Hon. William C. Alexander,

With the Compliments of

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NOTES

ON THE

HISTORY OF SLAVERY

IN

MASSACHUSETTS

BY

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Quis nescit, primam esse historiæ legem, ne quid falsi dicere audeat? deinde ne quid veri non audeat?

—*Cic. de Orat.*, II., 15.

NEW-YORK

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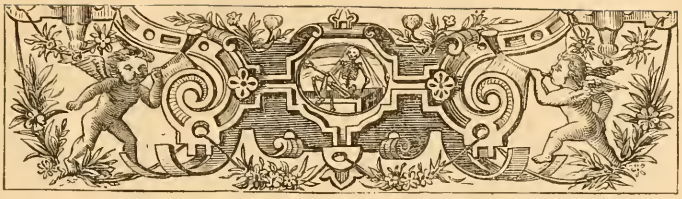

NOTES ON THE HISTORY OF SLAVERY IN MASSACHUSETTS.

I.

WE find the earlieſt records of the hiſtory of ſlavery in Maſſachuſetts at the period of the Pequod War—a few years after the Puritan ſettlement of the colony. Prior to that time an occaſional offender againſt the laws was puniſhed by being ſold into ſlavery or adjudged to ſervitude; but the inſtitution firſt appears clearly and diſtinctly in the enſlaving of Indians captured in war. We may hereafter add a ſketch of the theories which were held to juſtify the bondage of the heathen, but at preſent limit ourſelves to the collection of facts to illuſtrate our general ſubject. And at the outſet we deſire to ſay that in this hiſtory there is nothing to comfort proſlavery men anywhere. The ſtains which ſlavery has left on the proud eſcutcheon even of Maſſachuſetts, are quite as ſignificant of its hideous character as the

ſatanic defiance of God and Humanity which accompanied the laying of the corner-ſtone of the Slaveholders' Confederacy.

The ſtory of the extermination of the Pequods is well known. It was that warlike tribe who, in the early months of "that fatal year," 1637, were reported by Governor Winſlow to Winthrop as follows:

"The Pecoats follow their fiſhing & planting as if they had no enemies. Their women of eſteem & children are gone to Long Iſland with a ſtrong gard at Pecoat. They profeſſe there you ſhall finde them, and as they were there borne & bred, there their bones ſhall be buried, & rott in deſpight of the Engliſh. But if the Lord be on our ſide, their braggs will soon fall." *M. H. S. Coll.*, IV., vi., 164.

The extracts which follow explain themſelves and hardly require comment.

Roger Williams, writing from Providence [in June, 1637] to John Winthrop, ſays: "I underſtand it would be very gratefvll to our neighbours that ſuch Pequts as fall to them be not enſlaved, like thoſe which are taken in warr; but (as they ſay is their generall cuſtome) be vſed kindly, haue howſes & goods & fields given them: becauſe they voluntarily chooſe to come in to them, & if not receaved will [go] to the enemie or turne wild Iriſh themſelues: but of this more as I ſhall vnderſtand. . . ." *M. H. S. Coll.*, IV., vi., 195.

Again [probably in July, 1637]: "It having againe pleaſed the Moſt High to put into your hands another miſerable droue of Adams degenerate ſeede, & our brethren by nature, I am bold (if I may not

offend in it) to requeſt the keeping & bringing vp of one of the children. I haue fixed mine eye on this little one with the red about his neck, but I will not be peremptory in my choice, but will reſt in your loving pleaſure for him or any," &c. *M. H. S. Coll.*, iv., vi., 195-6.

Again [probably 18th September, 1637]: "Sir, concerning captiues (pardon my wonted boldneſs) the Scripture is full of mysterie & the Old Teſtament of types.

"If they have deserued death 'tis sinn to spare:

"If they haue not deserued death then what puniſhments? Whether perpetuall ſlaverie.

"I doubt not but the enemie may lawfully be weaknd & despoild of all comfort of wife & children &c., but I beſeech you well weigh it after a due time of trayning vp to labour & reſtraint, they ought not to be ſet free: yet so as without danger of adioyning to the enemie." *M. H. S. Coll.*, iv., vi., 214.

Later in the ſame year [Nov. 1637] Roger Williams, who had promiſed certain fugitive ſlaves to intercede for them, "to write that they might be vſed kindly"—fulfilled his promiſe in a letter to Winthrop, in which, after ſtating their complaints of ill usage, &c., he adds:

"My humble deſire is that all that haue theſe poor wretches might be exhorted as to walke wiſely & iuſtly towards them, so to make mercy eminent, for in that attribute the Father of mercy moſt ſhines to Adams miserable ofspring." *M. H. S. Coll.*, iv., vi., 218, 219.

