

iron, not much inferior to that of Bilboa, may be produced; as, at this day, is seen in a village near Topsfield, seven or eight miles west from Ipswich.<sup>1</sup>

In the following years troublesome occurrences have fallen out, occasioned by the civil wars in England; whence it came to pass that sundry shipmasters, upon pretence of a commission from the Parliament, seized some ships in the harbor of Boston, without the license or privity of the Court there, taking them to belong to some of the King's party, which, in the language of those times, was interpreted, enemies to the Parliament. These things, done on the sudden, by a prevailing party, could not be helped; for oftentimes might overcomes right, according to the proverb, else there were some upon the place that could have adventured much to have secured the harbor.<sup>2</sup>

### CHAP. XLVI.<sup>3</sup>

#### *Various occurrences in New England, from 1641 to 1646.*

At this time the people of New England were assaulted with difficulties about their subsistence, with other various accidents, concerning the limits of the civil power, conspiracy of the Indians, uniting of the Colonies, with several more troubles, both intestine and foreign. For the great turn of affairs, that happened at this time, putting a stop to the wonted way of their subsistence in New England, occasioned many, through want of faith and patience to wait upon God and observe his providence, to run themselves into divers straits and difficulties, as not being able to see a way of livelihood any longer in the wilderness, not considering the words of the Psalmist, "Trust in the Lord and do good; so shalt thou dwell in the land, and verily thou shalt be fed."<sup>4</sup> For many began now<sup>5</sup> to inquire after the southern parts, being much taken with the supposed advantages and easy way of living in Virginia, and the Caribbee Islands, especially the Isle of Providence, which, at this time, was

<sup>1</sup> For a full account of the establishment of the Iron Works at Lynn, see the History of that place by Alonzo Lewis, (8vo. Bost. 1844,) p.120, *et seq.*—H.

<sup>2</sup> See Sav. Win. ii. 180, 192, 194.—H.

<sup>3</sup> Originally XLV in the MS.—H.

<sup>4</sup> Psal. xxxvii. 3.—H.

<sup>5</sup> In 1640.—H.

in great request ; as if there were any place of the earth where that part of the curse should not take place, " In the sweat of thy brows thou shalt eat thy bread." But the ease and plenty of those countries was so taking with many, as they sold their estates there in New England, to transplant themselves and families to that Spanish Island ; the chief of whom was a gentleman<sup>2</sup> of good esteem in the country, one of the Patentees, a man of great activity, and one of the first beginners in the promoting the Plantation of the Massachusetts. He was laboring much in this new design ; for his estate being somewhat low for want of prudent managing, he offered his service to the Lords that had the interest in the said Isle, (to whom he was well known,) and was by them accepted for their next Governor, and thereupon labored much to draw on others to join with him in this (as it was judged) unwarrantable course. For though it was thought very needful to further the Plantation of Protestant churches in the West Indies, and all were willing to endeavor it, yet it was looked upon as very unsuitable for those that had but new begun to people another part of America, (more agreeable to the temper and condition of Englishmen,) and with the disparagement of that place, wherein they could not but take notice of many signal providences of God, tending to the establishment thereof. But men that were engaged in the design would not be taken off by such considerations as were laid before them by the wisest of the place where they were, viz. not only to discourage the hearts of their brethren, whom they had, at the first, occasioned to remove into the wilderness, but to expose themselves to the danger of a potent enemy, (the Spaniard,) and a new climate, they had no experience of, and to be under the command of those which should be set over them by others. These motives prevailed with some to alter their resolution, yet others persisted strongly therein, not taking notice of sundry remarkable Providences that crossed their first attempts.

The gentlemen of the Massachusetts were credibly informed how the Lord Say had labored, by discouraging their Plantation, to divert men from coming to them, and

<sup>1</sup> Genesis, iii. 19.—H.

<sup>2</sup> John Humphrey, Esq.—H.

so to draw them to the West Indies, and how, finding that wise men were unwilling to come under such Governors as were not chosen by themselves, &c., they had condescended to divers articles suited to that form, although they had formerly declared for an aristocracy, and an hereditary magistracy, to be settled upon some great persons, &c. Mr. Winthrop, the usual Governor of the Massachusetts, had written<sup>1</sup> to the Lord Say about the reports aforesaid, and shewed his Lordship how evident it was that God had chosen that country to plant his people in, and that it would be displeasing unto him to hinder that work, and persuade such as were still inclined (if not by their presence, yet by their assistance) to promote it, to desist, by insinuating into their minds that there was no possibility of subsistence there; and told him that God would never have sent so many of his people thither, if he had not seen the place sufficient to maintain them, or that he intended to make it such. His Lordship returned answer that he could not deny much of what was written, nor the evidence of God's owning his people in the country of New England, but alleged it was a place appointed only for a present refuge, and that, a better place being now found out, they ought all to remove thither. But it is not good judging of things at so great a distance, and to depend upon uncertain reports in things of so great moment. Their Lordships that were so highly persuaded of the West Indies, and their Plantation at Providence there, were soon after convinced, by the loss of the Island to the Spaniards, and £60,000 charge they had been at, that they had raised their hopes but on a sandy foundation. And the gentleman forementioned, Mr. J. H., who, with the disparagement of New England, had maintained his hopes of a full supply from the Spanish Providence, was that year awakened, by a solemn providence of Heaven, to consider better of his ways; for his barn, with all his corn and hay, was, in the year 1640, consumed by fire, through the carelessness of his servants;<sup>2</sup> and himself and family being, in

<sup>1</sup> Probably in May, 1640. See Sav. Win. i. 333.—H.

<sup>2</sup> Mr. Savage remarks that "the blame of the negligence appears to be cast on one," Henry Stevens by name. Sav. Win. ii. 13, 37.—H.

spite of all his endeavors for Providence, detained in New England another season.

