

CHAP. LXXI.¹

General affairs of the Massachusetts, from the year 1671 to 1676.

IN the beginning of this last epocha, or series of years, Mr. Bellingham was again chosen Governor of the Massachusetts, and Major John Leverett (to whose lot it had fallen some years before² to be the Major General of the Massachusetts Colony,) was at the same time, May 31, 1671, called by the general consent of the electors to be Deputy Governor, in the room of Mr. Willoughby, that formerly supplied that place, and always by his gravity and prudence, as well as by his integrity and faithfulness, well becoming the dignity thereof.³

In the year 1672, Harvard College being decayed, a liberal contribution was granted for rebuilding the same, which was so far promoted from that time, that, in the year 1677, a fair and stately edifice of brick was erected anew, not far from the place where the former stood, and so far finished that the public acts of the Commencement were there performed, over which God send or confirm and continue a President, for the carrying on of that hopeful work, that so the glory of the succeeding may in all respects equal and exceed that of the former generation.⁴

In the end of the year 1672⁵ an end was put to the life and government of Mr. Bellingham, a very ancient gentleman, having spun a long thread of above eighty years: he was a great justiciary, a notable hater of bribes, firm and fixed in any resolution he entertained, of larger comprehension than expression, like a vessel whose vent holdeth no good proportion with its capacity to contain, a disadvantage to a public person; had he not been a little too much overpowered with the humor of melancholy in his natural constitution, (the infirmities of which tincture did now and then appear in his dispensing of justice,) he had been very well qualified for a Governor. He had been bred a lawyer, yet turned strangely, although upon very pious considerations, as some have

¹ LXX in the MS.—H. ² In 1664, says Farmer.—H. ³ See page 518.—H. ⁴ See Mather's *Magnalia*, iv. p. 129; Quincy's *Hist. Harv. Univ.* i. 30-1, 508-9.—H. ⁵ Dec. 7th. See Savage's *Winthrop*, i. 145.—H.

judged, out of the ordinary road thereof, in the making of his last will and testament, which defect, if there were any, was abundantly supplied by the power of the General Court, so as that no prejudice did arise to his successors about his estate.

In the following year, 1673, May 7th, Major John Leverett was invited by the free and general consent of the freemen of the Massachusetts, to take the Governor's place after him, which he held ever since unto his life's end. His choice at this time was a little remarkable, in that he, being one of the junior magistrates, was called first to be Deputy, then Governor, which, according to the usual course of succession, belonged to the senior. Thus many times things so fall out that the last shall be first. What his administration hath been in the time past, as to wisdom, justice, courage, and liberality is known to all; in that which is to come, is left to be related by them to whose lot it may fall to write the Epilogue of New England's story, which God grant it may not prove so tragical as it hath been in the four last years preceding. But, as is well known, since God took him out of this troublesome world, March 16, 1678,¹ he hath, in his merciful Providence, called one² to preside as chief in authority over the Colony of the Massachusetts, who, by his sage wisdom, and long experience, (even ever since the first coming over of the Patentees,) hath been found the best able to take upon him the conduct of affairs in those difficult times, that have since happened, sufficient to have tried the wisdom of all that preceded in that *station*.³

This year,⁴ Monsieur Colve, coming with a few ships and soldiers from the West Indies, surprised the fort at Manhatos, or New York, in the absence of Colonel Lovelace, the Governor under his Highness the Duke of York, which might have proved no small disadvantage to the Colonies of New England, the Dutch having thereby an opportunity to seize many of their vessels, as they passed to and from the West Indies, who were wont to stop on the other side of the Cape Shoals; and many of their vessels were, during the time he held the place, surprized by his orders, which put the country upon a resolu-

¹ Old style. His funeral, which was very splendid, took place on March 25, 1679. See Whitman's *Hist. Anc. and Hon. Artil. Company*, (2d ed., 6vo. Bost. 1842,) p. 95.—H. ² Simon Bradstreet.—H. ³ Conjectural.—H.

