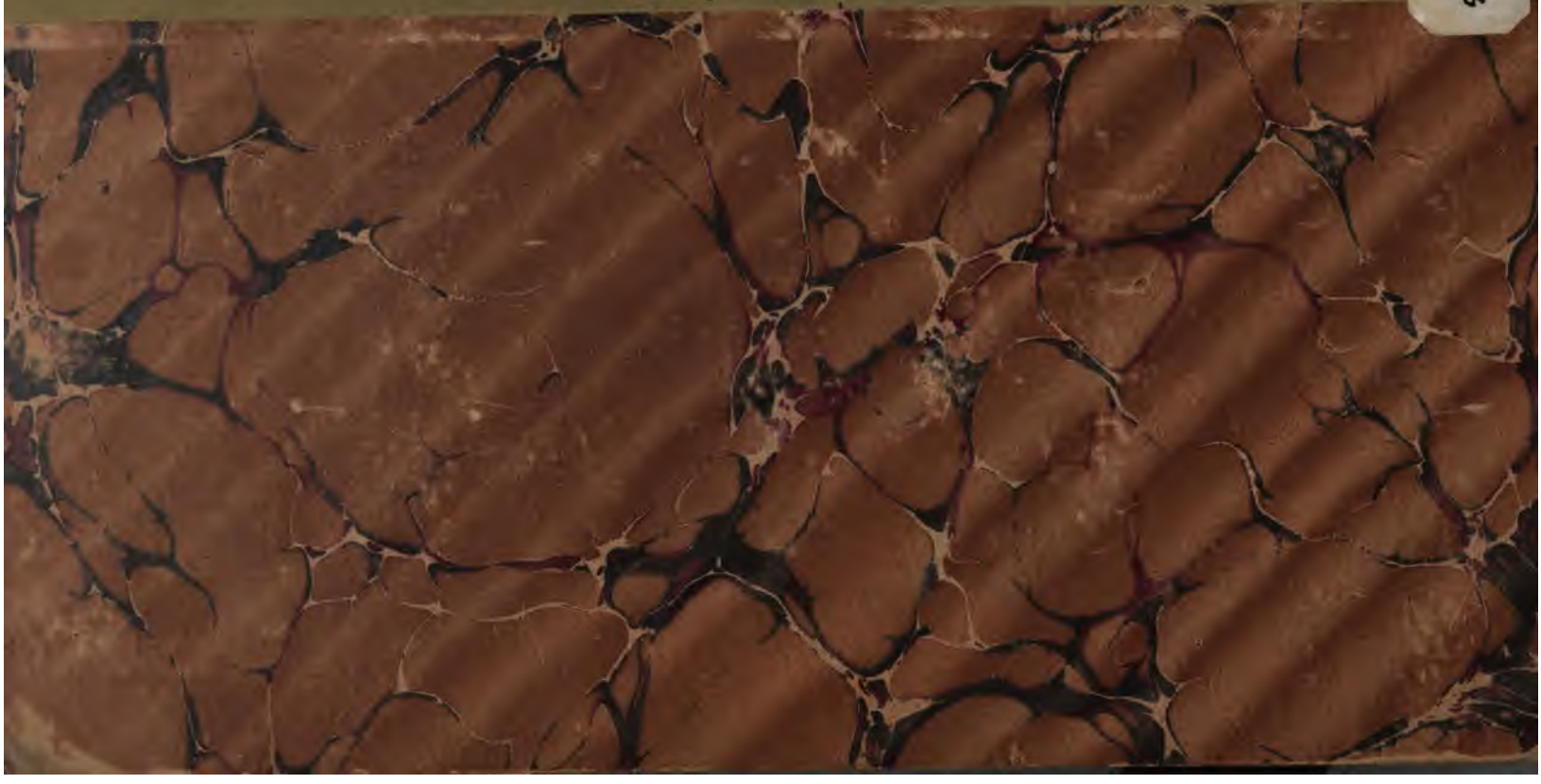
Bliss · Address to Members of the Bar.
1827



MR. BLISS' ADDRESS.

AN

ADDRESS

TO THE

MEMBERS OF THE BAR

OF THE COUNTIES OF

HAMPSHIRE, FRANKLIN AND HAMPDEN,

AT

THEIR ANNUAL MEETING

AT

NORTHAMPTON,

SEPTEMBER, 1826,

By GEORGE BLISS.

SPRINGFIELD:
TANNATT & CO. PRINTERS.
1827.

Hampshire, Franklin, and Hampden Supreme Judicial Court, September Term, 1826.

At a meeting of the Gentlemen practising at the bar of said Court, September 26, 1826,—it was *Voted*, That the Hon. Samuel C. Allen, Hon. Samuel Lathrop, and Isaac C. Bates, Esq. be a committee to present to the Hon. Mr. Bliss the thanks of the Bar, for the address this day delivered by him, and to request a copy for publication.

Attest: JOHN H. ASHMUN, *Clerk of the Bar.*

NORTHAMPTON, SEPT. 28, 1826.

Hon. GEO. BLISS:

Dear Sir—In behalf of the Gentlemen of the Hampshire, Franklin and Hampden Bar, we have the honor to tender you their thanks for your address of yesterday, and to request of you a copy thereof for publication.

With great respect and esteem,

We are your most ob't. servants,

SAMUEL C. ALLLEN.
SAMUEL LATHROP.
I. C. BATES.

SPRINGFIELD, APRIL 10, 1827.

Gentlemen:

The request, which you did me the honor to make, for a copy of my address, for publication, together with solicitations, from various quarters, that the facts stated might be made known, have induced me to give a copy for the press.

Circumstances, entirely beyond my control, have prevented an earlier answer.

With sentiments of great respect, for the members of the Bar in general, and for you, individually,

I am, Gentlemen, your ob't servant,

GEORGE BLISS.

To the Hon. SAMUEL C. ALLEN,
" SAMUEL LATHROP,
" ISAAC C. BATES,
Committee of the Bar.

ADDRESS.

The professors of the Law have, in every civilized community, exerted an extensive influence upon society. In no country has this class of men produced more effect than in our own. Lawyers will usually be selected for judges. Upon them, therefore, must depend life, liberty, and property. A considerable portion of them will be legislators. And though at times much clamor has been raised against having so many of them in Congress and in the General Assembly, yet it will ordinarily be true, that the laws will be framed by professional men, or they will be incorrect. But there is a more important, because a more general, every day influence, which persons of this profession, in the performance of their ordinary duties, have upon the community at large. For whatever some visionaries may have imagined, there will, in all tolerably free governments, be a class of agents, taking the place and

performing the duties of advocates. Fortunate is it, for society, that such is the fact; for in this way contending parties will be more nearly on a level. The difference, between advocates, will not, generally, be so great as between parties themselves.

Such being the influence of persons of this profession, the desire which you have manifested of knowing what part your predecessors have acted and what character they have sustained, is both a natural and an interesting one. And while I regret that it is not in my power to gratify this laudable desire, I will now attempt to lay before you so much of the history of the Hampshire bar, as I have been able to collect. In gathering up fragments, partly from personal knowledge, partly from the information of others, and partly from periodical publications and records, I fear, that in putting them together, something may be omitted, or introduced, which might give a complexion to the statement not in accordance with truth.

This history will naturally divide itself into four periods; the first, extending from the earliest settlement in the county, in the year 1636, to the year 1691, when the Province Charter was granted; the second, from that time to the year 1743; the third, embracing only the term of thirty-one years, and ending

with the suspension of the courts in this county, in the year 1774 ; and the fourth, extending from that to the present time, making in the whole one hundred and ninety years. This division is adopted not on account of great political changes, but because at these epochs important alterations took place in our judicial proceedings, and in the character of those who conducted them.

The first settlers of the Colony of Massachusetts were by no means destitute, either of natural endowments or literary acquirements. Some of them were distinguished in our profession. The first Governor, Winthrop, was a lawyer, and the son of a lawyer. His grandfather, also, had been an eminent counsellor. His posterity, in Connecticut and Massachusetts, were much distinguished. But the spirit of the times in which they lived, the special object of their emigration, and the business in which they were incessantly engaged, after they came to this country, prevented the first settlers from devoting much attention to the forms of legal proceedings. The practice of law in England, as exhibited in some of its departments, in the time of James the First and the elder Charles, had no charms for the puritans in general, or the emigrants to this country, in particular.

An extensive examination of the earliest records of the colonies of Plymouth and Mas-

sachusetts, has induced me to believe that our ancestors were not so ignorant of the principles, upon which justice had been administered in the mother country, as some have asserted. But it has also abundantly satisfied me that they were either in a great degree ignorant of the forms of legal proceedings, or considered them of very little importance.

During our first period, but little can be said of the reputation of the lawyers or of their practice.

The first settlement within the limits of the old county of Hampshire, was made in May of the year 1636, at Springfield, then called Agaam, or Agawam, though an house had been built there the preceding year. William Pynchon, Esq. one of the original patentees of the Massachusetts charter, a man of respectable talents and acquirements, with his son, John Pynchon, and his son-in-law, Henry Smith, in that year, by leave of the General Court, with some others, removed from Roxbury, and began this settlement. For some years the administration of justice was vested in Pynchon, the father. This seems, for two or three years, to have been under the general commission, given by the General Court, among others to him, when license was granted to remove to Connecticut River and form settlements there. It was then supposed that the settlements made on the

river below, were in the same situation with that at Springfield, and they were at first supposed to be under the jurisdiction of Massachusetts, but it was ascertained, in 1638, that the former were out of the limits of Massachusetts and the latter within. In the beginning of the year 1639, a voluntary association was formed, and Mr. Pynchon had a formal authority given him by the people, assembled in full town meeting, until the General Court should provide for them. In the year 1641 the Court made such provision, and Pynchon was authorized to exercise an extensive civil and criminal jurisdiction, giving a right of trial by a jury of six men, if a greater number could not be had. An appeal was given, in all cases of weight and difficulty, to the Court of Assistants at Boston. Mr. Pynchon continued to exercise this jurisdiction, which extended as well to matters of probate as civil actions, until the year 1650. He was then put out of his office on account of exceptions taken to a theological publication of his. Henry Smith was then substituted in his place; but he, soon after his appointment, removed to England with Mr. Pynchon, and thereupon, in 1652, a joint commission was given to three persons, of which John Pynchon was one, with similar powers. This course continued till after Northampton was settled. In the year 1658, an authority was given to the commis-

sioners at Springfield and Northampton, united, to hold courts alternately at those places; but thereby a right of appeal to the County Court at Boston was given, instead of an appeal to the Court of Assistants. Justice was thus administered to the inhabitants of the towns in the western part of the colony, until the county of Hampshire was established, in 1660. The records of the Pynchons, father and son, are preserved, and they probably contain the only memorials in existence of the early administration of justice in this part of the State. They also contain some account of the proceedings of the commissioners after there was a joint appointment. They shew that the forms of law were not always strictly regarded. The judges undertook to exercise chancery powers, which possibly they might have under their commission. Trials were universally by jury. Processes were issued, in his Majesty's name, as early as the year 1640.*

After the establishment of the county of Hampshire, County Courts were holden alternately at Springfield and at Northampton. But the Court of Assistants at Boston had appellate jurisdiction in all cases, and also had original jurisdiction in all criminal cases, extending to life, member, or banishment. This county

* See Appendix A.

then contained all the western part of Massachusetts, extending eastward as far as the east line of Brookfield. The towns of Suffield, Enfield, and Somers, which were very early settlements, now in Connecticut, then formed a part of this county. The limits of the county were lessened, in the year 1731, by the erection of the county of Worcester. Again, in the year 1749, by the revolt of those three towns to Connecticut ; and in the year 1761, by Berkshire county being formed.

While all the Superior Courts, under the colonial government, were holden at Boston, there were but few inducements, to persons residing in this county, to devote much time to legal study. So far as the records give the history of proceedings in the County Courts, there appears much foundation for remarks similar to those made by Stearns, Sullivan, and others, in regard to the central part of the State. The forms are incorrect, and indeed this might well be presumed. A journey to the Bay, as it was then termed, was an arduous undertaking. An ordinance of the General Court, made in 1663, not only shews in what estimation the profession was then held, but it had a direct tendency to keep it down, and even degrade it lower. It prohibits every person, who is a *usual* and *common attorney,* in *any inferior court,* from being admitted to sit

as a deputy in the General Court. This regulation remained in force as long as that charter continued.