Hugh Peter writes to John Winthrop from Salem

(in 1637): "Mr. Endecot and my ſelfe ſalute you in the Lord Jeſus, etc. Wee haue heard of a diuidence of women and children in the bay and would bee glad of a ſhare, viz.: a young woman or girle and a boy if you thinke good. *I wrote to you for ſome boyes for Bermudas, which I thinke is conſiderable.*" *M. H. S. Coll.*, IV., VI., 95.

In this application of Hugh Peter we have a glimpse of the beginning of the Colonial Slave-Trade. He wanted "ſome boyes for the Bermudas," which he thought was "conſiderable."

It would ſeem to indicate that this diſpoſition of captive Indian boys was in accordance with custom and previous practice of the authorities. At any rate, it is certain that in the Pequod War they took many priſoners. Some of theſe, who had been "diſposed of to particular perſons in the country," *Winthrop*, I., 232, ran away, and being brought in again were "branded on the ſhoulder," *ib.* In July, 1637, Winthrop ſays, "We had now ſlain and taken, in all, about ſeven hundred. We ſent fifteen of the boys and two women to Bermuda, by Mr. Peirce; but he, miſſing it, carried them to Providence Iſle," *Winthrop*, I., 234. The learned editor of Winthrop's Journal, referring to the fact that this proceeding in that day was probably juſtified by reference to the practice or inſtitution of the Jews, very quaintly obſerves, "Yet that cruel people never ſent priſoners ſo far." *Ib.*, *note.*

Governor Winthrop, writing to Governor Bradford of Plymouth, 28th July, 1637, an account of their ſucceſs againſt the Pequods—"y^e^ Lords greate

mercies towards us, in our prevailing againſt his & our enimies"—says:

"The priſoners were devided, ſome to thoſe of y^e^ river [the Connecticut Colony] and the reſt to us. Of theſe we ſend the male children to Bermuda, by Mr. William Peirce, & y^e^ women & maid children are diſpoſed aboute in y^e^ tounes. Ther have now been ſlaine and taken, in all, aboute 700." *M. H. S. Coll.*, IV., iii., 360. Compare the order for "diſpoſing of y^e^ Indian ſquaws," in *Mass. Records*, I., 201.

Bradford's note to the letter quoted above, ſays of their being ſent to Bermuda: "But y^ey^ were carried to y^e^ Weſt Indeas."

Hubbard, the contemporary hiſtorian of the Indian Wars, ſays of theſe captives, "Of thoſe who were not ſo deſperate or ſullen to ſell their lives for nothing, but yielded in time, the male Children were ſent to the *Bermudas*, of the females ſome were diſtributed to the Engliſh Towns; ſome were diſpoſed of among the other *Indians*, to whom they were deadly enemies, as well as to ourſelves." *Narrative*, 1677, p. 130.

A ſubſequent entry in Winthrop's Journal gives us another glimpſe of the ſubject, Feb. 26, 1638.

"Mr. Peirce, in the Salem ſhip, the Deſire, returned from the Weſt Indies after ſeven months. He had been at Providence, and brought ſome cotton, and tobacco, and negroes, etc., from thence, and ſalt from Tertugos;" *Winthrop*, I., 254. He adds to this account that "Dry fiſh and ſtrong liquors are the only commodities for thoſe parts. He met there two men-of-war, ſet forth by the lords, etc., of Providence with letters of mart, who had taken divers

prizes from the Spaniard and many negroes." Long afterwards Dr. Belknap ſaid of the ſlave-trade, that the rum diſtilled in Maſſachuſetts was "the mainſpring of this traffick." *M. H. S. Coll.*, I., iv., 197.

Joſſelyn ſays, that "they sent the male children of the Pequets to the Bermudus." 258. *M. H. S. Coll.*, IV., iii., 360.[1]

This ſingle cargo of women and children was probably not the only one ſent, for the Company of Providence Iſland, in replying from London in 1638, July 3, to letters from the authorities in the iſland, direct ſpecial care to be taken of the "Cannibal negroes brought from New England." *Sainſbury's Calendar*, 1574–1660, 278.[2]

And in 1639, when the Company feared that the number of the negroes might become too great to be managed, the authorities thought they might be ſold and ſent to New England or Virginia. *Ib.*, 296.

The ſhip "Deſire" was a veſſel of one hundred and twenty tons, built at Marblehead in 1636, one of the earlieſt built in the Colony. *Winthrop*, I., 193.

