth arise. [1642]

2 It is ordered by this Court & Authoritie therof, That every person impleading another in any court of Assistants, or County court shal pay the sum of ten shillings before his case be entred, vnles the court see cause to admit any to sue in forma pauperis. [1642]

3 It is ordered by the Authority aforesayd, That where the debt or damage recovered shall amount to ten pounds in every such case to pay five shillings more, and where it shall amount to twenty pounds or upward there to pay ten shillings more then the first ten shillings, which sayd additions shall be put to the Judgement and Execution to be levied by the Marshall and accounted for to the Treasurer. [1647]

4 In all actions brought to any court the Plaintiffe shall have liberty to withdraw his action or to be non-suted before the Jurie have given in their verdict; in which case he shall alwayes pay full cost and charges to the Defendant, and may afterward renew his sute at another Court. [1641] see Causes. see Records.

#### Age.

It is ordered by this Court & the Authoritie therof, that the age for passing away of lands, or such kinde of hereditaments, or for giving of votes, verdicts or sentences in any civil courts or causes, shall be twenty and one years: but in case of chusing of Guardions, fourteen years. [1641 1647]

#### Ana-Baptists.

Forasmuch as experience hath plentifully & often proved that since the first arising of the Ana-baptists about a hundred years past they have been the Incendiaries of Common-wealths & the Infectors of persons in main matters of Religiō, & the Troublers of Churches in most places where they have been, & that they who have held the baptizing of Infants unlawful, have usually held other errors or heresies together therewith (though as hereticks use to doe they have concealed the same untill they espied a fit advantage and opportunity to vent them by way of question or scruple) and wheras divers [\*2] of this kinde have since our cōming into New-

England appeared amongst ourselvs, some wherof as others before them have denied the Ordinance of Magistracy, and the law fulnes of making warre, others the lawfulness of Magistrates, and their Inspection into any breach of the first Table: which opinions if coñived at by us are like to be increased among us & so necessarily bring guilt upõ us, infection, & trouble to the Churches & hazzard to the whole Common-wealth:

It is therefore orderd by this Court & Authoritie therof, that if any person or persons within this Jurisdiction shall either openly condemn or oppose the baptizing of Infants, or goe about secretly to seduce others from the approbation or use therof, or shal purposely depart the Congregation at the administration of that Ordinance; or shal deny the Ordinance of Magistry, or their lawfull right or authoritie to make war, or to punish the outward breaches of the first Table, and shall appear to the Court wilfully and obstinately to continue therin, after due meanes of conviction, everie such person or persons shall be sentenced to Banishment. [1644] \* \* \*

#### Arrests.

It is ordered and decreed by this Court & Authoritie therof, That no mans person shall be arrested or imprisoned for any debt or fine if the law can finde any competent meanes of satisfaction otherwise from his estate. And if not his person may be arrested and imprisoned, where he shall be kept at his own charge, not the Plaintiffs, till satisfaction be made; unles the Court that had cognisance of the cause or some superiour Court shall otherwise determine: provided neverthesse that no mans person shall be kept in prison for debt but when there appears some estate which he will not [\*3] produce, to which end any Court or Commissioners authorized by the General Court may administer an oath to the partie or any others suspected to be privie in concealing his estate, but shall satisfie by service if the Creditor require it but shall not be solde to any but of the English nation. [1641: 1647] see sect 1. page 1. \* \* \*

#### Bakers.

It is ordered by this Court and Authoritie therof, that henceforth every Baker shall have a distinct mark for his bread, & keep the true assizes as heerafter is expressed viz. When wheat is ordinarily sold and these severall rates heerafter mentioned the peñi white loaf by averdupois weight shall weigh when wheat is by the bushell

at 3 ss. od.	The white	wheaten	Houshold
	11 ouces 1 gr.	17 ouc. 1 gr.	23 ouc. o.

at 3 6 10 1 15 1 20 2.  
 at 4 0 09 1 14 0 18 2.  
 at 4 6 08 1 11 3 16 2.  
 at 5 0 07 3 11 2 15 2.  
 at 5 6 07 0 10 2 14 0.  
 at 6 0 06 2 10 0 13 0.  
 at 6 6 06 0 09 2 12 2.