There were, it ought to be recollected, some duties, aside from legislation, to be performed by the members of the General Court, which might have been an inducement to make this regulation. They were not only to enact laws, but to try causes, in the last resort, between party and party, and in some cases to annul or confirm judgments; in capital crimes, they might be required to decide in cases of life and death. For this purpose a very solemn oath was prescribed to be taken by them, as judges as well as legislators. But whatever might be the reasons for this ordinance, its effect upon the respectability of the profession, in those parts of the country where all the courts were of such a description, that common attornies were all excluded from a seat in the General Court, cannot be doubted.

Under the colony charter I have not been able to find any law giving the courts any special authority to regulate the admission or practice of attornies, nor any record of admission to practice in the courts. But between the time when judgment was given upon the quo warranto,* and the grant of the province charter,†

*June 16th, 1684. †Oct. 7th, 1691.

it seems that some regulation on this subject was made by the existing government, which is not published, for I find, on the county records, that at the County Court, or Court of Pleas and Sessions of the Peace, as the courts were then styled, holden Sept. 1686, purporting to be holden under the authority of the President and Council, the following entry: "John King, of Northampton, Samuel Marshfield, and Jona. Burt, sen. of Springfield, were allowed of by this court to be attornies for this County's Courts, and they took the oath of attornies for the faithful performance of their office." This is the earliest record of a formal admission which I have found. There may, however, be some of an earlier date. If there were any rules, in regard to attornies, I have not been fortunate enough to find them. But it is clear, that from the first settlement of the country, there was such an order of men.

It appears, by the records of the General Court, that in the year 1649, an order passed that all plaintiffs, or *their attornies*, in civil actions, should draw up a declaration, in a fair and legible hand, [a rule which courts and clerks, in later times, would rejoice to have enforced,] and deliver the same to the recorder, or clerk, three days at the least before the court, that the defendant, or his attorney, might have time to answer, &c. It would seem, by this

order, that the declaration did not always go out with the writ. The law of 1663, in regard to excluding attornies from a seat in the General Court, is evidence, to the same point; as is also a clause in the law, regulating jury trials, enacted in 1672, wherein, according to the quaint language of the times, it was declared, that if any plaintiff, he or shee, have entered an action, and do not, by him or herself, or *their attornies*, make their appearance after they have been three times called, they shall be nonsuited.

In addition to those mentioned above, as regularly admitted to be attornies, there are some others, incidentally noticed as attornies, but I have obtained no interesting information of their characters or acquirements.

Peculiar to this period, was a general regulation respecting the taxation of costs, which gave to the courts a power to compel a party, who had been grossly in fault, to pay all the expenses attending the case. This was more equitable than the present provision, where a party, however meritorious, either when a just debt is withheld, or he is obliged to defend himself against an unjust claim, can recover only a pitiful sum towards a remuneration. It may be proper that no litigant should be fully indemnified; but in many instances our law operates as a denial of right.

I have now given all that I have learned of the practice, till the provincial charter was granted, in 1691. There is no small difficulty, in finding and examining the most ancient records in this county, which it may be as proper for you, perhaps, as any other body, to take measures to remedy. The records, before the year 1728, and the writs and files, to a much later period, are not in the Clerk's Office. As the County Court, under the colonial charter, had probate jurisdiction, some of the earliest are in the Probate Office; but it is probable some of them have been left with former clerks.* †

During our second period, from the time the province charter went into operation, we are not quite so much in the dark. For some por-

*Note 1. The court records, from 1660 to 1677, are in the Probate Office at Northampton. Though the probate records are continued, yet, after that time, there is very little account of proceedings in civil actions. The files in that office commence, as I am informed, with the new charter, in 1692. In the year 1677 the court ordered that there should be two clerks, one to reside in or near each of the places where the courts were to be holden; each of whom was required to record the proceedings. I have found, in possession of Edward Pynchon, Esq. at Springfield, the County Court records from the year 1677 to 1686—then there is an interruption to March, 1690; from that time they are regular to September, 1692; then they commence in May, 1720, and continue to 1728. The files I have not been able to trace. In the first book of the records of deeds, at Springfield, there are records of the court for one or two terms, in 1692.

†See Appendix B.

tion of the time, the records are, indeed, not to be found; but it is very certain that the practice of the law, in this county, and probably through the province, very greatly improved.

There were some general regulations, which had a tendency to produce this result. A Superior Court was substituted, in the several counties, for a Court of Assistants, and Courts of Common Pleas for County Courts. At first, no time or place was fixed, for holding the Superior Courts, in the county of Hampshire; but appellate jurisdiction was given to the court, holden at Boston, with power, to the Governor and Council, to order a Superior Court to be holden in the county, as occasion should require; but in the year 1699, a Superior Court was ordered to be holden, once a year, at Springfield; and in the year 1771, an additional term of that court was directed to be holden, annually, at Northampton. These courts were continued, without interruption, till all the courts of justice in the county were stopped, in the year 1774. And by a law passed in 1692, the Courts of Common Pleas were expressly authorized to establish necessary rules of practice. At the same time, liberty was given to plaintiffs, if they should so elect, in all cases where the demand exceeded £10, to institute their suits, at first, in the Superior Courts. In the year 1701, the form for the

oath of an attorney was prescribed, which is in use to this day. I have not been able to ascertain that the Court of Common Pleas established any rules of practice, except one affecting attornies, living out of the province, and practising in our courts, which imposed some restraints upon them, and regulated the costs which they should tax. These rules also provided that a person, not resident in the State, should not be admitted to take the oath of an attorney, and that none, who had not taken the oath, should tax attorney's fees;—that there should be no costs taxed for taking the writ from the clerk's office. No taxation to be allowed, further than there was actual attendance. An attorney might elect to take his fees, or his client's travel and attendance, but not both. These rules were adopted March term, 1728.

The chasm, in the court records, from the year 1694 to 1720, prevents my being able to give the names of the attornies in practice during that time. In addition to those whom I have mentioned as having been admitted in the year 1686, concerning whose practice I have no information after the year 1720, John Huggins and Christopher Jacob Lawton, who both resided in Springfield for several years, appear to have been more frequently employed than any other person. Huggins had extensive practice, and as correct information as any person of that

day. He removed to lower Housatonick, now Sheffield, and there continued in practice, and was succeeded by his son. His declarations are more formal than most that I have found. Lawton removed to Suffield. Of him I know nothing but his name, and that he was regularly admitted in 1726. Samuel Partridge, who had been clerk of the court, under the colonial government, and an attorney for some years, after the year 1720 was Chief Justice of the Common Pleas.

Timothy Dwight, of Northampton, who was regularly admitted as an attorney, August term, 1721, continued many years in reputable practice, and was afterwards a judge. In the latter part of this third period, are the names of William Pynchon and Josiah Dwight, of Springfield. The record of their admission I have not found ; but in the year 1732, John Ashley was regularly admitted an attorney. He then resided at Westfield. March term, 1733, Joseph Dwight, Esq. of Brookfield, and Oliver Partridge, of Hatfield, were also regularly admitted. Of the legal acquirements of these persons, I can give no information but what is derived from the records. The practice seems gradually to have improved. The first instance which I have found of an entry of a plea on the records, is of not guilty in detinue, in the year 1721. The issue, after that on the record,

does not appear to have been joined. In actions on notes, declarations before the close of this period were made tolerably correct. But at the earlier part of the period, debt was brought on note and book, and a *profert* made of the note and book. This was general through the province, and was continued to a very late period, in Connecticut. The plea was *nil debet.* Specialties were, however, in common use, and debt on bond was a more frequent action than any other.

When actions were brought to recover real estate, the action was denominated a plea of trespass and ejectment. The style of the action is the same with that given in the statute 1 Geo. II. passed 1727 ; and the same title of the action is continued in the revised statute, 1775, c. 75. There are many entries of actions on mortgages, as well as in other cases. The plaintiff generally states his title, and alleges that the defendant refuses to yield up possession. The plea is informal, that he ought not to be ejected, because he has a right to hold the premises. The issue is not joined, and no replication is entered.

It is very apparent, that much more attention was now paid, to the form of proceeding, than had been customary before. One fact is sufficient evidence of this. It appears that in almost every disputed action, a plea in abate-

ment was now filed first, and the court were called upon to decide it. If they decided that the plea was valid, the suit failed. If the court determined the exception to be insufficient, the defendant's attorney, saving his plea in abatement, would then plead to the action. Most commonly these pleas in abatement were adjudged insufficient; but there were other cases in which the defendant succeeded. Justice was frequently entangled in the net of forms. The maxim was,—*Qui cadit in litera, cadit in causa.*

Cornelius Jones was a most famous champion in this war. He resided at Springfield, was originally a tailor, but went into practice, probably, first as a pettifogger. He continued to practice in court from 1732 to 1765. He was admitted as an attorney in the year 1752, and appears, for a long period, to have been concerned in as many actions as any of the regular attornies. I have frequently heard it said, by those who were acquainted with his mode of doing business, that when employed for a defendant, he was accustomed to make his entries, on his docket, under the name of the case, in the following manner: First, abate; second, demur; third, continue; fourth, appeal; and sometimes, fifth, plead to the action. These pleas in abatement not being recorded, we have no means of judging what they were, nor how

skilfully they were framed. A plea of this nature may be as meritorious as any other, and as important, to the furtherance of justice ; but in general they are likely to defeat, rather than promote, justice. Some eminent counsellors have advanced the sentiment, that a recurrence to the more strict practice of former times, would be beneficial, as it would prevent lax and slovenly pleading, and make our legal proceedings more accurate and correct; that it would be a wholesome severity.

But aside from the unpleasant feelings, which would subsist among the members of the bar, it ought to be considered, that the most cautious may sometimes make a slip, or mistake, which might, in its consequences, produce the ruin of counsel or client. It would be improper to revive this practice in its full extent ; but care should be taken that liberality do not degenerate into licentiousness. The tendency of our practice, in permitting every deviation from established forms to pass unnoticed, is to introduce uncertainty and confusion into our judicial proceedings. It cannot fail to induce a habit of carelessness and indifference, and eventually great ignorance of correct practice. One branch of special pleading, that of abatement, was probably better understood, at the time of which we are speaking, than at present.

I have not been able to ascertain what means of information, on legal subjects, were enjoyed

in this county, in the early part of the last century. I cannot learn that the attornies, then in practice, had many law books. A very few, and those not the most valuable, have come down to the present time.

In the latter part of this period, three of the judges of the Court of Common Pleas had been practising attorneys—Samuel Partridge, John Ashley, and Henry Dwight. At a later period, Timothy Dwight and Josiah Dwight were also judges. And at one time, after the year 1743, the three Dwights, abovenamed, were on the bench together. If I could have had access to the records and files of the court, during the whole of this period, I should have been able to speak more confidently of the degree of legal science which was then possessed. But though there was much irregularity in the proceedings, yet it is very apparent, from what is found, that during this time much progress was made towards correct practice. Who were the principal promoters of the improvements, then made, I can give no further information.*

Though there is plenary evidence that the practice had been, for several years before the

*I have been in hopes I should have obtained some trace of the records and files, from 1694 to 1728, but my inquiries have been unsuccessful. There is a minute, in the hand writing of the clerk, before the revolution, that the records and files, before the year 1728, were not in his possession. They were probably in the hands of some prior clerk. I have given several precedents, during this period, in the Appendix C.

year 1743, gradually improving, yet it was, in many respects, incorrect, and knowledge of legal principles imperfect. From that time, both were very much advanced. This ought to be attributed, principally, to three men,—Phinehas Lyman, of Suffield, John Worthington, of Springfield, and Joseph Hawley, of Northampton.

Of the first, as his connection with this county did not long continue, I shall now give all the information which I have. The two latter will require a more detailed account, as they were many years at the head of the profession.

