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## MARCH MEETING, 1883.

The regular meeting was held in the Society's rooms, on Thursday afternoon, March 8, the President, the Hon. ROBERT C. WINTHROP, in the chair.

The record of the last meeting was read and approved.

The Librarian read a list of the donors to the Library during the last month. The Cabinet-keeper stated the gifts to the Cabinet.

The Corresponding Secretary reported that Captain G. V. Fox, of Washington, D. C., had accepted his election as a Corresponding Member.

The President, in announcing the deaths of two Resident Members of the Society, Dr. Chadbourne and Mr. Thayer, spoke as follows : —

We can hardly claim, Gentlemen, any primary or principal part in the loss which has been sustained by our Commonwealth and country, since our last meeting, in the death of the Hon. Paul A. Chadbourne. Elected one of our Resident Members as recently as June, 1880, his name has been on our roll for less than three years; and I believe that we have only once enjoyed the satisfaction of welcoming him personally at our meetings.

But we are not the less sensible, on that account, how important a life has been prematurely closed, and how varied and valuable have been his services to his fellow-men. With no early advantages of family, fortune, or education, he had earned a reputation for ability, energy, and learning, which cannot soon be forgotten.

To have been selected as the successor of the accomplished and venerable Mark Hopkins, as President of Williams College, would alone have been a distinction of no common character. But his service in that sphere, for nearly ten years, was only one of his many kindred services in the cause of education, science, and religion. His name is associated also with Madison University in Wisconsin, with Bowdoin College in his native State of Maine, and with the Massachusetts Agricultural College at Amherst, of which he was the President at his death. The honorary degrees both of Doctor of Laws and of Doctor of Divinity had been conferred upon him by

these or other institutions, while a service of two or three years in our State Senate had entitled him to the secular prefix by which he is designated on our roll.

He died in New York, after a short illness, on the 23d of February last, in the fifty-ninth year of his age, leaving a deep sense of an unfinished career, from which much valuable fruit might still have been confidently expected.

But death has come nearer home to us, Gentlemen, in the departure of our Associate Member, Mr. Nathaniel Thayer, who died yesterday morning, at his residence in this city, in the seventy-fifth year of his age.

The son of one of the most distinguished Congregational clergymen of Massachusetts, and the younger brother and heir of one of the most eminent and successful bankers of our city, Mr. Thayer had long ago established his own individual title to be counted among the great financiers and benefactors of Boston.

For many years a member of the corporation of Harvard University, he was the founder of one of its most spacious and costly halls, which will bear down his name, with those of his father and brother, to a grateful posterity, and which is only one of his numerous benefactions to that institution.

A close and constant friend of the late beloved Louis Agassiz, he nobly volunteered to assume the whole expense of his most interesting and important scientific expedition to Brazil.

More recently, in connection with our late valued associate, Dr. Chandler Robbins, he was one of the foremost founders and supporters of that Children's Hospital which has at length obtained a permanent home, and of which he was the President when he died.

But these constitute but a small part of his contributions to the public welfare and to personal want; and I should be in danger of doing injustice to his memory by any attempt, on this occasion, to recall and enumerate the varied objects of his bounty. The details of such a career must be left for the formal memoir, for which it is our custom to provide.

Meantime his personal life and character have been known to us all, and we can all bear witness to the virtues and excellences which we have witnessed. Shut off for many months from the occupations of business and from the intercourse of friends by serious and exhausting illness, he bore his infirmities and sufferings with a brave and patient spirit, and awaited that change which he and all around him had long antici-

pated, but which came at last so suddenly, with a Christian's hope and faith in a blessed hereafter.

I am instructed by the Council to submit the following Resolutions:—

*Resolved*, That the Massachusetts Historical Society have heard with deep regret of the deaths of their distinguished and respected associates, Hon. Paul Ansel Chadbourne and Nathaniel Thayer, Esq., and that memoirs of them be prepared for some future volume of our Proceedings.

*Resolved*, That the memoir of Mr. Thayer be committed to Dr. George E. Ellis, and that of Dr. Chadbourne to Professor Egbert C. Smyth.

Dr. GEORGE E. ELLIS, in seconding the first Resolution, said:—

It is with reason that this Society bears on its charter list, of one hundred members, the names of men known and honored among us for other services than those of chroniclers of past times or events, or of any form of authorship except that of good deeds. Such were among its founders nearly a century ago. Such have ever since been on its roll, as they are to-day. The Society lives by and lives for all the means and agents that foster intelligence, prosperity, patriotism, and all benevolent objects in this community. It gladly welcomes selected associates worthy and conspicuous in the manifold forms of high service for passing years or for all time to come. Those who write history, and those who do what will enter into history, need not weigh together their respective claims to membership. Among those who have sat in these halls, we recall the names of such as Perkins, Coolidge, Gardner, Welles, Tudor, Lawrence, Sears, Brooks, Mason, E. B. Bigelow, and others, whose works, other than those of research or chronicling of the past, none the less are historical, because of extended and permanent good.

Mr. Thayer had been a member of this Society for nineteen years. He certainly was not a familiar presence at our monthly meetings, but he kept himself well informed of our proceedings. In rare intervals of leisure from engrossing business cares of his own and of others, there were no volumes of which he so much enjoyed the perusal as those which go from these halls. Had he had time or taste for the use of his pen in narrative or history, he might have drawn from his own ledgers and letter-books a relation of the most authentic

and extraordinary character of his own agency in the marvelous development of intercommunication and traffic in the middle and western sections of this country. Hazardous and anxious contingencies came in with some of the complications and fluctuations of these enterprises, but large success for himself and for others crowned the results.

The best part of the record of every man's life is that of what he has done for others. Our community has been trained to stand in inquisition by the side of Death, which is the great Probate Judge, as it takes the keys and searches the safe and the pockets of every deceased rich man, to find out what he has given away, and to whom. Mr. Thayer anticipated that inquisition. As soon as he realized the possession of very large means, he once said to me in words so strong and simple that they struck into my memory, "A power of money has come to me. If it is to make me happy, it will be by enabling me to do good with it." The good he did with it was most varied and comprehensive in object and method. It had the largeness of the ocean in its patronage of the interests of the highest sciences, and it ran into every stream and little rill which feeds great charities or helps and cheers private and unknown beneficiaries. A costly scientific expedition, a munificently planned herbarium, a noble college hall, a students' refectory, a town library building, a whole ward of free beds in more than one hospital, signalize a list of donations from which probably not a single one of all our ingeniously special benedictive and benevolent agencies is omitted. Many who during his long debility were uncertain whether he still survived, were assured of the fact by the recognition of his generous response to some of the most recent appeals. The papers of the day which announced his decease found his name and gift on the last of them. He would wish the privacies of his large kindness to remain so.

No tribute to Mr. Thayer, however brief or inadequate, may omit connecting him with the beautiful Nashua valley town of Lancaster, and with the grateful and affectionate regard of all who dwell there. It was his birthplace, the scene of a happy boyhood, held by him to be his real home, for active work, rest, hospitality, and enjoyment for a great part of each year. Highways, farms, church, library, burial-ground, are all of them memorials of him. Filial veneration for his father, so long the pastor of the whole town, was the root of the bond which bound him there. The people in it who were old when he was young, and their children and children's children, growing on with his own years, seemed to

him alike his father's parishioners. The farmers would come to the walls and fences of the fields as he was driving by over the old roads, welcoming his cheerful and kindly interest in their work and crops. The Boston banker always appeared at his best as the Lancaster farmer.

The Rev. Dr. PEABODY then spoke as follows : —

Mr. President, — I cannot suffer the resolution before you to pass without paying my hearty, if inadequate, tribute to my dear friend, Mr. Thayer. I have never known a man who more truly lived to do good. He coined his own happiness from the happiness that he diffused. He seemed to assimilate into the substance of his own joy all the joy he gave. Simple in his tastes and habits, he sought and prized wealth, that as employer, host, citizen, private and public benefactor, he might make the most generous and liberal investments in whatever could contribute to comfort, enjoyment, and well-being, whether among those near him, or among those, however remote, whom his kindness could reach. I was his almoner in one of the many fields of his generous care. I furnished, at his no small cost, the dining hall, built almost wholly at his charge nearly twenty years ago, designed to board at the lowest possible rate such students of Harvard College as could afford to pay no more. For twenty-one years of active service in the college faculty, I gave in his behalf whatever I saw fit to needy students, the only conditions being that I should not use his name, and that I should never leave a deserving applicant unaided. The subsidies thus bestowed amounted to many more thousands of dollars than the years for which I was his agent in bestowing them. At the same time there were always in college, students — sons of clergymen with small salaries, of widows, of Lancaster men — whom he supported entirely and with the most liberal provision. In his native town it is impossible to say in what conceivable form his beneficence has not been felt alike in its public institutions and in every home where there has been want or distress. There are few persons in the town in need of counsel, sympathy, or aid, who have not ample reason to bless his memory, and there can hardly be a man, woman, or child within its borders who is not to-day a sincere mourner.

From what has incidentally come to my knowledge during my long intimacy with him, I am led to regard his public benefactions as but a small part of his charity. Far-off kindred, when in necessity or tribulation, have been counted by

him as near relatives, and those of them who in their prosperity hardly knew him, have in their adversity been sought out by him, and had his most assiduous ministries of mercy. There have been constantly those who could on no pretext whatever have laid claim to his bounty, whom he has relieved as soon as he knew them to be impoverished or straitened. I have made so many discoveries of this sort without any clew from him, that I have come to consider it as hard to conceal good deeds meant to be done in secret as it is to smother fire with linen garments. He had ever the profound feeling that his wealth was a stewardship for the service of God by serving man, and his aim was not to prepare for an account in the far-off future, but day by day to render an account worthy to be entered in the book of eternal remembrance.

With the munificence which has given him a justly honored name in our whole community, and far beyond it, we who have known him cherish equally the memory of the quiet, modest virtues, the gentle, lovely, winning traits of character which made him unspeakably dear in the nearer circles of kindred and friendship, and of the Christian faith and principle which governed his active life, sustained him in infirmity and suffering, and poured the light of the eternal day on the death-shadow as it gathered over him.

The following letter was received from the Rev. Dr. Lothrop:—

12 CHESTNUT STREET, March 8, 1883.

MY DEAR MR. WINTHROP,—I am exceedingly sorry not to be at the meeting of the Historical Society this afternoon, for as Mr. Thayer's death will be noticed, I should be glad to embrace the opportunity of saying a few words about one whom I have known for nearly sixty-five years, whose memory will ever be pleasant to me, as to many others, and whose life and character I hold in reverence, honor, and gratitude; but I feel that my first duty to-day is to be at my post as a member of the Standing Committee of the Massachusetts Society of the Cincinnati, when at our dinner and adjourned meeting this afternoon some important matters connected with our Centennial, which occurs in May, 1883, may come up for conversation and discussion, and perhaps action. So please hold me excused.

Ever faithfully yours,

S. K. LOTHROP.

HON. R. C. WINTHROP,

*President of the Massachusetts Historical Society.*

The Resolutions were then unanimously adopted.

The following committees were appointed in view of the approaching annual meeting: To nominate officers for the ensuing year, Messrs. Lodge, A. T. Perkins, and Chase; to audit the Treasurer's account, Messrs. Cobb, Abbott Lawrence, and Lyman.

Signor Cornelio Desimoni, Vice-President of the Historical Society at Genoa, Italy, was elected a Corresponding Member of the Society.

The Rev. Dr. PAIGE, in presenting to the Society a copy of his "History of Hardwick," said:—

Mr. President,—It may be remembered by some of the gentlemen now present, that six years ago, on the eighth day of March, on which day I attained the age of seventy-five years, I presented a copy of my "History of Cambridge" as a birthday offering. That work was undertaken as early as 1841, and this Society, at the suggestion of the venerable Dr. Harris, kindly granted me permission to explore its treasures before I was admitted to membership. I commenced my task with earnestness and zeal, but not long afterwards I was made to believe it was my duty to lay it aside for a season, and to write a "Commentary on the New Testament." While engaged on that long-continued labor, however, I embraced every opportunity, here and elsewhere, to collect materials, which, after many years, were arranged and combined; and the "History of Cambridge" was the result. My mind then reverted to another work contemplated in my early days, namely, a "History of Hardwick," my native town. To this labor I devoted such strength and ability as remained to me, and the History was substantially completed a year ago; but various obstacles hindered its publication until now. It affords me great satisfaction, on the arrival of another birthday, to lay this volume on the table. It contains the first literary work projected by me, though it be the last which I have accomplished; even as my Commentary was the last projected and the first accomplished.

I have been a member of this Society almost forty years, having been admitted May 30, 1844. I regret that during this long period I have contributed so little aid to the work in which it is engaged; but I rejoice in the belief that I am not regarded as an altogether unprofitable associate.

And now, Mr. President, having probably accomplished literally my last labor of any considerable importance, I have a painful impression that I ought to resign my membership, and give place to a younger and more active man. But I



confess myself hardly equal to such an act of self-denial. I am so selfish that I cannot yet quite resolve to surrender the privilege of attending our stated meetings, and looking upon the pleasant faces which surround this table, and listening to the voices which have so long and so often both cheered and instructed me. Under such circumstances, I hope to be pardoned if I cling a little longer to my present position, which affords me so much enjoyment in my old age.

The President, in reply, said that it was not usual to make any formal acknowledgment of presents from members to the Library, but he was sure that, in this case, the Society would like to record a vote of thanks to Dr. Paige for his gifts of his "History of Hardwick" to-day, and of his "History of Cambridge" six years ago. A vote of thanks proposed by the President was unanimously adopted.

Communications from the Third Section having been called for, Mr. R. C. WINTHROP, Jr., said : —

I desire to call the attention of the Society to the present state of the evidence upon the somewhat vexed question as to how early in the Colonial period it can be proved that portraits were painted in Boston. It would be easy for me, or any one else interested in the subject, to appear here with a long list of portraits fondly believed by their possessors to date from the early Colonial period, and to many of which interesting family traditions have become attached ; but we all know how untrustworthy such traditions are. Our volumes of Proceedings contain two formal communications on this subject, — the first, by Mr. Whitmore, in 1866, entitled "Early Painters and Engravers of New England." He begins by stating that "it has commonly been supposed that the earliest portraits painted in New England, except possibly a few executed by amateurs, were those by Smibert," and he then proceeds to show that there was at least one earlier resident portrait-painter, namely, Peter Pelham, who was here some years before Smibert. Mr. Whitmore gives no authority for this implication that portraits anterior to Smibert and Pelham were by "amateurs," and it was perhaps only a conjecture. There is no difference that I am aware of between an amateur and a professional artist, except that the one paints for relaxation, and the other as a permanent or temporary means of livelihood ; and when we consider what very busy lives people led in Boston in the seventeenth century, it would certainly seem more probable that, if any portraits were then

painted here, the work was done rather for compensation than for amusement.

The second communication on this subject was in 1867, and entitled "The Alleged Portrait of Rev. John Wilson, with some Notices of other Early Portraits." It was read by Mr. Deane, but written by Dr. John Appleton, then Assistant-Librarian of this Society. After seriously impeaching the authenticity of the Wilson portrait, Dr. Appleton goes on to say: "It appears to be conclusively established that there was some one exercising the art of a 'limner' in Boston before 1667, as appears from Cotton Mather's statement in relation to Wilson." This statement was made in 1695, and, setting aside any question of Cotton Mather's accuracy, Dr. Appleton then proceeds to name four portraits which, after careful investigation, are believed to have been painted in Boston prior to 1680. They are —

1. The portrait of Dr. John Clark, belonging to this Society, by no means despicable as a work of art, and inscribed "ÆTATIS SUÆ 66. ANN.SUO.," at which time he is known to have been living in Boston.

2. & 3. Two portraits of children named Gibbs, inscribed with their ages and the date 1670, and which have continued in possession of their descendants to the present time.

4. The portrait of Increase Mather, sent by him to his brother Nathaniel, in Dublin, and acknowledged by the latter in a letter dated March 2, 1680.

Besides these four cases, Dr. Appleton cites a letter written by Nathaniel Mather to his brother Increase, in March, 1684, introducing one Joseph Allen, who was about sailing for Boston, and describing him as one who "by his own ingenuity and industry acquired good skill in watchmaking, clock-making, graving, and *limning*; and his design in going to New England is, that he is under a necessity of earning his bread by practising his skill in some of those things." This was clearly no amateur, but it has not yet been possible to identify any portraits which he painted here.

So far as I am aware, no new light was shed upon this subject until the publication of the second volume of Judge Sewall's Diary, in which, at page 170, occurs the entry, familiar, doubtless, to some of us: —

"Nov. 10, 1706. This morning, Tom Child the painter died.

"Tom Child had often painted Death,  
But never to the Life before:  
Doing it now, he's out of Breath,  
He paints it once and paints no more."

The editors of Sewall state that in Child's will, dated in 1702, he is termed a painter-stainer, that Sewall's lines evidently imply he was a portrait-painter, and they add, "Here may be the long-sought-for artist who preceded Peter Pelham."

Finally, there appeared a year ago the fourth and last volume of the "Memorial History of Boston," the sixth chapter of which is devoted to an article on "The Fine Arts in Boston," by an accomplished gentleman and a particular friend of mine, among whose varied tastes antiquarian research has never found a place, and who, I am firmly persuaded, knows no more about the Puritans than he does about the Patagonians. Thus, the first page of an article which subsequently becomes interesting and valuable has apparently been evolved out of the writer's internal consciousness, in disregard or ignorance of the record. With one magisterial sweep of his pen he extinguishes Dr. Cotton Mather and his limner, Mr. William H. Whitmore and his amateurs, Dr. John Appleton and his four authenticated cases, Mr. Joseph Allen and Tom Child, — and he starts with the uncompromising and emphatic statement that "not until a hundred years after its foundation do we find any traces of art in Boston." A few paragraphs farther along, while telling his readers about John Smibert, a certain misgiving appears to have seized him, and he inserts a sort of parenthetical qualification that "perhaps Pelham may have done a few heads," and that it is "not certain" there may not have been other artists; but he leaves the force of his original assertion unimpaired, and it is evident that Mr. Winsor, the learned editor of the Memorial History, perceived that his contributor was somewhat beyond his depth, as he came to his rescue in a footnote, — a cautious footnote, — in which he says that there is "a surmise that one Tom Child was a still earlier limner of features," and adds, "See also some notes on presumably earlier portraits" in this Society's Proceedings for 1867, to wit, Dr. Appleton's article. The average general reader, however, pays little attention to footnotes, and still less takes the trouble of verifying the references in footnotes, so that, as I have reason to know, many persons have unhesitatingly accepted the statement that for the first hundred years not a trace of art can be found in Boston.