and so proportionably: under the penaltie of forfeiting all such bread as shall not be of the severall assizes as is aforementioned to the use of the poor of the towne where the offence is committed, and otherwise as is heerafter expressed: and for the better execution of this present Order; there shall be in everie market towne, and all other townes needfull, one or two able persons annually chosen by each towne, who shall be sworn at the next county Court. or by the next Magistrate, unto the faithfull discharge of his or their office; who are heerby authorized to enter into all houses, either with a Constable or without where they shall suspect or be informed of any bread baked for sale: & also to weigh the said bread as oft as they see cause: and to seize all such as they finde defective. As also to weigh all butter made up for sale; and bringing unto, or being in the towne or market to be solde by weight: which if found light after notice once given shall be forfeited in like manner. The like penaltie shall be for not marking all bread made for sale. and the sayd officer shall have one third part of all forfeitures for his paines; the rest to the poor as aforesayd. [1646]

#### [\*4] Bills.

It is ordered by the Authority of this Court that any debt, or debts due upon bill, or other specialtie assigned to another; shall be as good a debt & estate to the Assignee as it was to the Assigner at the time of it's assignation. And that it shall be lawfull for the sayd Assignee to sue for and recover the said debt, due upon bill, and so assigned, as fully as the originall creditor might have done, provided the said assignement be made upon the backside of the bill or specialtie. [1647] see usurie.

#### Bond-slavery.

It is ordered by this Court and authoritie therof, that there shall never be any bond-slavery, villenage or captivitie amongst us; unlesse it be lawfull captives, taken in just warrs, and such strangers as willingly sell themselves, or are solde to us: and such shall have the libertyes and christian usages which the law of God established in Israell concerning such persons doth morally require, provided, this exempts none from servitude who shall be judged thereto by Authoritie. [1641] \* \* \*

### Burglarie and Theft.

Forasmuch as many persons of late years have been, and are apt to be injurious to the goods and lives of others, notwithstanding all care and meanes to prevent and punish the same; - - -

It is therefore ordered by this Court and Authoritie therof that if any person shall commit Burglarie by breaking up any dwelling house, or shall rob any person in the field, or high wayes; such a person so offending shall for the first offence be branded on the forehead with the letter (B) If he shall offend in the same kinde the second time, he shall be branded as before and also be severally whipped: and if he shall fall into the like offence the third time he shall be put to death, as being incorrigible. And if any person shal commit such Burglarie, or rob in the fields or house on the Lords day [\*5] besides the former punishments, he shal for the first offence have one of his ears cut off. And for the second offence in the same kinde he shal loose his other ear in the same maner. And if he fall into the same offence a third time he shal be put to death if it appear to the Court he did it presumptously. [1642 1647]

2 For the prevention of Pilfring and Theft, it is ordered by this Court and Authoritie therof; that if any person shal be taken or known to rob any orchard or garden, that shall hurt, or steal away any grafts or fruit trees, fruits, linnen, woollen, or any other goods left out in orchards, gardens, backsides, or any other place in house or fields: or shall steal any wood or other goods from the water-side, from mens doors, or yards; he shall forfeit treble damage to the owners therof. And if they be children, or servants that shall trespasse heerin, if their parents or masters will not pay the penaltie before expressed, they shal be openly whipped. And forasmuch as many times it so falls out that small thefts and other offences of a criminall nature, are committed both by English & Indian, in townes remote from any prison, or other fit place to which such malefactors may be committed till the next Court, it is therefore heerby ordered; that any Magistrate upon complaint made to him may hear, and upon due proof determin any small offences of the aforesayed nature, according to the laws heer established, and give warrant to the

Constable of that town where the offender lives to levie the same: provided the damage or fine exceed not fourty shillings: provided also it shall be lawfull for either partie to appeal to the next Court to be holden in that Jurisdiction, giving sufficient caution to prosecute the same to effect at the said Court. And everie Magistrate shall make return yearly to the Court of Jurisdiction, wherin he liveth of what cases he hath so ended. And also the Constables of all such fines as they have received. And where the offender hath nothing to satisfie such Magistrate may punish by stocks, or whipping as the cause shall deserve, not exceeding ten stripes. It is also ordered that all servants & workmen imbeazling the goods of their masters, or such as set them on work that make restitution and be lyable to all lawes & penalties as other men. [1646]

### CAPITAL LAWES.

IF any man after legal conviction shall HAVE OR WORSHIP any other God, but the LORD GOD: he shall be put to death. Exod. 22. 20. Deut. 13. 6. & 10. Deut. 17. 2. 6.