But, the next year, news was brought to New England that a church being gathered at Providence, the pastor, one Mr. Sherwood, with another minister, were sent home prisoners into England by one Carter, the Deputy Governor, (a merciful providence of God to them, whereby they escaped being made prisoners by the Spaniards, soon after,) and letters came also from the rest of the church to New England, complaining of the persecution of their magistrates and others, and desiring help from them. Many, that were before resolved and preparing for the Island, were the more encouraged, and drew on others that did not so well approve of the design before<sup>1</sup> to hasten away thither, which might caution others, (considering the issue,) not to build too much upon Providences without a surer rule from the word or revealed will of God; for, immediately after, Mr. William Peirse, (that had been very serviceable in transporting passengers to New England,) with two vessels, (wherein were much goods, and some families,<sup>1</sup>) bound for the Island of Providence, were unhappily disappointed of their entertainments by the Spaniards, that had newly retaken the place; so as the said Mr. Peirse, passing towards the Island, was ||shot|| in within command of the fort, before he discerned the danger; but then suddenly was slain, with another active man,<sup>2</sup> (that was forward in carrying on the business,) before they could tack about, being then forced to return to the despised country of New England, with shame and sorrow; having some encouragement left in their minds from the last chapter in Genesis, which the master read in the morning, "Behold I die, but God will surely visit you," &c.; for it is said, that, as they touched at Christopher's, and hearing that there was some probability the Island might be taken by the Spanish fleet, (which was then abroad,) he would have persuaded the passengers to return back, but they would not hearken in time to good advice, and that then Mr. Peirse should reply, then I am a dead

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<sup>1</sup> "Thirty men, five women, and eight children," says Winthrop.—H.

<sup>2</sup> Samuel Wakeman. Ibid.—H.

man; as if he had received the sentence of death in himself, as oftentimes cometh to pass.

This solemn accident brought some of them, at last, to see their error, and acknowledge it to their friends at their return, Sept. 3, 1641. They were very loath to return back, and would have been set ashore any where in the warm country of the West Indies, but the seamen would not be overruled so to do.

A vessel that returned at that time<sup>1</sup> from the Isle of Sables made a better voyage, bringing four hundred pair of seahorse teeth,<sup>2</sup> with divers tun of oil, besides much other goods of like sort, which they left behind, worth £1500. And others also, in those times, did with more advantage improve the Islands of the West Indies in a way of traffic, still keeping their residence in New England.

But now the Plantation at the Spanish Island being laid aside, those that were disaffected to New England, not discerning at the present a way of subsistence, nor having patience and confidence in the Almighty to wait upon him, till a door of hope were opened by his wisdom and goodness, took their flight elsewhere. Whether they have thereby mended themselves, considering the hazards they have run, in making out their way, themselves are best able to judge. The affairs of the world are carried in a movable wheel, wherein it is oft found that what is highest in one season is laid quite underneath soon after.

The gentleman<sup>3</sup> forementioned (so strongly bent to remove) did, at last,<sup>4</sup> himself go over into England, leaving his children behind, without taking due care for their governing and education, whereby there were divers of them (being under age) shamefully abused and defiled by wicked persons, to such an high degree as the wisest in the country were at a loss to design any punishment, short of death, suitable to the nature of their offences. For, as was observed of old, children left to themselves, bring her that bare them to shame. Thus was this family strangely, though secretly polluted, though it brake not out till he had left the country, which he had been

<sup>1</sup> In October or November. Sav. Win. ii. 34-5.—H.

<sup>2</sup> "Which were esteemed worth £300," says Winthrop, Sav. Win. ii. 35, 67.—H.

<sup>3</sup> Humphrey.—H.

<sup>4</sup> October 26, 1641. Sav. Win. ii. 46, 85-6.—H.

contriving to do divers years before, against the advice of his best friends.<sup>1</sup>

But, besides these afflictive dispensations about their subsistence, as in the former lustre the people of New-England were exercised with ecclesiastical troubles, so, in this, with many difficulties in their civil affairs.

The General Court, held in the 10th month, 1641, was not without uncomfortable agitations and contentions, principally occasioned in a case wherein the Deputy Governor<sup>2</sup> was concerned, about a mortgage of land; thereby was all business retarded, and an occasion of grief to godly minds, and of reproach to the Court. There are dead flies in the apothecary's best ointment; but such infirmities, like dark shades in portraitures, and acupict embroideries, do not take away from the beauty of the whole piece in the issue. However, according to the old observation, that good laws take their original from bad manners, on that condition an wholesome law was made for recording all deeds of conveyance, whether absolute or conditional, that so neither creditors might be defrauded, nor courts troubled with vexatious suits and endless contentions, about sales and mortgages. Righteousness exalteth a nation, and maketh them honorable, even in the sight of very heathen, as was manifest at this time amongst the Indians, in their observation of the proceedings of the English. For, in the year 1642, those of New Haven, intending a Plantation at Delaware, sent some to purchase a large portion of land from the Indians there. But when they refused to deal with them, it so fell out that a Pequot sachim, who had fled his country in the time of the wars with them, and seated himself there upon that river, was accidentally present at that time, and, taking notice of the English, and their desire, persuaded the other sachim to deal with them, and told him that, howsoever they had killed his countrymen, and driven him out, yet they were honest men, and had just cause to do what they did, for the Pequots, he owned, had done them wrong, and refused to give them reasonable satis-

<sup>1</sup> See Sav. Win. i. 75, ii. 13, 26, 45; and a touching letter from Humphrey to Gov. Winthrop, (dated at Gravesend, Sept. 4, 1646,) in Hutchinson's Coll. Papers, pp. 159-60.—H.

<sup>2</sup> This seems to be a mistake. The case was between Dudley, one of the Council, and Edward Howe, of Watertown. Sav. Win. ii. 50.—H.

faction, which was demanded. Whereupon the sachem entertained them, and let them have what land they desired.