Well, sir, I can perfectly well understand that sceptical persons — and scepticism is the fashion — may say, "Oh, we put no faith in Cotton Mather; we imagine Mr. Whitmore's amateurs to have been as unreal as the ghost of Banquo; as to

Dr. Appleton's cases, you cannot prove those dates on the Clark and Gibbs portraits were not put on after the event; you cannot prove Dr. Increase Mather did not go privately to Europe, have himself painted, bring the portrait over here and send it back to his brother in Dublin; you cannot prove Joseph Allen ever handled a brush in Boston, or that Tom Child was more than a sign-painter." I am free to confess that we cannot now absolutely and conclusively prove any one of these facts; but so many fresh sources of information develop themselves unexpectedly year by year, that I by no means despair of not only gradually establishing the accuracy of these instances, but of bringing to light many others.

In the mean time, I desire to call the Society's attention to a little bit of evidence on this subject contained in the very last volume of the Society's Collections, — Part IV. of the Winthrop Papers, — which came out only a few months ago. The greater part of that volume is dry reading, and I dare say the passage I am about to quote has escaped notice. It is on page 500, in a letter from Wait Winthrop, then one of the judges in Boston, to his elder brother, Fitz-John Winthrop, at New London, in Connecticut. Under date of Oct. 31, 1691, he says: "If you could by a very careful hand, send the little picture of my grandfather, put carefully up in some little box, here is one would copy it for my cousin Adam; the great one here in the town-house had some damage, especially in one of the eyes, and he desires to see that [the little one]."

I may say, in explanation, that this "little picture" was a miniature of Governor Winthrop the elder, which is still in existence; that the "great one in the town-house" was evidently the portrait which has so long hung in the Senate-chamber of Massachusetts; and that the copy then about to be painted was in all probability the portrait now belonging to the American Antiquarian Society at Worcester, to which it was given by a descendant of "cousin Adam," who was Mr. Adam Winthrop, a merchant of Boston. The most sceptical person will now not dispute that in 1691 there was at least one gentleman in Boston who had a fancy for a portrait of his grandfather, who took some trouble to get it painted, and who found an artist to do it. The date is not as early as I wish it was, but it is between thirty and forty years before the period assigned in the Memorial History to the first trace of art in Boston, and it will be noticed that the request is mentioned rather as a matter of course and not

as if the presence here of an artist were novel or unheard of. I may add, that when the writer of that letter died (many years later, it is true, but still long within the period in question), an inventory of his personal effects shows "eight pictures," obviously portraits, in his house in Boston; and as he died at a very advanced age, they had probably been long in his possession. He was by no means the richest man in town; and if he, in the latter part of the seventeenth century, had eight portraits hanging on his walls, we may fairly suppose other leading citizens had as many, and that they were all painted in England is most improbable.

I shall be very glad if gentlemen whose reading is more extensive than mine will furnish other and earlier evidence bearing upon this subject; and if the Society will be patient with me a few minutes longer, I should like to call attention to one or two other passages in the article in the Memorial History from which I have already quoted. The writer's opening sentence is, "A Puritan society was not favorable to art." There we are all agreed. I am not aware that art developed itself more rapidly in Virginia than in Massachusetts, but the most ardent admirer of the New England Puritans would not venture to claim them as art-patrons. The first two lines of the sentence immediately following, however, caused me to rub my eyes. It begins, "Men believing in a literal interpretation of the Scriptures frowned on every thing like graven images, and devoted themselves grimly to the work," and so forth. Taken in connection with what follows about there not being a trace of art here for a hundred years, and about portrait-painting being the first branch of art to spring up in a young country, the writer is apparently under the impression that because the Puritans believed in a literal interpretation of the Bible and abhorred stained glass and sculptured stone in places of worship, as reminding them of the Church of Rome which they hated and the church of Archbishop Laud which they feared, that therefore a Puritan gentleman would consider his grandmother's portrait a graven image, and shudder at the thought of possessing a likeness of his wife or daughter. Why, sir, many of us have visited the National Portrait Gallery in London, and some, at least, of the innumerable private collections scattered throughout the length and breadth of England, and we have seen hundreds of portraits, representing not merely Puritan soldiers, statesmen, and divines, but private individuals of Puritan families, male and female. I shall be happy to be corrected, but I have never seen a jot or tittle of evidence to show that Oliver

Cromwell and John Milton were any less willing to have their features transferred to canvas than King Charles I. or Lord Clarendon was. The only difference I have ever been able to perceive between a Puritan and a Cavalier portrait is, that the former is ordinarily characterized by more sober apparel and fewer accessories; this, however, is not an invariable rule, and perhaps the most liberal display of neck and bosom I remember to have seen depicted was in a portrait of one of Oliver Cromwell's daughters. Take the leading Puritans who crossed the ocean to found these New England Colonies. There is an original portrait of John Endicott, which has always been in possession of his descendants; there is a fine portrait of Sir Richard Saltonstall, of which a copy hangs on our staircase; I will not include the portraits of John Cotton, Thomas Dudley, or Francis Higginson, as the authenticity of all three has been disputed, but there is no doubt whatever about those of the two John Winthrops, of Sir Harry Vane, of Winslow, Davenport, and others whom I will not take up time by mentioning.

One single quotation more. After stating that there was not a trace of art for one hundred years, the writer goes on: "By that time the severe race of Puritans had passed away, the young Colony had prospered and drawn over from England many who had less sad views of life, who saw no harm in fine clothes, and hung on the walls of their houses a few good pictures brought from their old homes." In other words, we are asked to believe that not only were no portraits painted here for a century, but that our ancestors were so severe that it took them one hundred years to consent to hang pictures brought from England on their walls, and that all this time the portraits of the Fathers of New England and their families were consigned to cellars and attics. Doubtless there were some fanatics,—there are fanatics in all parties and in all ages,—a sprinkling of men who could n't afford family portraits themselves and so thought it wrong in other people to have any, but that there was any wide-spread prejudice against them I confidently deny. There is contemporary evidence that at Governor Winthrop's death, in 1649, at least one portrait (his own) was hanging in his principal room,—it is almost certain there were others,—and there is no reason to suppose his house differed materially from the houses of other magistrates and elders.

Then, again, as to dress. An ingenuous and unsuspecting reader, obtaining his or her first impressions of Puritan society from this article, would suppose it took us here in Boston

one hundred years to develop a taste for fine clothes ; whereas, if the writer had taken the trouble to run his eye over Mr. Scudder's admirable article in an earlier volume of this same History, he would have seen that before our fathers had been four years on this peninsula that taste became so strong it had to be restrained by sumptuary laws ; and in 1651 it was enacted that no woman not enjoying property to the value of £200 should wear "lace, or tiffany hoods, or scarves," and that no man worth less than that amount should wear gold or silver lace on his coat, knotted ribbon at his knees, &c. What the Puritans aimed at was not a general denunciation of what we should consider very fine clothes indeed, but to compel persons to dress according to their station in life, to prevent servant-girls from aping their mistresses, and young men from running up bills at their tailor's. And if any one undertakes to reply that these sumptuary laws were intended for what may be termed the outsiders in the Massachusetts Colony, and that the strictest Puritans delighted only in the plainest and saddest-colored raiment, I would say that whoever will take the trouble to consult old inventories and marriage settlements will find the evidence largely the other way. I will give an instance in my own family, simply because it is always easier to quote one's own family, but I have no doubt I could find similar instances in other families. In an inventory of certain movables in Governor Winthrop's house in Boston, at the time of his death, I find such items as these : "Two tufted velvet jerkins," "one scarlet cap," "two satin doublets," "one clothe of gold scarf," "two clothe of gold belts," &c. If the present Governor of Massachusetts were to walk down State Street in a scarlet cap, a tufted velvet jerkin, and a cloth-of-gold scarf, we should certainly consider him a very un-Puritanical looking person ; yet this was apparently Governor Winthrop's Sunday-best, — a man renowned for the simplicity of his daily life, and a typical Puritan if there ever was one.

I have detained the Society too long, and will only add that my reason for dwelling so much upon the article in the Memorial History is this. The forty-eight volumes of this Society's Collections are, to all intents and purposes, for special students. Setting aside the comic portions of Judge Sewall's Diary, the general reading public takes no more interest in them than in the sacred books of the Hindus ; whereas the Memorial History of Boston is not merely a great literary achievement and a monumental work of reference, but it has attracted the attention of thousands who

would be repelled by a purely antiquarian publication. They turn over its pages, look at the illustrations, read a little here and there, often obtaining their first impressions of the subject, and it is very desirable such impressions should be well founded. The exceptional interest in art now prevailing in this neighborhood has caused this particular article to be, perhaps, more read than any other in the whole four volumes, and the passages to which I have called attention seem to me to convey some very erroneous ideas of the early Colonial period.

MR. HENRY LEE then alluded to a portrait in his possession of Major Thomas Savage, who came to New England from Taunton, Somersetshire, in 1635 and, so far as is known, never revisited his native country. It is a large three-quarter portrait, with numerous accessories, and, in one corner, a coat of arms and the inscription, "ANNO 1679, ÆT 73." A woodcut of it is given in the Memorial History of Boston, vol. i. p. 318, and there can be no doubt it was painted here.

MR. C. F. ADAMS, Jr., remarked, that in the old Adams mansion at Quincy, now the summer residence of his father's family, there were two very ancient oil-paintings, similar to those of the Gibbs children, and probably by the same hand. They came from the house at Mt. Wollaston, in Quincy, which Colonel John Quincy built and lived in, and which, abandoned as a dwelling-house early in the present century, was demolished about thirty years ago. John Adams came into possession of the property on the death of Norton Quincy, the son of John Quincy, in 1801, and going there one day some years later he found these pictures, then, like every thing else about the house, in a very neglected condition. He had them at once put into his carriage and took them home. But no better care was taken of them in his house than had been taken of them at Norton Quincy's, and it was probably some twenty-five years later that President J. Q. Adams one day carelessly gave the better of the two pictures to his daughter-in-law, the present Mrs. Charles Francis Adams, who subsequently had it restored. The other picture, then in a sadly damaged state, was not attended to until about 1850.

The two apparently represent a mother and child; the picture of the child being a work of some merit, and in a fair state of preservation. It represents an infant of two years of age, full length and life size, standing on a white and black checkered canvas carpet or painted floor, holding an



apple in one hand, which it points at with the other. The date is in the upper right-hand corner, and is apparently 1670. The other picture is very inferior. It represents a young woman in a very stiff white dress, standing, and holding a folded fan in her hand. It is perfectly conventional and uninteresting. There is no date. The two are unquestionably portraits of members of the Quincy family. John Adams always asserted that the child's picture was a portrait of Colonel John Quincy, and that the other was the portrait of John Quincy's mother. She was a Shepard, daughter of the Rev. Thomas Shepard, of Charlestown, and she married Daniel Quincy, of Braintree, Nov. 9, 1682. The wedding was marked by a terribly tragic incident, of which Sewall gives an account (Coll. V. vol. vi. p. \*18). In the midst of the festivities, the bride's aunt, Mrs. Brattle, was taken ill and died in her chair. "At length out of the kitchen we carry the chair and her in it, into the wedding-hall; and after a while lay the corpse of the dead aunt in the bride-bed. So that now the strangeness and horror of the thing filled the just now joyous house with ejulation. The bridegroom and bride lie at Mr. Ayres, son-in-law to the deceased, going away like persons put to flight in battle." There is also a mention of this incident in a letter of Samuel Nowell to John Richards of Nov. 9, 1682 (Coll. V. vol. i. p. 432).

John Quincy was not born until 1689. As already mentioned, the date on the picture of the child now looks like 1670. The old-fashioned way of forming the figures is, however, very deceptive, and it may be 1690. It is either the one or the other. The evidence of John Adams is tolerably direct. He married John Quincy's granddaughter, and was a frequent guest at his house. The two pictures were hanging there at that time, and were comparatively new. John Quincy could not but have known whose portraits they were, especially if one of them represented his own babyhood. As he was born in 1689, the date of the painting would be fixed for 1690, and not 1670. It was from John Quincy and his wife that John Adams undoubtedly got his information, and the tradition of two hundred years is thus handed down through only two lives. In any event, there the two pictures are, and one of them is by no means bad as a work of art. As bearing upon the query just raised by Mr. Winthrop, there is no room at all for doubt that they were painted in Massachusetts in the latter part of the seventeenth century, and it is most reasonable to suppose that they were the work of either Tom Child or Joseph Allen.

Mr. GOODELL spoke as follows :—

Mr. President, — I know nothing about the conversation at our last meeting, concerning the execution of Mark and Phillis in 1755, beyond what was reported in the newspapers, but, as I minutely examined the records of the case several years ago, and as I do not think that a full account of this interesting trial has ever been published, I venture to call the attention of the Society to the details of this — the only case of petit treason, I believe, in the history of Massachusetts.

It is not surprising that the execution of a woman, by burning, so lately as when Shirley was governor, — a period when the province had greatly advanced in culture and refinement, — should seem to any one incredible. Indeed, even so critical and thorough a student of our provincial history as our late distinguished associate, Dr. Palfrey, once wrote to me inquiring if the rumor of such a proceeding had any foundation in fact, and if so, whether the execution took place according to law, or by the impulse of an infuriated mob. It gave me great satisfaction to be able to settle his doubts on this subject by referring him to the records of the Superior Court of Judicature, where the judgment, from which I shall presently read to you, and a copy of which I sent to him, appears at length.

The subject is important at this day only as serving to define the nature of the “cruel and unusual punishments” prohibited by the thirty-first article of the Declaration of Rights, in our state Constitution, since this mode of punishment, having continued after the adoption of the Constitution, cannot have been considered by the framers of that instrument either as “cruel” or “unusual” in the sense in which they used these words.

The particulars of the crime for which the malefactors, Mark and Phillis, were executed are briefly as follows: Captain John Codman, a thrifty saddler, sea-captain, and merchant, of Charlestown, was the owner of several slaves whom he employed either as mechanics, common laborers, or house servants. Three of the most trusted of these, Mark, Phillis, and Phebe, — particularly Mark, — found the rigid discipline of their master unendurable, and, after setting fire to his workshop some six years before, hoping by the destruction of this building to so embarrass him that he would be obliged to sell them, they, in the year 1755, conspired to gain their end by poisoning him to death.

In this confederacy some five or six negroes belonging to other owners were more or less directly implicated. Mark,

the leader, was able to read, and signed his examination, hereafter referred to, in a bold, legible hand. He professed to have read the Bible through, in order to find if, in any way, his master could be killed without inducing guilt, and had come to the conclusion that according to Scripture no sin would be committed if the act could be accomplished without bloodshed. It seems, moreover, to have been commonly believed by the negroes that a Mr. Salmon had been poisoned to death by one of his slaves, without discovery of the crime. So, application was made by Mark, first to Kerr, the servant of Dr. John Gibbons, and then to Robin, the servant of Dr. Wm. Clarke, at the North End of Boston, for poison from their masters' apothecary stores, which was to be administered by the two women.

Essex, the servant of Thomas Powers, had also furnished Mark with a quantity of "black lead" for the same purpose. This was, unquestionably, not the harmless plumbago to which that name is now usually given, but galena, or *plumbum nigrum*, a native sulphuret of lead, probably used for a glaze by the potters of Charlestown.

Kerr declined to have any hand in the business; but Robin twice obtained and delivered to Mark a quantity of arsenic, of which the women, Phebe and Phillis, made a solution which they kept secreted in a vial, and from time to time mixed with the water-gruel and sago which they sometimes gave directly to their victim to eat, and at other times prepared to be innocently administered to him by one of his daughters. They also mixed with his food some of the "black lead," which Phillis seems to have thought was the efficient poison, though it appeared from the testimony that he was killed by the arsenic.

The crime was promptly traced home to the conspirators; and on the second day of July, the day after Captain Codman's death, a coroner's jury found that he died from poison feloniously procured and administered by Mark. Ten days later, Quaco,—the nominal husband of Phebe, and one of the negroes implicated,—who was the servant of Mr. James Dalton, of Boston, was examined before William Stoddard, a justice of the peace, and on the same day Robin was arrested and committed to jail. The examination of Quaco was followed by the examination of Mark, and of Phillis, later in the month. These last were taken before the Attorney-General and Mr. Thaddeus Mason.

At the term of the "Superiour Court of Judicature, Court of Assize, and General Goal Delivery," held at Cambridge on the second Tuesday of August following, the grand jury

found a true bill for petit treason against Phillis, and against Mark and Robin as accessories before the fact. As this is the only indictment for this offence known to have been found in Massachusetts, and was drawn by that eminent lawyer, Edmund Trowbridge, then Attorney-General, it is worthy of being preserved in print, in connection with the coroner's verdict and the examinations of the suspected parties, which are as follows : —

[ *Coroner's Inquest.* ]

[Two-penny stamp.] MIDDLESEX ss.