2. If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death. Exod. 22. 18. Levit. 20. 27. Deut. 18. 10. 11.
3. If any person within this Jurisdiction whether Christian or Pagan shall wittingly and willingly presume to BLASPHEME the holy Name of God, Father, Son or Holy-Ghost, with direct, expresse, presumptuous, or high-handed blasphemy, either by wilfull 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 men in awe; or shal utter any other kinde of Blasphemy of the like nature & degree they shall be put to death. Levit. 24, 15. 16.
4. If any person shall commit any wilfull MURTHUR, which is Man slaughter, committed upon premeditate malice, hatred, or crueltie not in a mans necessary and just defence, nor by meer casualty against his will, he shall be put to death. Exod. 21. 12. 13. Numb. 35. 31.
5. If any person slayeth another suddenly in his ANGER, or CRUELTY of passion, he shall be put to death. Levit. 24. 17. Numb. 35. 20. 21.
6. If any person shall slay another through guile, either by POYSONING, or other such develish practice, he shall be put to death. Exod. 21. 14.

7. If any man or woman shall LYE WITH ANY BEAST, or bruit creature, by carnall copulation; they shall surely be put to death: and the beast shall be slain, & buried, and not eaten. Lev. 20. 15. 16.

8. If any man LYETH WITH MAN-KINDE as he lieth with a woman, both of them have committed abomination, they both shall surely be put to death: unless the one partie were forced (or be under fourteen years of age in which case he shall be severely [\*6] punished) Levit. 20. 13.

9. If any person commit ADULTERIE with a married, or espoused wife; the Adulterer & Adulteresse shall surely be put to death. Lev. 20. 19. & 18. 20. Deu. 22. 23. 27.

10. If any man STEALETH A MAN, or Man-kinde, he shall surely be put to death. Exodus 21. 16.

11. If any man rise up by FALSE-WITNES wittingly, and of purpose to take away any mans life: he shall be put to death. Deut. 19. 16. 18. 16.

12. If any man shall CONSPIRE, and attempt any Invasion, Insurrection, or publick Rebellion against our Common-Wealth: or shall endeavour to surprize any Town, or Townes, Fort, or Forts therein; or shall treacherously, & persidiously attempt the Alteration and Subversion of our frame of Politie, or Government fundamentally he shall be put to death. Numb. 16. 2 Sam. 3. 2 Sam. 18. 2 Sam. 20.

13. If any child, or children, above sixteen years old, and of sufficient understanding, shall CURSE, or SMITE their natural FATHER, or MOTHER; he or they shall be put to death: unless it can be sufficiently testified that the Parents have been very unchristianly negligent in the education of such children; or so provoked them by extrem, and cruel correction; that they have been forced therunto to preserve themselves from death or maiming. Exod. 21. 17. Lev. 20. 9. Exod. 21. 15.

14. If a man have a stubborn or REBELLIOUS SON, of sufficient years & understanding (viz) sixteen years of age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him will not harken unto them: then shall his Father & Mother being his natural parents, lay hold on him, & bring him to the Magistrates assembled in Court & testify unto them that their Son is stubborn & rebellious & will not obey their voice and chastisement, but lives in sundry notorious crimes, such a son shall be put to death. Deut. 21. 20. 21.

15. If any man shal RAVISH any maid or single womãñ, cõmitting carnal copulation with her by force, against her own will; that is above the age of ten years he shal be punished either with death, or with some other greivous punishmet according to circumstances as the Judges, or General court shal determin. [1641]

#### Cask & Cooper.

It is orderedy by this Court and authoritie therof, that all cask used for any liquor, fish, or other cõmoditie to be put to sale shall be of London assize, and that fit persons shal be appointed from time to time in all places needfull, to gage all such vessels or cask & such as shal be found of due assize shal be marked with the Gagers mark, & no other who shal have for his paines four pence for every tun, & so proportionably. And every County court or any one Magistrate upon notice given them shall appoint such Gagers to view the said cask, & to see that they be right, & of sound & wel seasoned timber, & that everie Cooper have a distinct brand-mark on his own cask, upon payn of forfeiture of twenty shilling in either case, & so proportiõably for lesser vessels. [1642 1647] \* \* \*

#### [\*23] Fornication.

It is ordered by this Court and Authoritie therof, That if any man shall commit Fornication with any single woman, they shall be punished either by enjoying to Marriage, or Fine, or corporall punishment, or all or any of these as the Judges in the courts of Assistants shall appoint most agreeable to the word of God. And this Order to continue till the Court take further order. [1642] \* \* \*