In the year 1642, the Isles of Shoals being found to fall within the jurisdiction of the Massachusetts, and having submitted to the government thereof, were provoked to revolt from them, by one Mr. Gibson, a scholar, whom they had entertained in the nature of a minister, and he exercised that function after the manner of the church of England. He had been sent to Richmond Island, that belonged to Mr. Trelany, but not liking to abide there he removed to Pascataqua, Strawberry Bank, and so at last came to an employment amongst the fishermen at the Shoals. While he officiated there he was incensed by some speeches in a sermon of Mr. Larkham's, the minister of Dover, wherein he inveighed against such hirelings. Mr. Gibson, in way of retaliation, or rather revenge, sent him an open letter, wherein he scandalized the government of the Massachusetts, and opposed their title to those parts; but, being called in question by them, whose authority he had contemned at a distance, he submitted himself to an acknowledgment of his offence, and was discharged, (in regard he was a stranger,) without either fee or fine.<sup>1</sup>

In the same year, 1642, one ||Darby Field,|| an Irishman, with some others,<sup>2</sup> travelled to an high mountain, called the White Hills, an hundred miles, or near upon, to the west of Saco. It is the highest hill in these parts of America. They passed through many of the lower and rainy clouds as they ascended up to the top thereof, but some, that were there afterwards, saw clouds above them. There is a plain of sixty feet square on the top, a very steep precipice on the west side, and all the country round about them seemed like a level, and much beneath them. There was a great expectation of some precious things to be found, either on the top or in the ascent, by the glistening of some white stones. Something was found like crystal, but nothing of value. It appeared to

|| Darbyfield ||

<sup>1</sup> Richard Gibson, an Episcopal clergyman, was at Richmond's Island "as early as April, 1637." He went to Portsmouth in 1640, where he was chosen first pastor of the Episcopal church, but removed, not long after, to the Isles of Shoals. He probably returned to England. See Maine Hist. Coll. i. 26; Farmer's Belknap, p. 29; Adams's Portsmouth, p. 27; Sav. Win. ii. 66.—H.      <sup>2</sup> Two Indians.—H.

them that made the most diligent observation of the country round about, that many great rivers of New England rise out of that mountain, as Saco, [and] Kennebeck, to the north and east, Connecticut, to the south, as they conceived ; as cosmographers observe that four great rivers arise out of the mountains of Helvetia, accounted the highest land in Europe. In each of those rivers they report, at the first issue, there is water enough to drive a mill.<sup>1</sup>

In the same year fell out a new occasion of starting the old question about the negative vote in the magistrates ; for the country, and all the Courts thereof, (General and Particular,) in a manner, were filled with much trouble, about something<sup>2</sup> that strayed from a poor man's possession in the year 1636 ; but in this year were revived so many controversies about the true title thereof, as engaged all the wisdom and religion in the country to put an end thereunto. The poor man's cause is like to engage the multitude with a kind of compassion, against which, as well as against the bribes of the rich, the law of God doth caution judges. It proved almost as long and chargeable as *Arrestum Parliamenti Tholosanni*, in the case of Martin Guerra,<sup>3</sup> to find who was the right owner 'of the thing in controversy.'<sup>4</sup> It is much to see the restless and unreasonable striving in the spirit of man, that a lessor Court, that hath power to determine an action of an hundred or a thousand pounds, could not put an issue to a matter of so small a value. It proceeded so far at the last, (through some prejudice taken up against the defendant,) that the very foundations of the whole authority of the country were in danger to be blown up thereby ; a report being taken up by the common people of the country that the negative vote of the magistrates (who did in that, as they should in all cases, look more to the nature of the evidence than any preoccupating notion or prejudice to or against the plaintiff or defendant) had hindered the course of justice. On that occasion it was strongly moved that the said negative vote might be taken away ; for, by the Patent, no matter

<sup>1</sup> See Sav. Win. ii. 67, 69 ; Farmer's Belknap, pp. 11-12.—H.

<sup>2</sup> First written *a swine*, which was, in truth, the "something." See Sav. Win. ii. 69.—H. <sup>3</sup> The "thing in controversy," in this case, was a woman, whom two individuals claimed as wife.—H.

<sup>4</sup> First written *of the said swine*.—H.



should pass in the General Court, without the concurrence of six of the magistrates, at the least, with the Governor or Deputy, which, in this case, could not be found; therefore was it the more on this account solicitously endeavored that the power of the negative vote in the General Court might be taken away. And it was so impetuously now carried on, that there was scarce any possibility to resist the torrent of common fame, jealousy, <sup>of minds</sup>\*\*\*\*† and prejudice of minds, so as at the last, for peace sake, and quieting the minds of the people in the present exigence of the said<sup>1</sup> business, the magistrates yielded to a private reference, as to some circumstances of the action; and the defendant was persuaded to return the poor woman her charges, i. e. what he had received upon the account of a former action, viz, £3, as part of £20, that was granted by the jury; which was done rather out of charity, and respect to the public good, than out of conviction of duty in point of justice, as wise men always apprehended the case. But for the negative vote, it will more naturally fall to be spoken to afterwards.

July 28, 1642, a Dutch ship arrived at Boston, laden with salt from the West Indies, which she sold there for plank and pipe staves, (as good encouragement to promote the traffic of the country, then newly set on foot.) She brought two Spanish merchants, who, being taken at sea, while they went in a frigate from Domingo, to find an English ship which they had freighted home, and was (by their agreement) stolen out of the harbor, where she was long imbarred, they hired this Dutchman to bring them thither, where they had appointed this ship to come, (not daring to go into England, or Spain, &c.) They stayed about a month and after, but their ship came not; so they went away again. It was heard afterward that their ship had been beating upon the coast fourteen days, but being put back still by northwest winds, she bore up and went for England, and arrived at Southampton. The Parliament made use of the treasure which God diverted from New England, that their hearts might not be taken with her wealth, and that it might not cause the Spaniard to have an evil eye upon them.

† MS. illegible. ED. [I am obliged to acknowledge it.—E.]

<sup>1</sup> First written *sow*.—E.