⁴ July 30, 1673. See Thompson's *Long Island*, i. 150, *et seq.*—H.

tion to secure their vessels on that side of the Cape; but by good Providence the quarrel betwixt the English and the Dutch being ended, those places were again peaceably surrendered¹ into the hands of the English, so as from that time free intercourse and traffic being allowed for the trading vessels, it is hoped the country may now flourish for the future more than formerly.

The Court of Election, from the beginning of this lustre, fell out in 1671, May 31; 1672, May 15; 1673, May 7; 1674, May 27; 1675, May 12; 1676,² May 3; 1677, May 27; in every of which, since the year 1672, unless in 1678,³ May 8, when Mr. Bradstreet was first chosen Governor, and Mr. Danforth, of Cambridge, Deputy, Major Leverett hath been honored with the place of Governor over the Massachusetts Colony. And the principal transactions which have since happened there, relate either to their troubles with the Indians, (of which more may be seen in the narrative forementioned, and the continuation thereof in the following chapter,) or else to the controversy which lately arose, and is yet depending between the heirs of one Captain Mason and Sir Ferdinando Gorges, who have several times complained against the said Colony to his Majesty, and, by reiterated petitions, requested for an hearing thereof before him, [and] have, by much importunity, at last obtained their desire.

The substance of their complaint was, that whereas, as they pretended, a grant had been made by the Council of Plymouth to the said Captain John Mason and Sir Ferdinando Gorges, of a distinct Province to each of them, the one called Hampshire, the other Maine, both in the years 1621, 1622, and 1629 and 1635, and that they had, by the expense of many thousand pounds there, taken possession by their agents, yet that they had been dispossessed thereof, by violence and strong hand, by some persons employed by the government of the said Colony of the Massachusetts, and, notwithstanding all applications made unto them, could obtain no redress or relief of their injuries and wrongs, &c.⁴

By these kind of petitions they prevailed so far as to

¹ By the Treaty of Westminster, Feb. 9, 1674.—H. ² See in N. H. Hist. Coll. iii. 99-100, "The Names of eighteen Gentlemen, who had most Votes for Magistrates, as appears at opening the sd Votes at Boston, April 11: 1676, with the number of votes for each."—H.

³ A mistake; it should be 1679. See page 611.—H.

obtain letters from his Majesty, March 10th,¹ 1678, requiring the Colony aforesaid to send over agents to appear before him in six months after the receipt of the said letters, with full instructions impowered to answer for them, that so they might receive his royal determination in that matter depending for judgment before him.

This command of his Majesty was carefully observed by the Massachusetts, and notwithstanding the many difficulties they were at that time incumbered withal, by reason of their war with the Indians, and the great distance of place, and other sad calamities, they deputed as their agents, Mr. William Stoughton and Mr. Buckley, to take that service upon them, who were ready to attend his Majesty's pleasure at Whitehall, within the time limited in his royal letters;² and not long after, upon a just hearing of the allegations of each party, his Majesty was pleased to give his final determination, wherein he saw cause to confirm unto the Massachusetts their Charter, with the original bounds of the same, contrary to the expectation of the petitioners, who had, at least one of them, endeavored by sundry allegations, to have vacated the same; and the Province of Maine was also, by the said determination, not altered, but left to the heirs of Sir Ferdinando Gorges, both as to the soil and government.* But as for the Province which was demanded by Mr. Mason, his plea not being made for any right of government, himself was left at liberty to take his course at law to recover his interest, whatever it was, in the soil. But how the government of the said Province shall be disposed of, was then left to his Majesty's determination, who then gave his subjects in that country a ground of hope, that as they have given a good example to all the rest of his Plantations in America, of industry and sobriety, so they shall not want any due encouragement from himself, both of protection, and an equal participation of all other acts of his royal grace and favor, which others already have had, or hereafter have hope to receive.