#### [\*24] Gaming.

UPON complaint of great disorder by the use of the game called Shuffle-board, in houses of common entertainment, wherby much pretious time is spent unfruitfully and much wast of wine and beer occasioned, it is therfore ordered and enacted by the Authoritie of this Court;

That no person shall henceforth use the said game of Shuffle-board in any such house, nor in any other house used as common for such purpose, upon payn for every Keeper of such house to forfeit for every such offence twenty shillings: and for every person playing at the said game in any such house, to forfeit for everie such offence five shillings: Nor shall any person at any time play or game for any monie, or mony-worth upon penalty of forfeiting treble the value therof: one half

to the partie informing, the other half to the Treasurie. And any Magistrate may hear and determin any offence against this Law. [1646 1647] \* \* \*

### Heresie.

ALTHOUGH no humane power be Lord over the Faith & Consciences of men, and therefore may not constrein them to beleive or professe against their Consciences: yet because such as bring in damnable heresies, tending to the subversion of the Christian Faith, and destruction of the soules of men, ought duly to be restrained from such notorious impiety, it is therfore ordered and decreed by this Court;

That if any Christian within this Jurisdiction shall go about to subvert and destroy the christian Faith and Religion, by broaching or mainteining any damnable heresie; as denying the immortalitie of the Soul, or the resurrection of the body, or any sin to be repented of in the Regenerate, or any evil done by the outward man to be accounted sin: or denying that Christ gave himself a Ransom for our sins, or shal affirm that wee are not justified by his Death and Righteousnes, but by the perfection of our own works; or shall deny the moralitie of the fourth commandement, or shall indeavour to seduce others to any the herisies aforementioned, everie such person continuing obstinate therin after due means of conviction shal be sentenced to Bañishment. [1646] \* \* \*

### [\*25] Idlenes.

It is ordered by this Court and Authoritie therof, that no person, Housholder or other shall spend his time idleyly or unprofitably under pain of such punishment as the Court of Assistants or County Court shall think meet to inflict. And for [\*26]this end it is ordered that the Constable of everie place shall use speciall care and diligence to take knowledge of offenders in this kinde, especially of common coasters, unprofitable fowlers and tobacco takers, and present the same unto the two next Assistants, who shall have power to hear and determin the cause, or transfer it to the next Court. [1633]

### Jesuits.

THIS Court taking into consideration the great wars, combustions and divisions which are this day in Europe: and that the same are observed to be rayed and fomented chiefly by the secret underminings, and solicitations of those of the Jesuiticall Order, men brought up and

devoted to the religion and court of Rome; which hath occasioned divers States to expell them their territories; for prevention wherof among our selves, It is ordered and enacted by Authoritie of this Court,

That no Jesuit, or spiritual or ecclesiasticall person [as they are termed] ordained by the authoritie of the Pope, or Sea of Rome shall henceforth at any time repair to, or come within this Jurisdiction: And if any person shal give just cause of suspicion that he is one of such Societie or Order he shall be brought before some of the Magistrates, and if he cannot free himselfe of such suspicion he shall be committed to prison, or bound over to the next Court of Assistants, to be tryed and proceeded with by Bañishment or otherwise as the Court shall see cause: and if any person so banished shall be taken the second time within this Jurisdiction upon lawfull tryall and conviction he shall be put to death. Provided this Law shall not extend to any such Jesuit, spiritual or ecclesiasticall person as shall be cast upon our shoars, by ship-wrack or other accident, so as he continue no longer then till he may have opportunitie of passage for his departure; nor to any such as shall come in company with any Messenger hither upõ publick occasions, or any Merchant or Master of any ship, belonging to any place not in emnity with the State of England, or our selves, so as they depart again with the same Messenger, Master of Merchant, and behave themselves in-offensively during their abroad heer. [1647] \*  
\* \*

[\*29] In-keepers, Tippling, Drunkenes.

Forasmuch as there is a necessary use of houses of common entertainment in every Common-wealth, and of such as retail wine, beer and victuals; yet because there are so many abuses of that lawfull libertie, both by persons entertaining and persons entertained, there is also need of strict Laws and Rules to regulate such an employment: It is therefore ordered by this Court and Authoritie thereof;

[\* 30]

That no person or persons shall at any time under any pretence or colour whatsoever undertake to be a common Victuailer, Keeper of a Cooks shop or house for common entertainment, Taverner, or publick seller of wine, ale, beer or strongwater (by re-tale) nor shall any sell wine privatly in his house or out of doors by a lesse quantitie or under a quarter cask: without approbation of the selected Townsmen and Licence of the Shire Court where they dwell: upon pain of

forfeiture of five pounds for everie such offence, or imprisonment at pleasure of the Court, where satisfaction cannot be had.