An Inquisition Indented, Taken at Charlestown Within the County of Middlesex Aforesaid the Second day of July in the Twenty ninth year of the Reign of our Lord George the Second by the Grace of God, of Great Britain France and Ireland, King Defender of the Faith &c, before John Remington Gentleman one of the Coroners of our said Lord the King, Within the County of Middlesex Aforesaid; upon view of the Body of John Codman of Charlestown Aforesaid Gentleman then and there Being dead by the oaths of Josiah White-more, Samuel Larkin, Samuel Larkin Jun<sup>r</sup> Richard Deavens, William Thompson, Nathaniel Brown, Samuel Kettle, John Larkin, Thomas Larkin, David Cheever, Barnabas Davis, Edward Goodwin, Benjamin Brazier, Samuel Sprague, Richard Phillips, Samuel Hendley and Michael Brigden Good and Lawfull men of Charlestown Aforesaid Within the County Aforesaid; Who being Charg'd and Sworn to Inquire for our said Lord the King, When, and by What means, and how the Said John Codman Came to his Death — upon their Oaths do Say that the said John Codman Came to his death By Poison Procured by his negro man servant Mark Which he took and Languishd untill the first of July Current and then died and so the Jurors Aforesaid upon their oaths do Say, that Aforesaid Mark in manner and Form Aforesaid, the Aforesaid John Codman then and there feloniously did Poison against the peace of our Sovereign Lord the King his Crown and Dignity —

In Witness, Whereof, as Well I the Coroner Aforesaid, as the Jurors Aforesaid, to this Inquisition have Interchangeably put our hands and Seals, the day And year Abovesaid.

RICH <sup>D</sup> PHILLIPS	[Seal.]	JOHN REMINGTON <i>Coroner</i>	[Seal.]
SAM <sup>LL</sup> KETTELL	[Seal.]	JOSIAH WHITEMORE	[Seal.]
JOHN LARKIN	[Seal.]	SAM <sup>L</sup> HENDLY	[Seal.]
SAMUEL LARKIN JN <sup>R</sup>	[Seal.]	MICH <sup>LL</sup> BRIGDEN	[Seal.]
WILLIAM THOMPSON	[Seal.]	NATH <sup>LL</sup> BROWN	[Seal.]
THOMAS LARKIN	[Seal.]	DAVID CHEEVER	[Seal.]
RICHARD DEVENS	[Seal.]	SAM <sup>LL</sup> LARKIN	[Seal.]
		BENJAMIN BRAZIER	[Seal.]
		BARNABAS DAVIS	[Seal.]
		SAMUELL SPRAGUE	[Seal.]
		EDW <sup>D</sup> GOODWIN	[Seal.]

[*Examination of Quaco.*]

On the 12<sup>th</sup> July 1755. was Examined Quaco a Negro man belonging to M<sup>r</sup> James Dalton of Boston Victualler He s<sup>d</sup> Quaco says that some time the last winter one Kerr a Negro man belonging to Doct<sup>r</sup> Jn<sup>o</sup> Gibbons came to the s<sup>d</sup> Quaco & told him that Mark belong<sup>g</sup> to M<sup>r</sup> Codman had Been w<sup>th</sup> him to get some Poyson and the s<sup>d</sup> Quaco says that Ker told him that Mark asked the s<sup>d</sup> Kerr whither Phœbe had been w<sup>th</sup> him for said Poyson. The said Quaco also says that he Spoke to Phœbe M<sup>r</sup> Codman's negro woman whom he called his Wife & told her not to be Concerned with Mark for that she would be Brought into Trouble by him, for that Mark had been w<sup>th</sup> Kerr Gibbons to get Poyson, & had askt s<sup>d</sup> Kerr whither Phœbe had not been w<sup>th</sup> him for s<sup>d</sup> Poyson. The s<sup>d</sup> Quaco also says that the above discourse w<sup>th</sup> Phœbe was when they were going to Bed the Saturday night after the discourse had w<sup>th</sup> Kerr Gibbons. He also says that he charged her not to be concerned w<sup>th</sup> Mark about Poyson on any acco<sup>t</sup> whatever.

The above Examination Taken on the 12<sup>th</sup> July 1755 at Boston  
 W<sup>m</sup> STODDARD *J Pacis*

[*Mittimus against Robin.*]

SUFFOLK ss :

To The Keeper of His Majestys Goal in Boston and to the Constables of Boston Greeting —

I herewith Comit to you M<sup>r</sup> Constable Pattin the Body of L. S. Robin a Negro man belonging to D<sup>r</sup> William Clarke of the North End of Boston, who is this day Charged w<sup>th</sup> being Concerned in the Poysoning of the late M<sup>r</sup> John Codman of Charles Town Deceased. Take Care of him and deliver him to The Keeper of His Majestys Goal in Boston; and you the s<sup>d</sup> Keeper are hereby Comanded to Receive the Body of the Said Robin and him Safely Keep untill he shall be discharged by Due Course of Law,

Given under my hand and Seal at Boston the Twelfth day of July anno Domini 1755 and in the Twenty ninth Year of the Kings Reign.

W<sup>m</sup> STODDARD, *Just: Pacis.*

[*Examination of Phillis.*]

MIDD<sup>x</sup> ss :

The Examination of Phillis a negro Servant of John Codman late of Charlestown deceased taken by Edmund Trowbridge and Thaddeus Mason Esq<sup>rs</sup> at Cambridge in the County of Middlesex the 26<sup>th</sup> Day of July Anno Domini 1755. And y<sup>e</sup> 2<sup>d</sup> of Aug<sup>t</sup> following —

*Quest<sup>n</sup>.* Was M<sup>r</sup> John Codman late of Charlestown deēd, your Master?

*Answer.* Yes he was.

*Ques<sup>t</sup>.* How long was you his servant?

*Answer.* He my said Master bought me when I was a little girl and I continued his servant untill his Death.

*Quest<sup>n</sup>.* Do you know of what sickness your said master died?

*Answer.* I suppose he was poisoned.

*Ques<sup>t</sup>.* Do you know he was poisoned?

*Answer.* I do know he was poisoned.

*Ques<sup>t</sup>.* What was he poisoned with?

*Answer.*—It was with that black lead.

*Ques<sup>t</sup>.* what black Lead is it you mean?

*Answer.* The Potter's Lead.

*Ques<sup>t</sup>.* How do you know your s<sup>d</sup> master was poisoned with that Lead?

*Answer.* Mark got some of the said Potter's Lead from Essex Powers and my young mistress Molly found some of the same Lead in the Porringer that my Master's Sagoe was in, he complain'd it was gritty; and that made Miss Molly look into the Porringer, and finding the Lead there, she ask'd me what it was, I told her I did not know. — I cleaned the Skillet the Sagoe was boiled in and found some of the same stuff in the bottom of the skillet that was in the bottom of the Porringer. And presently after Mark was carried to Goal, Tom brought a Paper of the Potter's Lead out of the Blacksmith's Shop, which he said he found there; and I saw it and am sure it was the same with that which Was in the bottom of the Porringer and the Skillet.

*Quest.* Do you know that any other Poison besides the Potter's Lead was given to your s<sup>d</sup> master?

*Answer.* Yes.

*Quest.* What was it?

*Answer.* It was Water which was poured out of a Vial.

*Quest.* How do you know that, that Water was Poison?

*Answer.* There was a White Powder in the Vial, which Sunk to the Bottom of it. —

*Quest.* Do you know who put the Powder into the Vial?

*Answer.* I put the first Powder in.

*Quest.* Where did you get that Powder?

*Answer.* Phebe gave it to me up in the Garret, the Sabbath Day morning before the last Sacrament before my master dyed, and Phœbe at the same time told me Mark gave it to her.

*Ques<sup>t</sup>.* What was the Powder in when Phœbe gave it you?

*Answer.* It was in a White Paper, folded up Square, both ends being turn'd up, & it was tyed with some Twine.

*Quest.* How much Powder was there in the Paper?

*Answer.* There was a good deal of it I believe near an ounce.

*Quest.* Did you put all that Powder into the Vial?

*Answer.* No, I put in but a little of it, only so much as lay on the Point of a narrow Piece of flat Iron, with which I put it in, which Iron

Mark made & gave it to me to give to Phebe, Mark gave me the s<sup>d</sup> Iron the Saturday before the Sabbath afores<sup>d</sup>. I ask'd him what it was for, he would not tell me; he said Robbin gave him one, and he had lost it; and that he himself went into the shop and made this. I gave the s<sup>d</sup> Iron to Phœbe that same afternoon, in the Kitchen; and the next morning she gave it to me in the Garret, and Quaco was there with her; she whisper'd to me and told me to take the Paper of Powder which was in the hollow over the Window, and the flat Iron which was with it and put some of it into the Vial with the Iron which I did; and she bid me put some water into it, but I did not; but she afterwards put some in herself, as she told me, and she put it into the Closet in the Kitchen in a Corner behind a black Jug; and the same Vial was kept there until my master dyed.

*Quest.* Had your Master any of that Water which was put into the said Vial given to him?

*Answ<sup>r</sup>.* Yes he had.

*Quest<sup>d</sup>.* How was it given to him?

*Answ<sup>r</sup>.* It was poured into his barley Drink and into his Infusion, and into his Chocalate, and into his Watergruel.

*Quest.* Who poured the Water out of the s<sup>d</sup> Vial into the Chocalate?

*Answ<sup>r</sup>.* Phœbe did, and Master afterwards eat it.

*Quest.* Who pour'd it into his barley Drink?

*Answ<sup>r</sup>.* I did it myself; I pour'd a drop out of the Vial into the barley Drink, & I felt ugly, and pour'd the Water out of the mug again off from the Barly, and put clean Water into the mug again & cover'd it over that it might boil quick.

*Quest.* Who pour'd the Water out of the Vial into the Infusion?

*Answ<sup>r</sup>.* Phœbe did.

*Quest.* How do you know it?

*Answ<sup>r</sup>.* I came into the Kitchen and saw her do it.

*Quest.* Did your master drink the Infusion after that water was so pour'd in?

*Answ<sup>r</sup>.* He drank one Tea Cup full of it.

*Quest.* How do you know that Phœbe poured any of the poisoned Water out of the Vial into your Master's Chocalate?

*Answ<sup>r</sup>.* She told me she had done it.

*Quest.* When did she tell you so?

*Answ<sup>r</sup>.* That Same Day.

*Quest.* Was it before or after your Master eat that Chocalate that the poison'd Water was pour'd into, that She told you so?

*Answ<sup>r</sup>.* Before he eat it.

*Quest.* Did you see him eat that Chocalate?

*Answ<sup>r</sup>.* Yes, I did, he eat it in the Kitchen on a little round Table.

*Quest.* Who put the Second Powder into the Vial?

*Answ<sup>r</sup>.* Phœbe put it in; I left Part of the Powder she gave me in the Paper, and she afterwards put that into the Vial as she told me. as I was in the cellar drawing some Cyder, I heard Phœbe tell Mark that the Powder was all out, and all used up;

*Quest.* When was it that you heard Phœbe tell Mark so?

*Answer.* The Wednesday before my master dyed.

*Quest.* Do you know of any more Powder being got to give to your master ?

*Answer.* Yes, but master never took any of it.

*Quest.* Who got this last Powder ?

*Answer.* Mark got it.

*Quest.* What did he do with it ?

*Answer.* He gave it to me ; in our little House.

*Quest.* What Sort of Powder was it that Mark gave You ?

*Answer.* I[t ?] was white the same as the first.

*Quest.* What was it in ?

*Answer.* In a Peice of Paper ; he had more of that Powder than he gave me, it was in a Paper folded up in a long Square, he tore off Part of that Paper, and put Some of the Powder into it, and gave it to me and kept the rest himself. and at the same time that he gave it to me he told me that Robbin said we were damn'd Fools we had not given Master that first Powder at two Doses, for it wou'd have killed him, and no Body would have known who hurt him, for it was enough to kill the strongest man living ; upon which I ask'd Mark how he knew, it would not have been found out, he said that Mr. Salmon's Negros poison'd him, and were never found out, but had got good masters, & so might we.

*Quest.* What did you do with that Powder which Mark gave you ?

*Answer.* I put it into the Vial, & set it in the Same Place it was in before, there was some of the first Powder & Water remaining in the Vial when I put this last in.

*Quest.* Do you know that any of the Water that was in the Vial after you put this last Powder in was given to your Master ?

*Answer.* No, he never had a drop of it. The next Day after Master died Mark came into the Closet where I was eating my Dinner and ask'd me for that Bottle, I ask'd him what he wanted it for, and he would not tell me, but insisted upon having it, upon which I told him that it was there behind the Jugg, and he took it and went directly down to the Shop in the yard, and I never saw it afterwards 'till Justice Mason shew it to me, on the Fast Day night.

*Quest.* Do you know where Mark got that Powder which he gave to you ?

*Answer.* He had it of Robbin, Doc<sup>r</sup> Clark's Negro ; that liv'd with Mr. Vassall.

*Quest.* How do you know that Mark had that Powder of Robbin ?

*Answer.* The Thursday night before my master died Mark told me he was going oyer to Boston to Robbin to get some more Powder for he s<sup>d</sup> Phœbe told him y<sup>t</sup> the other was all out ; and Mark went over to Boston, and return'd again about nine o'Clock ; and I ask'd Mark if he had got it, and he told me no, he had not, but Robbin was to bring it over the next night ; and between 8 & 9 o'Clock that next night, a negro Fellow came to me in our Yard & ask'd me for Mark, And I ask'd him his name but he would not tell me, and I said to him, Countryman, if you'l tell me your name I'll call Mark, for I know



where he is, but he would not, I then askt him if he was not Robbin Vassall, (for I mistrusted it was he) and upon that he laughed and said his name was not Robbin Vassall, but he came out of the Country and wanted to see Mark very much about his Child; and upon my refusing to tell him where Mark was the negro went away down to the Ferry, and I followed him at some distance & saw him go into the Ferry Boat, and the Boat put off, with him in it. That same Fryday, in the afternoon, Mark told me, if any Negro Fellow shou'd come; & say that he came out of the Country to call him, I ask'd him what negro it was that he expected wou'd come; he told me it was Robbin, and that he was to say that he came out of the Country to speak with Mark about his Child, and bid me tell no Body about it.

*Quest.* Do you know Robbin Doct<sup>r</sup> Clark's negro?

*Answer.* I do, and have known him for many years.

*Quest.* How then happen'd it that you cou'd not certainly tell whether the negro afores<sup>d</sup> that askt for Mark was Robbin or not?

*Answer.* Because it was dark, So dark I cou'd not see his Face so as certainly to know him, but I am fully satisfyed it was Robbin.

*Quest.* What Reason have you to be satisfyed it was Robbin?

*Answer.* That same night I told Mark that a negro Fellow had been there and ask'd for him & wanted him, he ask'd me why I did not call him, I told him our Folks called me and I could not, Mark told me he was very Sorry I did not, and asked me if he gave me any Thing, I told him he did not, he said he was very sorry he did not; then I ask'd him who it was, and he said it was Robbin, and then he told me that he thought Robbin & he had been playing blind-mans Buff, for they had been over the Ferry twice that night and mist one another; and that Elij<sup>h</sup> Phipps & Timo Rand told him that a negro Fellow had been over the Ferry to speak with him about his Child. And then Mark told me he would the next Night go over to Robbin and get some more of the same Powder, and would bring it over on the Sabbath Day, & he went to Boston on the Saturday night, but did not return till Monday morning, when he brought it and gave it to me in the little House, as I told you before.

*Quest.* Did you see Robbin at Charlstown in the Time of your master's sickness or about the Time of his Death?

*Answer.* Yes, I saw him on y<sup>e</sup> Tuesday the Ship was launched, when my master catch'd Mark buying Drink at M<sup>r</sup>s Shearman's to treat him with, & drove him away; and I saw him at Charlstown on the Saturday after my Master was buried; but I did not speak with him at either of those Times. The Tuesday he was before our Shop Door, in the Street, with Mark and had a Bag upon his shoulder; and on the Saturday in the afternoon I saw him going up the Street by our House, while Phœbe and I were washing in the back yard; I told Phœbe there was Robbin a going along this minit, and she said is he? and ask'd me what Cloaths he had on; I told her he had a bluish Coat on lined with a straw coloured or yellow lining and the Cuffs open & lined with the said Yellow lining, and that he had a black wigg on;

and I told Phœbe I believed he was gone up to Mark to tell him not to own that he had given any Thing to him, and Phœbe said she believed so to; and I went into the street to the Pump with a Pail to get some Water, designing to see whether he went that Way, and I saw him go right up the main street, and I could see him as far up as Mr. Eleazer Phillips's, and I did not see him afterwards. I never see him with a Wigg on before, but as he went by us he look'd me full in the Face and I knew it was Robbin. When I told Phœbe that Robbin was going by, I thought she saw him, but she questioned whether it was he, and I told her I was sure it was he, for I had known him ever since he was a boy, and I told her I would lay a mug of Flip that it was he, but she wou'd not; and then it was that I told her I believed he was gone up to Mark &c.

*Quest.* Do you know what Powder that was which Mark & Phœbe gave you, and you put into the Vial?

*Answer.* Mark told me it was Ratsbane, but I told Phœbe I believed Mark lied & that it was only burnt allom, for I told her, that upon taking Ratsbane they would directly swell, and Master did not swell; and she said she believed so to.

*Quest.* How many Times was any of that Water, which was in the Vial afores<sup>d</sup>, put into your master's victuals?

*Answer.* Not above Seven Times.

*Quest.* When was the first Time?

*Answer.* The next Monday morning after Phœbe gave me the first Powder. then it was put into his Chocolate, by Phœbe. The next was also put in to his Chocolate by Phœbe on the next Wednesday morning, and I thinking she put in more than she should, told her her hand was heavy, and there was no more put in, that, I know of till the next Fryday, when Phœbe put some into his Chocolate, and my Master eat the Chocolate all the three times aforesaid in the Kitchen, and I was there & saw him; The next was on the Saturday following, when I put Some into his Watergruel, but I felt ugly and threw it away, and made some fresh, and did not put any into that. The next was on the afternoon of the same Saturday, I made him some more Watergruel & pour'd some of the Water out of the Vial into it, and it turned yellow, and Miss Betty, ask'd me what was the matter with the Watergruel and I gave her no answer; but that was thrown away, and more fresh made, and Miss Molly was going to put the same Plumbs in again, and Phœbe told her not to do it, but she had better put in some fresh Plumbs, and she did; and no Poison was put into that; It was by Phœbe's advice that I put it into the first this afternoon. And he had no more, that I know of 'till the next Monday night, when Mark put some of the Potter's Lead into Masters Sagoe.

*Quest.* How do you know that Mark put any of the Potter's Lead into the Sagoe?

*Answer.* When I went out of the Kitchen I left the Sagoe in the little Iron Skillet on the Fire, and no body was in the Kitchen then, but when I returned, Mark was Sitting on a Form in the Corner, and I afterwards found Some of that Lead in the Skillet, and neither Phœbe nor I had any Such Lead.