The gentlemen forenamed, having been detained in England for the space of three years, to give answer to

¹ Edward Randolph, who brought these letters, sailed from the Downs March 30th, and arrived at Boston June 10th, 1678. See his Narrative in Hutch. Coll. Papers, in which the letters of the King are said to have been dated "20th of March last."—H. ² They sailed for England Oct. 30, 1678. Hutchinson, i. 281.—H.

such allegations as Mr. Mason and his adherents had given in against them, at the last were for the present dismissed, upon demand of others to be sent in their room, with more full instructions and power to make answer to whatever the Lords Commissioners for Foreign Plantations should see cause to require satisfaction in, in reference not only to the claims of Mr. Robert Mason aforesaid, but also to make answer to whatever else might be alleged about the Charter of the Massachusetts and the regulation thereof. Accordingly Mr. William Stoughton and Mr. Peter Buckley returning home in the year 1679,¹ there were two other gentlemen deputed² in their room to attend that service, viz. Mr. Joseph Dudley and Mr. John Richards, who were sent to England in the year 1682,³ which was as soon as things could be prepared and dispatched for their journey, which they safely accomplished, arriving at London about the latter end of August in the same year. Not long before the honored gentleman, Edward Cranfield, Esq., appointed by his Majesty's special commission⁴ to be Governor of New Hampshire, arrived there, a Province situate between the river Merrimack and Pascataqua, challenged by Mr. Mason to be his propriety, concerning whose right thereunto, at this time, *sub judice lis est*; and because many motions have been occasioned by the pretensions of said Mr. Mason, it may not be amiss to take a view of the several grants made to his grandfather, Captain John Mason, in former times, with the opinion of a great lawyer, Sir William Jones, the King's Attorney, about them.

The copy of a Grant made by the Council of Plymouth, to Captain John Mason, of the land betwixt Naumkeag and Merrimack, in New England, Anno 1621.

This Indenture, made the 9th of March, Anno 1621, the 19th year of the reign of our Sovereign Lord, James, by the grace of God, &c., between the President and Council of New England on the one part, and John Mason, Gent. &c., on the other part, witnesseth, That whereas our Sove-

¹ They arrived at Boston Dec. 23d, bringing with them a letter from the King, dated July 24, 1679, (requiring other agents to be sent over "in six months after the receipt of these letters,") which may be seen in Hutch. Coll. Papers, pp. 519-22.—H. ² Though not until a letter of Sept. 30, 1680, had been received from the King, reproving them for "wholly neglecting the appointment of other agents." Ibid. 522-5.—H. ³ They sailed May 31.—H. ⁴ Dated May 9, 1682. See Farmer's Belknap, pp. 96, 496.—H.

reign Lord, King James, for the making a Plantation and establishing a Colony, &c. Now this Indenture further witnesseth, that the said President and Council, of their full, free, and mutual consent, as well to the end that all the lands, woods, waters, islands, &c., hereafter in these presents mentioned, may be wholly and entirely invested, appropriated, severed and settled in and upon the said John Mason, his heirs and assigns forever ; as for divers special services for the advancement of the said Plantation, and other good causes and considerations them especially hereunto moving, have given, granted, bargained, sold, assigned, enfeoffed, set over and confirmed, and by these presents do give, &c., unto the said John Mason, his heirs and assigns, all that part of the seacoast in New England, being a great headland, or Cape, and lying in the northernmost parts of the Massachusetts Country, and to the northeastwards of the great River of the Massachusetts, stretching itself out into the sea eastwards five leagues or thereabouts, and lying betwixt the latitude of 42 and 43 degrees or thereabouts, and commonly called and known by the name of Tragabigsenda, or Cape Anne, with the north, south, and east shores thereof ; the back bounds toward the main land to begin at the head of the next great river, to the southward of the said Cape, which runs up into the country of the main land westward, and supposed to be called Naumkeag, or by what other name or names the said river is or may be called, and to a river lying to the northwestward of the said Cape, and to the furthest head of the said river, from which period to cross over land to the head of the other great river which lies southward of the foresaid Cape, where the perambulation began, and half way over, that is to say, to the midst of either of the said two rivers which bounds or limits the aforesaid lands, both on the north and south thereof, together with the great isle or island, henceforth to be called Isle Mason, lying near or before the Bay, Harbor, or River of Agawam, together with all the sects, isles, or islands adjoining to any part of the precincts of the lands aforesaid, or lying within three miles of any part of the same, as also all the lands, soil, grounds, havens, ports, rivers, mines, minerals, pearls and precious stones, woods, quarries, marshes, waters, lakes, fishings, hunting, hawking, fowling, com-

modities and hereditaments whatsoever, with all and singular their appurtenances, together with all prerogatives, rights, royalties, jurisdictions, privileges, franchises, pre-eminences, liberties, marine power, as also the escheats and casualties thereof, with all the state, right, title, interest, claim and demand whatsoever, which the said President and Council, and their successors, of right ought to have, or claim, in or to the said portions of land, and other the premises as is aforesaid.