And every person so licenced for common entertainment shall have some inoffensive Signe obvious for strangers direction, and such as have no such Signe after three months so licenced from time to time shall lose their licence: and others allowed in their stead. And any licenced person that selleth beer shall not sell any above two-pence the ale-quart: upon penaltie of three shillings four pence for everie such offence. And it is permitted to any that will to sell beer out of doors at a pennie the ale-quart and under.

Neither shall any such licenced person aforesaid suffer any to be drunken, or drink excessively viz: above half a pinte of wine for one person at one time; or to continue tippling above the space of half an hour, or at unreasonable times, or after nine of the clock at night in, or about any of their houses on penaltie of five shillings for everie such offence.

And everie person found drunken viz: so that he be thereby bereaved or disabled in the use of his understanding, appearing in his speech or gesture in any of the said houses or elsewhere shall forfeit ten shillings. And for excessive drinking three shillings four pence. And for continuing above half an hour tippling two shillings six pence. And for tippling at unreasonable times, or after nine a clock at night five shillings: for everie offence in these particulars being lawfully convict thereof. And for want of payment such shall be imprisoned untill they pay: or be set in the Stocks one hour or more [in some open place] as the weather will permit not exceeding three hours at one time.

Provided notwithstanding such licenced persons may entertain sea-faring men, or land travellers in the night-season, when they come first on shore, or from their journey for their necessarie refreshment, or when they prepare for their voyage or journie the next day early; so there be no disorder among them; and also Strangers, Lodgers or other persons in an orderly way may continue in such houses of common entertainment during meal times, or upon lawfull busines what time their occasions shall require.

Nor shall any Merchant, Cooper, Owner or Keeper of wines or other persons that have the government of them suffer any person to drink to excesse, or drunkenes, in any their wine-Cellars, Ships or other vessels or places where wines doe lye; on pain to forfeit for each person so doing ten shillings.

And if any person offend in drunkenes, excessive or long drinking the second time they shall pay double Fines. And if they fall into the same offence the third time they shall pay treble Fines. And if the parties be not able to pay the Fines then he that is found drunk shall be punished by whipping to the number of ten stripes: and he that offends in excessive or long drinking shall be put into the stocks for three hours when the weather may not hazard his life or limbs. And if they offend the fourth time they shall be imprisoned until they put in two sufficient Sureties for their good behaviour.

And it is further ordered that if any person that keepeth or hereafter shall keep a common house of entertainmen, shall be lawfully convicted the third time for any offence against this Law: he shall (for the space of three years next ensuing the said conviction) be disabled to keep any such house of entertainment, or sell wine, beer or the like; unless the Court aforesaid shall see cause to continue them.

It is further ordered that every In-keeper, or Victuailer shall provide for the entertainment [\* 31] of strangers horses viz: one or more inclosures for Summer and hay and provender for Winters with convenient stable room and attendance under penaltie of two shillings six pence for every dayes default, and double damage to the partie thereby wronged (except it be by inevitable accident.

And it is further ordered by the Authoritie aforesaid, that no Taverner or seller of wine by retale, licenced as aforesaid shall take above nine pence profit by the Butt or Pipe of wine (and proportionably for all other vessels) toward his wast in drawing and otherwise: out of which allowance every such Taverner or Vintner shall pay fifty shillings by the Butt or Pipe and proportionably for all other vessels to the Countrey. For which he shall account with the Auditor general or his Deputie every six months and discharge the same. All which they may doe by selling six pence a quart in re-tale (which they shall no time exceed) more than it cost by the Butt, beside the benefit of their art and mysterie which they know how to make use of. And every Taverner or Vintner shall give a true account and notice unto the Auditor or his Deputie of every vessel of wine he buies from time to time within three dayes; upon pain of forfeiting the same or the value thereof.

And all such as retale strong waters shall pay in like manners two pence upon every quart to the use of the Countrey, who also shall give notice to the Auditor or his Deputies of every case and bottle or other quantitie they buy within three dayes upon pain of forfeiture as before.