General Lyman was born at Durham, in Connecticut, in the year 1716; was, in the year 1738, a graduate of Yale College, and three years a tutor there. He left that office, in 1742, and after being admitted to practice, as is presumed, at New-Haven, he came to Suffield, which then was in this county, and commenced practice in 1743. His business soon became extensive. He was a distinguished advocate, and afterwards an able politician and renowned officer. He has found an eloquent biographer in Dr. Dwight, who, in his Travels, has most feelingly portrayed his sufferings and misfortunes. I have frequently heard him spoken of, by those who were contemporary with him, as a very able lawyer. He was in practice until the year 1749, when Suffield renounced the

jurisdiction of Massachusetts. This, by President Dwight, who probably knew the fact, is, in a great degree, attributed to General Lyman. He states that he was much engaged in producing this event. What inducements Lyman had, for adopting this course, we are left without information. The history of the times furnishes abundant evidence that it was the policy of the British Cabinet to curtail and diminish Massachusetts, on all sides. It is not known that General Lyman had any motive for promoting its views. Worthington and Hawley were both his pupils, and it has been said that he felt a strong attachment to them. It is possible that, perceiving the growing fame of Worthington, he was apprehensive that they could not move, harmoniously, in the same orbit, and therefore took measures, in which he finally succeeded, to induce Suffield, with Enfield and Somers, to revolt from Massachusetts. Whatever were his motives, Massachusetts was thereby deprived of a jurisdiction to which she was most equitably, as well as legally, entitled.

General Lyman's law library was small, but he had some valuable ancient authors, which are now owned in the county. No longer belonging to this county, he probably withdrew from practice here. He was soon after engaged in public business, and before many years,

embarked in a most unfortunate project, of making a settlement on the Mississippi.

From Lyman's time, there is, apparently, a considerable improvement in practice. Legal forms were more attended to; the records are more perfect, the issue is stated therein, and the judgment is in conformity with it. The reformation, however, it appears, was not sudden, but gradual. It was sometime after Worthington and Hawley commenced, before it was complete. The former began in the year 1744; the latter, some years later, probably in the year 1749. Since the time that they flourished, it has not essentially changed. Precedents, which can be clearly ascertained to have had their sanction during the last twenty years of their practice, might now be safely followed, unless statutes have made some alteration. Contemporary with them, in the early part of their practice, were Oliver Partridge, of Hatfield, Charles Phelps, of Hadley, Josiah Dwight, then of Westfield, John Ashley, of Lower Housatonuck, and Cornelius Jones, of Springfield; Jones died in 1765. Col. Partridge had an appointment to the sheriff's office.

With relation to the latter part of their professional life, I have made a list of the barristers and attorneys, practising in this county, in the year 1774, at the close of this period. I

have arranged them, so far as I was able, according to seniority at the bar, and have given the places of their residence.

John Worthington, of Springfield, a barrister.
Joseph Hawley, of Northampton, barrister.
Charles Phelps, Hadley.
Moses Bliss, Springfield, barrister.
Mark Hopkins, Great Barrington.
Simeon Strong, Amherst, barrister.
Thomas Williams, Stockbridge.
Timothy Danielson, Brimfield.
Elisha Porter, Hadley.
Jonathan Bliss, Springfield, barrister.
Daniel Hitchcock, Northampton.
Theodore Sedgwick, Sheffield, barrister.
Thomas Bridgman, quære Brimfield.
Jonathan Ashley, of Deerfield.
John Phelps, of Westfield.
Justin Ely, West Springfield.
Samuel Field of Deerfield.
Elijah Williams, of Deerfield.
William Billings, Sunderland.
Samuel Barnard, Deerfield.
Woodbridge Little of Pittsfield.
Samuel Fowler, of Westfield.
John Chester Williams, Hadley.
Caleb Strong, of Northampton, barrister.
David Noble, of Williamstown.

I believe, however, four or five of the number, the Williams's, Danielson, Bridgman, and

Hitchcock, were not then in practice. It may be noticed that five of those in the list resided in the county of Berkshire. As that territory was, for some time, part of this county, the Superior Courts were all holden here, and the attornies practised, indiscriminately, in each, I have thought there was no impropriety in inserting them on our list.

I have already observed, that before Worthington and Hawley came to the bar, the practice was very illiberal; *technical* distinctions and niceties were much in vogue. This practice continued for some time after their admission; but it seems gradually to have gone out of use, and a more free and liberal course was adopted.

While Worthington and Hawley were at the head of the profession in this county, the bar adopted a number of rules of practice, and among others, the important one requiring three years' study before a recommendation for admission should be given. From the first establishment of courts to that time, there seems to have been no rule, no settled, uniform practice, on this subject. Probably the courts generally required some previous study, and it has been said, that a year had been many times required. This rule was adopted but a short time before the revolution. These regulations originated with the Essex bar. That county

has always been among the foremost in improvement, in the knowledge and practice of law. I have seen the original propositions, from that county to this bar. Some respectable members of the bar, when this rule as to admission was first proposed, doubted whether the term of study was not too long ; but after thorough experiment, became well satisfied with it.

One of the Essex bar, of the same standing with Worthington and Hawley, Wm. Pynchon, Esq. of Salem, I personally knew. I should have been glad to have enrolled him as a member of this bar, but find that facts will not warrant this. He was, indeed, a native of this county, but neither studied nor practised here. He went to Salem in 1745, and studied with Mr. Sewall, and died about the year 1790. He stood high at that bar, as an eminent lawyer, and was well skilled in the science of special pleading. His learning, however, was not confined to Rastell and Coke : he was a complete scholar, and an accomplished gentleman. His colloquial powers were very superior, and rarely excelled. If he was a fair specimen of the Essex bar, we need not wonder that we find Lowell, Parsons, Sewall, and many others, some of whom are still surviving, emanating from that county. It has been frequently observed, that Pynchon did much to give the bar of Essex

its high standing. These remarks, I trust, will not be understood as depreciating the practice in Suffolk, or in any other of the counties.

I have observed that these were rules adopted by the bar. There were not any general rules, adopted by the courts, to regulate the practice, till after the revolution, at least, I have not ever heard of any. The rules of courts and rules of the bar, seem, sometimes, to have been confounded. The rules of court are binding on all. The rules of the bar depend, for their validity, on the voluntary agreement and honor of the members of the bar. An illustration of the principle, occurs in regard to the authority required to be shewn by an attorney to appear for a party in court. For many years, regular powers of attorney were taken and produced, in the case. As these were very numerous, a very concise form of a few lines was adopted, and printed blanks were kept by persons in practice. After a long course of this practice, and after I was a member of the bar, a rule was adopted by the bar, not to require proof of the authority from one another, but to rely upon each other's word, that they were employed in the cause. This practice continued for many years, but this not being a rule of the court, questions frequently arose, about the authority to appear, and decisions were had that a legal power of attorney

must be produced, when insisted on. The courts always taking care that no injustice should be done, by an unexpected call of this nature, and in such case always gave suitable time to produce the proper authority. It seems to be taken for granted, by the Supreme Court of the United States,* that the presumption of an authority in attornies, who are regularly admitted, is of course taken by all courts. This may be the case with many, and perhaps with all courts, at the present time ; but it was not so formerly. And there are a variety of facts and practices which may be traced to the origin of its being incumbent on a person appearing for another, to produce his authority.

After the Superior Courts were ordered to be holden in this county, eminent counsel from Boston very frequently attended. This was the case during the term now under consideration. The appearance of the Superior Court, of that period, was adapted to fill the mind with respect. It came into the county but once a year, and was ushered into it by the sheriff, with his posse. The dress of the judges, while on the bench, their robes and wigs, added to the majesty of their appearance. I saw the court when a boy, and after making all due allowance for the effect upon the mind of a child, I feel confident that no earthly tribunal could

* 9 Wheat. Rep. 708.

inspire greater reverence than its appearance did on my mind. I must believe that there was much in its appearance, well adapted to command veneration and respect. The attornies of that court were all obliged to dress in black, and the barristers, when in court, to wear black gowns. To me, it has been a subject of regret, that no peculiar costume has been retained, or adopted by the bench and the bar. When I saw a chief justice of the United States, dressed, while on the bench, in a drab, or mixed russet suit, it appeared to me out of character. I know that such a man as chief justice Jay, cannot fail to command respect and veneration. But we ought not to reason from the effect produced by a Jay or a Parsons, to ordinary cases. Their extraordinary talents might make them exceptions to a good general rule; and it by no means follows, that even in them, attention to this object might not have given their administration of justice more universal influence. I admit that a person, destitute of talents, clothe him as you will, must appear contemptible. But still, I contend, that while flesh and blood compose so large a part of our nature, the senses cannot fail to influence the opinion of every individual, to a considerable degree, and the great body of the people, most powerfully, in regard to the judgment which they form of others.

After Worthington and Hawley came to the bar, they soon acquired a distinguished reputation, and were employed in all important trials. Associated with them, though much their juniors, were Simeon Strong, Moses Bliss and Jonathan Bliss, and towards the close of their practice, Mark Hopkins, Theodore Sedgwick, and Caleb Strong. Others were, indeed, occasionally employed, but those mentioned were the principal advocates and counsellors, resident in these counties.

The northern section of the county, containing the county of Franklin, was much more recently settled than the southern and middle. Many of the present towns were entirely unsettled. Such was also the case with the northern part of the county of Berkshire. For a short time before the revolution, Ashley and Barnard were at Deerfield, Billings at Sunderland, and Field, as I believe, at Conway; Woodbridge Little, at Pittsfield, and David Noble was at Williamstown. These, I believe, are all that were in practice in the northern part of these counties. In the present county of Hampshire, I cannot find that there were attornies in any of the towns, except Northampton, Hadley, and Amherst. And in the limits of the county of Hampden there were none, except within the limits of what was then Springfield and Westfield; for I think it uncertain whether either

Danielson or Bridgman were in practice at Brimfield as late as the year 1774. Pleading, during this period, acquired, in general, the same standard which it now has. This, however, must have been gradual, rather than sudden. Though Worthington and Hawley made rapid improvements, considering the disadvantages under which they laboured, yet it is not to be supposed that they could produce an instantaneous revolution. It took them some time to procure libraries, and become themselves sufficiently instructed, and it must have taken time to induce the court and their seniors at the bar to conform to their standard. In real actions, so far as I have been able to discover, precedents were generally as correct as they have ever been since. An action of entry in the *per* was brought on a dissiesin done to the ancestor, where the pedigree is deduced in a correct manner, and the plea and judgment in good form. I have also examined the proceedings in many common recoveries, which appear to be in all respects formal and technically correct. It is probable, that in these instances, business was done by those who had more than ordinary skill ; but in proportion to its number, this bar has at no period had members of superior legal ability, than that which immediately preceded the revolution.

Perhaps I ought to speak cautiously of the character of Worthington and Hawley, as lawyers, having never known any thing of them at the bar; but their great eminence may require an attempt to gather some portions of their history. Of the former, I know much more than of the latter; with the former, as far as my junior standing would permit, I was many years conversant; with the latter, I had no personal acquaintance.

Colonel Worthington was a native of Springfield, born Nov. 24th, 1719. He was educated at Yale College, where he graduated in the year 1740, where he was some time a tutor; he left there in 1743, and read law a short time, as is supposed, about a year, with General Lyman, at Suffield. He commenced practice in 1744, at Springfield, where he resided till his death. I have not been able to find any record of his admission, nor of that of Lyman or Hawley. His legal attainments were highly respectable. He usually attended the courts in Worcester, and after Berkshire was made a county, the Court of Common Pleas there. His practice was very extensive; he was public prosecutor, or king's attorney, for this county. I never heard him argue a cause to a jury, but from what I have known of his method of managing controversies, I have no doubt but that he was

an able advocate. His mind was ardent, his imagination lively, his feelings strong. His ideas were apt to flow in torrents, and he had great command of language. He was many times very powerful. If he had any fault, as an advocate, it was this, that being very forcibly impressed with his subject, he would sometimes forget the condition of those whom he addressed, and not always realizing their feelings, he would urge a topic beyond what it would bear. His style was nervous, forcible, and uncommonly correct. He had a taste for general science, and his knowledge was not confined to law and politics. Though Worthington made a conspicuous figure on the political theatre of his day, I shall, in regard to him, as well as all others to whom I shall allude, not advert to their political course. My notice of them will be confined to their professional character and attainments. From the interruption of the courts, in August, 1774, to the time of his death, in April, 1800, Worthington lived retired from public and professional business. Having been thirty years in practice, and during that time conversant with the judges and familiarly acquainted with the eminent lawyers of his time, he was capable of communicating much legal information, while his health and ability to converse were continued, and many interesting particulars of the course

of practice and of the character of the eminent jurists of his time, and was very free to do it. I had frequently the pleasure and benefit of his instructions. As he had many years been so situated as to form a very extensive acquaintance, and lived to a good old age, he had many of his friends and acquaintance to visit him and enjoy his conversation. He died in the eighty-first year of his age.