*Quest.* Do you know of any other Poison prepar'd for, or given to your Master?

*Answer.* No, I do not.

*Quest.* Who was it that first contrived the poisoning your Master Codman?

*Answer.* It was Mark who first contrived it, He told Phœbe and I that he had read the Bible through, and that it was no Sin to kill him if they did not lay violent Hands on him So as to shed Blood, by sticking or stabbing or cutting his Throat.

*Quest.* When was it that Mark first proposed the poisoning his Master?

*Answer.* Some time last Winter; he proposed it to Phœbe and I, but we would not agree to it, and told him No Such Thing should be done in the House; This before my Master brought him home from Boston.

*Quest.* Did he ever afterwards propose the poisoning his s<sup>d</sup> Master?

*Answer.* Yes he did, a Week or a Fortnight after my Master brought him home from Boston, he proposed it to me first, and I would not agree to it, and then he proposed it to Phœbe.

*Quest.* What Reason did Mark give for poisoning his Master?

*Answer.* He said he was uneasy and wanted to have another Master, and he was concerned for Phœbe and I too.

*Quest.* Do you know how your Master's Work house that was burnt down came on Fire?

*Answer.* Yes I do.

*Quest.* How came it on fire?

*Answer.* I set it on fire, but it was thro' Mark's means, he gave me no rest 'till I did it.

*Quest.* How did you Set your Master's Work House on fire?

*Answer.* I threw a Coal of Fire into some Shavings between the Blacksmith's Shop & the Work House, and I went away & did not see it kindle.

*Quest.* Who put the Shavings there?

*Answer.* Mark did.

*Quest.* Was any Body concern'd in the burning the Work house besides Mark and you?

*Answer.* Yes, Phœbe knew about it as well as I.

*Quest.* Where was Phœbe & Mark when you put the Coal of Fire into the Shavings?

*Answer.* They were up Garret in bed.

*Quest.* Who first proposed the Setting the Workhouse on fire? and what reason was given for doing it?

*Answer.* Mark first proposed it, to Phœbe and I; and the Reason he gave us was that he wanted to get to Boston, and if all was burnt down, he did not know what Master could do without selling us.

*Quest.* Why did you, when Phœbe pour'd Some of the Water out of the Vial into the Chocolate tell her, "her hand was heavy?"

*Answer.* I thought she pour'd in too much, more than she should I felt ugly and I wan't willing she shou'd put in so much and that he

should be kill'd so quick. Mark's orders were to give it in two Doses, that was the Directions Robbin gave to Mark, as Mark told me, and Mark Said Robbin told him there was no more taste in it than in Cold Water.

*Quest.* Why did you not tell your Master or some of the Family that Phœbe had poisoned the Chocolate, and thereby prevent your Master's eating it?

*Answer.* I do not know why I did not tell.

The mark of × Phillis.

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[*Examination of Mark.*]

MIDDLESEX SS :

The Examination of Mark a Negro Servant of John Codman late of Charlestown deceased taken by Edmund Trowbridge & Thaddeus Mason Esq<sup>r</sup> at Charlestown in the County of Middlesex the Day of July Anno Dom: 1755.

*Quest.* What is your name?

*Answer.* Mark.

*Quest.* Are you a Servant or Freeman?

*Answer.* A Servant. M<sup>r</sup> John Codman dec<sup>d</sup> was my master.

*Quest.* How long was you his Servant?

*Answer.* For several Years before & untill his Death.

*Quest.* Do you know what occasion'd your s<sup>d</sup> Master's Death?

*Answer.* He was poisoned.

*Q.* What was he poisoned with?

*A.* With Poison that came from the Doctor's.

*Q.* What Doctor?

*Answer.* Doct<sup>r</sup> Clark that lives at the North End of Boston.

*Q.* What sort of Poison was that?

*A.* It was a White Powder put up in a Paper.

*Q.* How do you know that that Powder came from Doct<sup>r</sup> Clark's?

*A.* Robbin the Negro Fellow that belongs to Doct<sup>r</sup> Clark gave it to me.

*Q.* When & where did Robbin give you that Powder?

*An.* A Week Day night, at his Master's Barn.

*Qu.* Was there any Person present with you when Robbin gave you that Powder?

*An.* No. The first Time, the negro man his fellow Servant called him out, it was in the Evening near 9 o'Clock.

*Qu.* How many Times had you such Powder of Robbin?

*An.* Twice only.

*Qu.* When was the last Time you had any such Powder of him?

*An.* The Sabbath Day night before my s<sup>d</sup> Master died, in the Evening after Candle Light.

*Qu.* Where was it you had this last Powder of him, and what was it in?

*An.* He gave it to me in the same Barn, it was done up in a long square in two Papers, the outtermost Paper was brown and the innermost Paper was White, as the other was.

*Qu.* What did Robbin give you these Powders for?

*An.* To kill three Pigs belonging to Quaco as Phœbe told me.

*Qu.* How long ago was it Since Robbin gave you the first of these Powders?

*An.* I can't certainly tell.

*Qu.* Was it before Robbin & you were together at John Harris y<sup>e</sup> Potters Work house?

*Ans<sup>r</sup>.* I think it was before.

*Qu.* How long before was it?

*Ans<sup>r</sup>.* About a Week before.

*Qu.* Did you pay Robbin any Thing for these Powders?

*An.* No. I did not.

*Q.* What did you do with them?

*Ans.* Phœbe had the first; and she sent Phillis for the second and I gave it to her.

*Qu.* When & where did you give Phœbe the first Paper of that Powder?

*An.* In our Garret; the same night I brought it over.

*Qu.* Was any Body there when you gave it to her?

*An.* No.

*Qu.* What did she do with it?

*An.* She took it & put it upon the Table.

*Qu.* Did you give her the whole of the Powder you had of Robbin the first Time?

*An.* Yes. I gave her the Paper with all the Powder in it, as I received it of Robbin.

*Qu.* Did you tell her what was in the Paper?

*An.* No. She knew what was in it; for she told me what to get.

*Qu.* What did she tell you to get?

*An.* Something to kill three Pigs.

*Qu.* Did Robbin give you any Directions how to use that Powder, and tell you what Effect it would have?

*Ans.* He told me to put it into about 2 Quarts of Swill or Indian meal, and it would make 'em swell up.

*Qu.* Did you tell her how she must use the Powder? or what Effect it would have?

*Ans<sup>r</sup>.* yes I told her as Robbin told me.

*Qu.* Do you know whether she used that Powder or any Part of it?

*Ans<sup>r</sup>.* no otherwise than as Phœbe & Phillis told me Since my master's Death.

*Qu.* Who did you give the Second Paper of Powder to?

*An.* To Phillis.

*Qu.* When & where did you give that Paper of Powder to Phillis?

*Ans.* In the little House; She came to empty a Pot over the

Wharffe, and I gave it to her, The Monday before my s<sup>d</sup> Master died, after Breakfast in the Forenoon.

*Qu.* Did you then give her all the Powder you rec<sup>d</sup> of Robbin the Second Time?

*Ans.* Yes. I took off the brown Paper and gave it to her in the white Paper, that it was in, when Robbin gave it to me.

*Qu.* What did she do with it?

*Ans<sup>w</sup>.* She caried it into the House to Phœbe as Phillis told me, She came to me & told me Phœbe sent her for that Thing that She sent me for, and thereupon I gave Phillis the Paper.

*Qu.* How was your Master poisoned with these Powders?

*Ans<sup>w</sup>.* Phœbe & Phillis told me that they used them for that End.

*Qu.* When did they tell you this?

*Ans<sup>w</sup>.* The next Day after my master died.

*Q.* Were they together when they told you So?

*Ans<sup>w</sup>.* No, Phillis told me of it first, and said that Phœbe used all that I brought first, that Way; and that the last was used so too by her and Phœbe; and then I went to Phœbe and ask'd her about it, and She denyed it at first but when I told her that Phillis had told me all about it, then she owned it.

*Qu<sup>es</sup>.* Had you no Reason before your s<sup>d</sup> master dyed to think that the Powders you had of Robbin were given to your master or that he was poison'd therewith?

*Ans<sup>w</sup>.* No other Reason than hearing Phœbe the Saturday night before master died ask Phillis, if she had given him enough, to which she replyed, yes. I have given him enough, and will stick as close to him as his shirt to his back; but who she meant I did not then know, nor untill after master died.

*Quest.* Was there no Discourse had between you Phœbe & Phillis about getting more Poison, after you had the first, of Robbin?

*Ans<sup>w</sup>.* The Fryday before my master died Phœbe told me that she had lost that stuff that I had brought to her from Robbin, and desired me to get her some more. I told her I wou'd when I went over to Boston; this was in the Forenoon, when she was washing in the back yard.

*Quest.* Did you get her any more of Robbin?

*Ans<sup>w</sup>.* Yes, and that was it which I gave to Phillis

*Quest.* When did you go over to get the last Poison?

*Ans.* on the Saturday night before my master died; I went over after Sunset; I went directly to Robbin; & told him I wanted some of the same I had of him before for that was lost, Robbin was then at the Corner of his master's House out in the street, he told me he could not get any then, but if I wou'd come on the Sabbath Day night he would let me have some, and I went to him on the Sabbath Day night after Candle Light, and he then gave it to me.

*Quest.* Was there any Body with you on the Saturday night when you ask'd for the Poison, or do you know whether any Person saw you & Robbin together that Evening?

*Ans<sup>w</sup>.* No, nobody was there, and I dont know that any Body saw us together that Evening.

*Quest.* How long was you with Robbin at M<sup>r</sup> Harris's Work house?

*Answ<sup>r</sup>.* I made no tarry there, but left him at the Pot house, and he and the young man that was with him followed me and overtook me a little below M<sup>r</sup> Waite's Slaughter house; And they went with me into the Lane leading from the market Place to the long Wharffe near M<sup>r</sup> Shearman's, while I went into M<sup>r</sup>s Shearmans and got a mug of Toddy, in the mug I brought from M<sup>r</sup> Harris's Work house, and I carried it to them and they both drank with me.

*Quest.* Had you any Discourse with Robbin in private or between you and him alone that Day?

*Answ<sup>r</sup>.* No, none at all.

*Quest.* Where did you drink the Toddy?

*Answ<sup>r</sup>.* In the Lane afores<sup>d</sup>.

*Quest.* Where did you all go after you drank the Toddy?

*Answ<sup>r</sup>.* We all came away together & went thro' M<sup>r</sup> Sprague's Yard & so thro' M<sup>r</sup>s Silence Harris's yard & Entry into the street. and they went directly down to the Ferry and I went into my master's Yard with the Pots I brought from the Potters Work house.

*Quest.* Did you then go with them to the Ferry or nearer to it than your master's House?

*Answ<sup>r</sup>.* No, I did not.

*Quest.* Did Robbin give you, or did you give Robbin any Thing between the Time of your coming out of M<sup>r</sup> Harris's Entry and his going over the Ferry?

*Answ<sup>r</sup>.* No, I did not give him any Thing neither did he give me any Thing.

*Quest.* After you had parted with him when you came thro' the Entry, did you call him back?

*Answ<sup>r</sup>.* No, I did not.

*Quest.* Did your master that Day forbid M<sup>r</sup>s Shearman's letting you have any more Drink?

*Answ<sup>r</sup>.* Yes, my master told her not to sell any Drink to any of his Servants.

*Quest.* Did Robbin know of it?

*Answ<sup>r</sup>.* Not that I know of; he see master go into M<sup>r</sup>s Shearman's Shop, and pass'd by Robbin in the Lane as Robbin told me.

*Quest.* Did you ever apply to any body else, besides Robbin for Poison?

*Answ<sup>r</sup>.* No, only to Carr, Doct<sup>r</sup> Gibbon's negro man, and then Phœbe sent me for it. She had been with Carr before on the same account, & he told her he cou'd not get her any then, as she told me;

*Quest.* Did you get any Poison of Carr?

*Ans<sup>r</sup>.* No, he told me he wou'd not let me have any, untill he had seen Quaco, and did not know whether he shou'd then or not, and I never went to him afterwards.

*Quest.* Did you never ask Doct<sup>r</sup> Rand's Cato for any Poison?

*Answ<sup>r</sup>.* No, I do not know that I ever did, in the World.

*Quest.* Had you and Phebe any Conversation together about your

master in or near your Blacksmith's Shop or in the yard the Monday before your master died?

*Answer.* I had not, that I know of.

*Quest.* Did you that Day before Tom or any other of your master's Servants say that you knew that your master would dye or utter any Words to that effect?

*Answer.* No, I did not. The Day before master dyed, Phœbe came into the Shop to dress Tom's Eye & got to dancing & mocking master & shaking herself & acting as master did in the Bed; And Tom said he did not care, he hop'd he wou'd never get up again for his Eye's sake, and Scipio was there at the same time and saw her.

*Quest.* Did you ever Say that your master had been offer'd £400 for you but wou'd not take it, and now he shou'd not have a farthing or Words to that effect?

*Answer.* No I never said any such Thing.

MARK.\*

*Quest.* Did you ever tell Phœbe or Phillis that the Week before your master dyed, that you went over the Ferry to see Robbin to get some more Poison, and that he came over the Ferry in another Boat and so you mist each other and that he Robbin pretended to the Ferryman that he was a Country negro and wanted to see you about your Child, or Words to that Effect?

*Answer.* I never told them or either of them so.

*Quest.* How came that Vial buried near your Forge in the Blacksmith's Shop, that you told M<sup>r</sup> Kettell of, and he found there?

*Answer.* I buried it there.

*Quest.* When did you bury it there?

*Answer.* In the afternoon of that Day that master dyed.

*Quest.* Where did you get that Vial?

*Answer.* I took it from Phillis that same Afternoon.

*Quest.* Did any body see you take it from her?

*Answer.* No. When I took it from Phillis she own'd that Phœbe had given the first Poison that I brought to master; and that she and Phœbe had given him all the Rest saving what was then in the Bottle. and thereupon I went to Phœbe and charged her with it, she at first deny'd it, but at last own'd it it and begg'd me to say nothing about it; I told her if I had known she wou'd have put it to that use I would not have got it for her; then I call'd Pompey to go down to the shop with me for I wanted to speak with him, intending to shew him the Vial, and he came into the shop but before I had an opportunity to speak to him M<sup>r</sup> Kettell took me.

*Quest.* Where was the Vial when you talked with Phœbe as afores<sup>d</sup>?

*Answer.* I had it in my Pocket, and told her so, then I went into the shop and buried it, then I went into the House immediately to call Pompey to shew it to him.

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\* Mark signed his deposition here, and the entry, "continued," was made at the end of the sheet; the next sheet beginning, "Mark's Examination, continued."



*Quest.* Why did you bury the Vial before you called Pompy? or shew it to any body?

*Ans<sup>r</sup>.* I buried it because I did not want any body should see it before I shewed it to him.

*Quest<sup>n</sup>.* Have you lately had any Potters powder'd Lead by you or in your Possession?

*Ans<sup>r</sup>.* Only that I had from Essex Powars; which was as I suppose ground to Powder.

*Quest.* When did you get that powder'd Lead of Essex?

*Ans<sup>r</sup>.* I had it of him that Day I went there for six butter Pots, which my master's son Isaac sent me for.

*Quest.* What did you get that Lead for?

*Ans<sup>r</sup>.* To see if it would melt in our Fire. upon a Dispute between Tom and I about it; Tom said it would melt, and I told him I did not believe it would; I carried it home and laid it upon the Wall Plate in the Blacksmith's shop, and I never moved it afterwards or thought any Thing about it, 'till it was show'd to me by the Justice.

*Quet.* Do you know that any Part of that Lead you had of Essex or any Lead like unto it was given to your master or put into his Victuals or Drink?

*Ans<sup>r</sup>.* I do not.

*Quest.* Do you know of any Proposal made of poisoning your master?

*Ans<sup>r</sup>.* No, I do not, nor ever heard any such Thing proposed by any Body.

*Quest.* Do you know of any Cushoe nuts being procured for that Purpose?

*Ans<sup>r</sup>.* No; I have not seen a Cushoe nut since I have been in this Country.

*Quest.* Do you know of any Copperas or Green stuff being provided for that Purpose?

*Ans<sup>r</sup>.* No I do not.

*Quest.* What Time on the Saturday before your master dyed was it that you heard Phœbe ask Phillis, if she had given him enough, and Phillis said she had, and would stick as close to him as his Shirt to his Back?

*Ans<sup>r</sup>.* In the afternoon about Dark; and before I went to Boston.

*Quest.* How came you, after you had heard this Talk between Phœbe and Phillis, to get her s<sup>d</sup> Phœbe more Poison?

*Ans<sup>r</sup>.* I did not know what she meant by their Talk, nor who they meant, by him.

*Quest.* Did you tell Carr that Phœbe sent you for that Poison you applyed to him for?

*Ans<sup>r</sup>.* She did not tell me it was Poison, but told me to ask Carr for that Thing he had promised her; he said he knew what it was and would not send it, 'till he had talked to Quacco, and did not know that he should send it afterwards; and I said no more to Carr about it.

*Quest.* Did you ever ask Carr at any other Time for Poison?

*Ans<sup>r</sup>.* No.

*Quest.* Did you never ask him for something to Poison or kill a Dog?

*Ans<sup>w</sup>.* No, not that I know of.

*Quest.* Was you ever bit by a Dog?

*Ans<sup>w</sup>.* No. I never was.

*Quest.* Do you know any Thing more of your master's being poisoned than you have before related?

*Ans<sup>r</sup>.* No, I do not.

MARK.

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[*Bill of Indictment.*]

MIDDLESEX SS. At His Majesties Superiour Court of Judicature Court of Assize and General Goal Delivery held at Cambridge in and for the County of Middlesex on the first Tuesday of August in the Twenty ninth Year of the Reign of George the Second by the Grace of God of Great Britain France & Ireland King Defender of the Faith &c.