Also it is ordered that in all places where week day Lectures are kept, all Taverners, Victuailers and Tablers that are within a mile of the Meeting-house, shall from time to time clear their houses of all persons able to goe to the Meeting, during the time of the exercise (except upon extraordinary cause, for the necessarie refreshing of strangers unexpectedly repairing to them) upõ pain of five shillings for every such offence over and besides the penalties incurred by this Law for any other disorder.

It is also ordered that all offences against this Law may be heard and determined by any one Magistrate, who shall heerby have power by Warrant to fend for parties, and witnesses, and to examin the said witnesses upon oath and the parties without oath, concerning any of these offences: and upon due conviction either by view of the said Magistrate, or affirmation of the Constable, and one sufficient witnes with circumstances concurring, or two witnesses, or confession of the partie to levie the said severall fines, by Warrant to the Constable for that end, who shall be accountable to the Auditor for the same.

And if any person shall voluntarily confesse his offence against this Law in any the particulars thereof, his oath shall be taken in evidence and stand good against any other offending at the same time.

Lastly, it is ordered by the Authoritie aforesaid that all Constables may, and shall from time to time duly make search throughout the limits of their towns upon Lords dayes, and Lecture dayes, in times of Exercise; and also at all other times, so oft as they shall see cause for all offences and offenders against this Law in any of the pariculars thereof. And if upon due information, or complaint of any of their Inhabitants, or other credible persons whether Taverner, Uictuailer, Tabler or other; they shall refuse or neglect to make search as aforesaid, or shall not to their power perform all other things belonging to their place and Office of Constablenesship: then upon complaint and due proof before any one Magistrate within three months after such refusall or neglect; they shall be fined for everie such offence ten shillings, to be levied by the Marshal as in other cases by Warrant from such Magistrate before whom they are convicted, or Warrant from the treasurer upon notice from such Magistrate. [1645 1646 1647] See Gaming, Licences. \*\*\*

[\*35] Lying.

Whereas truth in words as well as in actions is required of all men, especially of Chistians who are the professed Servants of the God to

Truth; and wheras all lying is contrary to truth, and some sorts of lyes are not only sinfull (as all lyes are) but also pernicious to the Public-weal, and injurious to particular persons; it is therfore ordered by this Court and Authoritie therof,

That everie person of the age of discretion [which is accounted fourteen years] who shall wittingly and willingly make, or publish any Lye which may be pernicious to the publick weal, or tending to the damage or injurie of any particular person, or with intent to deceive and abuse the people with false news or reports: and the same duly proved in any Court or before any one Magistrate (who hath heerby power graunted to hear, and determin all offences against this Law) such person shall be fined for the first offence ten shillings, or if the partie be unable to pay the same then to be set in the stocks so long as the said Court or Magistrate shall appoint, in some open place, not exceeding two hours. For the second offence in that kinde wherof any shall be legally convicted the sum of twenty shillings, or be whipped upon the naked body not exceeding ten stripes. And for the third offence that way fourty shillings, or if the partie be unable to pay, then to be whipped with more stripes, not exceeding fifteen. And if yet any shall offend in like kinde, and be legally convicted therof, such person, male or female, shall be fined ten shillings a time more then formerly: or if the partie so offending be unable to pay, then to be whipped with five, or six more stripes then formerly not exceeding fourty at any time.

The aforesaid fines shall be levied, or stripes inflicted either by the Marshal of that Jurisdiction, or Constable of the Town where the offence is committed [\*36] according as the Court or Magistrate shall direct. And such fines so levied shall be paid to the Tresurie of that Shire where the Cause is tried.

And if any person shall find himselfe greived with the sentence of any such Magistrate out of Court, he may appeal to the next Court of the same Shire, giving sufficient securitie to prosecute his appeal and abide the Order of the Court. And if the said Court shall judge his appeal causlesse, he shall be double fined and pay the charges of the Court during his Action, or corrected by whipping as aforesaid not exceeding fourtie stripes; and pay the costs of Court and partie complaining or informing, and of Witnesses in the Case.

And for all such as being under age if discretion that shall offend in lying contrary to this Order their Parents or Masters shall give them due correction, and that in the presence of some Officer if any Magistrate shall so appoint. Provided also that no

person shall be barred of his just Action of Slauder, or otherwise by any proceeding upon this Order. [1645] \*\*\*

[\*38] Masters, Servants, Labourers

1. It is ordered by this Court and the Authoritie therof, that no servant, either man or maid shall either give, sell or truck any commoditie whatsoever without licence from their Masters, during the time of their service under pain of Fine, or corporal punishment at the discretion of the Court as the offence shall deserve.