Of Major Hawley, I know much less than of Colonel Worthington ; but the information I have is derived from those who were many years associated with him in practice. He was born at Northampton, in 1724, graduated at Yale College, in the year 1742. After he left college he studied divinity, and was a preacher for several years, though he was never settled in the ministry. He officiated, as a chaplain, in the provincial army, and was at the siege of Louisburgh. After this, he studied law with General Lyman, at Suffield, but for how long a time, I have not been able to learn. He came to his native place, and went into practice there. The precise time, when he began to practice, is not ascertained ; the first notice of him, as an attorney in court, is at May term, 1749, which, by tradition, is the first year of his practice.

His practice was extensive, though more circumscribed than that of Worthington. He

did not usually practice in Worcester county, but regularly attended the Berkshire courts, after they were established. As an advocate, he was powerful and successful. He was grave and solemn in his demeanour ; he was strictly conscientious, and had an instinctive abhorrence of any thing approaching to deceit. Juries had confidence in his assertions ; their opinion of his stern and undeviating integrity, made them very readily listen to him. His opinions had, with them, great weight. It was said, and generally believed of him, that he would not engage in a cause until he was fully persuaded his client had right and justice on his side. After he had engaged, if he discovered, or believed that he was not on the side of justice, he would, in any stage of a case, abandon it. Sometimes, it was found that he had done this prematurely, and without sufficient evidence. It is not always easy to perceive, at the moment, the duty of an advocate. He has no right to sacrifice the interests of a client. He is bound, by his oath, not to disclose or betray his secrets. Counsel are generally sufficiently prone to exercise fidelity to those who employ them ; but it ought always to be remembered, that their obligations to the court and to truth and righteousness, are at least as strong as those they owe to their clients. When Hawley was satisfied of the justice of his cause, his arguments

were very powerful and convincing. When a point of law was to be taken, he would meet the case fairly, and reason upon it as a sound logician. Hawley's juridical science was profound. He was peculiarly attached to the old English black letter law. He was very attentive to forms, and tenacious of ancient English precedents. Compared with Worthington, he was probably more conversant with Bracton, Britton, Fleta, and Rastell, but not so well acquainted with the more modern authors, and less acquainted with the various branches of commercial, or mercantile law. Hawley was a very active, and zealous magistrate. He was subject to turns of great depression of spirits. The general tenor of his manners made him more in favour with the people than with the court. Worthington, though very popular among his own townsmen, was more courtly in his manners, and being thought to stand high in favor with the provincial government, had less general popularity. They were generally engaged on opposite sides, in court. When they were united, a successful opposition to them rarely occurred. They were both correct special pleaders, and could not endure to have legal proceedings in any other than *appropriate* technical language. This character I have uniformly heard of Hawley, and know that it was true of Worthington. The latter could

not endure the loose, story-telling manner of pleading, which, at one period, prevailed in Connecticut, but which has been there lately very much corrected.

Major Hawley, in the year 1767, or 8, fell under the censure of the Superior Court, and was suspended from practice. At the next term he was restored, at the motion of Colonel Worthington. The precise state of the case, I cannot give, but I have always understood that there was no imputation on Hawley's character, in this affair. He was counsel for some persons in the county of Berkshire, who had been indicted for being concerned in a riot. In the course of the trial he made some observations, which the court considered as having too much of the spirit of liberty to be permitted to pass without animadversion. Whether the riot had its origin in any public political measure, I am not informed.

Worthington and Hawley had both of them the honor of numbering, among their pupils, those who would be ornaments to any bar. Hawley never practised after the year 1774, but occasionally presided in the Court of Sessions, as the oldest magistrate in the county. He died March, 1788, aged 64 years. *One who knew Hawley well, had often heard him at the bar, and was a competent judge, says of him—

* President Dwight.

"Many men have spoken with more elegance "and grace. I never heard one speak with more "force. His mind, like his eloquence, was "grave, austere, and powerful."

Worthington and Hawley were both men in whose honesty and fairness, those who knew them intimately, would place unbounded confidence. Hawley retained more of the manners of our puritan ancestors. Worthington had long been conversant with the most polished society in our country, and added to great acquisitions as a lawyer, those of a scholar and a gentleman. Though their manners were very different, a dishonest, unprincipled man would choose to keep out of their way;—their piercing scrutiny he would, if possible, avoid.

That Worthington and Hawley should, with the means then in their power, have acquired such eminence, is a proof of great talent and industry. It is, also, evidence that a thorough knowledge of the law, as derived from its ancient sources, will make a man respectable, without reading every modern publication. Hawley's law library consisted, principally, of ancient authors. Worthington had a much better collection of more modern authors.

Upon the character of one of the next in seniority,* it will not be expected that I should enlarge. I believe he was generally

*Moses Bliss, Esq.

esteemed a sound lawyer, and a skilful special pleader. His contemporaries valued his legal opinions. He graduated at Yale College, in 1755, studied divinity, and preached for some time ; after which he read law a year with Col. Worthington, was admitted to the bar at November term, 1761, and left practice in the year 1798. He was in practice several months before his admission, which appears from the records to have been a very common course.

Nearly cotemporary with him, was Simeon Strong. He was born at Northampton, in 1735, graduated at Yale College, in 1756, and for several years devoted himself to preaching. He was quite a metaphysician, and always fond of theology. Pulmonary affections induced him to relinquish the profession he had chosen, not having been settled in the ministry. He read law with Colonel Worthington, commenced practice at Amherst, in 1762, and after practising some months, was regularly admitted to the bar at the November term of that year. From the time the courts were stopped, in 1774, there was an interval of several years before he returned to practice. He did very little business, in Court, from 1774 to 1780, but from that time until he was appointed a judge of the Supreme Court, in 1800, his practice was extensive, and his attendance in court regular and constant. It was said that he spent the time of his

retirement from practice in extensively revising his law books. He had before been well indoctrinated, but this thorough revision gave him great advantage, in the whole learning of real estate, and more especially in regard to real actions. With these subjects he ever afterwards appeared to be perfectly familiar.

There were some traits in his character, which may be worthy of particular notice. He was very modest and unassuming in his whole deportment, and always, on all occasions, treated the court, before whom he appeared, with great deference and respect. Whatever he might think of the man, he always respected the judge. In a person of his acquirements, and with wit of such caustic powers as he sometimes exhibited, and before judges, at times, for whom no very high claims could be advanced, this was a feature of character rarely to be found. It is possible this might partially be derived from the respect, accustomed to be paid, to the old Superior Court; but I am satisfied it was principally personal, and that he lost nothing in this way. If his course, in this respect, were generally followed by the bar, instead of diminishing, it would add to their weight of character. Perhaps an angry client might, at the moment, be better pleased with a rude and uncivil reply; but indifferent, disinterested auditors will always hold a different opinion.

I have known Mr. Strong to acquire considerable advantage by the course he pursued. Another trait, not always found in the character of distinguished advocates, was the perfect fairness with which he was accustomed to treat his antagonists. He was as astute as any man to discover a mistake, but would never take unreasonable advantage of it. In his remarks to the jury, the client or the case might feel the keen point of his satire, but towards his brethren at the bar, he was always civil and courteous. He was eminently skilled in the science of special pleading. He generally attended the courts in Worcester, as well as Hampshire, and in the former part of his practice, frequently attended at Berkshire. After deducting the interval in his practice, he was nearly a third of a century at the bar. His manner, at the bar, was not the most graceful ; but the clearness, force, and point of his address, to the jury, always procured him great attention. As Judge Strong was more than five years on the bench of the Supreme Court, the soundness of his legal opinions will appear from the reports. He died December 14, 1805.

Among the distinguished members of the bar, before the revolution, was Jonathan Bliss, of Springfield. He graduated at Cambridge, in 1763, read law with Judge Trowbridge, and was contemporary, and many years correspond-

ed with Francis Dana. He began practice in November, 1764, was in good practice, and esteemed an able advocate and counsellor. At the approach of the revolutionary contest, in August, 1774, having no family, he went to England, and never afterwards resided in the United States. He was successively attorney-general and chief justice of the province of New Brunswick, and died in the latter office, at an advanced age. These offices he filled with reputation. His manners were those of a gentleman of the old school.

The five, to whom I have particularly referred, were the only barristers there were in this county, before the revolution. Governor Strong and Judge Sedgwick were invested with this honor, after the peace.

One other distinguished man read law, and was admitted to the bar in this county, though I do not learn that he ever practised here. Pierpont Edwards was of Northampton; he was admitted February term, 1771. He soon removed to New-Haven, where he acquired great professional celebrity. His eloquence, as much as that of any other man, appeared to be strictly extemporaneous; yet I had the opportunity of knowing, that no person was accustomed to bestow more pains in preparing a case. He was wont to study it thoroughly, and to examine all points likely to arise in it.

Here, I may be permitted to make the general remark, that so far as my limited observation, in the course of a protracted professional life, extends, those great men, who have charmed by their eloquence, or convinced by their arguments, were men of *deep study;* even when they appeared most impromptu, they did not come to the subject unprepared. Whatever natural powers one may have, you know that no person can be an able counsellor without long and laborious study. However it may be with poets, no man is born a lawyer. Whatever vulgar errors may be entertained, no lawyer can be well qualified to manage a cause without previous preparation. Whatever the appearance, in the forum, the excellence displayed must be much indebted to midnight study. The particular circumstances of each case, as well as general principles, must be thoroughly investigated. Some will require less time to prepare than others. But even a Parsons and an Edwards were to be found in their libraries. There must be much of that for which one of the old lawyers, in his quaint, broad language, in his account, charged the town of Northampton :—to *larbored (labored) study and pillowising.* This charge is not very frequently made, and when made, it is more frequently, and I add more unjustly complained of, than almost any other. If I am

right, in my opinion of these eminent men, much encouragement is thereby given to laborious study, even where there is not great genius. Industry, throughout the civilized world, makes much more difference, between man and man, than natural ability, unless, in the latter term, is included a capacity and disposition for unremitting application.

We have now arrived at an important era in the history of our jurisprudence. In examining the list of lawyers, it may be that there are others who were entitled to be more distinctly noticed. My only apology will be my ignorance of their history. Some there are, who, though they came to the bar during this third period, yet having acquired their distinction in later times, I shall reserve a particular account of them, to our last division. In the mean time, there are some things proper to be mentioned here.

Having stated that General Lyman's law library was very limited, and that Worthington and Hawley acquired from him the knowledge they had, before they commenced practice, it may not be improper to say, that they very early took measures to obtain the books then extant, which were considered as most useful. When they left practice, they had good collections, for that day. Colonel Worthington's was the most extensive ; but Hawley, having

procured Lyman's old books, had a more valuable library of the ancient English authors. The greater part of Hawley's law library has been destroyed by fire, within a few years. They had, therefore, means of acquiring information themselves and of affording it to their students. Jonathan Bliss had also an extensive law library, which remained in the county till some years after the peace of 1783.

It is not within the scope of my plan to speak of political events, any farther than they affected the practice of the law; but there was one effect of the stamp act which I do not recollect to have seen mentioned. It appears, by the records of this county, that the administration of justice, in the inferior courts, was suspended during the years 1765 and 1766, because it was required that venires should all be on stampt paper, and the courts declined using that for their jury processes, and continued all causes, that were for trial, till the law was repealed.

I have observed that three of those of whom I have given some account, had studied divinity, and were preachers before they practised law; and this was the case with several others, on the general list.

It cannot be necessary, in addressing such an audience, to say any thing in vindication of this course of conduct. Some eminent jurists have prescribed, for students of law, in the

commencement of their studies, very much such a course as might be useful for a student of divinity. But without taking this into consideration, and without recurring to the eminent examples, to be found in the history of other parts of the state, we may affirm, that the purity and integrity of such men as Hawley and Simeon Strong, cannot, without violating all rules of judging, be for a moment questioned. When the illiberal speak of such a course as selfish and avaricious, refer them to Hawley and the elder Strong. If any one, entitled to a serious reply, speak of making shipwreck of a good conscience, by leaving divinity for law, point them to Hawley, and till he is convicted of corruption, they must remain silent.