But this Grant being only sealed with the Council's seal, but unwitnessed, no seizin endorsed, nor possession ever given with the grant, Sir William Jones, the King's Attorney-General, concludes, that having no other confirmation but the Council's seal, and there being also no entry of them upon record, it is not good in law, neither according to the law of England nor of New England, they having no particular law of their own, (to his knowledge,) which differs from the law of England, as to the manner of passing lands; therefore, he saith, he doth not see how those Grants can be good; and further, he saith that Mr. Mason's rights to any of the lands which he claims, that lie within the jurisdiction of the Massachusetts, ought to be tried upon the place, liable to such appeals as the Charter allows, if it allow any; all which appears by a writing under his hand, bearing date 18th Sept. 1679, which he gave to the agents of New England, then present at London.

Besides the forementioned Grant, made to Captain John Mason for Cape Anne, he obtained another Grant from the said Council of Plymouth, bearing date August 10th, 1622, which was made both to him and to Sir Ferdinando Gorges, from Merrimack to Sagadahock,¹ a copy of which, it seems, is yet extant, although it appears not that ever the said Grant was signed, sealed, or witnessed, by any order of the Council.

There is another like copy of such a Grant, made to Sir Ferdinando Gorges and Captain J. Mason, bearing date the 17th of November, 1629.²

There was the copy of another Grant made to the said

¹ See page 216; Farmer's Belknap, p. 4; N. H. Hist. Coll. ii. 272.—H.

² In Robert Mason's Petition to the King, Belknap, p. 441, we are told that "John Mason, together with Sir Ferdinando Gorges, was enfeoffed by the Council of New England in lands by the name of Laconia, by their deed bearing date the 27th day of November, 1629, the said lands lying and bordering upon the great lakes and rivers of the Iroquois and other nations adjoining."—H.

Captain John Mason for all the land from Naumkeag to Pascataqua River, bearing date April 22, in the 11th year of King Charles the First, sc. Anno 1635,¹ much what of the same tenor with the first grant, 1621.

At the Court of Pleas, held at Portsmouth, in New England, in February, 1682, this last Grant was principally insisted upon, in a suit commenced against one Mr. Wadley of Exeter, and it was there attested under oath, by Mr. Chamberlain, Secretary of the Province of New Hampshire, and by one Mr. Reynes,² that they had compared the said Grant of April 22, 1635, with the original, and that it was a true copy, although it did not appear that the said Grant was either signed, sealed, or witnessed. It being manifest also, that the said Council of Plymouth was to consist of forty persons, who had the sole power of granting any lands in the country of New England from the degrees of 40 to 48 of north latitude, provided it was done by the major part of them, or of a major part of a lawful assembly of the said Council, under their common seal, which not appearing, and the lands questioned in that suit had been for a long time, viz. near fifty years, occupied by others, the jury found for the defendant; upon which the plaintiff appealed, the issue of which is yet depending, till it be heard and determined by the authority appealed unto.

But as to the lands between Naumkeag and Merrimack, demanded by Mr. Mason, although they are well known to be included within the limits of the Massachusetts, as appeared before the Lords Chief Justices, together with the rest of the honorable Commissioners, that had the hearing of the case concerning the bounds of the Massachusetts Patent, the whole case is thus determined by his Majesty's Attorney-General aforesaid.

The Case of the Governor and Company of the Massachusetts Bay, in New England, in America.

3^o Nov. 14^o Jac.³ The whole tract of New England was granted to forty persons, Lords and others, by the name of the Council of New England established at Plymouth, whereby power is given them to set out lands and hereditaments to adventurers and planters, as should by

1620
CNE

¹ See this Grant in Hazard, i. 384-7.—H.