2. And that all workmen shall work the whole day allowing convenient time for food and rest.

3. It is also ordered that when any servants shall run from their masters, or any other Inhabitants shall privily goe away with suspicion of ill intentions, it shall be lawfull for the next Magistrate, or the Constable and two of the chief Inhabitants where no Magistrate is to presse men and boats or pinnaces at the publick charge to pursue such persons by Sea or Land and ring them back by force of Arms.

4. It is also ordered by the Authoritie aforesaid, that the Free-men of everie town may from time to time as occasion shall require agree amongst themselves about the prizes, and rates of all workmens labours and servants wages. And everie person inhabiting in any town, whether workman, labourer or servant shall be bound to the same rates which the said Freemen, or the greater part shall binde themselves unto: and whosoever shall exceed those rates so agreed shall be punished by the discretion of the Court of that Shire, according to the qualitie and measure of the offence. And if any town shall have cause of complaint against the Freemen of any other town for allowing greater rates, or wages then themselves, the Quarter Court of that Shire shall from time to time set order therin.

5. And for servants and workmens wages, it is ordered, that they may be paid in corn, to be valued by two indifferent Freemen, chosen the one by the Master, the other by the servant or workman, who also are to have respect to the value of the work or service, and if they cannot agree then a third man shall be chosen by the next Magistrate, or if no Magistrate be in the town then by the next Constable, unles the parties agree the price themselves. Provided if any servant or workman agree for any [\*39] particular payment, then to be payd in specie, or consideration for default therin. And for all other payments in corn, if the parties cannot agree they shall choos two indifferent men, and if they cannot agree then a third as before.

6. It is ordered, and by this Court declared, that if any servant shall flee from the tyrannie and crueltie of his, or her Master to the house of any Freeman of the same town, they shall be there protected and susteined till due order be taken for their releif. Provided due notice therof be speedily given to their Master from whom they fled, and to the next Magistrate or Constable where the partie so fled is harboured.

7. Also that no servant shall be put off for above a year to any other, neither in the life time of their Master, nor after their death by their Exectuors or Administrators, unles it be by consent of Authorite assembled in some Court, or two Assistants: otherwise all, and everie such Assignment to be void in Law.

8. And that if any man smite out the eye, or tooth of his man-servant, or maid-servant; or otherwise maim, or much disfigure them (unles it be by meer casualtie) he shall let them goe free from his service, and shall allow such farther recompence as the Court shall adjudge him.

9. And all servants that have served diligently and faithfully to the benefit of their Masters seven years shall not be sent away emptie: and if any have been unfaithfull, negligent, or unprofitable in their service, notwithstanding the good usage of their Masters, they shall not be dismissed till they have made satisfaction according to the judgement of Authoritie. [1630 1633 1635 1636 1641] see Oppression. \*\*\*

[\*44] Pipe-staves.

Whereas information hath come to this Court from divers forrein parts of the insufficiencie of our Pipe-staves in regard especially of worm holes, wherby the commoditie is like to be prohibited in those parts, to the great damage of the Countrie; it is therefore ordered and enacted by the Authoritie of this Court,

That the Select-men of Boston and Charlstown, and of all other towns in this Jurisdiction where Pipe-staves use to be shipped; shall forthwith, and so from time to time as need shall require nominate two men of each town, skilfull in that commoditie, and such as can attend that service to be Viewers of Pipe-staves; who so chosen, shall by the Constable be convented before some Magistrate, to be sworn dilligently and faithfully to vie and search all such Pipe-staves as are to be transported to any parts of Spain, Portugal, or within either of their Dominions, or elsewhere to be used for making of tight cask, who shall cast bye all such as they shall judge not merchantable both in respect of worm-holes and due assize viz that

are not in length four foot & half, in breadth three inches and half without sap, in thickness three quarters of an inch, & not more or lesse then an eight part of an inch then three quarters thick: well, and even hewed and sufficient for that use. And they or some one of the shall at all times upon request give attendance; & they shall enter in a book the number of all such merchantable Pipe-staves as they shall approve, and for whom.

And if any man shall put aboard any Ship, or other vessel any Pipe-staves other then shall be so searched and approved, to the end to be transported to any part of Spain or Portugal, except they should be shipped for dry cask, he shall forfeit the same whole parcell or the value therof; and the said Viewers shall be allowed two shillings for everie thousand of Pipe-staves which they shall so search, as well the refuse as the merchantable, to be paid by him that sets them a work.