At the time the courts were stopped, in 1774, there were, probably, in Hampshire and Berkshire, a little more than twenty persons who paid some attention to professional business, but the principal part of it was done by a much less number. Of these, Worthington and Hawley never returned to practice, though Colonel Worthington had several students in his office, after 1774. Jonathan Bliss had removed, as I have stated. Three, out of five barristers, entirely left the courts. Many of the other lawyers retired, and either never came to the bar again, or did very little business there.

The courts of justice were closed, in August, 1774, and no Court of Common Pleas was appointed till May, 1778. The Superior Court might have been holden, once or twice, during the interval; but very little professional business was done till the close of the revolutionary war. The most of what was done, was done by Governor Strong and John Chester Williams.

There was an entirely new state of things, in the administration of justice, at the beginning of the fourth and last period of our history. The judges and clerk and sheriff were all new. Of the judges, none but the chief justice professed to have any acquaintance with legal proceedings, and he had, for some years, given his principal attention to trade. Very few of the lawyers attended court; those who had taken the lead, and had been looked up to for direction, were gone. Perhaps, however, this county was as favorably situated as almost any one in the State. Only two of the whole number in the profession, had left the country.

At the close of the revolutionary war, business very greatly increased in our courts. The fountains of justice, which had been sometime closed, were suddenly opened, obstructions removed, and the torrents seemed likely to overwhelm every thing in their course. But this was soon checked; barriers, of various

kinds, were interposed, and the doors were but partially open. At this time, the people in this county were greatly in debt. The merchants, at Boston and New-York, had, before the revolution, many of them given extensive credit to the country traders; they, in their turn, had generally sold their goods on credit. Those debts, which had escaped the blast of paper money, and many such there were, had accumulated to a large amount. In addition to this, public burdens pressed very heavily. The debts incurred for hiring and supporting soldiers, as well as direct taxes, were beyond the means of the people to discharge. There was no market for produce, and its price was greatly reduced. Distressed, and driven almost to desperation, instead of imputing their sufferings to the real causes, the people looked only to the immediate instruments, the attornies and sheriffs, and collectors of taxes, and considered them as nuisances and pests to society.

From the latter part of the year 1784, the practice of the law was, for several years, in this county, under a cloud. Mobs obstructed courts of justice, and opened the prisons. Great pains were taken, by artful and designing men, by means of publications in the newspapers, and in various other ways, to fasten popular odium on the profession; and for a time their efforts were successful. Lawyers

were accused of multiplying suits unnecessarily, and of improperly enhancing bills of costs. However this might be in other parts of the Commonwealth, and I have never heard any proof of the assertion in regard to any county, it is certain that in this there was no foundation for the accusation. The bar, in this county, as a body, took a variety of measures to avert the odium. They determined to discourage all suits, where it could be done with safety, and adopted a practice which has since become extensive, instead of appealing or continuing actions at large, that of continuing them for final judgment, thereby greatly diminishing the expense, and giving each party as much advantage as would have been derived from an appeal upon a default. But all expedients were ineffectual.

After various attempts to stop the course of justice, which were partially successful, an armed force was resorted to, and the insurrection of 1786 took place. *Silent leges inter arma.* Many of those concerned in this rebellion, fully believed that the revolution had entirely cancelled their debts, but when they found that they not only revived, but had greatly increased, they were much vexed and chagrined. The insurrection was quelled, in the course of the year 1787. But the enemy of justice assumed a new shape, one, indeed, not so terrific,

but quite as pernicious. Having the sanction of government, it was more difficult to control. Tender acts and suspension laws were enacted, and in addition to these, a law was passed with the flattering title of an act for rendering processes in law less expensive; it was commonly known by the name of the *see cause act.* This law, which was enacted November 15, 1786, gave every justice of the peace exclusive jurisdiction in all actions, of every description, wherein the title to real estate was not brought in question, without limiting the sum for which he might render judgment. The design of this act was undoubtedly to dispense entirely with the aid of attornies, in collecting debts, and it was meant, in its origin, to give unlimited powers to justices, and leave very little for courts or lawyers to do. It was made the duty of every justice of the peace, upon request, and the exhibition of a demand to him, to issue a writ, directing the sheriff to attach the property of the defendant, and to summon him to appear before the justice, and confess the demand of the plaintiff, *if he should see cause.* This gave it the name before mentioned. If the defendant did not appear, judgment was to be given on default; if he appeared, and confessed, there was a similar judgment; but if the defendant disputed the demand, and the justice by his best endeavors, could not induce the

parties to consent to a reference, the plaintiff was to carry the cause to court, and there enter it for trial. This course of proceeding may hereafter be as much a matter of curious investigation as the trial by battle or ordeal. As the whole proceeding depended on the care and science of the justice, in issuing the writ and making and preserving his records, great perplexity and difficulty have occurred in attempting to trace a title to real estate, under the levy of executions, issued by justices, on this process. Justices have removed to a distance; some of them have kept no records; their papers are lost, and in some instances, persons who had done much business in this way, have been found to have acted without authority. I have known many very valuable estates entirely lost through the carelessness or incompetency of justices of the peace.

The junior part of the profession, who have probably not known much of this heterogeneous course, may, perhaps, think I have dwelt too long upon it. But without regard to the object, as it respected the profession, it is very manifest that it must tend to introduce confusion and uncertainty into legal proceedings, and the utmost difficulty in ascertaining titles to real estates.

This system operated, to a great extent, to embarrass the collection of debts; it enhanced

costs, in all litigated cases. This law was much ameliorated after June, 1790. An option was given to commence actions in general at the Common Pleas, and the jurisdiction of justices was taken away, in many cases. From that time, it was not made the *duty* of a justice of the peace to issue process, in any case, though *authority* was given him, in regard to debts in general, by various temporary laws, to render judgments on default, until June, 1799. So that business did not, till after that time, return to its regular channels. From the close of the last century to this time, it has met with no extraordinary embarrassments, and the profession itself has had its full share of public confidence.

This address has already been extended so far as to need your indulgence, but there still remain two persons, who were so long eminent at our bar, that it would be unpardonable to pass them only with a general notice,—Gov. Strong and Judge Sedgwick.

The character of Governor Strong, as a politician, has been so long known, that it is probable his legal talents are also extensively known. But twenty-six years having elapsed, since he left practice, many of those who hear me may not have known him much as an advocate and counsellor. He was born at Northampton, January 9, 1745; was a graduate at Cambridge

College, in 1764. After he left college his health was very feeble, and he was so much afflicted with weakness in his eyes as to be entirely unable to read. He however commenced the study of law with Major Hawley, and was accustomed to procure his father, or one of his sisters, to read to him. He spent considerable time in journeying, to regain his health. I have not been able to find any record of his admission. I have been told that the court were, for some time, disinclined to admit any more attornies, but finally consented to admit him. It is said he began to practice in 1772, and that year I first find him named as attorney of record. It is very manifest that the court pursued no fixed course, in regard to admissions, and it is also probable some were admitted whose names may not appear on record. As it was but little more than two years, from the time Strong began to practice, to the time the courts were interrupted, it is probable that his business was not very extensive. But after the courts were re-established, and until he left the bar, in 1800, his practice was more extensive than that of any other person in the county. He regularly attended the courts in Worcester and Berkshire, as well as this county. Though much employed in public business, he generally was able to attend to his professional engagements, as well as his

public duties. That forecast, which was so remarkable a trait in his character, was advantageously employed in making his arrangements to attend the courts without deserting public business. When at the general court, or at congress, he would come and attend a court, and return, and perhaps not be missed at all. He was one of the most diligent and industrious men living; he improved every moment. With a very large civil docket, and many criminal cases to manage, for he was public prosecutor for the county from the re-establishment of the courts, in 1778, till he left the bar, his business was so arranged as to be always ready. Habits of procrastination, which are sometimes found among lawyers, he never indulged, and it was astonishing how much business he would accomplish, without any noise or even the appearance of extraordinary engagements. His mind was uncommonly versatile; interruption did not seem to break its course. He would resume a subject, after attending to some important business, as though nothing had intervened. He was very fond of reading, and always had a book at hand, that he might improve every leisure moment. His knowledge of law was more universal than that of any of those already named; but I am not prepared to say, that he was so peculiarly distinguished, in the doctrines of real actions, as

Judge Strong; but on this branch of the law he was respectable, and there was no deficiency when applied to practice. His draughts and forms were uncommonly accurate. It was rare, indeed, that any defects or mistakes were discovered. Being peculiarly skilled in draughting, he was much employed in this branch of business. Many of the statutes of the United States and of this Commonwealth were formed by him. His pleading was, among professional men, always received as good authority; it was, however, rather less in the English style than that of his master, or of Judge Strong. But in this his characteristic prudence manifested itself, as it did in all other things. One or two examples of this now occur to my mind. It was long and warmly disputed, and in some parts of the State, almost with fists and clubs, whether, in entry on disseisin, not guilty was a good plea. It had somehow crept into practice, at the time of the revolution. Governor Strong, instead of not guilty generally, pleaded not guilty of the disseisin alleged. Another case, very much like it, occurred in regard to criminal prosecutions, as to the conclusion of an indictment founded on statute. The English authorities were clear, that in such a case, alleging an offence to be contrary to law, would be bad. But Strong framed many indictments and presentments, laying the offence to be con-

trary to *the* law. This, he said, would refer to the law on the subject, whether statute or common law. This course was pursued for several years, but, as well as the other instance, has been since decided to be wrong. They are mentioned as indicating legal *astutia*.

Governor Strong's aid and counsel were as much sought after and relied on as those of any one. He was a very successful advocate to a jury. His manner was as different from that of Hawley, as could well be conceived. His address was pleasing and insinuating. He commonly began in a very low tone of voice, talking to the jury in a very familiar manner, but so as to gain their attention. Whether others heard, or not, he was not concerned. Not unfrequently, before those whom he addressed, or any one else suspected it, he had gained his point. I have frequently heard it observed, by one who had been called to practice in all the counties in the State, that he found no man he so much feared, as closing counsel, as Caleb Strong. The public had great confidence in him. Juries placed great reliance on his assertions. His eloquence was not destitute of force, but its predominant feature was that of persuasion. In him were united, in a very uncommon degree, great prudence and discretion, with very great simplicity and integrity of character. He was the favorite

advocate when the rights of humanity were to be vindicated. He early took a decided part in favor of the negroes. As he lived several years, after he retired from public life, and in good health and spirits, his conversation was uncommonly instructive and entertaining. He had known most of the great men in our country, from the early part of the revolution, and been conversant with most of the important measures that had been proposed or adopted; and as his memory was very tenacious, he was ready to give anecdotes of almost all, and in such a manner as was always pleasing. He was twice offered a seat on the bench of the Supreme Court, but declined it. He died November 7, 1819, in his 75th year.*

The only other member of the bar, to which I shall call your particular attention, is the Hon. Theodore Sedgwick. He was born at Hartford, west division, in Connecticut, in the year 1746, graduated at Yale College, in 1765, read law in the county of Berkshire, with Mark Hopkins, Esq. and was admitted to the bar in 1766. It is said that he did not complete his

*Governor Strong's political course has been so prominent in the State, that it was hardly possible not to allude to it. It is devoutly to be wished that, ere long, the time will come when some able pen will examine his character and his policy. Perhaps impartiality cannot so soon be expected, but it ought to be recollected that facts may, at future time, be more entirely out of reach than impartiality at present.

college term, and was therefore admitted to the bar very young. The first notice I find of him, in our courts in this county, is May term, 1767. He first began to practice in Great Barrington, then removed to Sheffield, and afterwards to Stockbridge. He was fast rising into eminence when the revolution interrupted the regular administration of justice. From the beginning of his practice, until the year 1802, when he was appointed a judge of the Supreme Judicial Court, he regularly attended our courts and practised at our bar. His practice, however, was subject to many interruptions, by public business. As he was many years a judge, those who did not know him personally, may, from the reports, learn how profound his knowledge of law was. It is needless for me to give his character, in this respect, and it might be deemed arrogant. His character and talents, as an advocate and counsellor, may not be so generally known. He was ardent in his feelings, of a sanguine temperament. His eloquence was forcible and commanding. What he gained, was by fair means. His attacks were above board; he gave warning, and put his adversary on his guard. In all important causes his assistance was requested, and he was frequently called out of the State to manage causes. His efforts were attended with a good degree of success. He had an instinctive

abhorrence of deceit; was well versed in the science of pleading, had great deference for English law, and was for adhering to the old forms.