The Jurors for the said Lord the King upon their Oath present That Phillis a Negro woman of Charlestown in the County of Middlesex Spinster Servant of John Codman late of Charlestown aforesaid Gentleman not having the Fear of God before her Eyes but of her Malice forethought contriving to deprive the said John Codman her said Master of his Life and him feloniously and Traiterously to kill and murder, She the said Phillis on the thirtieth Day of June last at Charlestown aforesaid in the Dwelling house of the said John there did of her Malice forethought willfully feloniously and Traiterously put a Deadly Poison called Arsenick into a Vial of water and thereby did then and there Poison the same Water — and that the said Phillis knowing the Water aforesaid to be so poisoned did then and there feloniously willfully traiterously and of her Malice forethought put one spoonfull of the Same Water so poisoned into a Pint of the Said John's Watergruel and thereby poison the Same Watergruel — And that the said Phillis did then and there of her malice forethought feloniously willfully and traiterously in manner as aforesaid poison the Watergruel aforesaid, with a felonious and Traiterous Intent and Design that the said John her said master then being should then and there eat the Same Watergruel so poisoned and thereby be poisoned killed & murdered — And that one Elizabeth Codman not knowing the Watergruel aforesaid to be so poisoned then and there Innocently gave the Same Watergruel so poisoned as aforesaid to the said John to eat —

And that the said John then and there being the said Phillis's Master and being altogether ignorant of the Watergruel aforesaid's being

poisoned as as\* aforesaid and Suspecting no Evil did then and there eat the same Watergruel so poisoned as aforesaid — And that the said Phillis then and there was feloniously and traiterously present with the said Elizabeth & John knowing of and consenting unto the said Elizabeth's giving him the said John the Watergruel aforesaid so poisoned as aforesaid and his eating the same as aforesaid — And that the said John by means of his eating the Watergruel aforesaid so poisoned as aforesaid There Languished for the space of fifteen Hours and then at Charlestown aforesaid Died of the Poison aforesaid given him as aforesaid — And So the Jurors aforesaid upon their Oath say that the said Phillis did at Charlestown aforesaid of her malice forethought in manner and form aforesaid willfully feloniously and traiterously poison kill & murder the said John Codman her said master against the Peace of the said Lord the King his Crown & Dignity.

And the Jurors aforesaid upon their Oath further present That Mark a Negro man of Charlestown aforesaid Labourer and Servant of the said John Codman. And Robbin a Negro man of Boston in the County of Suffolk Labourer & Servant of John Clark of Boston aforesaid Apothecary before the said Treason and murder aforesaid committed by the said Phillis in manner & form aforesaid did at Charlestown aforesaid on the twentieth Day of June last of their malice forethought (the said Mark then being Servant of the said John Codman) feloniously & traiterously advise & incite procure & abet the said Phillis to do and commit the said Treason & Murder aforesaid against the Peace of the said Lord the King his Crown and Dignity.

EDM TROWBRIDGE *Att<sup>r</sup> & Dom Reg<sup>r</sup>.*

This is a True Bill.

CALEB DANA *foreman.*

The case was tried, at the same term at which the parties were indicted, before Stephen Sewall, chief justice, and Benjamin Lynde, John Cushing, and Chambers Russell, associate justices, — all fairly read in the law, and the Chief Justice eminent in his profession. Samuel Winthrop and Nathaniel Hatch, jointly, were clerks of the court.†

Mark and Phillis were convicted, and sentence of death was pronounced upon them in strict conformity to the common law of England. On the 6th of September, a warrant for their execution was issued, under the seal of the court,

\* *Sic.*

† This is assumed to be the case, since both these clerks officially signed papers in this very case, though, from the loose custom which gradually obtained with the clerks of our highest judicial court, of not recording their appointments, it is impossible to verify this statement by the record. Samuel Tyley, Jr., and Benjamin Rolfe were sworn in as joint clerks of this court, Feb. 26, 1718, and Samuel Winthrop was clerk as early as June, 1745, and Nathaniel Hatch as early as September, 1752.

commanding Richard Foster, Sheriff of Middlesex, to perform the last office of the law, on the 18th of the same month; and upon this warrant the sheriff made return upon the day of the execution.

The subpoenas to the witnesses against the accused, the caption and conclusion of the record of the case, and the warrant for the execution of the condemned are as follows:—

PROVINCE OF THE MASSACHUSETTS BAY, ss.	}	<i>George the Second by the Grace of God of Great          Britain France &amp; Ireland King Defender          of y<sup>e</sup> Faith &amp;c</i>
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SEAL.

To the Sheriff of our County of Middlesex his under Sheriff or Deputy or to any Constable of the Town of Charlestown within Said County, Greeting—

We Command you That you Suimon W<sup>m</sup> Brattle Esqr Docter Pinchin of Boston Joseph Rand Jun<sup>r</sup> Hatter Bartholomew Powers Isaac Rand Phisitian W<sup>m</sup> Kneland, Benj<sup>n</sup> Codman Parnel Codman Eliz<sup>h</sup> Codman Mary Codman Ann Codman Catherine Codman, Pompey Thomas Cuffee and Scipeo negro servants that were Jno. Codman Dec<sup>d</sup> James Kittle W<sup>m</sup> Foster Phisitian Essex Servant to thomas powers Serv<sup>t</sup> of Dr. Rand Dinah Serv<sup>t</sup> of Rich<sup>d</sup> Foster Esqr Ruth Adams

To appear Before our Justices of our Superiour Court of Judicature Court of Assize and General Goal Delivery now held at Cambridge within & for said County tomorrow at Eight of y<sup>e</sup> Clock before noon to give Such Evidence in our Behalf (as you know) against Mark a Negro man & Phillis a Negro woman both of Charlestown aforesaid—

Hereof fail not and so soon as may be make return of this Writ with your Doings Therein into the same Court Witness Stephen Sewall Esq. at Boston the sixth Day of August in the twenty ninth year of our Reign Anno. Domini 1755

SAM<sup>L</sup> WINTHROP *Cler*

[Endorsed Return.]

MIDDLESEX ss. August 7, 1755

We have somoned the persons within named to appear & Give Evidence at the time & place within mentioned.

JAMES KETTELL, *Dept Sheriff,*  
 & JOHN MILLER  
*Constabel.*

PROVINCE OF THE }  
 MASSACHUSETTS BAY ss } *George the Second by the Grace of God of  
 Great Britain France & Ireland King  
 Defender of the Faith &c.*

SEAL.

To the Sheriff of our County of Suffolk his under Sheriff  
 or Deputy or any Constable of the Town of Boston in  
 s<sup>d</sup> County Greeting

We Command you that you Summon The Wife of Ichabod Jones  
 Eliz<sup>a</sup> Mercy Car, a negro man servant of John Gibbins Apothecary  
 Quaco the serv<sup>t</sup>: of Dalton Quaco a Negro man belonging to m<sup>r</sup>  
 John White

To appear before our Justices of our Superiour Court of Judicature  
 Court of Assize & General Goal Delivery now holden at Cambridge  
 within and for said County Tomorrow morning at Eight of y<sup>e</sup> Clock  
 before noon Then and there to give Such Evidence in our Behalf as  
 you know against Mark a Negro man & Phillis a Negro woman both  
 of Charlestown in our County of Middlesex —

Hereof Fail not and so soon as may be make Return of this Writ  
 with your Doings therein into the same Court

Witness Stephen Sewall Esq. at Boston the Sixth Day of August  
 in the twenty ninth year of our Reign Annoq, Domini 1755

SAM<sup>L</sup> WINTHROP *Cler*

[*Record of the Case.*]

PROVINCE OF THE }  
 MASSACHUSETTS BAY }  
 MIDDLESEX ss. } *Anno Regni Regis Georgii secundi Magnæ  
 Britanniæ Franciæ Hiberniæ vicesimo-  
 nono.*

At his Majestys Superiour Court of Judicature Court of  
 Assize and General Goal Delivery began and held at  
 Cambridge within and for the County of Middlesex on  
 the first Tuesday of August Annoque Domini 1755 —

By the Hon<sup>ble</sup> Stephen Sewall Esq<sup>r</sup> Chief Justice  
 Benjamin Lynde \* }  
 John Cushing & } Esquires Justices  
 Chambers Russell }

\* Judge Lynde makes a memorandum of this trial, and of the particulars of  
 the executions, in his diary under date of July 9, 1755. — Lynde Diaries (pri-  
 vately printed, 1880), p. 179. — Eds.

[*After reciting the words of the indictment, the record proceeds as follows, being, as far as where the record of the trial and sentence begins, an extension of a memorandum on the indictment.*]

Upon this Indictment the said Phillis was arraigned and upon her arraignment pleaded not guilty and for trial put herself upon God and the Country and the said Mark was also arraigned upon this Indictment and upon his arraignment pleaded not Guilty and for trial put himself upon God and the Country, a Jury was thereupon Sworne to try the issue M<sup>r</sup> John Miller Foreman and fellows who having fully heard the Evidence went out to consider thereof and returned with their verdicts and upon their oath's say'd that the said Phillis is Guilty, and that the said Mark is Guilty, upon which the prisoners were remanded, and being again brot and set to the Bar, the Kings Attorney moved the Court that Judgment of Death might be given against them, whereupon they were asked by the chief Justice if they had ought to say why Judgment of Death should not be given against them, and having nothing material to offer Judgment of Death was pronounced against them by the chief Justice in the name of the Court in form following that is to Say that the said Phillis go from hence to the place where she came from, and from thence to the place of Execution & there be burnt to Death, and that the said Mark go from hence to the place where he came from, and from thence be drawn to the place of Execution and there be hanged by the neck until he be dead and God Almighty have mercy upon their Souls. Ordered that these Sentences be put into Execution upon thursday the eighth\* day of September next between the hours of one and five of the Clock in the Afternoon.

Warrant issued Sep. 6. 1755.

[*Writ of execution, or death-warrant.*]

PROVINCE OF THE  
MASSACHUSETTS BAY  
MIDDLESEX SS. }

*George the second by the Grace of God of  
Great Britain France and Ireland King  
Defender of the Faith & C<sup>a</sup>*

SEAL.

To Richard Foster Esq<sup>r</sup> Sheriff of our County of Middlesex in Said Province

Greeting

Whereas at our Superiour Court of Judicature Court of Assize and General Goal Delivery begun and held at Cambridge within and for the County of Middlesex on the first Tuesday of August last the Grand Jurors for us for the Body of our said County of Middlesex did on

\* An error. It should have been "eighteenth."

their Oath Present That Phillis a Negro woman of Charlestown in the County of Middlesex Spinster Servant of John Codman late of Charlestown aforesaid Gentleman, not having the fear of God before her Eyes, but of her malice forethought contriving to deprive the Said John Codman her Said master of his life and him feloniously and Traiterously to kill and murder, she the said Phillis on the thirteenth day of June last at Charlestown aforesaid in the dwelling house of the said John there did of her malice forethought willfully feloniously and Traiterously put a Deadly Poison called Arsenick into a Vial of Water and thereby did then and there Poison the same water — and That the said Phillis knowing the water aforesaid to be so poisoned did then and there feloniously willfully traiterously and of her malice forethought put one spoonfull of the same water so poisoned into a pint of the said John's watergruel and thereby poison the same watergruel — and that the said Phillis did then and there of her malice forethought feloniously willfully & traiterously in manner as aforesaid poison the watergruel aforesaid, with a felonious and traiterous Intent and design that the said John her said master then being should then and there eat the Same Watergruel so poisoned and thereby be Poisoned killed and murdered. And that one Elizabeth Codman not knowing the watergruel aforesaid to be so poisoned then and there Innocently gave the Same Watergruel so poisoned as aforesaid to the Said John to eat, and that the Said John then and there being the said Phillis' master and being altogether Ignorant of the watergruel aforesaid's being poisoned as aforesaid and suspecting no Evil did then & there eat the same watergruel so poisoned as aforesaid & that the said Phillis then and there was feloniously and traiterously present with the said Elizabeth & John knowing of & consenting unto the s<sup>d</sup> Elizabeth's giving him the said John the watergruel afores<sup>d</sup> so poisoned as aforesaid & his eating the same as afores<sup>d</sup>. And that the said John by means of his eating the watergruel aforesaid so poisoned as aforesaid there Languished for the space of Fifteen hours & then at Charlestown aforesaid died of the Poison afores<sup>d</sup> given him as aforesaid — and so the Jurors aforesaid upon their Oath said that the said Phillis did at Charlestown aforesaid of her malice forethought in manner and form aforesaid willfully feloniously and traiterously poison kill & murder the said John Codman her Said master against our Peace Crown & Dignity, and The Jurors aforesaid upon their Oath further present That Mark a Negroman of Charlestown aforesaid Labourer and Servant of the said John Codman before the said Treason and murder aforesaid committed by the said Phillis in manner and form aforesaid did at Charlestown aforesaid on the twentieth day of June last of his malice forethought (the said Mark then being Servant of the said John Codman) feloniously & traiterously advise and incite procure & abet the Said Phillis to do & commit the said Treason & murder aforesaid against our peace crown & Dignity (as in Said Indictm<sup>t</sup> is at large Set forth) upon which Indictment the said Phillis and Mark were Severally arraigned and upon their arraignment Severally pleaded not Guilty and for Tryal put themselves on God and the Country, and Whereas the said Phillis

& Mark at our Court aforesaid were each of them convict of the crime respectively alledg'd to be committed by them as aforesaid by the Verdict of twelve good & lawful men of our Said County and were by the consideration of our Said Court adjudged to Suffer the Pains of Death therefor; as to us appears of Record Execution of which said Sentence doth still remain to be done we command you therefore that on Thursday the Eighteenth day of September instant between the hours of one & Five o'Clock in the day time you cause the said Phillis to be drawn from our Goal in our County of Middlesex aforesaid (where she now is) to the place of Execution and there be burnt to Death & also that on the Same day between the hours of one & five of the Clock in the day time you cause the Said Mark to be drawn from our Goal in our County of Middlesex aforesaid (where he now is) to the place of Execution & there be hanged up by the Neck until he be dead, & for so doing this shall be your Sufficient Warrant — Hereof fail not; and make Return of this writ with your doings therein into the Clerks Office of our Said Court as soon as may be after you have Executed the Same Witness Stephen Sewall Esq<sup>r</sup> at Boston the sixth day of September in the Twenty ninth Year of our reign Annoque Domini 1755 —

By Order of Court

NATHANIEL HATCH *Cler*

MIDDLESEX. ss — September the 18<sup>th</sup> 1755.

I Executed this warrant as above directed, by causing Phillis to be burnt to Death, and Mark to be hang'd by the neck until he was dead, between the hours of one and five a Clock of Said day —

RICH<sup>d</sup> FOSTER *Sheriff*

It is worthy of observation that no such process as a formal warrant was required for a capital execution by the laws of England. In the King's Bench, the prisoner was committed to the custody of the marshal at the beginning of the trial, and an award of judgment upon the record was all the authority that that officer had for the execution. Formerly, it was customary in courts of oyer and terminer, and of jail delivery, to authorize the execution by a precept under the hands and seals of three or more commissioners, of whom one, at least, should be of the quorum; but this custom had become obsolete at the time of this trial, and only a calendar, or abstract of the record, subscribed by the judge, was put into the hands of the sheriff for this purpose; and such is the practice in England, I presume, to this day.

Even Blackstone, who is so blind to many gross imperfections in the jurisprudence of his native country, is forced to remark, in view of the looseness of procedure in capital cases, —



“It may certainly afford matter of speculation that in civil causes there should be such a variety of writs of execution to recover a trifling debt, issued in the king’s name, and under the seal of the court, without which the sheriff cannot legally stir one step; and yet that the execution of a man, the most important and terrible task of any, should depend upon a marginal note.”\*

The courts and people of New England were always more mindful of the sacredness of human life than those of other nations, save, perhaps, the little community of the Netherlands. They also attached great importance to the formal proceedings by which the ends of justice were reached in criminal cases. This is well illustrated by an incident that is recorded relative to the action of the judges of the Superior Court of the Province when, after the conviction of Richardson for the murder of the boy Sneider, in 1770, it became evident to them that the cause of justice required that they should intercede to prevent his execution. They were long in doubt as to the sufficiency of a pardon obtained from the crown through the recommendation of the Lieutenant-Governor upon their certificate of its propriety, the only evidence of the pardon being its insertion in the Newgate Calendar. Hutchinson relates that “they were at length satisfied; and the prisoner having been brought into court early in the morning, when scarcely anybody but the officers of the court were present, pleaded his Majesty’s pardon, and was discharged, and immediately absconded.”†

But, to proceed with a definition of the crime committed by these negroes, and a more particular account of the punishment for petit treason:—

By the statute 25 Edw. III., this crime, which had had a wider application, was restricted to three classes of cases: 1, where a servant killed his master or mistress; 2, where a wife killed her husband; 3, where a clergyman killed his prelate, or the superior to whom he owed canonical obedience. The sentence in the case of a woman was, that she be burned to death, and in the case of a man, that he be drawn to the place of execution and there hanged by the neck until he be dead.‡ To mitigate the sufferings of felons at the

\* Comm. book iv. ch. 32, p. 403.

† Hist. Mass. Bay, vol. iii. p. 287, n.

‡ By stat. 22 Hen. VIII. ch. 9, a person of either sex, who was convicted of murdering another by poison, was to be boiled to death, and the offence was, by the same act, declared high treason; but this act was repealed by 1 Edw. VI. ch. 12, after several executions under it, including that of Margaret Davy, who poisoned her mistress. Though by the common law poisoning was deemed a most atrocious circumstance, it did not alter the punishment of the principal crime involved. The law considered only the crime, and not the manner in which it was committed.

stake, the executioner usually fastened one end of a cord to the stake, and bringing this cord around the neck of the woman, pulled it tightly the moment the torch was applied, and continued the strain until life was extinct, which, unless the cord was sooner burnt asunder, generally happened before the condemned had suffered much from the intensity of the flames.

In cases of high treason, other barbarities were practised upon the bodies of the criminals; but these were frequently, and in cases of persons of distinction, generally, remitted. Indeed, even the hanging was dispensed with in these latter cases; and hence we read of the execution of great prisoners of state, male and female, by beheading, which, strictly, is a manner of death unknown to the laws of England, except as an incident to the principal penalty by hanging or burning. After the hanging, the body, according to rule, was to be cut down (if possible, while yet alive), to be eviscerated, then beheaded, and the trunk and limbs divided into four parts, to be disposed of as the sovereign should order. By special writ, under the privy seal, all these circumstances, except decapitation, were, as I have already said, usually omitted.