² Joseph Rayn, Attorney-General under Cranfield.—H.

³ It should be 18^o Jac.; it was Nov. 3, 1620; James began to reign in 1603.—H.

216 CAR 28 MAR 1625 1 BEGINS

6

2

7

3

23 MAR

8

4

2. 4 MAR CAR 4 = 1628 0

a commission of survey and distribution executed, be named.¹

NEC

19^o Martii, 1628. The said Council grant the Massachusetts Colony to Roswell and others.

1628^o

4^o Martii, 4^o Car. 1^{mi}. The Grant to Roswell, &c., was by Letters-Patents confirmed to the said proprietors and others their associates, who were then incorporated, with power of government granted to them, and of making laws not repugnant to the laws of England.²

NEC

The Company, in pursuance of this Grant of the Council at Plymouth and Charter from the King, transport themselves and make a settlement upon the said lands, distributing the same, from time to time, freely to adventurers and planters, without any rent reserved to the Company, yet so that where the said lands were possessed by the natives, the planters did also purchase from them.

NEC
1628^o

May 1657. It is enacted by the laws of the place— That any person who had, by himself, his grantees, or assigns, before the law about inheritances, 14th October, 1652, possessed and occupied, as his or their proper right, in fee simple, any houses or lands there, and should so continue without disturbance, let, suit, or denial, legally made, by having the claims of any person thereto entered with the Recorder of the County, and such claim prosecuted to effect, within five years next after the 20th of that present May, 1657; every such proprietor, their heirs and assigns, shall forever hereafter enjoy the same, without any lawful let, suit, disturbance, or denial, by any other claim of any person or persons whatsoever, any law or custom to the contrary notwithstanding.

No claim made of the lands in question within the time limited.

In 1635, the Pat. of || 3^o || Novris. 14^o Jac. surrendered.⁴

Mr. Mason's Title.

9th Martii, 1621. Mr. Mason, by grant from the Council at Plymouth, under their common seal, to his ancestor, John Mason, claims some ten towns within

|| 30 ||

¹ See this Patent in Hazard, i. 103-18.—H. ² In Chalmers's Polit. Annals, pp. 147-8, is "A copy of the docquet of the grant to Sir Henry Roswell and others, procured by the Lord Viscount Dorchester, Feb. 1628," (i. e. 1628-9.) The Patent is in Hutchinson's Coll. Papers, pp. 1-23.—H.

³ See page 617, note 2.—H

⁴ See page 227.—H.

the Massachusetts bounds of their Patent, to be called Mariana, to hold to him and his heirs, in free and common soccage, &c., subject to the exceptions in the Grant to the Grand Council, yielding a fifth part of all ore found to his Majesty, and another fifth part to the Council, with a letter of attorney to the chief officer there for the time being, for delivery of possession and seizin to the grantee, Mason, or his attorney.¹

Note. The Grant only sealed with the Council's seal, unwitnessed, no seizin endorsed, nor possession ever given with the Grant.

10 Aug. 1622. The said Council grant, alien, sell, and confirm to Sir Ferdinando Gorges and Captain John Mason, their heirs and assigns, all the lands lying between the Rivers of Merrimack and Sagadahock.²

Note, as in the Grant of 1621.

7 Nov. 1629. The said Council grant part of the premises to Captain John Mason, single, and his heirs, extending between the Rivers of Merrimack and Pascataqua.³

1631. Note as above. The same Council did again grant a small parcel of the premises, granted to Sir Ferdinando Gorges and Captain J. Mason, unto the said Sir Ferdinando and Captain Mason, with about six or seven others, their associates, lying on both sides the River of Piscataqua, upon which lands some settlement was made and some part thereof divided between the said grantees and adventurers after 1631.⁴

April 1635. Captain John Mason obtains a new Grant from the said Great Council, of all the lands from Naumkeag River to Piscataqua River, by the name of New Hampshire;⁵ at which time all that part of the lands so granted, which are now contained within the bounds of the Massachusetts, were actually distributed to, and planted by, the inhabitants of that Colony, by virtue of their Grants from the said Council, Anno 1628, 1629.