Perhaps no two equally great men and eminent advocates can be found, whose general manner was more dissimilar than that of Gov. Strong and Judge Sedgwick. They were very commonly engaged in the same cause, in this county and in Berkshire, and were each, in his own way, pre-eminent From their example, as well as others I have named, it may be inferred, that to insure success in public speaking and to be an eminent advocate, there is no peculiar mode necessary. While gross improprieties are avoided, each person may adopt the manner most easy and natural to himself. I may be excused here in repeating an observation which has been made by others, that Judge Sedgwick's manner, on the bench, while it was dignified, was always courteous; and that his efforts, in a good degree, contributed to establish and promote urbanity on the bench and a cordial good understanding between the court and bar, always important and comfortable to both.

There is one thing, which ought to be mentioned to his honor. He stood, many years, at the head of the profession in the county of Berkshire; during his professional life he had

many students. His pupils, through his attention and that of an honorable gentleman long associated with him, came into practice much better indoctrinated than many of those who had served a clerkship in this county. It is certainly not to the honor of our bar, that, for many years, so little attention was paid to the instruction of students. It was as much as could be said, in some cases, in regard to a person admitted to practice, that he read law in such an office. The almost utter neglect, of affording any personal information or instruction, would seem to be unaccountable. It was not the case only with those whose ability to instruct would not be considered the best, but also with some who had every requisite, except a disposition to perform this important duty. I am willing to hope there were some honorable exceptions. Since attention has been drawn to this subject, it is probable the evil will be effectually corrected. The eminent law schools established in different parts of the country, cannot fail to ensure more attention to a knowledge of the theory of law. Experience must decide how far and how much practice must be combined with theory, in order to give the best prospect of success.

Various efforts have been made, by the bar of this county, and some by the different courts, to establish some other test of professional

acquirement, than the time a person has been in an office; but they seem, as yet, not to have been very successful. Perhaps too much was expected; perhaps there were defects in the plans adopted, which were not necessarily inherent in the system itself. I hope some mode will be devised of having thorough examinations, to entitle a person to be recommended by the bar and by the court, as worthy of public confidence, as an advocate and counsellor. I can see no formidable objection, and it seems to me it must increase the respectability of the profession. Having been nearly forty years in practice, I know that time alone is no infallible test of eminence. From present appearances, it is probable that the collection of debts will not, in future, require so much professional attention. It will therefore be more important that all who engage in the profession should be more thoroughly versed in all the branches of knowledge connected with it.

I have now given an account of some of the members of our bar, who have filled a large space and have exerted an extensive influence. Some of them were cotemporary, shall I say, with some of us? Alas! my brethren, the great destroyer will hardly allow me to use the plural number. But the reflection, how much I stand alone, will justify me in deviating from the general course I had marked for myself, and

bringing to your recollection one with whom I was long, and more frequently than with any other person, associated as an advocate. The Hon. Eli P. Ashmun had not the advantages of a public education. He read law with Judge Sedgwick, and was a bright example to what eminence, notwithstanding the want of a thorough classical education, and notwithstanding very great feebleness of voice, a person may arrive. I shall not attempt his character. He was too well known, to most of you, to render this necessary. It will be no disparagement, to any one, to say that he was many years at the head of the profession, in this county. I knew him intimately, and think I knew him thoroughly. He was an eminent advocate and sage counsellor, but he was more, very much more, than these epithets imply.

This brief sketch will shew, that for nearly a century, our bar has not been destitute of men of eminent talents. Such men as Worthington and Hawley, as the Strongs and Sedgwick, would do honor to any bar. I say nothing of those who are still alive, whether retired from practice, or still devoted to its duties. Omitting to reckon Pynchon, of Salem, Edwards, or President Dwight, who studied law in this county, it has produced those who have done honor to the profession and have had a full share of public honors and of the confi-

dence of their fellow-citizens. We cannot, indeed, pretend to vie with the list given in the excellent address to the Suffolk bar, but ours is by no means contemptible. It has given to the State—

One Governor ;

Two Judges of the Supreme Court, besides another appointed who did not accept ;

Two members of the Old Congress ;

Four United States Senators ;

One Speaker of the House of Representatives of the United States ;

One member of the convention that formed the Constitution of United States ;

Three members of the convention that formed the State Constitution ;

Seven Representatives in Congress ;

Twenty seven State Senators.

Six State Counsellors.

The office of President of the Senate has been once, and that of Speaker of the House twice filled by those from this bar.

Eight Judges of the Common Pleas and Circuit Court have gone from this bar.

Five Judges of Probate, four Sheriffs, and many other public officers, have been taken from our ranks.

If the profession is to be estimated by the property acquired, I fear we should not stand very high. Perhaps no class of the community

has labored more unsuccessfully. Whatever else it may be, the practice of the law, in the country, is not the road to wealth. In the few instances, where lawyers have acquired property, it has been by means distinct from professional practice.

Within the last forty years, there have been in practice one hundred and sixty-nine members of the bar. Of these thirty have died, twenty-eight have removed from these counties, and thirteen have retired from practice, or are attending to other pursuits. About one hundred still remain in practice in the three counties.

Permit me, here, to look back to the beginning of the forty years. There were then residing in this county, and in practice, only fourteen; two of them about retiring to mercantile pursuits and one declining business.* Of these, only four are still living, and not one of them now in practice. So far as I have been able to ascertain, Joseph Clark, Esq. of Northampton, is the oldest attorney, admitted to our bar, now alive.

Perhaps there is no class of men, equally numerous, who have been more generally respectable. Very few of our profession, in these counties, have manifested themselves unworthy of that public confidence which necessarily is

*See a list, Appendix D.

placed in them. Would that we could say there had not been a single one of this description. In so numerous a body, it is all important that the bar, standing in the highly responsible relation which they bear to the community, should exhibit a pointed reprobation of any wilful, corrupt and dishonorable practice, and should exercise a most watchful scrutiny over the conduct of its members,—so that malpractice may be exposed and offenders expelled. When mistakes are made, that liberality, which has so long been exercised, will still be manifested; but fraud or corruption cannot be overlooked, or concealed, without a violation of our oath of office. Let not these remarks be understood as implying a suspicion of any of our fraternity, or as disparaging our bar. Far, very far be it from me, to excite or encourage suggestions unfavorable to any of our members. But I wish that we may all feel our responsibility to the bar and to the community in general. The confidence necessarily placed in professional men, the influence they have on the administration of justice and on the respectability of courts, render it proper that we should be sensible of our obligations.

The men, of whom I have given a particular account, had not the advantages which students now have. Probably a copy of Blackstone was not to be found in the county before the year

1770. They had Hale and Gilbert, and a short time before the revolution, Bacon's Abridgment ; but there was not in the county a copy of Comyn's Digest. They had Coke and Littleton, as well as Rastell, Fitzherbert, Bracton, Britton, and Fleta. It is, however, to be recollected, that what they had was in a narrow compass. They were not obliged, in acquiring the treasures of legal science, to hunt for them in hundreds of detached volumes ; or to search for gold where it was spread out so thin, or the thread of it drawn so fine that even a modern microscope could scarcely discover it. A person who was apt to learn, might sooner get all their books by heart, than cursorily look through modern law publications. Hundreds of volumes of reports were not then published every year. Digests, commentaries, and treatises, upon every branch of the law, were not then so multiplied as to require the treasures of the Indies to purchase them, and the age of a Methuselah to read them. It was not then necessary that a law book, to be studied, should be wrought up with all the elegance of Scott's novels. When children, our predecessors had been obliged to eat black broth, or to go hungry ; and if they were afterwards too fastidious to read black letter, they must sink into contempt. The books they had, they read thoroughly. We have now, in many respects, greatly the advan-

tage of them; but the distraction, arising from the immense number of law books at present, is no doubt felt to be quite a discouragement to a student, in the pursuit of his studies.

To obviate some of the evils which are felt, or fancied, in acquiring a knowledge of law, various expedients have been devised. Codifications are to work wonders. It may not be long, in this age of inventions, before a patent will be taken for some *royal* or *democratic* road to legal science; so that a person may become a lawyer without study.* Attempts to systematize, or simplify our laws, ought not to be discouraged. But it would be strange if any one man, or small number, should be able to use precise and definite expressions, upon all subjects, so that doubts, as to their meaning would not arise; when laws have existed for ages, and every section, every sentence, and almost every word, has had a meaning fixed upon it by judicial decisions, so that if once ambiguous, they are now well understood. The necessity for alterations, in such cases, ought to be very urgent, before it is attempted.

Serious objections have also been raised, and from very respectable quarters, against the common law. The English common law is, at one stroke, to be entirely discarded. But such

*Since this was delivered, it has been announced, in the papers, that a man may be made a good lawyer in six months.

were not the sentiments of our venerable predecessors. Many of them had certainly no very strong predilection for any thing sanctioned by the British government, or even of British origin. The common law, before the feudal system had entirely changed its features, was far more consonant with our habits and regulations than any other which ever existed. It has been much in fashion to decry the common law, as it has been with a class of writers to run down English literature. On this subject I must not enlarge. But I fear that efforts to build up a system of law, without resort to the common law, would prove like attempts to frame a system of theology, while revelation is discarded. In the latter case the system would be useless, or even pernicious, unless very much is derived from the Bible. So our legal system would be very imperfect, or most of its great principles be taken from the common law.

With pleasure we can look back upon the character of Worthington and Hawley, the Strongs, and Sedgwick, men who have been the ornament and glory of our bar. When we inquire for the foundation of their eminence, we shall find it not in their great genius and extensive acquirements, but the basis of all their distinction, is their sterling integrity. Public confidence will be given only to those who are esteemed worthy of it; and to acquire

and retain this esteem, a person must be what he professes to be. Eminent talents and splendid acquirements may, without integrity, dazzle, for a short period ; but honesty, and a strict regard to right and justice, are essential to the success of an advocate.

We have heard of those, in other countries, and in other parts of our own, who had great abilities and distinguished talents, but as soon as the public voice had declared they were devoid of honesty and unfit to be trusted, however high they may have arisen, and some have been near the highest places, they have fallen into absolute contempt :

"The wisest, brightest, meanest of mankind."

While we follow the examples of our illustrious predecessors, we shall not be likely to err. The salutary influence of our profession will be extensively felt. As long as there are injuries to be redressed, and rights to be enforced, I say—*Esto perpetua.*

APPENDIX.

[A.]

When leave was given, by the General Court of Massachusetts, to form settlements on Connecticut River, care was taken to provide for the regular administration of justice. A formal commission was made, to certain persons by name, and among others to William Pynchon, Esq. and they were thereby vested with power to act as magistrates, try causes, and punish offenders. Pynchon was the only one of the select number, who came to Agawam, or Springfield.

Without question it was supposed that this place was in the same condition with those down the River, at Windsor and Hartford. It was expected at first that all, for a time at least, would be subject to Massachusetts. But the claim of the agents of the patentees of Connecticut was immediately interposed. Springfield, as well as the other towns and settlements was considered as belonging to Connecticut. Pynchon's name appears in the first records of that colony as a magistrate, and a deputy to their assembly was also appointed from Springfield. For two or three years Mr. Pynchon exercised authority as one of their magistrates; but in 1638 the south line of Massachusetts having been run, it appeared that Springfield was in Massachusetts, and Windsor and the other towns in Connecticut. Upon this being known the people at Springfield, in February, 1639, invested Mr. Pynchon with power to govern them as a magistrate. As this was Pynchon's commission he has inserted it in his records. I subjoin some extracts from it.

February the 14th, 1638.