All male persons convicted whether of high treason or of petit treason were, unless specially exempted in the manner I have stated, *drawn* to the place of execution. This was originally an ignominious incident of the terrible penalty, and required that the criminal should be rudely pulled along over the ground, behind a horse; later, however, a hurdle or wicker frame, or a sledge, — that is, as we call it, a sled, — was used, either from motives of humanity, or in order to prolong the life of the traitor through subsequent stages of the punishment. Properly, however, women were not to be drawn in cases of petit treason\* until 1790, after the repeal of the law for burning, for which drawing and hanging were substituted.

Another incident to this punishment, though not peculiar to it, since it applied to all atrocious felonies, was the gibbeting, or hanging in chains. This was no part of the sentence, but was performed in accordance with a special order or direction of the court, given, probably, in most cases, verbally to the sheriff. After execution, the body of the felon

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\* Hale, P. C., i. 382; ii. 397. This was the better opinion, though the law was uncertain. It will have been noticed that though the judgment against Phillis was that she *go* to the place of execution, the warrant required that she be *drawn* thither according to the practice in England, which, though sustained by the current of authorities, is not sanctioned by the statutes referred to, nor the cases cited by the commentators, and would have been challenged, probably, if the cruelties incident thereto had not become obsolete. Comp. Hale, *ut supra*, with Staundf. 182; Lamb. Eiren., 570; 3 Inst. 211; Hawk. P. C., ii. ch. 48, § 6; Black. Comm. iv. 204; and Hale P. C. i. 351 · 5 · 299.

was taken from the gallows and hung upon a gibbet conveniently near the place where the fact was committed, there to remain, until, from the action of the elements, or the ravages of birds of prey, it disappeared. Of the object of this ghastly feature of capital punishment it is alleged, "besides the terror of the example," "that it is a comfortable sight to the friends and relations of the deceased"; but the obviousness of this reason is somewhat lessened by the doubt in which we are left as to which deceased person, the criminal or his victim, is referred to. In the case of Mark it is noticeable that no sentence to the gibbet appears in the record, and I have found no order for it, or mention of it, in the papers on file.

Phillis and Mark were executed at the usual place of execution in Cambridge; and the following account of the affair is taken from the Boston "Evening Post," of Sept. 22, 1755:—

"Thursday last, in the Afternoon, *Mark*, a Negro Man, and *Phillis*, a Negro Woman, both Servants to the late Capt. *John Codman*, of *Charlestown*, were executed at *Cambridge*, for poisoning their said Master, as mentioned in this Paper some Weeks ago. The Fellow was hanged, and the Woman burned at a Stake about Ten Yards distant from the Gallows. They both confessed themselves guilty of the Crime for which they suffered, acknowledged the Justice of their Sentence, and died very penitent. After Execution, the Body of *Mark* was brought down to *Charlestown* Common, and hanged in Chains, on a Gibbet erected there for that Purpose."

Frothingham, in his "History of Charlestown,"\* quotes this item from the "Post," and adds, from Dr. Josiah Bartlett's account of Charlestown,† that "the place where Mark was suspended in irons was on the northerly side of Cambridge Road, about one fourth of a mile above our peninsula." He also adds, from the same authority, that "Phebe, who was the most culpable," became evidence against the others, and that she was transported to the West Indies.

It is very likely that Phebe was transported, as described by Dr. Bartlett, but there is nothing on record to show that she was used as a principal witness. Indeed, the answers of Phillis and Mark on their examination are mutually recriminative, and amount to a plenary confession of the crime of each. Besides, as neither the governor nor the court had any

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\* Page 264.

† 2 Mass. Hist. Coll., vol. ii. p. 166, and note.

authority to grant a pardon for murder,\* it is not likely that any favor was shown to her in accordance with a promise from either, nor is there any evidence that any lenity was actually extended to her, except the negative circumstance that she was not included in the indictment.

This completes the narrative of this remarkable case. The body of Mark is said by Dr. Bartlett to have remained on the gibbet "until a short time before the Revolution." Certain it is that when Dr. Caleb Rea passed through Charlestown on the first day of June, 1758, on his way from Danvers to join the regiment, of which he had been chosen surgeon, in the expedition against Ticonderoga, he found the body hanging, and, having examined it, recorded in his journal that "his [Mark's] skin was but very little broken, although he had hung there near three or four years." †

Finally, another patriot, — Paul Revere, — in describing his famous ride on the 18th of April, 1775, on a still more important errand, says, "After I had passed Charlestown Neck, and got nearly opposite where *Mark was hung in chains*, I saw two men on horseback under a tree," ‡ &c.; thus alluding to the site of the gibbet as a place well known at that time, — as undoubtedly it was, to all the country round.

I have said that this is the only case of petit treason to be found in our records. There was, indeed, an earlier case in which the penalty of death by burning was inflicted; but in regard to that case there is no suggestion anywhere to my knowledge that the crime of petit treason had been committed, nor any allegation to that effect in the charge or indictment, nor even a hint that any life was lost by the misconduct of the condemned.§ This was the case of Maria, a negress,

\* See Hutchinson's Hist. Mass. Bay, vol. iii. p. 287, n. Instances of pardons and reprieves occur in our judicial history, but they were invariably granted in the name of the king, by the commander-in-chief; and, if for a graver offence than manslaughter, it seems to have been understood that a pardon was not to be granted without previous express directions from the king. This was in compliance with a clause in the royal instructions, issued to all the governors, by which they were enjoined not to remit any fines or forfeitures above £10 in amount, or to dispose of escheats, without the royal sanction; forfeiture of lands and chattels being a consequence of attainder upon conviction of the higher class of felonies. The commission to Andros expressly excepted treason and murder from the offences which he was authorized to pardon.

† Hist. Coll. Essex Inst., vol. xviii. p. 88, n.

‡ Letter of Colonel Revere to Cor. Sec. of Mass. Hist. Soc., Jan. 1, 1798: 1 Mass. Hist. Coll., vol. v. p. 107.

§ Although the record contains no allegation of loss of life, Increase Mather states in his diary, under date of Sept. 22, 1681, that a child was burnt to death in one of the houses set on fire by this negress. Even if this were true, it is not probable that the relation of master and servant subsisted between the deceased and Maria, and neither this relation, nor the fact of treason, is averred in the indictment. See Mass. Hist. Soc. Proc., vol. iii. p. 320.

who was executed at Roxbury in 1681. Perhaps it will be well to give the story of this case as it appears on the records of the Court of Assistants.\*

“Marja † Negro Servant to Joshua Lambe of Roxbury in the County of Suffolk in New England being presented by the Grand Jury was Indicted by the name of Marja Negro for no<sup>t</sup> having the feare of God before hir eyes & being Instigated by the divil at or upon the eleventh Day of July last in the night did wittingly willingly & feloniously set on fier the dwelling house of Thomas Swann of sd Roxbury by taking a coale from vnder a still & carrjed it into another Roome and layd it on floore neere the doore & presently went & crept into a hole at a back doore of thy master Lambs house & set it on fier also taking a liue coale betweene two chips & carried it into the chimbe<sup>r</sup> by which also it was Consumed as by y<sup>r</sup> Confession will appeare Contrary to the peace of our Soueraigne Lord the king his croune & dignity the lawes of this Jurisdiction in that Case made & prouided tittle firing of houses = The prisoner at the barr pleaded & acknowledged himselfe to be Guilty of ye fact. And accordingly the nex<sup>t</sup> day being Again brought to the Barr had sentenc of death pronnonc<sup>t</sup> ag<sup>t</sup> hir by the Honno<sup>ble</sup> Gouñor that she should Goe from the barr to the prison whenc she came & thence to the place of execution & there be burn<sup>t</sup> = Y<sup>e</sup> lord be mercifull to thy Soule sd y<sup>e</sup> Gov<sup>v</sup>.”

The case was capital under the act referred to in the record. The act reads as follows : —

Burning Houses. And if any person of the age aforesaid, [16 years and upwards] shall after the publication hereof, wittingly and willingly, and feloniously, set on fire any *Dwelling House, Meeting House, Store House*, or shall in like manner, set on fire any *out-House, Barn, Stable, Leanto, Stack of Hay, Corn or Wood*, or any thing of like nature, whereby any *Dwelling House, Meeting House or Store House* cometh to be burnt, the party or parties vehemently suspected thereof, shall be apprehended by Warrant from one or more of the Magistrates, and committed to Prison, there to remain without Baile, till Capital. the next Court of Assistants, who upon legal conviction by due proof, or confession of the Crime, shall adjudge such person or persons to be put to death, and to forfeit so much of his Lands, Goods or Chattels, as shall make full satisfaction, to the party or parties damnified. [1652.] ‡

It will be observed that the law prescribes no such punishment as was ordered by the Assistants, and how the court

\* Boston, Sept. 6, 1681.

† I have followed Secretary Rawson in his peculiar use of the letter j. See many similar instances in the Mass. Colony Records.

‡ Mass. Colony Laws, ed. 1672, p. 52.

were satisfied of the legality of their sentence is to me inexplicable, except upon the possible claim that they might rightfully exercise the expansive discretion which they applied to the case of the first Quakers, and so supply a deficiency in the ordinances of the General Court, by administering the *lex talionis*\* in this particular instance as a necessary terror to evil-doers.

The public opinion which permitted the colonial magistrates to exercise, unchallenged, a discretion not given to them by positive law, as in this case and that of the first Quakers, and in the instance of their conviction of a capital crime, of Tom, the Indian, in 1674,† of whose guilt the jury were doubtful, cannot be deemed to have enlarged their authority, by *custom*, without a perversion of language and a disregard of fundamental distinctions relative to the nature and source of law.‡

Two other negroes who were suspected of complicity with Maria were ordered to be transported. The record is as follows :—

“Chessaleer negro  
Sentence”

Chessaleer negro servant to Tho. Walker brickmaker now in Goale on suspicion of Joyning w<sup>th</sup> Marja Negro in Burning of D<sup>r</sup> Swans' & Lambs houses in Roxbury in July last The Court on Consideration of the

\* Exodus xxi. 25. “In all criminall offences, where the law hath prescribed no certaine penaltie, the judges have power to inflict penalties, according to the rule of God's word.”—Declaration of the General Court: Hutch. Coll. Papers, p. 207. And see the first article of the Colonial “Liberties,” in Mass. Hist. Coll., vol. viii. p. 216.

† Records of the Court of Assistants, 1674, p. 14.

‡ By the stat. 8 Hen. VI. ch. 6, the burning of houses, after a threat to do so if money be not paid, &c., was made high treason, and the incendiary suffered as any other traitor; that is, if a woman, she was burned to death. But this statute was repealed in the reign of Edward VI., as regards the treason, and the offence remained felony as at the common law, and punishable by hanging only.

That mistaken notions as to the nature of penalties to be inflicted in criminal cases, and as to the authority of the bench to impose unusual punishments, were not solely entertained in this distant colony, and among men not bred to the law, may be shown by many instances in the English law-books. One of the most notable is Sir Edw. Coke's reference to the case of Peter Burchet, a prisoner in the Tower,—who slew his keeper with a billet of wood, which drew blood,—as an authority for inflicting the additional punishment of cutting off the hand (under the stat. 33 Hen. VIII.) in the case of murder perpetrated in the king's palace, when attended with bloodshed. In Elderton's case, Chief Justice Holt, whose habits of thorough research were not less remarkable than his absolute fairness and honesty, said, “I have searched for the case cited [as Jones's case] about killing a man in the Tower. It is Burdelt and Muskett's case. Being dissatisfied with my Lord Coke's report of it, therefore I sent for the record, . . . and there is judgment of death given, but no judgment that his right hand should be cut off. It is indeed so related in Stowe's Chronicle, and in fact his hand was cut off, but there was no judgment for it.” Compare 3 Inst., ch. 65 (p. 140 f) with 2 Ld. Raym., 978, 982.

Case Judged it meet to orde<sup>r</sup> that he be kept in prison till his master send him out of the country & then discharge y<sup>e</sup> charges of Imprisonment wch if he refuse to doe aboute one moneth the country Treasurer is to see it donne & when y<sup>e</sup> chardges be defrayd to returne the ouerplus to y<sup>e</sup> sd Walker

James Pemberton's negro sentence

The like Judgment & sentenc was declard against Jame<sup>s</sup> Pembe<sup>r</sup>ton's negro in all respects as ag<sup>t</sup> Chessaleer negro &c."\*

Still another negro was convicted, at the same term of the court, of the crime of arson, and ordered to be hanged, and afterwards consumed to ashes in the same fire with Maria, as appears by the following record:—

“Jack negro servant to M<sup>r</sup> Samuel Woolcot of Weathersfield thou art Indicted by the name of Jack Negro for no<sup>t</sup> hauing the feare of God before thy eyes being Instigated by the Divill did at or upon the foureteenth day of July last 1681 wittingly & feloniously sett on fier Leiftenat W<sup>m</sup> Clarks house in North Hampton. by taking a brand of fier from the hearth and swinging it vp & doune for to find victualls as by his confession may Appaere Contrary to the peace of ou<sup>r</sup> Soueraigne Lord the King his Crowne & dignity the lawes of God & of this Jurisdiction in that case made & prouided title firing of houses page (52) to wch Indictment at the barr he pleaded Not Guilty, & Affirmd he would be trjed by God & the Country and after his Confessions &c were read to him & his ownig thereof were Comitted to the Jury who brought him in Guilty and the nex<sup>t</sup> day had his sentence pronounc agt him by the Gouvernor that he should goe from the barr to the place whence he came & there be hang<sup>d</sup> by the neck till he be dead & then taken doune & burnt to Ashes in the fier w<sup>th</sup> Marja Negro = The Lord be mercifull to thy soule sajd the Gouverno<sup>r</sup>” †

Jack negro Indicted & sentence

There was some excuse for the latter part of this sentence, for since the offence was an atrocious felony, such as in England would subject the offender to an infamous punishment, it seemed proper to attach something more of ignominy to his sentence than the mere execution by hanging.

Our forefathers of the colonial period regarded the Mosaic law as of too sacred obligation to be impaired in the least de-

\* Record of the Court of Assistants, *ubi supra*, pp. 138, 139.

† *Ibid.*

gree; much more to be expressly contravened by the courts of justice in respect to the command, —

“And if a man have committed a sin worthy of death, and he be to be put to death, and thou hang him on a tree, his body shall not remain all night upon the tree, but thou shalt in any wise bury him that day; (for he that is hanged is accursed of God;) that thy land be not defiled, which the Lord thy God giveth thee for an inheritance.”\*

— they, therefore, by an ordinance passed in 1641, had required that the body of every executed criminal should be buried within twelve hours after death, except in cases of anatomy, which prevented the possibility of hanging in chains after the English fashion; and the only way in which they could set a mark of infamy upon the deceased criminal, without a breach of the colonial ordinance as well as of the divine law, was to burn the body.†

But this tendency to a strict adherence to the laws of Israel disappeared early in the provincial period, under the operation of the same causes which led to the abandonment of those rugged metaphrases of the Psalms of David, and of the song of Deborah and Barak, &c., contained in the Bay Psalm-Book, for the smoother though less literal version of Tate and Brady and the presumptuous “Imitations” of Dr. Watts. When, therefore, under the new charter the offence called for it according to the custom of England, the gibbet was erected; and though the occasions for its employment were very rare, the report of sundry instances of its use has come down to us, as in the case of the pirates whose bodies hung in chains, from time to time, on the now vanished Bird Island in Boston Harbor, a locality as near the place where the fact was committed as could conveniently be used. I confess I find it impossible to understand whence the provincial judges claimed to derive their authority for ordering the bodies of criminals to be hung in chains. We have seen that, even if our fathers brought with them the right to exercise this authority, they soon enacted provisions entirely inconsistent with the practice; and I am not aware of any subsequent act of parliament, extending to the Colonies, that restored the

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\* Deut. xxi. 22, 23.

† The ordinary punishment for all capital felonies during the colonial régime seems to have been simply hanging. Heretics and witches were subjected to no severer penalty; and in 1674, Robert Driver, who was convicted of murdering his master, Robert Williams of Piscataqua, and who thus incurred the penalty for petit treason, was sentenced to be “hanged by the neck until he be dead.” — See Records of the Court of Assistants.



authority ; and certainly there was no law of the Province to that effect.

I ought not to dismiss this subject without adding something to the brief allusion already made to the comparative mildness of the laws of Massachusetts in respect to capital punishment. The execution of Mark and Phillis took place just about the time that Blackstone was delivering his lectures at Oxford, which have since given him an enduring and world-wide fame as a commentator on the laws of England. This elegant defender and apologist for English laws and customs, in his commentaries, admits, seemingly with reluctance and regret, that there then existed on the statute-books of England no less than one hundred and sixty capital offences. At that time the number of capital offences in Massachusetts was less than one-tenth this number, if we exclude those made so by the acts relating to military offenders in actual service, and felonies on the high seas, and a few others, which, like the latter, were created by including among capital crimes certain offences which, though theretofore exempt from the death penalty by special circumstances and technical rules, had always been capitally punished when committed under other and not less justifiable circumstances.

Said Isaac Backus, whom I find to be a very trustworthy authority, in a letter to this Society, under date of Feb. 20, 1794, "There has not been any person hanged in Plymouth County for above these sixty years past." \* More than a century earlier, John Dunton mentions a sermon of Mather's, preached at the execution of "Morgan, the only person executed in that country [Massachusetts] for near seven years." † He must, however, I think, have forgotten the case of Maria, the negro woman.

Again, when the English riot act (1 Geo. I. stat. 2, ch. 5) was substantially adopted by the Province in 1751, the legislature studiously avoided the harshness of the former act by substituting forfeiture of lands and chattels, and whipping and imprisonment, for the death penalty. ‡

In 1761 Governor Bernard vainly labored with his utmost zeal to secure the passage of an act or acts making it felony, without benefit of clergy, to forge public and private securities or vouchers for money, or to coin or counterfeit the cur-

\* 1 Mass. Hist. Coll., vol. iii. p. 152.