Many difficulties falling in together, about those times in New England, put divers, that were discontented before, into such an unsettled frame of spirit, that concluding there would be no subsistence for them and their children there, they counted it their wisdom to shift for themselves in time, and retire to places of safety before the storm came; but most of them, by that means, did but the sooner fall into the misery they hoped to fly from. Amongst others Mr. J. H.<sup>1</sup> forementioned, with four or five other persons of note,<sup>2</sup> returning that year for England, against the advice of their friends, and thinking their passage was like to be short and prosperous, gave too much liberty to their own spirits to speak evil both of the people and place they left behind them; possibly their spirits might be too much elevated by their present success to expect great matters in the country whither they were going, as if they had been already in possession thereof. But when they were upon the coast of England, the wind came up just against them, and tossed them up and down so long, that they had not only spent all their provisions, but, at the last, were, by tempestuous winds, in danger of being dashed in pieces on the rocks, which put them into a serious inquiry, not only into the grounds of their removal, but into the frame of their spirits in the way; by their reflecting on which they saw cause to humble themselves before God for their miscarriage therein, and, like Jonah, to see their great error in running from the presence of the Lord to Tarshish, where they found afterwards, many of them, that their hopes were disappointed, as was reported by some, who knew what entertainment divers of them found there.<sup>3</sup>

Those who first removed into the country, upon due grounds, were (implicitly at least) engaged to support each other in whatever exigents should fall out, and therefore should not have been too forward to have removed, without the free consent of the rest of their friends, with whom they were so confederated. It will be hard to lay down such rules as shall necessarily bind

<sup>1</sup> John Humphrey. See pages 376, 377, 379.—H.   <sup>2</sup> "Four ministers, and a schoolmaster," says Winthrop.—H.   <sup>3</sup> See Sav. Win. ii. 85-8.—H.

all particular persons to a strict observation of them, without some allowance ; but this may be observed here, that there having so much of God appeared in carrying on that Plantation of New England from the first, those that were lawfully called to engage therein had need have had as clear a call from God before they had deserted the same. The Church of God is not now confined to a family or nation, as in former ages, but is, in these days of the Gospel, dispersed over the whole world ; and every part of the same have, in every age, had their particular work and service to attend, and may therein observe the pillar and cloud of God's presence going before them, to find out a resting place for them, as they in New England have now for fifty years together had experience of ; in all which time God hath so ordered his dispensations toward his people there, that they have found as comfortable a way of subsistence, by their diligence and industry, as their friends have done in other places.

Besides the forementioned occurrents, which exercised the minds of the principal inhabitants there, in the year 1642, there was another troublesome business that then fell out, occasioned by a small treatise, brought into the Court of Election that year,<sup>1</sup> directly levelled against the institution of the Standing Council,<sup>2</sup> which the author pretended to be a sinful innovation, and therefore ought to be reformed. Upon the first discovery thereof, the Governor<sup>3</sup> moved to have the contents thereof examined, and then, (if there appeared a cause,) to have the author inquired after. The greatest part of the General Court, (consisting of deputies,) being well persuaded of the honest intentions of the compiler thereof, (as tending to favor the liberty of the people,) would not consent thereunto, but desired rather to inquire how it came into the Court. It was, at the last, yielded to be read in the Court, and it was found to have been made by one<sup>4</sup> of the Assistants, and by him to be delivered to a principal man<sup>5</sup> among the deputies, to be tendered to the Court, if he should approve of it ; but, upon one account or other, that gentleman did not acquaint the Court with it, but

<sup>1</sup> May 18, 1642.—H.

<sup>2</sup> See page 234.—H.

<sup>3</sup> Winthrop.—H.

<sup>4</sup> Richard Saltonstall.—H.

<sup>5</sup> William Hathorne.—H.

delivered it to one of the freemen, further to consider of, with whom it remained about half a year, and then was it (contrary to the first intention of the author) delivered to one<sup>1</sup> of the principal members of the said Council. A worse hand it could not have fallen into, as to the design aimed at; for by him, and the rest of the Council, it was complained of, as an attempt to undermine one of the fundamental orders of the government. An answer was also drawn up to it,<sup>2</sup> and read at the next sessions of the Court, wherein all the harsher and displeasing passages were laid open, with all the aggravations that an able pen could possibly fasten upon them. Some observations were likewise made thereof by Mr. Norris, the minister of Salem, of like nature, (which were also, with some difficulty, at the same time read in the Court,) who, not suspecting the author, handled him more sharply than otherwise perhaps he would have done, according as he judged the merit of the matter required.

The Governor (who, according to the first institution of the said Council was to be President thereof, for the time being,) moved a second time that the matter of the book might be considered; but the whole Court would not admit thereof, except the author were first acquitted from any censure concerning the said treatise, though some passages of the same, that were looked upon as very offensive and unwarrantable, were mentioned to induce them thereunto. But, at the last, the author's indemnity from any censure being first voted, the matter of it was inquired into, and divers expressions therein were much blamed by many, as that the said Council was first instituted unwarily to satisfy the desire of Mr. Vane, etc., whereas it was well known to many in the Court, (as themselves affirmed,) that it was, upon the advice and solicitation of the ministers and after much deliberation from Court to Court, established. Some also conceived that Mr. Cotton had sufficiently proved, from Scripture and from reason, that the chief magistrates ought to be for life, as those of this Standing Council were (when first chosen) to be, and therefore any passages that did reflect

<sup>1</sup> Dudley.—R.

<sup>2</sup> By Dudley.—R.

upon such a constitution, with reproachful expressions, were the worse taken by those that were called to be of that order. In the conclusion, a motion was made to take the advice of the ministers || in || the country, concerning the soundness of the propositions and arguments alleged for its confirmation; accordingly it was agreed by the whole Court that there should be a meeting of all the ministers at Ipswich, on the 18th of October, the same year, to consider thereof. And, being there met, and taking into their consideration that which was committed to them by the General Court, though they were different in their judgments about it, yet at length they all agreed upon this answer:

First, that the propositions laid down, in the general, were granted, (with a distinction in the first,) which were these:

1. First, that a Christian people, (rightly and religiously constituted) have no power, office, administration, or authority, but such as is commanded and ordained of God. This was granted with this limitation; that all lawful powers are ordained, &c., either expressly or by consequence, by particular examples or by general rules.