And if any Master or other Officer of any Ship, or other vessel shall receive into such Ship or vessel any parcel of Pipe-staves to be transported into any of the said Dominions which shall not be searched, and allowed as merchantable, and so certified by a note under the hand of one of the said Viewers such Master shall forfeit for everie thousand

#### Poor.

It ordered by this Court and Authoritie therof; that any Shire Court, or any two Magistrates out of Court shall have power to determin all differences about lawfull setling, and providing for poor persons; and shall have power to dispose of all unsettled persons into such towns as they shall judge to be most fit for the maintainance, and imployment of such persons and families, for the ease of the Countrie. [1639] \* \* \*

#### [\*49] Strangers.

It is ordered by this Court and the Authoritie therof; that no Town or person shall receive any stranger resorting hither with intent to reside in this Jurisdiction, nor shall allow any Lot or Habitation to any, or entertain any such above three weeks, except such person shall have allowance under the hand of some one Magistrate, upon pain of everie Town that shall give, or sell any Lot or Habitation to any not so licenced such Fine to the Countrie as that County Court shall impose, not exceeding fifty pounds, nor lesse then ten pounds. And of everie person receiving any such for longer time then is heer expressed or allowed, in some special cases as before, or in case of entertainment of friends resorting from other parts of this Country in amitie with us, shall forfeit as aforesaid, not exceeding twenty pounds,

nor lesse then four pounds: and for everie month after so offending, shal forfeit as aforesaid not exceeding ten pounds, nor lesse then fourty shillings. Also, that all Constables shall inform the Courts of new commers which they know to be admitted without licence, from time to time. [1637 1638 1647] See Fugitives, Lib.com: Tryalls. \*\*\*

#### Suits, vexatious suits.

It is ordered and decreed, and by this Court declared; that in all Cases where it appears to the Court that the Plaintiffe hath willingly & wittingly done wrong to the Defendant in commencing and prosecuting any Action, Suit, Complaint or Indictment in his own name or in the name of others, he shall pay treble damages to the partie greived, and be fined fourty shillings to the Common Treasurie. [1641 1646]

#### Swyne.

It is ordered by this Court, and by the Authoritie therof; that every *Township* within this Jurisdiction shall henceforth have power, and are heerby required from time to time to make Orders for preventing all harms by swine in corn, meadow, pastures and gardens; as also to impose penalties according to their best discretion: and to appoint one of their Inhabitants by *Warrent* under the hands of the Select-men, or the Constable where no Select-men are, to levie all such Fines and Penalties by them in that case imposed (if the Town neglect it).

And where Towns border each upon other, whose Orders may be various, satisfaction shall be made accrding to the Orders of that Town where the damage is done.

But if the swine be sufficiently ringed and yoaked, as the Orders of the Town to which they belong doeth require, then where no fence is, or that it be insufficient through which the swine come to trespasse, the Owner of the land or fence shall bear all damages. \* \* \*

#### [\*50] *Tobacco.*

*This Court finding that since the repealing of the former Laws against Tobacco, the same is more abused then before doth therfore order,*

That no man shall take any *tobacco* within twenty poles of any house, or so neer as may indanger the same, or neer any Barn, corn, or hay-cock as may occasion the

firing therof, upon pain of ten shillings for everie such offence, besides full recompence of all damages done by means therof. Nor shall any take *tobacco* in any Inne or common Victualing-house, except in a private room there, so as neither the Master of the said house nor any other Guests there shall take offence therat, which if any doe, then such person shall forthwith forbear, upon pain of two shillings sixpence for everie such offence. And for all Fines incurred by this Law, one half part shall be to the Informer the other to the poor of the town where the offence is done. [1638 1647]

### *Torture*

It is ordered, decreed, and by this Court declared; that no man shall be forced by torture to confesse any crime against himselfe or any other, unles it be in some Capital case, where he is first fully convicted by clear and sufficient evidence to be guilty. After which, if the Case be of that nature that it is very apparent there be other Conspirators or Confoederates with him; then he may be tortured, yet not with such tortures as be barbarous and inhumane.

2 And that no man shall be beaten with above fourty stripes for one Fact at one time. Nor shall any man be punished with whipping, except he have not othwise to answer the Law, unles his crime be very shamefull, and his course of life vitious and *profligate*. [1641]

EOD