In the Pequot War, ſome of the Narraganſetts

[1] Governor Winthrop in his will (1639-41) left to his ſon Adam his iſland called the Governor's Garden, adding, "I give him alſo my Indians there and my boat and ſuch houſehold as is there."—*Winthrop's Journal*, II., 360., *App.*

[2] "We would have the Cannibal negroes brought from New England inquired after, whoſe they are, and ſpeciall care taken of them." *P. R. O. Col. Ent. Bk.*, Vol. IV., p. 124. In the preface to the Colonial Calendar, p. xxv., Mr. Sainſbury explains why no anſwers to the Company's letters are in the State Paper Office. The Bahama Iſlands were governed abſolutely by a Company in London, and unfortunately the letters *received by* the Company have not been preſerved, or if ſo, it is not known where they now are. *MS. Letter.*

joined the Engliſh in its proſecution, and received a part of the priſoners as ſlaves, for their ſervices. Miantunnomoh received eighty, Ninigret was to have twenty. Mather ſays of the principal engagement, "the captives that were taken were about one hundred and eighty, which were divided between the two Colonyes, and they intended to keep them as ſervants, but they could not endure the Yoke, for few of them continued any conſiderable time with their maſters." *Drake*, 122, 146. *Mather's Relation*, quoted by *Drake*, 39. See alſo *Hartford Treaty*, Sept. 21, 1638, in *Drake*, 125. *Drake's Mather*, 150, 151.

Captain Stoughton, who aſſiſted in the work of exterminating the Pequots, after his arrival in the enemy's country, wrote to the Governor of Maſſachuſetts [Winthrop] as follows: "By this pinnace, you ſhall receive forty-eight or fifty women and children. . . . Concerning which, there is one, I formerly mentioned, that is the faireſt and largest that I ſaw amongſt them, to whom I have given a coate to cloathe her. It is my deſire to have her for a ſervant, if it may ſtand with your good liking, elſe not. There is a little ſquaw that Steward Culacut desireth, to whom he hath given a coate. Lieut. Davenport alſo deſireth one, to wit, a ſmall one, that hath three ſtrokes upon her ſtomach, thus: —||| +. He deſireth her, if it will ſtand with your liking. Soſomon, the Indian, deſireth a young little ſquaw, which I know not." *MS. Letter* in Maſs. Archives, quoted by *Drake*, 171.

An early traveller in New England has preſerved for us the record of one of the earlieſt, if not, indeed, the very firſt attempt at breeding of ſlaves in Amer-

ica. The following paſſage from Joſſelyn's Account of Two Voyages to New England, publiſhed at London in 1664, will explain itſelf:

"The Second of *October*, [1639] about 9 of the clock in the morning Mr. *Mavericks* Negro woman came to my chamber window, and in her own Countrey language and tune ſang very loud and ſhrill, going out to her, ſhe uſed a great deal of reſpect towards me, and willingly would have expreſſed her grief in *Engliſh;* but I apprehended it by her countenance and deportment, whereupon I repaired to my hoſt, to learn of him the cauſe, and reſolved to intreat him in her behalf, for that I underſtood before, that ſhe had been a Queen in her own Countrey, and obſerved a very humble and dutiful garb uſed towards her by another Negro who was her maid. *Mr. Maverick* was deſirous to have a breed of Negroes, and therefore ſeeing ſhe would not yield by perſuaſions to company with a Negro young man he had in his houſe; he commanded him will'd ſhe nill'd ſhe to go to bed to her, which was no ſooner done but ſhe kickt him out again, this ſhe took in high diſdain beyond her ſlavery, and this was the cauſe of her grief." *Joſſelyn*, 28.

Joſſelyn viſited New England twice, and ſpent about ten years in this country, from 1638–39 and 1663 to 1671. In ſpeaking of the people of Boſton he mentions that the people "are well accommodated with ſervants . . . . of theſe ſome are Engliſh, others Negroes." *Ibid.*, 182.

Mr. Palfrey ſays: "Before Winthrop's arrival there were two negro ſlaves in Maſſachuſetts, held

by Mr. Maverick, on Noddle's Iſland." *Hiſtory of New England*, II., 30, *note*. If there is any evidence to ſuſtain this ſtatement, it is certainly not in the authority to which he refers. On the contrary, the inference is irreſiſtible from all the authorities together, that the negroes of Mr. Maverick were a portion of thoſe imported in the firſt colonial ſlave-ſhip, the Deſire, of whoſe voyage we have given the hiſtory. It is not to be ſuppoſed that Mr. Maverick had waited ten years before taking the ſteps towards improving his ſtock of negroes, which are referred to by Joſſelyn. Ten years' ſlavery on Noddle's Iſland would have made the negro-queen more familiar with the Engliſh language, if not more compliant to the brutal cuſtoms of ſlavery.