2. That those powers, offices, &c., ordained of God, &c., being given, dispensed, and erected in such a Christian society, (by his general providence,) proportioned to his rule by their state and condition, established by his power, carried on and accompanied with his presence and blessing, ought not to be by them changed or altered but upon such grounds, for such ends, in such manner, and so far only, as the mind of God may be manifest therein.

3. The mind of God is never manifested concerning the change or alteration of any civil ordinance, erected or established by him, &c., so long as all the cases, counsels, services, and occasion thereof, may be duly and fully ended or ordered, executed and performed, without any change or alteration of government.

Secondly, for the application of the aforesaid propositions to the Standing Council, and the arguments en-

forcing the same. They distinguished between a Standing Council invested with a kind of transcendent<sup>1</sup> authority, beyond other magistrates, or else any kind of Standing Council, distinct from magistracy. The former they seemed implicitly to disallow. The latter they approved, as necessary for them, not disproportionable for their estate, nor of any dangerous consequence, for disunion among the magistrates, or factions among the people, (which were the arguments used by the author against the said Council.) Some passages also they wished had been spared, and other things they found omitted, which, if supplied, might have cleared other passages, which seemed to reflect upon the gentlemen that were of the present Standing Council, which yet they thought not to be of that moment but that, (the uprightness of his intentions considered, and the liberty given for advice,) according to the rules of religion, peace, and prudence, they might be passed by.

Lastly, they declared their present thoughts about the moulding and perfecting of a Council, in four rules :

1. That all the magistrates, by their calling and office, together with the care of judicature, are to consult for the provision, protection, and universal welfare of the people.

2. That some select men taken out from among the Assistants, or other freemen, being called thereunto, be in special, to attend, by way of Council, for the provision, protection, and welfare of the people.

3. This Council, or members of it as such, to have no power of judicature.

4. In cases of instant danger to the people, in the interim, before a General Court can be called, (which were meet to be done with all speed,) whatsoever shall be consented unto and concluded by this Council, or the major part of them, together with the consent of the magistrates, or the major part of them, may stand good and firm till the General Court.

In the end, after much agitation in the Court and country about the business, by the wisdom and faithfulness of

<sup>1</sup> This word, by a most ridiculous blunder, is *transient* in the MS.—H.

some of the ministers, the author of the aforesaid treatise was brought to see his error, which he did ingenuously acknowledge, and so was reconciled to those that were offended thereat; but some others,<sup>1</sup> that had engaged in that cause, (possibly upon some particular prejudice,) manifested too much stiffness to be brought thereunto.

By this it appears, how difficult it is, if possible, for any order or constitution amongst men to be so warily stated but some will be found nibbling thereat, and pretend matter of reason and moment to object against it, and, when all is done, are forced to sit down with silence and submission, which they might have done before, without troubling themselves or others.

It is well known, by the experience of all places and people, that some are necessarily called to preside and take the charge and oversight of the whole series of affairs, distinct from their office, that are to intend matters of judicature. According to the diversity of gifts mankind is furnished withal, many are found to excel in the faculties of some particular science and profession that are not of like ability, in point of prudence, to counsel and advise in managing the general affairs of a people or place. And it will be equally hard to find a competent number of any order to have the same degrees of wisdom and prudence; in case, therefore, that any notable difference do appear, what inconvenience will be found in advancing some of the same order to an higher degree both of honor and trust? David of old had, among his captains and worthies, some that were advanced above the rest; and some, also, that were not advanced among the first three, were, notwithstanding, placed in an order above the rest of the thirty. And in the Persian monarchy we read of three that were set over the rest of the Governors of the whole number of the Provinces.

But this business of the book against the Standing Council was no sooner ended, but another controversy was revived about the negative vote,<sup>2</sup> upon occasion of the forementioned controversy,<sup>2</sup> which at this time, in the year 1643, was, by the restless importunity of some, that

<sup>1</sup> I. e. Mr. Bellingham.—H.

<sup>2</sup> First written, upon occasion of the old story of the stray sow.—H.

liked to labor in the fire, called over again; and this caused the same question to be moved afresh, about the magistrates' negative vote in the General Court. The deputies were very earnest to have it taken away. Whereupon one of the magistrates wrote a small treatise, wherein he laid down the original of it from the Patent, and the establishing of it by order of the General Court, in the year 1634; showing thereby how it was fundamental to the government, which, if it were taken away, would be a mere democracy. He showed also the necessity and usefulness of it, from Scripture, reason, and common practice, &c. Yet this would not satisfy, but the deputies were earnest to have it taken away; and yet it was apparent, (as some of the deputies themselves confessed,) the most did not understand it. But where men's affections are once engaged upon any design, whether reason persuade to it or not, it is usually with great earnestness pressed on. Those that were, at this time, inclined that way were much strengthened in their purpose by a discourse that fell into their hands, (drawn up by one of the magistrates, as was conceived,) supposing they had now enough clearly to carry the cause, and avoid the danger of all arguments and reasons laid down in the former treatise, and therefore pressed earnestly to have the matter presently determined. But the magistrates told them the matter was of great concernment, even to the very frame of their government, and that it had been established upon serious consultation and consent of all the ministers, and had been continued without any apparent mischief and inconvenience now these fourteen years; therefore it would not be safe nor convenient to alter on such a sudden, and without the advice of the ministers of the country, offering withal that if, upon such advice and consideration, it should appear to be inconvenient, and not warranted by the Patent and by the said order, &c., they should be ready to join with them in the taking it away. Upon these propositions their heat was moderated, and an order drawn up that every member of the Court should take advice; and



that it should be no offence for any, either publicly or privately, with modesty to declare their opinion in the case ; and that the ministers should be desired to give their advice, before the next meeting of the Court. It was the magistrates' only care to gain this, that so the people's minds might be the more easily quieted ; for they knew the ministers would hear reason, and that so there might be liberty to reply to the said answer of one of the magistrates, (very long and tedious, but not with that strength of reason as was by some apprehended,) which accordingly was done<sup>1</sup> soon after the Court, and published to good satisfaction. One of the ministers also wrote a small treatise, wherein he, both scholastically and religiously, handled the question, laying down the several forms of government, both simple and mixed, and the true form of the Massachusetts government, and the unavoidable change of the government into a democracy, if the negative vote were taken away.