"We the Inhabitants of Agaam upon Quinneticot, takinge into consideration the manifold inconveniences that may fall upon us for want of some fit magistrate among us; Being now by

Godes providence fallen into the line of the Massachusette Jurisdiction; and it being farr of to repayre thither in such cases of Justice as may often fall out, among us, doe therefore, thinke it meete, by a general consent, and vote, to ordaine, (till we receive further directions from the General Court in the Massachuset Bay,) Mr. William Pynchon, to execute the office of a magistrate, in this our plantation of Agaam.

* * * * * * *

"It is, also, agreed upon, by a mutual consent, that in case any action of debt or trespass, be to be tryed; Seeing a Jury of 12 fit persons cannot be had at present among us; that six persons shall be esteemed and held a sufficient jury to try any action, under the sum of ten pounds, till we shall see cause to the contrary, and by comon consent shall alter this number of jurors, or shall be otherwise directed from the general court in ye Massachusetts."

Under this order, Mr. Pynchon exercised an extensive civil and criminal jurisdiction. The earliest records of actions and proceedings of Pynchon, as a magistrate, are of the year 1639. Under this authority, an action was tried. which may serve as a specimen of proceeding. It was brought by George Moxon, the minister of the town, against John Woodcock. The following is a copy of the record:

"John Woodcock, being summoned by warrant, to answer Mr. George Moxon, in an action of slander, for reporting that he took a false oath against him. The said John desired, that this difference might be tried, by a private hearing, below in the river. Mr. Moxon referred himself to the judgment of the plantation, present, whether it were fitter to be heard by a private reference below, in the river, or tried publicly by a jury.

"The general vote of the plantation is, that seeing the matter is public, it should be publicly heard and tryed here by a jury. Liberty is granted to John Woodcock to produce his witnesses against this day fortnight, being the 26th of December. The meeting on the 26th of December, is deferred till the second of January, 1639.

"1639, January 2d, George Moxon complains against John Woodcock, in an action of slander, that he saith, that John Woodcock did report, that he took a false oath against him, at Hartford, and he demands against said John Woodcock, for the said slander, £9 19s. [Jurisdiction being limited to £10.] The jury, Henry

Smyth, Jehu Burr, Robert Ashley, Thomas Mirick, Jo Searle, Samuel Hubbard, find for the plaintiff £6 13s. 4d. Mr. Moxon gave the constable his warrant, to distrain for ye said damages. The said John Woodcock answered, he owed Mr. Moxon no money, nor none he would pay him. A proposition had been made by Mr. Moxon to refer the dispute, or to have it reheared by a jury of twelve men ; but the defendant not consenting, an execution was issued in the following form :

" To John Scarlet, Constable of Springfield. These are in his Majesties name, to require you presently, uppon the receipt hereof, that you attach the body of John Woodcock, upon an execution granted to Mr. George Moxon, by the jury, against the said John Woodcock, for an action of slander ; and that you keep his body in prison of irons, untill he shall take some course to satisfie the said George Moxon ; or else, if he neglect or refuse to take a speedy course to satisfie the said execution of £6 13s. 4d. granted by the jury, January 2, 1639, that then you use what means you can to put him out to service and labor, till he make satisfaction to the said Mr. George Moxon, for the said £6 13s. 4d. and also to satisfie yourself lawful charges as you shall be at for the keeping of his person. And when Mr. Moxon and yourself are satisfied, then you are to discharge his person out of prison. Fail not, at your perrill.

" Springfield, this 5 October, 1640.

"Pr. WILLIAM PYNCHON."

There is, in this record, a case in which Mr. Pynchon was himself the plaintiff, *ex necessitate rei* ; but the jury, appointed by the town, decided that cause, as it seems they did every dispute that arose in the course of the administration of justice.

In 1641, William Pynchon had a commission from the General Court, very much of the tenor of the authority given him by the town. This was renewed, from time to time, reserving a right of appeal to the Court of Assistants at Boston. Mr. Pynchon having fallen under the censure of the General Court, on account of a theological publication, he was left out of office in 1651, and Henry Smyth, his son-in-law, appointed in his stead. He however immediately afterwards went to England, with his father-in-law, and never returned here. In 1652 a like commission issued to John Pynchon, Elizur Holyoke, and Samuel Chapin. They continued in that office until after the settlement of Northampton,

and then were joined with Northampton commissioners, to hold courts alternately at Springfield and Northampton. There are, in the Pynchon records, some of their proceedings, but there is nothing to shew that their proceedings were very formal. There is one short record, which, though it has not much of law in it, I will transcribe:

"At a corte holden at Springfield, Sept. 27, 1659, Samuel Allin, of Northampton, plaintiffe, agst. John Bliss, of the same towne, defendant, in an action of the case for unjustly stealinge away the affections of Hannah Woodford, his espoused wife, damnifying the said Samuell to the value of fifty pounds. In this cause, the plaintiff withdrew his action before the case was tryed, for that he found himself defective in his testimony."

The Pynchons had neither of them a professional education, but they appear to have had considerable acquaintance with legal proceedings. John Pynchon was a magistrate from 1652 to 1692, and a judge of the County Court for more than thirty years.

[B.]

After the county of Hampshire was established, in the year 1660, and County Courts regularly holden, though justice was administered, very little appears on record, respecting attornies, during the continuance of that system. There are instances in which persons appear on the record as attornies for others; but many of them seem to have been cases in which, under the colonial law, bills or bonds had been assigned, and the suit prosecuted by the assignee. In some other cases a person appears to act for another, because he was at a distance, or out of the jurisdiction.

It may, perhaps, gratify curiosity, to see specimens of actions in the County Courts. Actions, to recover debts, appear very indiscriminately to be styled actions of debt and actions of the case. It ought to be noted, however, that securities were generally specialties, promissory notes not being in general use. Case was brought in the following form:

"Mr. George Keith, merchant, plaintiff, *per contra* Edward Church, defendant, in an action of the case for detaining a just debt due from the said Church, by book, to ye said Keith for merchandize delivered by the said Keith to his servant, T. B. at his order. The sum due is two pounds sixteen shillings, with all just

damages, according to attachment. In the action depending in court between Mr. George Keith, plaintiff, and Edward Church, defendant, the testimony and evidences, in the case, being produced and read in court, were transferred to the jury, who brought in their verdict that they found for the defendant costs of court."

Debt was brought as follows:

"The Worshipful Maj. Pynchon, plaintiff, *contra* the estate of Florence Driscoll, in an action of debt, due by booke, with damages to the value of eight pounds, according to attachment. In the case depending between the Worshipful Major Pynchon, plaintiff, and the relict of Florence Driscoll, defendant. The jury find for the plaintiff £5, 6s. 1d. and costs of corte, which are as per bill allowed in court, and on file, 16s. 8d."

Perhaps the mode of proceeding, in regard to real estate, is as good a criterion of the condition of legal science, as any other. I have therefore selected two cases of actions to recover property, of that description:

"At the Counties Court, holden at Northampton, March 26, 1678, Enos Kingsley, plaintiff, *per contra* John Laughton, of Farmington, executor to the estate of George Laughton, deceased, defendant, in an action of the case for neglecting or refusing to pay, deliver, or set out unto the persons concerned, ye ful and just rights and priviledges or dues, belonging to Ruth Hawes, alias Haynes, daughter to the widow Haynes, wife to George Laughton aforesaid, deceased, which rights, privileges or dues, were due to the said Ruth Haynes, alias Hawes, from the estate of her father, Edmund Haynes, deceased, which estate the said George Laughton was possessed of by his marriage with the widow Haynes, which rights, priviledges and dues, are to the value of twenty pounds, with due damages. In the action depending in court between Enos Kingsley, (attorney to Obadiah Hawes, which Hawes was administrater to the estate of Eleazer Hawes,) plaintiff, and John Laughton, executor to the estate of George Laughton, deceased, defendant, the testimonys and evidences in the case being produced and delivered to the jury, they brought in their verdict that they find for the plaintiff five pounds in land and costs of court, as per bill allowed in court."

The following is selected, as well on account of the form for recovering real estate, as also for the proceedings in an action of

covenant, in consequence of it, in which the plaintiff was an attorney, and afterwards a judge of the County Court :

" John White, sen. of Hartford, in the colony of Connecticut, administrator to the estate of Stephen Taylor, deceased, plaintiff, *per contra* Samuel Partrigg, of Hadley, defendant. In an action of *the case* for unjust detaining a certain mansion, with the house lot formerly in the tenure of the said Taylor, and by the court disposed, as security for the heires' portion, to a surrender of the said house and land, with just damages. The testimonys and evidences in the case being produced and read in court, were transferred to the jury, who brought in their verdict, that they find for the plaintiff the tenement he here sues for, now in the tenure of Samuel Partrigg."

At the next term was the following action :

" Samuel Partrigg, plaintiff, *per contra* Daniel White, administrator to the estate of Barnabas Hinsdale and Sarah Hinsdale, relict of the said Barnabas, and co-administratrix with ye said Daniel White, defendants, according to attachment. In an action of *the case,* for refusing to make good to and defend for the said Samuel Partrigg a legal title of a certain mansion and lot thereto belonging, and purchased by valuable considerations, paid by ye said Partrigg, and yet refusing to repay to the said Partrigg the principal, or purchase money by him embursed for the premises and demanded of them to the sum of sixty pounds, both value and damages. In the action, depending between Samuel Partrigg, plaintiff, contra Daniel White, administrator to the estate of Barnabas Hinsdale and Sarah Hinsdale, relict of the said Barnabas Hinsdale, and co-administratrix to the said estate, defendants, the attachment and evidences being produced and read in court, and delivered to the jury, they ye jury find for the plaintiff forty-three pounds twelve shillings, together with costs of court, allowed at £3, 3s. 0d. And this court doth give leave or allowance, or order, to Samuel Partrigg to take forth execution against the administrator or administratrix, against whom judgment was granted to the said Partrigg in this court."

Copy of the exon. and levy.

" To the Constable of Hatfield :

" In his Majusties name, you are required to levy and take in execution of the estate of the administrators of the estate of Barnabas Hinsdale, viz : of Daniel White, and Sarah the relict of the

said Barnabas, to the value of £46, 11s. to satisfy Samuel Partrigg for a judgment granted him by the court, at Springfield, Sept. 24, 1678, in action commenced by him, the said Partrigg, in the said court, against ye said Daniel White and Sarah Hinsdale, aforesaid, which the court found for Samuel Partrigg, for debt and damage, £43, 12s and for costs of court allowed of £3 3s. And what you soe levy, being duly valued, you are to deliver to the said Partrigg, according as was granted him aforesaid, and secure 2s. for this execution and your own just fees, and of your work herein you are to make a true return, under your hand; and hereof fail not.

"Springfield, Sept. 26, 1678.

"JOHN HOLYOKE, Recorder."

Return.

"Oct. 12, 1678. This present day this execution was extended on three parcels of land of Daniel White's, the whole containing eight acres, two roods, and nineteen pole and 1-2, appraised by three men, under oath, at fifty pounds, eighteen shillings, and on a firepan of Sarah Hinsdale, appraised at one shilling, four pence, out of which was delivered to Samuel Partrigg forty-six pounds, fifteen shillings, according to the judgment of court, as attest, John Field, Constable. Entered the records for the county of Hampshire, Oct. 13, 1679. Per JOHN HOLYOKE, Recorder."

The earliest record which I have found, of a levy on real estate, is Sept. 29th, 1671. In some instances the estate is butted and bounded, and the names of the appraisers given, but in most of the returns the names are not given.

From these precedents it appears that the knowledge of legal forms was very imperfect. There is no evidence that it was improved under the colonial charter. One additional precedent will shew a great confusion on this subject:

"March, 1690. W. H. jun. plaintiff, *per contra* J. L. defendant, in an action of the case for neglecting and refusing to make payment of four hundred sixty and nine pounds of fresh pork, which the said J. L. had and received of said W. H. and in consideration thereof did agree to pay him, ye said H. soe many pounds of good salt pork, which is to the value of six pounds, current pay, as also for the damage of failure of making good, or non-performance of his agreement, and also for damage or costs may arise in the prosecution of the action. The testimonys and evidences in ye case being produced and read in court, and transmitted to ye jury, they

brought in their verdict, that they find for the plaintiff four hundred sixty and nine pounds of salt pork, and costs of court."

[C.]