† *Ibid.*, 2d series, vol. ii. p. 102.

‡ Compare provincial statute 1750-51, ch. 17 (Prov. Laws, vol. iii. p. 540), with the act of parliament referred to.

rent money of the Province. He sent a special message upon the subject to the Assembly, in which he stated :—

“In regard to the popular prejudices against capital punishments which have hitherto prevailed in this country, I shall only say that at present they are very ill-timed. Whilst the people of this country lived from hand to mouth, and had very little wealth but what was confined among themselves, a simple system of laws might be proper, and capital punishments might in a great measure be avoided; but when by the acquisition, diffusion, and general intercourse of wealth, the temptations to fraud are abundantly increased, the terrors of it must be also proportionably enlarged; otherwise if, through a false tenderness for wicked men, the laws should not be sufficient to protect the property of the honest and industrious, the rights of the latter are given up to the former, and the undue mercy shown to the one becomes a real injury to the other. To instance this, I need only say that I have no doubt but that if these crimes had been capital some years ago, and usually punished as such, they would not have been committed at all at the present time.”

The Governor's opinion, however, was not borne out by the experience of the British government in its dealings with crime. There, it was made a capital felony to steal in a dwelling-house to the amount of 40s., or, privately, in a shop, goods to the value of 5s., or to counterfeit stamps that were used for the sale of perfumery, or such as were used for the certificates of hair-powder; and yet, notwithstanding this severity, all who considered the subject thoughtfully found that the increase of capital crimes more than kept pace with the increase of laws creating them; and this became so alarmingly evident that at length the conservative opposition to reform was overborne, and Sir Samuel Romilly and his coadjutors began those changes which have continued in the same direction to the present day. Before the reform was established, however, executions became so frequent that it was not uncommon for citizens to avoid certain parts of London and its environs on account of the intolerable odor, there, of decaying human bodies, hung in chains by the highways and before the doors of citizens.

Still the judges rode their circuits, leaving briefly minuted “calendars” in the hands of the executioners, who erected close behind them the gallows and the gibbet as monuments of their dispensation of “justice.” Barristers banded repartees and cracked jokes over good dinners, and serjeants hobnobbed with their brethren of the bench and of the coif, apparently unconcerned at the responsible part they were

enacting in this awful drama; while the poor rabble put on their best attire on the days of execution, and liberally patronized the vendors of cakes and ale who, near the gallows, erected booths as on other gala days,—many of the spectators, no doubt, thinking that it would not be so bad a thing, after all, if it came their turn next to better their desperate condition by swinging on the newly contrived gallows, on which ten criminals could be hanged together.\*

Alas! well may we ask with astonishment if it is possible that such a state of society really existed in the England of Hannah More, of Sir William Jones and Edmund Burke,—the land throughout which the Wesleys were preaching and singing to eager multitudes of the free grace and abounding mercy of God; where the pious Cowper was pleading for the relief of “insolvent innocence,” and Clarkson and Wilberforce and Granville Sharp were rousing the public mind to the evils of slavery in distant colonies!

The case of petit treason which we have been considering occurred nine years before Beccaria startled all Europe with “the code of humanity,”—his treatise on crimes and punishments; yet had he known of our experience in this Province, he could have pointed to Massachusetts as the strongest practical illustration of the truth of his theory, that it is not necessary to multiply extreme penalties in order to prevent crime, but that we are to look for the amelioration of manners and the diminution of public and private wrongs to the mental and moral education of the people rather than to the terrors of the law.

In 1777, when the Revolutionary War was beginning to assume its gravest aspect, and when the hopes of traitors were reviving, the barbarous incidents of the punishment for treason were abolished by the legislature of Massachusetts, and this crime was made punishable simply by hanging. Eight years later the distinction between petit treason and murder was abolished,—an improvement of the criminal code in which we were followed by Great Britain five years later still.†

\* See a picture of the new gallows, in the illustrated “Newgate Calendar.”

† The Massachusetts act is as follows:—

“Whereas it does not appear reasonable any longer to continue the distinction between the crimes of murder and petit treason:

“Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing of this act, in all cases wherein heretofore any person or persons would have been deemed or taken to have committed the crime of petit treason, such person or persons shall be deemed and taken to have committed the crime of mur-

So that it was possible that our good city of Boston might have been disgraced by one of these horrible executions as late as 1785, and that a delicate woman could, with all the solemnity of legal forms, have been publicly burned to death at Tyburn as late as 1790.

In point of fact such executions occurred in England long after the burning of Phillis. A memorable case is that of Anne Beddingfield, who was burned for petit treason at Rushmore, near Ipswich, in 1763.

In 1813 the last of the minor infamous punishments, such as whipping, branding, the stocks, the pillory, cutting off ears, slitting noses, boring tongues, &c., were abolished in this Commonwealth.

As for hanging in chains, I cannot find when the custom was discontinued in Massachusetts. I do not remember to have read of an instance of this kind since the adoption of the Constitution, though I have made no special search for such an instance. Some of my hearers may be able to refer me definitely to the time and reason of the change.

In England, by the stat. 25 Geo. II., ch. 35 (1752), which was three years before the execution at Cambridge, provision was made that hanging in chains should be included in the sentence to be pronounced by the court against all persons convicted of murder, and that the sentence should be executed on the next day but one after it was pronounced. This was changed by the stat. 9 Geo. IV., ch. 31, so as to give the court a discretion to order hanging in chains or dissection; and the next year this act was extended to Ireland. By the stat. 2 & 3 Wm. IV., ch. 75, the court was authorized to order the body to be hung in chains or buried; and, finally, by the stat. 4 & 5 of Wm. IV., ch. 26 (July 25, 1834), all laws requiring bodies to be hung in chains were repealed.

No such sudden punishment as that prescribed by the act of parliament of the 25 Geo. II., could be legally inflicted here, — at least during the colonial period; for the colonial ordinance of 1641 required that four days at least should intervene between judgment and execution.

The only barbarous treatment of the bodies of criminals authorized by law in Massachusetts since the adoption of the Constitution, that I am aware of, was prescribed by the act of 1784, to discourage the practice of duelling, which revived some of the provisions of a law of the Province, passed in

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der only, and indicted and prosecuted to final judgment accordingly; and the same punishment only shall be inflicted as in the case of murder. — [This act passed March 16, 1785.]”

1728, denying duellists the right to be buried in a coffin, and requiring the coroner or executioner to see that their bodies be interred near the place of execution, or in the public highway, with a stake driven through them.\*

Now, happily, capital punishment is restricted in this Commonwealth and in England to two offences only; and while, here, even high treason is punishable simply by imprisonment, in England, strong efforts have been repeatedly made, and recently with a fair prospect of ultimate success, to induce parliament to imitate our example and take away the death penalty from this the highest crime known to the common law.

Mr. JENKS exhibited a contemporary broadside ballad on the execution of these slaves, belonging to the Bostonian Society, whose officers had kindly lent it to him for this purpose.

Mr. WINSOR presented one of a few copies of an engraving of a new map of New Sweden made by Professor Gregory B. Keen, Secretary of the Pennsylvania Historical Society, who has compiled it from material in the archives at Stockholm, and from local remains on the Delaware. It is a much more accurate presentation of the geography of the Swedes' colony on the Delaware than any ever before made.

Mr. GOODELL, in presenting to the members photo-lithographs of the court seals used in Massachusetts during the provincial period, made the following remarks: †—

No attempt is known to have been made to preserve the shapes and devices of the seals of the colonial and provincial courts of justice. As the use of such seals was made imperative by law, and as they were essential to the proper authentication of writs and other processes, they are of such importance, both juridically and historically, as to make the labor of restoring them profitable, as well as deeply interesting, and to entitle a full and exact account of them to an honorable place in our Proceedings.

Whether the account which follows, and the accompanying lithographs, are thus deserving, depends upon the degree of thoroughness and accuracy attained by the author in his investigations, and also upon his skill—as a tyro, rather than

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\* Compare act of June 30, 1784, with Prov. Stat. 1728-29, ch. 15: Prov. Laws, vol. ii. p. 516.

† The Society is indebted to Mr. Goodell for the photo-lithographs of these seals here inserted. — Eds.

an amateur—in the art of pen-and-ink drawing. Of these others must judge.

Of the original stamps, or mounted dies, used by the clerks to impress these seals, only four are known to be in existence; namely, those of the Superior Court of Judicature, of the common-law county-courts of Plymouth and Essex, and of the Probate Court of Plymouth County. The Essex county-courts seal dates back, certainly, to the time of Andros, as appears by its impression in wax on the original printed writs of *capias* and summons returnable to the Inferior Court of Common Pleas for that county in 1687.

No. 1 of the accompanying lithographic representations of seals is, as the abbreviated Latin inscription signifies,\* the seal of the Superior Court of Judicature already referred to. This court was first erected by the act of Nov. 25, 1692,† but, having ceased to exist by reason of the disallowance of this act, by the Privy Council,‡ it was revived, and continued to the end of the May session of the General Court of 1697, by the act of Oct. 3, 1696,§ when it was reconstituted under the name of the “Superiour Court of Judicature, Court of Assize, and General Goal Delivery.” This last act,|| and the reviving act of 1696, were disallowed by the Privy Council, Nov. 24, 1698. Upon receiving notice of this last disallowance, Governor Bellomont, early in the May session of the General Court of 1699, urged the Assembly to take immediate steps to re-establish the court, and, accordingly, another act was passed¶ erecting a court with the same title. Thus organized, it continued in existence until the adoption of the Constitution.

The jurisdiction of the Superior Court was coextensive with the territory of the Province, and it had “cognizance of all pleas, real, personal, or mixt, as well all pleas of the Crown, and all matters relating to the conservation of the peace and punishment of offenders, as civil causes, or actions between party and party, and between his Majesty and any of his subjects, whether the same do concern the realty and relate to any right of freehold and inheritance, or whether the same do concern the personalty and relate to matter of debt, contract, damage, or personal injury; and also all mixt actions which concern both realty and personalty brought before them by

\* *Sigillum Curie Superioris ex Provincia Massachusetts-Bay, Norwæ Angliæ.*

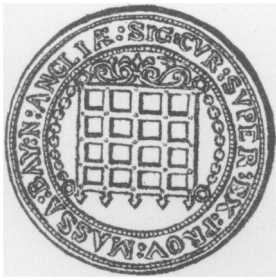
† 1692-3, ch. 33, § 6: Province Laws, vol. i. p. 78.

‡ Aug. 22, 1695. The date of the letter communicating official notice of the disallowance is Dec. 26, 1695.

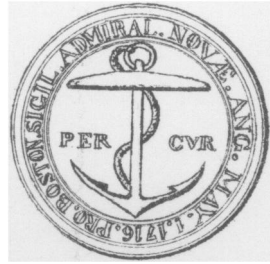
§ Province Laws, 1696, ch. 5.

|| *Ibid.*, 1697, ch. 9.

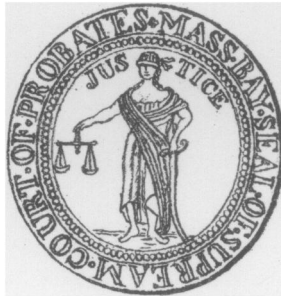
¶ *Ibid.*, 1699-1700, ch. 3.



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appeal, review, writ of error, or otherwise, as the law directs; and, generally, of all other matters, as fully and amply, to all intents and purposes, whatsoever, as the courts of King's Bench, Common Pleas, and Exchequer within his majesty's kingdom of England have or ought to have."\*

All these acts required that all the processes and writs of the court should issue out of the clerk's office, either "under the seal of said office" or "under the seal of said court." Accordingly, we find that a seal of the design here depicted was used from the first organization of the court until the period of the Revolution, when it was discontinued, and other miscellaneous devices were used; such as an antique head, and, occasionally, what appears to be the head of Charles Townshend, and, again, the arms of the Cushings, and of other families, and St. George and the Dragon,—very similar to, if not identical with, the seal shown in No. 23,—though this last device does not appear to have been used after the Declaration of Independence. The use of these miscellaneous seals was continued until about 1785, when the present seal,—issuing from a cloud, a hand holding a pair of scales in equipoise, with the motto, "*Nulli negabimus, nulli vendemus justitiam*,"—appears to have been adopted, although I have been unable to find any record of its adoption.†

I have mentioned the fact that the original seal of the Superior Court is still in existence. Of this fact I was not aware until after my drawings had gone to the lithographer, when, while conversing upon the general subject of court seals, in the presence of Mr. John Ward Dean, that modest and accomplished antiquary put into my hands the veritable original, which had been intrusted to his keeping by an officer of the Dorchester Antiquarian Society, which is the owner or depository of this interesting treasure. The mingled emotions of surprise, delight, and veneration with which I regarded this almost miraculously preserved relic of provincial times—the faint and broken impressions of which I had for more than twenty years made the subject of desultory but deeply curious study with a view to its perfect restoration—can be better

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\* Province Laws, 1699–1700, ch. 3, § 1.

† I found in the possession of the late Geo. W. Jenks, clerk of the courts for Nantucket, an ancient die,—which had been recut on the back, for a notary public,—bearing the device of an Indian facing to the right and holding a bow, with the inscription, "S. J. COURT. MASSACHUSETTS." This suggested the interesting inquiry, which I am unable to answer, whether or not such a seal was adopted by the Supreme Judicial Court before the present seal. A careful, though not exhaustive, search among the files of this court has disclosed no evidence of its use.



imagined than described. This was the seal that—through what unknown vicissitudes during nearly two centuries—had come to my hand from the hand of Jonathan Ellatson, the first clerk. With this instrument the first original process that issued from the Superior Court was sealed, and this identical seal was impressed upon the Writs of Assistance. Stoughton, the first chief justice in the days of William and Mary, and Peter Oliver, the last chief justice under George III., have looked down upon this bit of wood and silver in the hands of the earlier or later clerks; and so, doubtless, have good old Samuel Sewall, and his nephew, Stephen, and the two Lyndes,—father and son,—and the learned Edmund Trowbridge and William Cushing. Newton and Bullivant, no doubt, and Overing and Auchmuty, Read and Pratt, Jeremy Gridley and James Otis, John Adams and Josiah Quincy, have toyed with this same little instrument while chatting with the clerks or nervously addressing the court. And yet, after more than a century of disuse, and after the fact of its ever having existed is so far forgotten that not even a tradition of its use lingers in the clerk's office or is known to a judge upon the bench, it is here \* before us, of the same materials, and substantially as it appeared when the judges appointed by Sir William Phips first opened court in Boston. The device is a portcullis, with chains appendant.†

No. 2 is the first seal of the Court of Vice-Admiralty established for the district of Boston. It bears the date, May 1, 1716, and from the interior inscription, which appears to be an abbreviation of "*per curiam*," it was probably designed by the court, which modestly adopted as its device one of the three anchors on the seal of the High Court of Admiralty in England.

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\* The original seal was produced at this meeting, and handed around for examination.

† This device, which is strictly heraldic, was adopted by Henry VII. in token of his descent from the house of Beaufort, on whose escutcheon it was originally borne. He added the motto, *Altera securitas*, "implying that, as a portcullis is an additional defence to a gate, so his descent from the Beaufort family [which is traceable to John of Gaunt] afforded him an additional title to the crown." From the time of Elizabeth—if not from that of the first of the Tudors—it has been the principal badge on the collar of SS worn by the Lords Chancellors and Lords Chief Justices of England. The identical collar worn by Sir Edward Coke, and bearing this badge, was in the possession of Mr. Justice Coleridge as lately as 1876. In pictures of the High Court of Chancery and Court of King's Bench of the time of Henry VI., or earlier, preserved in illuminated MSS., the justices, though clad in scarlet robes and the coif, do not wear collars, nor is the portcullis represented in the escutcheons on the walls of the court-rooms. Sir Thomas More, who was appointed Lord Chancellor in 1530, and whose portrait was painted by Holbein, is represented as wearing the collar containing this badge.

No. 3 is the seal of the Supreme Court of Probate, and is remarkable as the first use, on a court seal in Massachusetts, of the figure of Justice, or of the scales. By the Province charter the Governor and Council were empowered to "doe execute or performe all that is necessary for the Probate of Wills Granting of Administracions for touching or concerning any Interest or Estate which any person or persons shall have within our said Province or Territory." For a short time after the charter went into operation the Governor and Council exercised probate jurisdiction for the entire Province; but on the 18th of June, 1692, judges and registers of probate were appointed for the four principal counties, Suffolk, Essex, Middlesex, and Hampshire, without any enabling act of the legislature, but by a delegation of judicial functions, according to the civil law, the rules of which were followed in the ecclesiastical courts. This delegation of judicial functions was continued during the provincial period until probate courts were established in all the counties, and recognized by the legislature in numerous acts enlarging or defining their jurisdiction, establishing the fees of their judges and registers, and providing for the security of heirs, distributees, and creditors, and for the faithful performance of duty by executors, administrators, and other appointees of these courts.

That these inferior ecclesiastical tribunals were supposed to authenticate their peculiar processes by official seals, appears not only from the actual practice of these courts, but also from the act of Nov. 1, 1692, for the punishment of criminal offenders,\* which exempted judges and registers of probate from liability to conviction of forgery for innocently affixing "their seal of office" to any forged will. Of these seals particular details will be given hereafter.

Appeals from the probate courts lay to the Governor and Council as the Supreme Court of Probate, which, after the establishment of the county tribunals, retained, or rather exercised, only this appellate jurisdiction. No attempt seems to have been made by the Governor and Council to separate the performance of their judicial functions from their ordinary transactions in their executive capacity until Feb. 9, 1760, when, at the instance of Governor Pownall, who prepared and laid before the Council an elaborate account of their probate jurisdiction,† they formally organized

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\* Province Laws, 1692-93, ch. 18, § 8.