Thus the deputies, and the people also, having the heat of their spirits allayed by time, and their judgments better informed by what they had learned about it, let the cause fall, and the gentleman who had written the answer to the first defence, &c., appeared no further in it for that time ; and it was conceived that there would have been a final end put to that controversy by an Order made in the next Court, March 25, 1644, when there was a motion of the deputies that the Court should sit apart in their consultations, the magistrates by themselves, and the deputies by themselves, and what the one agreed upon they should send to the other, and if both agreed, then to pass, &c. But the controversy could not be so easily determined, so it was laid aside for that time ; but afterwards it was agreed that, in case the major part of the deputies, and also of the magistrates, did not unite in the same conclusion, in any matter of judicature, that then, the whole Court being met together, the vote of the major part should put an issue to the case ; which establishment continued for a long time after.

But at the next Court of Election there arose a ques-

<sup>1</sup> By Winthrop. The MS. is in the library of the Massachusetts Historical Society.—E.

tion of another nature, about the extent of the Standing Council; whether all the magistrates were not, by the Patent, to be reputed of the Council of the country.

Those of the County of Essex, having, at the former Court, procured that the deputies of ||the|| shires should meet before the Court, to prepare business, they did accordingly, and propounded divers things, which they agitated and consulted among themselves, without communicating of them to the other shires, (who conceived they had been only such things as concerned the good of the whole,) but when they came to be put to the Court, it appeared that their chief intent was only to advantage their own shire; as by drawing the ||<sup>o</sup>government, Courts,|| and a good part of the country's stock, thither, because the present Governor, Mr. Endicot, lived there. Endeavors were also used for procuring four, of those parts, to be joined in commission with the magistrates; and for this end they had made so strong a party among the deputies of the smaller towns, (being most of them of mean estate, and that had small understanding in matters of state,) as they easily carried all those things among the deputies; but when the bills came to the magistrates, they discerned the plot, and that the things were hurtful to the common good, and therefore refused to pass them, and a committee of both parts of the Court being appointed to consider of the reasons on both sides, those of the magistrates prevailed. Another motion was then made for having three of the deputies<sup>1</sup> joined in commission with seven of the magistrates, to order all the affairs of the country, in the vacancy of the General Court. The magistrates returned this answer thereunto, that such a commission tended to the overthrow of the foundation of the government, and of the freemen's liberty, and therefore desired the deputies to consider of a way how this danger might be avoided, and the liberty of the freemen preserved inviolable, else they could not comfortably proceed in other affairs. Upon this all the deputies came to confer with the magistrates, who then de-

|| their ||

|| <sup>o</sup>government courts ||

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<sup>1</sup> "And Mr. Ward, sometime pastor of Ipswich, and still a preacher," says Winthrop.—H.

clared their exceptions against the said proposal. 1. That this Court should create general officers, which the freemen had referred to the Court of Election. 2. That they should put out all the rest of the magistrates, besides the seven, from that power and trust which the freemen had committed to them. 3. That they ought not to accept that power, by commission from the General Court, that belonged to them by the Patent, and by their election. The deputies had very little to answer to this, yet they alleged a precedent or two, where the General Court had ordered some of the magistrates, and some others, to be a Council of war, and that, having varied from the Patent in some other things, they were not bound to it in this; but they chiefly stood upon this, that the Governor and magistrates had no power out of Court, but what was given them by the General Court. To which the magistrates replied, that such examples as were against rules, or common right, were errors, and no precedents, and that the said Council was for one particular case only, and not of general extent; and that those things wherein they had varied from the Patent did not touch the foundation of the government; and, lastly, that the ~~Governor and Assistants had power of government~~ before they had any written laws or had kept any Court; and to make a man a Governor over a people gives him (by consequence) power to govern the people, otherwise there were no power to order or punish in any case that there were no positive law declared in. It was at last consented to, that the present Court had authority to order and direct the power of these magistrates for time, place, persons, &c., for the common good, but not wholly to deprive them of it, their office continuing; so as these being chosen by the people, according to Patent, to govern the people, (a chief part whereof consists in counsel,) they are the Standing Council of the country; and, in the vacancy of the General Court, may act in all the affairs thereof, without any commission. Upon this the deputies withdrew, and, after a few hours, tendered a commission for war only, and none of the magistrates to be left out. But the magistrates refused to accept of any com-

mission, but they would consent the same should pass by order, so as the free power of the magistrates were declared in it, or to a commission of association, to add three or nine<sup>1</sup> to the magistrates, or to advise with the ministers, &c. But this not being admitted, they moved that the magistrates would consent that nothing might be done till the Court met again, (which was before adjourned to October.) To this was answered, that, if occasion required, they must act according to the power and trust committed to them; to which their speaker<sup>2</sup> (daringly enough) replied, you will not be obeyed. Two days after, the present Court was broke up, before any thing more was done about the premises; but, upon some intervening occurrents, about the Indians, it was called to meet again the next month; at which time a debate fell in concerning a Commission to be prepared for the Major-General. It was agreed upon and sealed, and in it he was referred to receive his instructions from the Council of the country, but who were this Council was not agreed. Whereupon the magistrates (all save two) signed a declaration in maintenance of their authority, and to clear aspersions cast upon them, as if they intended to bring in an arbitrary government, &c. And this they sent in first to the deputies, with intimation that they intended to publish it. The deputies sent to desire the publishing of it might be forborne, and that a committee might be chosen to state the difference between them, which was done, and the difference brought under this question :

Whether the magistrates are, by Patent and election of the people, the Standing Council of the country, in the vacancy of the General Court, and have power accordingly to act in all things subject unto government, according to the rules of the said Patent and laws of the jurisdiction; and when any necessary occasions call for action from authority, in cases wherein there is no particular express law provided, there to be guided by the word of God, till the General Court give particular rules in such cases ?