There were many causes under the Provincial Government, operating to produce a more formal and correct dispensation of justice, than under the Colonial Charter. Attornies were to be admitted and sworn as officers of the courts. The prohibition of their becoming members of the General Court, was done away. Writs, instead of being issued by every magistrate, were confined to the clerk of the court. And as it respects this part of the country, a Superior Court was regularly holden in the county. The records from 1694 to 1720, I have not seen; but I have found some processes, from which it appears there was considerable improvement. It was, however, but slow and gradual, and much greater in some departments than in others.

From the year 1720, it appears that the business in court was done by attornies. I subjoin some specimens of declarations and other proceedings. In the most common actions, when judgment was rendered upon default, under the statute of 1701, there is a regular rendition of judgment—*Ideo consideratum est.*

The declarations are many of them, in debt on simple contract: "I. C. of, &c. versus, W. W. of, &c." (giving no addition of degree or mystery,) "in an action or plea of debt of five pounds due by book, upon ballance of accounts, for a yoke of oxen, the said W. W. bought of the pltf. in March, 1717; and there is still remaining due to the plaintiff, five pounds for said oxen; and, therefore, he brings this suit, which is to the damage of the plaintiff, as he saith, six pounds. The plaintiff appeared in court, but the defendant, though three times called, made default of appearance. It is therefore considered by the court, that the plaintiff recover." &c.

So there are many entries of debt on simple contract, in the following form: "In a plea of debt, of —— due by note, under the defendant's hand, bearing date, [in figures] as pr. the writ, will more at large appear."

At the same time, there are others, in case as follows: "J. B. of &c. yeoman, vs. C. B. of, &c. butcher, in a plea of the case for neglecting and refusing to pay to the plaintiff the sum of eight pounds, eighteen shillings and sixpence, money, due by a

note under the defendant's hand, dated ye 4th day of February, 1720, as by said writ more particularly is set forth "

It appears that bonds were in common use until after 1720, as securities for money. Most of the suits for debts are on bonds. Where the demand was upon simple contract, it appears by the record that the action of case gradually superseded the action of debt, so that debt, on simple contract, is rarely to be found, after the year 1728. In the declarations, as recorded, there is no assumpsit. Whether a promise was alleged in the writ, not having the files, I cannot ascertain; but I have one case, in which the declaration is tolerably accurate. This I here give. Sikes and al. administrators, v. Smith, August, 1728; "Attach, Thomas Smith, of Suffield, within our county of Hampshire, weaver, to answer unto Elizabeth Sikes, housewife, John Sikes and Francis Sikes, husbandmen, all of Springfield, in the county aforesaid, administrators on ye estate of Nath. Sikes, late of said Springfield, the 1st, yeoman, deceased, in a plea of the case for that the defendant, by his note in writing, under his hand, bearing date ye ninth day of February, 1726-27, promised to pay to the said Nathaniel Sikes, in his life time, on or before the fifteenth day of April next ensuing the date of said note, the full and just sum of two pounds eleven shillings and four pence, in current money, which the defendant neglected to pay to ye deceased, in his life time, and since his decease, has hitherto neglected and still neglects to pay the same to the plaintiffs, in said capacity; the nonpayment of which is to the damage of the said Elizabeth Sikes, John Sikes and Francis Sikes, in said capacity, as they say, the sum of three pounds." This writ is drawn by John Huggins, and endorsed "Huggins." I find, also, between 1720 and 30, a declaration in trover, and another in detinue; the former of which is accurately drawn, and the latter not very informal.

Debt on bond, brought by the assignee, "James Poisson, of Hartford, in the Colony of Connecticut, merchant, plaintiff, vs. Joseph Younglove, of Suffield, in the county of Hampshire, aforesaid, defendant, in a plea of debt for that the defendant refuses or neglects to pay to the plaintiff the full and just sum of twelve pounds, lawful money of New England, due by one bond or writing, obligatory under the defendant's hand and seal, bearing date ye 28th day of November, Anno Domini 1719, originally payable to Samuel Dwight, of Suffield, and by assignment becomes due to the plain-

tiff, as by the said bond, with the assignment, to be in court produced more fully appears, which is to the damage of the said James Poisson, as he saith, the sum of sixteen pounds, with other due damages."

A new style of declaring, when real estate was to be recovered, was now adopted and continued in general use, for many years. It was probably adopted from Boston. But at what precise time, I cannot ascertain. The action is styled trespass and ejectment. The earliest record is in the year 1720.

"Addington Davenport, Thomas Hutchinson, Esq. John White and Edward Hutchinson, gentleman, surviving trustees, named and especially empowered, in and by an act of the great and general court, or assembly, made and passed at their sessions, held in Boston, the 20th day of October, 1714, entitled an act for the making and emitting the sum of fifty thousand pounds, in bills of credit on the said province, as is in the said act expressed, to let out said bills, plaintiffs, versus, Samuel Cooper, of Springfield, in the county of Hampshire, physician, defendant; in a plea of trespass and ejectment, for that the said Samuel Cooper doth refuse to deliver to the plaintiffs possession of, &c. which said lands the said S. C. on ——— mortgaged to A. B. Esq. since deceased; and the aforesaid plaintiffs, for the payment of, &c. Nevertheless, the plaintiffs in fact say said J. S. hath not paid, &c. whereby the said land, &c. becomes forfeited to ye said plaintiffs, as surviving trustees. Yet said S. C. although often requested thereunto, the possession, &c. to deliver to the plaintiffs, doth refuse, to the damage, &c. Upon a default, judgment that the plaintiffs in their capacity aforesaid, recover the money, to be paid within two months, or that they recover possession of said land, &c."

There are frequent instances of this form being used to recover lands mortgaged; but it was sometime after this, before the action was universally styled trespass and ejectment. It will be seen that there is neither a trespass nor ejectment alleged; but a refusal to deliver possession—counting upon a mortgage deed and alleging a breach of the condition in nonpayment, &c.

The following is in a different form:—"March, 1722. Thomas Welles vs. John Stebbins, in a plea of trespass and ejectment, for that the said J. S. defendant, or tenant, deforceth, and by wrong withholdeth from said T. W. plaintiff, or demandant, the posses-

sion of, &c. all which land was heretofore in the administration, possession, tenure and occupation of H. S. as she was administratrix of, &c. and by a judgment, &c. J. B. recovered against the estate of, &c. he had exon. and said execution was extended and served upon all the aforesaid land, and possession delivered thereof to him the said J. B. and said J. B. by his deed, well executed, bearing date, &c. sold the said land to said J. W. the demandant; but notwithstanding said J. S. the tenant, unjustly withholds the possession from ye demandant; wherefore he brings this action. And the defendant pleads that he hath the better right to hold the land demanded, than the plaintiff hath to recover it. Verdict, the jury find for the plaintiff, the land demanded." This is a more strange mixture of proceedings, in different kinds of action, than the last precedent.

"Sept. 1723. C.V. v. J. B. in a plea that he render to the plaintiff 2 acres of land, &c. and the plaintiff saith that J. B. being lawfully seized on the —— day of ——, sold and demised the same to the plaintiff by deed dated on ——, by force whereof the plaintiff entered into the same and became lawfully seized as his estate in fee simple, but the defendant since, within ten years now last past, entered into the same without lawful right so to do; and the plaintiff thereof disseized and him thereof deforceth and holdeth out to the great wrong and damage of the plaintiff. The defendant pleads that the land controverted is not the plaintiff's."

This precedent has more of the substance of a real action than the others.

Case on an account annexed.

"March, 1728. S. B. v. J. P. in a plea of the case for that the defendant denies to pay to the plaintiff the sum of ——, justly due and owing to the plaintiff from the defendant, as per account to the writ annexed—defendant pleads nil debet—verdict the jury find for the plaintiff."

This form appears to have been frequently used at that time.

☞ NOTE.—*The numbers in page 66, to correspond with the following list, should read thus: The whole number, 175; died, 29; removed, 34; retired from practice, 12.*

(D.)

A list of the Attornies and Counsellors, either admitted to the bar in the county of Hampshire, or practising in that county, from 1786 to 1826.

*[redacted]		Samuel Lathrop
*Moses Bliss	Barristers.	Elijah Bates
*Simeon Strong		*Solomon Vose
*Theodore Sedgwick		Jonathan Dwight, jr.
*Caleb Strong		aJotham Cushman
*Justin Ely		aBenjamin Parsons
*John Phelps		*Edward Upham
*Samuel Fowler		*Jonathan Woodbridge.
*William Billings		*Joseph Procter
*John Chester Williams		Samuel F. Dickinson
aAbner Morgan		aPhinehas Ashmun
*Edward Walker		Joseph Bridgman
aJohn Chandler Williams		Sylvester Maxwell
aAlexander Wolcott		William Billings
*Samuel Lyman		Elijah H. Mills
*Pliny Mirrick		Pliny Arms
rSamuel Hinckley		rElijah Alvord
rJohn Hooker		Samuel C. Allen
rEphraim Williams		rTheodore Strong
*John Barrett		aEdmund Dwight
*Samuel Mather		Oliver B. Morris
George Bliss		Henry Barnard
rJoseph Lyman		Giles C. Kellogg
John Taylor		*Charles Shepard
aWilliam Coleman		John Nevers
*Jona. E. Porter		James M. Cooley
Simeon Strong		aSolomon Strong
*Willim Ely		aAlvin Coe
rJohn Phelps		aNoah D. Mattoon
*Eli P Ashmun		Isaac C. Bates
Jonathan Leavitt		*Jonathan H. Lyman
Elijah Paine		aJohn M. Gannett
*Stephen Pynchon		Lewis Strong
rJohn Ingersoll		Alanson Knox
rSolomon Stoddard		Asahel Wright
aWilliam M. Bliss		Mark Doolittle
Richard E. Newcomb		rSamuel Orne
aJonathan Grout		Hooker Leavitt
Hezekiah W. Strong		rSamuel Howe
Charles P. Phelps		aPhinehas Blair

NOTE. It has been impossible to arrange them according to seniority at the bar. The star (*) prefixed signifies the decease (a) removed from the county; (r) retired from practice.

aSamuel Cutting
Isaac B. Barber
Laban Marcy
Israel Billings
aDeodatus Dutton
aApollos Cushman
aRodolphus Dickinson
*Edmund Bliss
*Daniel Shearer
aCalvin Pepper
William Blair
aJohn H. Henshaw
James Stebbins
William Ward
George Grennell
David Willard
Horace W. Taft
John Drury
Franklin Ripley
aThomas Powar
Augustus Collins
Dyer Bancroft
aWarren A. Field
Patrick Boies
John Mills
John Hooker, jr.
Samuel Johnson
William Knight
John Howard
aBenjamin Day
*Joshua N. Upham
George Bliss, jr.
Justice Willard
Charles F. Bates
Solomon Lathrop
William Bowdoin
*Hophni Judd
Itharmar Conkey
Norman Smith
rJames Fowler
Elisha Hubbard
Eli B. Hamilton
Daniel Welles
Samuel Welles
aAlfred Stearns
Caleb Rice
Jonathan A. Saxton
Frederick A. Packard

Lucius Boltwood
Jonathan Eastman
aWaldo Flint
Charles E. Forbes
aCyrus Joy
aDavid Brigham
Aaron Arms
Joseph P. Allen
Benjamin Brainard
Jonathan Hartwell
aDavid A. Gregg
Epaphras Clark
Benjamin Mills
aTimothy C. Cooley
John B. Cooley
Asa Olmstead
Horace Smith
aJoshua Leavitt
Mason Shaw
Elisha Mack
John H. Ashmun
Samuel F. Lyman
Justin W. Clark
Horatio Byington
aEmory Washburn
Horatio G. Newcomb
William B. Calhoun
aJosiah Hooker
William Bliss
Erasmus Norcross
Daaniel N. Dewey
Myron Lawrence
James W. Crooks
Richard D. Morris
—— Parish
Homer Bartlett
Osmyn Baker
Elijah Williams
Francis B. Stebbins
Norman J. Leonard
Reuben A. Chapman
George Ashmun
Henry Chapman
Stephen Emory
— Field
Edward Dickinson
aAndrew A. Lock

Two of our number have been very recently removed from us: the Hon. Elihu Lyman and the Hon. Jonathan H. Lyman. They were men in whom public confidence had long been placed.