† See this message of Governor Pownall's, printed in Appendix III to Quincy's Mass. Reports, p. 573.

a Supreme Court of Probate, and adopted the seal here depicted.\*

No. 4. This most interesting seal is remarkable as being the first seal ever adopted by a judicial court in Massachusetts. It was designed in 1680,† to be used on the probate letters issued from the Suffolk County-Court, and in 1692 was adopted as the seal of the Inferior Court of Common Pleas, and the Court of General Sessions of the Peace for that county. The only impressions of this seal that I have discovered being upon paper, over a wafer, and either lightly made, or else much affected by time, I had great difficulty in making it out. However, by comparing many impressions, I was, fortunately, able to ascertain, with sufficient accuracy, even the most obscure details of the device and inscription.

No. 5 is the seal of the Probate Court for Suffolk County, as shown by the legend, in abbreviated Latin.‡ Seventy-two different impressions of this seal, selected from files contained in more than fifty-six hundred envelopes, were carefully studied and compared in order to accurately ascertain the details of the device and the surrounding inscription. The swan is an ancient heraldic royal device used even by Edward III., but chiefly by the Henrys, IV. and V., who derived it from the Bohuns. No special reason for its adoption here has been discovered.

No. 6 is the seal of the common-law courts of Essex County, and is a monogram for "Essex." Over the monogram is a legless bird, and beneath it a fleur-de-lys, each between two

\* "Ordered, likewise, that there be a seal provided and appropriated to the use of this court."—*Order in Council: Ibid.*

† I must acknowledge my indebtedness to John Coffin Jones Brown, Esq., for this important item. Since the meeting at which the accompanying lithographs were exhibited, Mr. Brown referred me to the following entry in the Records of the County Court: "At a County Court, held at Boston, 25 January, A<sup>o</sup>. 1680 [-1] Present, S<sup>r</sup>. Bradstreet, Esqr., Govr,

WM. STOUGHTON	}	Esq <sup>r</sup> .
JOSEPH DUDLEY		
HUMP <sup>r</sup> . DAVIE		
JOHN RICHARDS		
SAMUEL NOWELL		
JOHN HULL		

Ordered, that the Clerke provide a Seale for the Courts use to annex to probate of wills and grants of Adm<sup>o</sup> the circumference thereof to bee the same of a Shilling and a Ship engraven thereon with this inscription SIGILLUM COMITATUS SUFFOLCÆ."

Mr. Brown also called my attention to the resemblance between this seal and the Admiralty seal of Boston, in Lincolnshire, Eng., the device on which he has incorporated in the seal which he ingeniously designed for the Bostonian Society.

‡ *Sigillum Comitatus Suffolciæ, in Nova Anglia, de Probatione Testamentorum*:—The seal of the Probate of Wills for the County of Suffolk in New England.

groups of dots, which may have been intended for roses or, possibly, *estoyles*. This ancient seal, which, as I have already said, is still in existence, though somewhat changed by wear and occasional recutting, is now used as the seal of the Board of County Commissioners, which succeeds to the administrative functions of the old Court of Sessions. It was originally designed for the Inferior Court of Common Pleas, as has already been said. Later, it was impressed upon the subpoenas and other processes issued by Stephen Sewall, clerk of the Special Court of Oyer and Terminer, before which the persons accused of witchcraft were tried in 1692; although the warrant for the execution of Bridget Bishop — and, perhaps, all the other “death-warrants” — was sealed with the private arms of Stoughton, the chief justice.

Upon the establishment of the Court of Common Pleas and Court of Sessions, in 1692, it was adopted by them, and continued in use as the seal of those courts until they were abolished.

No. 7 is the seal of the Probate Court for Essex County, and was adopted at the time of the establishment of the court. The device — a lion rampant — still appears on the seal of that court, though, since the Revolution, the legend “County of Essex” has been substituted for the Latin inscription of the original seal.

No. 8 is the seal of the common-law courts of Middlesex County. The admirable condition in which the files of the Inferior Court of Common Pleas and of the Court of Sessions for that county are kept enables us easily to trace the use of this seal back to 1692–93, but the loss of the more ancient files of the County Court leaves us in doubt as to its earlier use. Samuel Phips, the first clerk under the Charter, occasionally sealed warrants and subpoenas of the Court of Sessions with a stamp on which his initials were cut enclosed in a circle.

In the seal here depicted the illiterate seal-cutter omitted a “d” in “Middlesex,” and evidently intended “Registry” by the anomalous word “Regisley.”

No. 9 is the seal of the Probate Court for Middlesex County. A naturalist would hardly be able to classify the bird here represented. The device intended was, undoubtedly, in the language of the heralds, “a pelican vulning herself.” The absence in this case of the characteristic pouch of the pelican is not more remarkable than the absence of one of the two legs characteristic of all perfect birds. If the “gouts” of blood that are represented as falling from her self-inflicted

wounds were nourishing her brood around her, she would be described by the heralds as "in her piety," and the appropriateness of this device, for a probate court, might then be more apparent; but it is difficult to understand why the attention of the afflicted petitioners to the Probate Court of Middlesex should have been officially called to this example of wanton self-injury.

No. 10 is the seal of the common-law courts of Plymouth County. It is still preserved by the Clerk of the Courts, though not in use. This is fortunate, since the ancient files of the clerk's office were recently almost totally destroyed by fire. On a few of the scattered papers of early date that were saved from the fire, I was, by the kindness of their possessors, enabled to discover the impression of this seal, and to observe that it has undergone but very slight change since 1692.

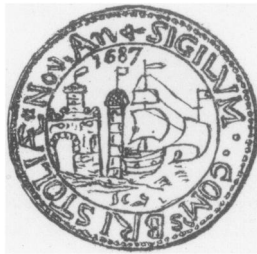
No. 11 is the seal of the Probate Court for Plymouth County. As the legend implies, the person here represented as kneeling is the "*relictæ*," or widow. She holds in her left hand the extended hand of her "orphan" child, and in her right hand, what — though it more nearly resembles a fan, or bunch of cigars — must have been intended to represent a petition to the judge. The antique costume of these figures is noticeable, and might be referred to a period much earlier than the date of the establishment of the Probate Court in this county; I have not, however, found an instance of the use of this seal before 1707. It was probably adopted by the first judge of this court, about 1702, and is still in the custody of the Register of Probate. The present seal of the same court exhibits the same legend and device, though the latter, æsthetically, is much improved.

No. 12 is the seal of the common-law courts of Bristol County. It bears date 1687, which, no doubt, is the date of its adoption, although the first instance of its use on record is Nov. 28, 1689, while Stephen Burton was clerk. Like the other county seals herein described, it was used for the Inferior Court of Common Pleas and Court of General Sessions of the Peace, until they were superseded by the Circuit Court of Common Pleas.

No. 13 is the Probate Court seal of Bristol County. This drawing was made from nine fragmentary impressions on wax, discovered in a careful search through more than twenty-eight hundred different envelopes of the filed papers of this court. The results of this careful scrutiny left nothing for conjecture except the first three letters of the word "county," which were not on either of the fragments found. No instance of



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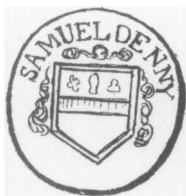
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the use of this seal has been discovered before 1755, and from the comparatively modern appearance of the letters of the inscription, as well as from the neatness of the workmanship, I should suppose it to be not older than 1750.

This seal evidently represents a probate court in session. The judge, wearing a curled wig, sits at the left, in his gown and bands, holding a book or paper in his left hand, which he keeps open with his right hand, while on his left, and behind a table, sits the register. On this table is an inkstand in which a quill-pen stands upright. Another pen, and a book or fold of paper, lie before the register, whose left arm is extended upon the table while with his right hand he is passing to the judge a folded letter. In the background, between the judge and the register, is a Doric column or pilaster, and between this and the judge is a casement, or window, with lozenge-shaped panes. A parquetry floor extends from the edge of the table-cloth — which hangs in folds nearly to the floor — to the extreme front of the foreground. The whole design presents a curious and interesting picture of what may be fairly considered an actual scene in New England in the middle of the eighteenth century, or earlier.

There was considerable irregularity in the use of seals in the Probate Court of Bristol before and after the earliest known instance of the employment of the seal here depicted. Other seals were used by the same officers who used this seal. Thus, Judge Blagrove, — 1729-44, — or his register, Stephen Paine, used a shield, with an inscribed heart nearly filling the field, and an *estoile* of eight points, or rays, for a crest; and Judge Leonard, or his son, the register of the same name, after 1747, used different armorial devices, — sometimes a double-headed eagle, displayed, and sometimes a lion rampant, with his name, "George Leonard," circumscribed; he also used a small seal representing a lymphad, or other vessel, opposite a port flanked with towers, and superscribed, "PORTO BELLO."

No. 14 is the seal of the common-law courts of Worcester County. A seal of substantially the same design is still used by the County Commissioners, and is known as the county seal. An enlarged representation of it hangs on the wall of the law library in Worcester. It continued to be used for the Inferior Court of Common Pleas and Court of Sessions from 1731, when the county was established, until those courts were superseded; and some of the best impressions of it may be seen on writs filed in the clerk's office in the years 1812-15.

No. 15 is the seal of the Probate Court of Worcester County. The bird here intended I conceive to be a turkey, though neither nature nor the heralds have anywhere produced its archetype. The peculiar fitness of this device as an emblem for this county and court is not obvious on its face, nor have I been able to discover any further facts relating to its adoption, than that it was used by the first appointed officers of the Probate Court. After the Revolution it was disused, and has long been forgotten by the probate officers and even by the antiquaries.

No. 16, as appears by the inscription,\* is, strictly, the seal of the Probate Court for Hampshire County, — which originally included Berkshire, Hampden, and Franklin, — but it appears to have been, also, the only seal used by the Inferior Court of Common Pleas and of the Court of Sessions for that large territory. It dates back, undoubtedly, to 1692, when the Probate Court in Hampshire County was first established.

No. 17 was drawn from a fragment of what is supposed to have been the original Probate Court seal of Nantucket County. Of the impressions of this seal, — all of which are indistinct and fragmentary, — it is possible that the more perfect ones may have been made by applying the seal twice, so as to partly overlay a former impression, thus rendering the inscription more obscure, and producing the appearance of four arch-diadems where only two should appear. In 1715, while this seal was in use, and while James Coffin was judge and Eleazer Folger was acting as register, I find used as a seal, an impression of arms which appear to be a chief, indented, and a chevron. Just before the Revolution, and later, another seal, not infrequently used, was a crest, — a wyvern, or cockatrice; more probably the latter. This last-mentioned seal was used while Grafton Gardner was judge and Frederick Folger was register. In 1771, under the same judge and register, the device of St. George and the Dragon (No. 23) was also used in a few instances.

No seal for the common-law courts seems to have been specially adopted in Nantucket; it is certain that the files saved from the fire of July, 1846, show no such seal; and the supposition is confirmed by the practice, since 1800, of sealing the writs of the Inferior Courts of Common Pleas with the reverse of a cent, or with any other coin or instrument that could be conveniently employed for that purpose.

No. 18 is the seal of the Inferior Court of Common Pleas

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\* *Sigillum, Comitatus Hamptoniæ, de Probatione Testamentorum.*



and Court of General Sessions of the Peace for Cumberland County, which was set off from the County of York in 1760,\* and, with the parent county and the county of Lincoln, remained a part of Massachusetts until Maine was admitted into the Union as a sovereign State in 1820. This seal continued in use after Maine became a State, and it is yet the county seal.

Unfortunately, the great fire in Portland in July, 1866, which destroyed the court-house, consumed all the files and records of the probate office, which was, too confidently, deemed fire-proof. I have not yet been able to learn from any other source whether or not there was a probate seal from the establishment of the court, which is as old as the county. The earliest impression of a seal of this court that has come to my notice is of comparatively recent date, and nearly resembles, except in point of size, the seal now in use. The device is an urn surrounded by an inner inscription, "ÆQUITAS SUPERSTITIBUS," and an outer inscription, "CUMBERLAND PROBATE COURT." At least three distinct seals, substantially identical in design, have been successively used by this court; but the first of these has not been traced back further than thirty years.†

No. 19 is all that I have been able to make out of the seal of the courts of Lincoln County, which was set off from York County in 1760, by the act above mentioned. At first, no seal was specially adopted for any of these courts; but, at a Court of Sessions held at Pownalborough, June 1, 1762, the following order was passed: "Ordered that a seal presented by Samuel Denny, Esq., the Motto whereof being a cup and three mullets, being the lawful Coat of Arms of the said Denny's Family, with the said Denny's name, at large, in the verge thereof, be accepted, and that it be established to be the common Seal of this Court." ‡

Denny was, at that time, chief justice of the Inferior Court of Common Pleas for the county, and William Cushing — afterwards distinguished, successively, as a justice and chief justice of the Superior Court of Judicature of the Province, and chief justice of the Supreme Judicial Court of the State,

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\* June 21: Province Laws, 1760-61, ch. 7.

† I have seen a letter of administration and a letter of guardianship granted in 1797, when William Gorham was judge and Samuel Freeman was register, both of which letters bear the impression of seal No. 18; and I have not yet seen a paper of earlier date than these, that was issued by the Court of Probate for this county.

‡ Sessions Records, Lincoln County, vol. i., p. 17. I find no confirmation of the claim of this family to these arms.

of Massachusetts, and a justice of the Supreme Court of the United States — was judge of probate. Jonathan Bowman, at that time clerk of the courts and register of probate, used this seal alike in common-law and probate proceedings; and his successors continued the practice certainly as late as the beginning of the Revolution.

A seal much used on writs and probate papers in Lincoln County, before the adoption of the Denny arms, was the head of one of the Georges, — a seal occasionally used officially, and sometimes on bonds and deeds, in other counties. This device is shown in No. 24, and it is not unlikely that seals bearing this royal likeness were to be had of the stationers or haberdashers of that period.

Nos. 20, 21, and 22 are seals formerly in use in Barnstable County.

All the court and probate files of this county were lost in the fire which consumed the court-house at Barnstable on the night of Oct. 22, 1827. Fortunately, however, most of the books of probate records were saved, and in the first volume of these, Barnabas Lothrop, the first judge of probate for this county, not only made the first record of a letter testamentary,\* but affixed his seal thereto in wax. This impression is shown in No. 22. No. 20 was used by Nathaniel Otis while he was clerk, in 1729, as the seal of the Inferior Court of Common Pleas. No. 21 was used from 1730 to 1750, while John Sturgis was clerk. This last may have been used as the initial letter for Barnstable, or for Bourne — members of that family having held either one or more of the offices of the Common Pleas or Probate Courts during this period. On the whole, the indications are that no particular seal for either of the courts of Barnstable County was adopted during the provincial period.

In Dukes County I find occasionally used as the seal of the Probate Court an intricate monogram, the faint and imperfect impressions of which I have been unable to decipher.† In 1715 the initials “B. S.” occur, being evidently those of Benjamin Skiffe, who was then judge of probate. Later, I find a mitre sometimes used, and sometimes two keys crossed saltierwise, among the miscellaneous devices appearing upon the papers of the Probate Court; but no evidence that a seal was specially adopted for any of the courts.

York County seems also to have been without a regular

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\* Will of Edmond Hawes, Sept. 2, 1693.

† This may have been a double monogram for “J. Athearn,” — Jabez Athearn having been for many years register of the court.

court seal for either of its courts. Very early, an obscure monogram was used on the writs of the Inferior Court of Common Pleas; and the impression of a seal, still more obscure, but which may possibly have been the same, is found on a few early probate papers. Finally, the common-law courts seem to have adopted the device — shown in No. 23 — of St. George and the Dragon. This continued in use certainly as late as 1820.

The seal last described was occasionally used by the probate officers in 1731, and again ten years later. Towards the end of the term of Charles Frost, who was register of probate from 1700 to 1733, a small double monogram of his initials, "C. F." was used, and occasionally a rudely cut crest, — a stag, lodged. Simon Frost, while register, — 1744–66, — also used a seal bearing only his initials, rudely cut. Under Judge Jeremiah Moulton, however, — 1746–65, — which covered most of the time during which Simon Frost was register, the seal most commonly used appears to have been a fesse; in the chief, two swords crossed, saltier-wise, and in the base a mullet: crest, a mullet. I have not ascertained to what family these arms, which are very neatly and artistically cut on the seal in question, belong. This seal continued to be used occasionally on probate papers as late as 1821. In 1776, under Judge John Bradbury, a bird — perhaps a dove or a raven, and, apparently, a crest — was sometimes used. While David Sewall was register, the full arms of the Sewalls — a chevron between three bees: crest, a bee, — were used under Judge John Hill; and the crest, simply, under Judge Joseph Simpson, in 1779. It appears from the foregoing that the register, rather than the judge, appointed the seal of the court.

In the County of Berkshire, which, as has been said, was set off from Hampshire in 1761, no seal seems to have been regularly adopted by either of the county courts. Among the miscellaneous devices used in sealing the letters of the Probate Court from 1773 to 1784 was one that appears to have been the original corporate seal of Princeton College, New Jersey. Private coats of arms were also used for the same purpose then and earlier.

Although it is not my purpose at this time to describe seals that were not in use before the adoption of the State Constitution, I will so far overstep my proposed limits as to observe here that the first seal used in Berkshire County was the probate seal, which appears to have been adopted about 1797, and which continued in use until 1811 or 1812. It bore sub-

stantially the same device as that upon the State seal, with an inscription showing that it was the seal of the Probate Court. This was superseded by another seal, which first appears in 1813, on which are represented two figures; one evidently meant for the judge of probate sitting in a round-backed chair, and the other, a small boy standing before the judge, whose left hand is laid tenderly upon the boy's head, while his right clasps the boy's left hand. It is inscribed, "Seal of the Court of Probate, Berkshire," with an inner inscription of "Mass." on a scroll above the judge's head. This seal, having been broken, was repaired, when the seal-cutter took the liberty to substitute a straight-posted chair for the judge's seat, and to make other slight changes in the design.

A regular seal for the common-law courts of Berkshire seems to have been first used at the June Term of the Inferior Court of Common Pleas in 1804; and it probably continued to be used by that court and the Court of Sessions until the establishment of the Circuit Courts of Common Pleas. The device on this seal was an awkward figure of "Justice," with her head extending into the verge of the seal, holding a sword in her right hand and a pair of scales, equipoised, in her left hand. The inscription is, SIG. COM. PLEAS. BERK<sup>S</sup> MASS.