<sup>1</sup> It should be *four*.—Sav. Win. ii. 168.—H.    <sup>2</sup> William Hathorne.—H.

This difference being thus stated, the deputies drew up this Order following, and sent it to the magistrates: "Whereas there is a difference between the Governor and Assistants, and the deputies of this Court, concerning the power of the magistrates, in the vacancy of the General Court; we thereupon, (*salvo jure,*) for the peace and safety of the Colony, do consent that the Governor and Assistants shall take order for the welfare of the people, in all sudden cases which may happen within the jurisdiction, until the next session of this Court, when we desire this question may be determined."

This they accepted, (with the *salvo jure,*) but they refused another, which they had sent before in these words: "We do authorize those three, which are of the Standing Council, to proceed," &c.

Upon this agreement they consented that their declaration should remain with the secretary, and not to be published without the consent of the major part of the magistrates, which they intended not to do, except they were necessitated thereunto by the deputies' misreport of their proceedings; and indeed some of the magistrates did decline the publication thereof, upon this apprehension, that it would cause a public breach through the country; and if it should come to that, the people would fall into factions, and the non-members would certainly take part with the magistrates, (they should not be able to avoid that,) and it would make them and their cause, though never so just, obnoxious to the common sort of freemen, the issue whereof must needs be very doubtful.

In the end of October<sup>1</sup> following, the General Court assembled again, and all the ministers were sent for to reconcile the difference between the magistrates and the deputies; and when they were come, they put the question to them, as it was stated the last session. After they had received the question they withdrew for consultation about it, and the next day were ready to attend the Court with their answer. The deputies sent four of their number as a committee to hear their answer, which was

<sup>1</sup> Oct. 30th.—x.

affirmative on the magistrates' behalf, in the very words of the question, not one dissenting.

Upon the return of this answer the deputies prepared other questions to be propounded likewise to the ministers, and sent them first to the magistrates to take a view of them. The magistrates also prepared four questions, and sent them to the deputies.

The magistrates' questions, with the ministers' answer, were,

1. Whether the deputies in the General Court have judicial and magistratical authority?

2. Whether the General Court, consisting of magistrates and deputies, as a General Court, have judicial and magistratical authority?

3. Whether they may warrantably prescribe certain penalties to offences, which may probably admit variable degrees of guilt?

4. Whether a judge be bound to pronounce such sentence as a positive law prescribes, in case it be apparently above or beneath the merit of the offence?

The ministers' answer.

1. The Patent in express words giveth full power and authority, as to the Governor and Assistants, so to the freemen also, assembled in General Court.

2. Whereas there is a threefold power of magistratical authority, viz. legislative, judicial, and consultative or directive of the public affairs of the country, for provision and protection, &c. The first of these is expressly given to the freemen, jointly with the Governor and Assistants. The third is also granted by the Patent as the other. But for the second, the power of judicature, if we speak of the constant and usual administration thereof, we do not find that it is granted to the freemen or deputies in the General Court, either by the Patent or the election of the people, or by any law of the country; but if we speak of the occasional administration thereof, we find power of judicature administrable by the freemen, jointly with the Governor and Assistants, upon a double occasion. (1.) In case of defect or delinquency of

a magistrate, the whole Court (consisting of magistrates and deputies) may remove him. (2.) If, by the law of the country, there lie any appeal to the General Court, or any special cause be referred to their judgment, it will necessarily infer, that, in such cases, by such laws, the freemen, jointly with the Governor and Assistants, have power of judicature, touching the appellant's cause of appeal, and for those reserved cases. What is spoken of the power of freemen by Patent, the same may be said of the deputies, so far forth as the power of the freemen is delegated to them by order of law.

3, 4. As to the third and fourth questions, they answer:

1. Certain penalties may and ought to be prescribed to capital crimes, although they may admit variable degrees of guilt; as in case of premeditated malice and sudden provocation there is prescribed the same punishment of death in both, though murder upon premeditated malice be of far greater guilt than upon sudden provocation, Numb. xxxv. 16, 18, with 20, 21. Also in crimes of less guilt, as theft, though some theft may be of greater guilt than other, (as for some man to steal, who hath less need, is of greater guilt than for another, who hath more need,) the Lord prescribed the same measure of restitution to both.

2. In case that variable circumstances of an offence do so much vary the degrees of guilt, as that the offence is raised to an higher nature, there that<sup>1</sup> must be varied to an higher answerable proportion. The striking of a neighbor may be punished with some pecuniary mulct, when the striking of a father may be punished with death; so any sin committed with an high hand, as the gathering of sticks on the Sabbath day, may be punished with death, when a lesser punishment may serve for gathering sticks privately, and in some need.

3. In case circumstances do so vary a sin, as that many sins are complicated and wrapped up in it, the penalty is to be varied, according to the penalties of those various sins. A single lie may be punished with a less mulct than that which is told before the judgment seat, or else-

<sup>1</sup> The penalty.—H.

where, to the damage of any person, whether in his good name, by slander, or in his estate, by detriment in his commerce; in which case a lie, aggravated by such circumstances, is to be punished with respect both to a lie, and to a slander, and to the detriment another sustaineth thereby.

4. In case the circumstances which vary the degrees of guilt, concern only the person of the offender, (as whether it be the first offence, or customary, or whether he were enticed thereto, or whether he were the enticer, whether he were the principal or the accessory, whether he were unadvised, or witting and willing, &c.) there it were meet the penalty should be expressed [with a latitude, whereof the lowest degree to be expressed,<sup>1</sup>] (supposed five shillings, or, as the case may be, five stripes,) and the highest degree, twenty shillings or twenty stripes, more or less; within which compass, or latitude, it may be free to a magistrate to aggravate or mitigate the penalty, &c.; yet even here also care would be taken that a magistrate attend, in his sentence, as much as may be, to a certain rule in these circumstances, lest some persons, whose sins be alike circumstanced with others, if their punishments be not equal, may think themselves more unequally dealt withal than others.