The whole matter in difference was referred to the two Lord Chief Justices, by his Majesty and Council.⁶

They, after a solemn hearing of counsel on both sides, reported unto his Majesty: That as to the right of the

¹ See p. 614.—H. ² See p. 616.—H. ³ This Grant may be found in Hazard, i. 289-93.—H. ⁴ See the substance of this Grant, dated Nov. 3, 1631, pp. 215-16.—H. ⁵ See pp. 616-17.—H. ⁶ See, in Farmer's Belknap, pp. 449-52, "the Report of the Lords Chief Justices," Richard Rainsford and Francis North, presented to the King and Council, July 20, 1677.—H.

soil of the Province of New Hampshire and Maine, they could give no opinion, not having proper parties before them, it appearing that not the Massachusetts Company, but the ||terre-tenants,|| had the right of soil and whole benefit thereof, and yet were not summoned to defend their titles.

As to Mr. Mason's right of government within the soil he claimed : Their Lordships, and indeed his own counsel, agreed he had none, the Great Council of Plymouth, under whom he claimed, having no power to transfer government to any.

As to the bounds of the Massachusetts Colony : Their Lordships have, by their said report, excluded thereout the four towns of Dover, Portsmouth, Exeter, and Hampton, parcel of Mr. Mason's claim, but determined the remainder of his claim to be within their bounds ; which report was confirmed by his Majesty in Council.

1 Quer. Whether Mr. Mason's Grant, being only under the Council of Plymouth's seal, unwitnessed, and without any entry or record of them anywhere, without seizin endorsed, and no possession having ever gone along with them, be valid in law, to out about fifty years possession, a title under the government of the Massachusetts, and a purchase from the natives ?

[Ans.] I think it is not good, according to the law of England, and New England having no particular law of their own, (to my knowledge,) which differs from the law of England, as to the manner of passing lands, I do not see how many of these grants can be good.

Or admitting they be good in law :

2 Quer. Whether Mr. Mason be not estopt by the law of the place as above, having not made his claim thereto, within the time prescribed ?

[Ans.] If Mr. Mason's estate do lie within the jurisdiction of the Assembly who made this law, and that this Assembly were rightly constituted, according to the power given by Charter, I think Mr. Mason was bound by this law, which I look upon to be a reasonable law, and agreeing in reason with the law of England.

And if Mr. Mason have right thereto :

3 Quer. Whether ought not that right be tried on the place, ten of the towns claimed by him remaining within the Massachusetts jurisdiction, by the Chief Justices' report?

[Ans.] I think his right ought to be tried upon the place, for so much thereof as lies within the Massachusetts jurisdiction, liable to such appeal as the Charter allows, if it allows any.

4 Quer. Or, if triable here, by what Court can it properly be so, whether in one of the Four Courts at Westminster, or upon a special commission, and how, in your judgment, whether by jury or otherwise?

[Ans.] It cannot properly be tried here, by any of the Four Courts, but according to the law of the place, if it lie within any jurisdiction; and if within none, the King may erect Courts to proceed according to the law of England, unless altered by the legislative power of the place.

18 Sept. 1679.

W. JONES.

CHAP. LXXII.¹

Ecclesiastical affairs in New England, from the year 1671 to the year 1685.

THE solemn and awful dispensations of the Almighty towards the people of New England of late, have made all the wise hearted among them fear that he had a controversy with them, having written his displeasure in the dismal characters of contagious sickness, and of the sword of war, as well as other disastrous events and sad calamities. Many endeavors were used, by sundry solemn days of humiliation, to find out the cause why the Lord contended with them. They conceived that personal afflictions did oftentimes come only for probation, but as to public calamities it is not usually so, as they apprehended, especially when, by a continued series of providences, God seems to be pleading against a people as he did against Israel in David's time; and as he had seemed to do with them for divers years. At the last the General Court of the Massachusetts saw cause to assemble all the ministers and messengers of the churches within their jurisdiction in a general Synod at Boston,

¹ LXXI in the MS.—x