5. In those cases wherein the judge is persuaded in conscience that a crime deserveth a greater punishment than the law inflicteth, he may lawfully pronounce sentence according to the prescript penalty, &c., because he hath no power committed to him by law to go higher; but where the law may seem, to the conscience of the judge, to inflict a greater penalty than the offence deserveth, it is his part to suspend his sentence, till, by conference with the lawgivers, he find liberty, either to inflict the sentence or to mitigate it.

6. The penalties of great crimes may sometimes be mitigated, by such as are in chief power, out of respect to the public good service which the delinquent hath done to the state in former times, as Solomon did to Abiathar, 1 Kings, ii. 26, 27.

<sup>1</sup> Supplied from Winthrop. The cause of the omission is easily found in the circumstance of the word *expressed* coming at the end of each member of the sentence.—H.



Questions propounded to the ministers by the deputies.

Qu. 1. Whether the Governor and Assistants have any power, by Patent, to dispense justice in the vacancy of the General Court, without some law or order of the same to declare the rule?

Ans. They answer negatively; and further, they conceive<sup>1</sup> it meet the rule should be express for the regulating all particulars, as far as may be, and where such cannot be had, to be supplied by general rules.

Qu. 2. Whether any General Court hath not power by Patent, in particular cases, to choose any commissioners, (either Assistants or freemen,) exempting all others, and to give them commission to set forth their power and places? By any 'particular case' they mean in all things, and in the choice of all officers, that the country stands in need of, between election and election; not taking away the people's liberty in elections, nor turning out any officer so elected by them, without showing any cause.

Ans. 1. If the terms 'all things' imply or intend all cases of constant judicature and counsel, we answer negatively, &c., because then it would follow that the magistrates might be excluded from all cases of constant judicature and counsel, which is their proper and principal work, whereby also the end of the people's election would be frustrate.

2. But if these terms 'all things' imply, or intend, cases (whether occasional or others) belonging neither to constant judicature nor counsel, we answer affirmatively, &c., which yet we understand with this distinction, viz. that if the affairs committed to such officers and commissioners be of general concernment, we conceive the freemen, according to Patent, are to choose them, the General Court to set forth their powers and places. Whereas we give cases of constant judicature and counsel to the magistrates we thus interpret the word 'counsel.' Counsel consists of care and action. In respect of care the magistrates are not limited. In respect of action they are to be limited by the General Court, or by the supreme Council.

<sup>1</sup> I have ventured to substitute this word for *caution* in the MS., as the latter makes no sense at all.—H.

Finally, it is our humble request that in case any difference grow in the General Court, between magistrates and deputies, either in these or any other cases, which cannot presently be issued with mutual peace, that both parties will please to defer the same to further deliberation, for the honor of God and of the Court.

Upon other propositions, made by the deputies, the ministers gave this further answer, viz.—

That the General Court, consisting of magistrates and deputies, is the chief civil power of this country, and may act in all things belonging to such a power, both concerning counsel, and in consulting about the weighty affairs of the country, and concerning making of laws, and concerning judicature, in orderly impeaching and sentencing any officers, even the highest, according to law, likewise in receiving appeals, whether touching civil or criminal cases, wherein appeals are, or shall be, allowed by the General Court, (provided that all such appeals proceed orderly from inferior courts to the Court of Assistants, and from thence to the General Court, or, if the case [were] there first depending in the Court of Assistants, then to proceed from thence to the General Court,) in all such cases as are appealable, “as in cases evidently against law, or in cases wherein the subject is sentenced to banishment, or loss of limb, or life, without any express law, or in cases weighty and difficult, (not admitting small matters, the pursuit whereof would be more burdensome to the Court and country, than behoofful to the appellant, nor needlessly interrupting the ordinary course of justice, in the Court of Assistants, or other inferior Courts;) provided also, that if it do appear that the appeal proceed not out of regard of right, but from delay of justice, and out of contention, that a due and just punishment be by law ordained and inflicted on such appellant;” that no magistrate have power to vary from the penalty of any law, &c., without consulting with the General Court.

Qu. 3. Whether the titles of Governor, Deputy, and Assistants do necessarily imply magistratical authority, in the Patent?

Ans. The ministers' answer was affirmative.

Qu. 4. Whether the magistrates' power be not given by the Patent to the people, or General Court, and by them to the Governor and Assistants?

Ans. The magistrates' power is given to the Governor, &c., by the Patent; to the people is given, by the same Patent, to design the persons to those places of government; and to the General Court power is given to make laws, as the rules of their administration.

These resolutions of the ministers were after put to vote, and were all allowed to be received, except the last clause, in answer to the second question.

Most of the deputies were now well satisfied concerning the authority of the magistrates, &c., but some few leading men (who had drawn on the rest) were still fixed upon their own opinions; so hard it is to draw men (though wise and godly) from the love of the fruit of their own inventions.

Mr. Winthrop, at this time Deputy Governor, having formerly, and from time to time, opposed the deputies' claim of judicial authority, and the prescribing of set penalties in cases which may admit variable degrees of guilt, occasioned some to suspect that he, and some other of the magistrates, did affect an arbitrary government. He now wrote a small treatise of that point, showing what arbitrary government was, and that the government (in the state it now stood) was not arbitrary, neither in the ground and foundation of it, nor in the exercise and administration thereof, which tended much to the satisfaction of them that desired distinctly to understand the nature of these things.

#### CHAP. XLVII.<sup>1</sup>

*Troubles occasioned to the Massachusetts inhabitants by one Samuel Gorton, and his company, all of them notorious Familists.*

Two Indian sachems<sup>2</sup> having submitted themselves to the government of the Massachusetts, for fear of the

<sup>1</sup> Originally XLVI in the MS.—H.      <sup>2</sup> Pumham and Sacononoco.—H.  
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