It will be obſerved that this firſt entrance into the ſlave-trade was not a private, individual ſpeculation. It was the enterpriſe of the authorities of the Colony. And on the 13th March, 1639, it was ordered by the General Court "that 3*l* 8*s* ſhould be paid Leiftenant Davenport for the preſent, for charge diſburſed for the ſlaves, which, when they have earned it, hee is to repay it back againe." The marginal note is, "Lieft. Davenport to keep y^e^ ſlaues." *Maſs. Rec.*, I., 253.

Emanuel Downing, a lawyer of the Inner Temple, London, who married Lucy Winthrop, ſiſter of the elder Winthrop, came over to New England in 1638. The editors of the Winthrop papers ſay of him, "There were few more active or efficient friends of the Maſſachuſetts Colony during its earlieſt and moſt critical period." His ſon was the famous Sir George Downing, Engliſh ambaſſador at the Hague.

In a letter to his brother-in-law, "probably written during the ſummer of 1645," is a moſt luminous illuſtration of the views of that day and generation on the subject of human ſlavery. He ſays:

"A warr with the Narraganſett is verie conſiderable to this plantation, ffor I doubt whither yt be not ſynne in vs, hauing power in our hands, to ſuffer them to maynteyne the worſhip of the devill, which their paw wawes often doe; 2lie, if upon a Juſt warre the Lord ſhould deliver them into our hands, we might eaſily haue men, woemen and children enough to exchange for Moores, which wilbe more gayneful pilladge for vs than wee conceive, for I doe not ſee how wee can thrive vntill wee gett into a ſtock of slaves ſufficient to doe all our buiſines, for our children's children will hardly ſee this great Continent filled with people, ſoe that our ſervants will ſtill deſire freedom to plant for them ſelues, and not ſtay but for verie great wages. And I ſuppoſe you know verie well how wee ſhall maynteyne 20 Moores cheaper than one Engliſhe ſervant.

"The ſhips that ſhall bring Moores may come home laden with ſalt which may beare most of the chardge, if not all of yt. But I marvayle Conecticott ſhould any wayes haſard a warre without your adviſe, which they cannot mayntayne without your helpe." *M. H. S. Coll.*, IV., vi., 65.

II.

We come now to the era of poſitive legiſlation on the ſubject of human bondage in America. Mr.

Hurd, the ableſt writer on this ſubject, ſays: "The involuntary ſervitude of Indians and negroes in the ſeveral colonies originated under a law not promulgated by legiſlation, and reſted upon prevalent views of univerſal juriſprudence, or the *law of nations*, ſupported by the expreſs or implied authority of the home Government." *Law of Freedom and Bondage*, § 216, I., 225.

Under this ſanction ſlavery may very properly be ſaid to have originated in all the colonies, but it was not long before it made its appearance on the ſtatute-book in Maſſachuſetts. The firſt ſtatute eſtabliſhing ſlavery in America is to be found in the famous CODE OF FUNDAMENTALS, or BODY OF LIBERTIES OF THE MASSACHUSETTS COLONY IN NEW-ENGLAND—the firſt code of laws of that colony, adopted in December, 1641. Theſe liberties had been, after a long ſtruggle between the magiſtrates and the people, extracted from the reluctant graſp of the former. "The people had [1639] long deſired a body of laws, and thought their condition very unſafe, while ſo much power reſted in the diſcretion of magiſtrates." *Winthrop*, I., 322. Never were the demands of a free people eluded by their public ſervants with more of the contortions as well as wiſdom of the ſerpent. *Compare Gray in M. H. S.*, III., viii., 208.

The ſcantineſs of the materials for the particular hiſtory of this renowned code is ſuch as to forbid the attempt to trace with certainty to its origin the law in queſtion. It is, however, obvious that it was made to provide for ſlavery as an exiſting, subſtantial fact, if not to reſtrain the application of thoſe higher-

law doctrines, which the magiſtrates muſt have ſometimes found inconvenient in adminiſtration. The preamble to the Body of Liberties itſelf might have been conſtrued into ſome vague recognition of rights in individual members of ſociety ſuperior to legiſlative power—although it was promulgated by the poſſeſſors of the moſt arbitrary authority in the then actual holders of legiſlative and executive power. *Compare Hurd's Law of Freedom and Bondage*, I., 198. Had they only learned to reaſon as ſome of the modern writers of Maſſachuſetts hiſtory have done on this ſubject, the poor Indians and Negroes of that day might have compelled additional legiſlation if they could not vindicate their rights to freedom in the general court. For the firſt article of the Declaration of Rights in 1780, is only a new edition of "the glittering and ſounding generalities" which prefaced the Body of Liberties in 1641. Under the latter, human ſlavery exiſted for nearly a century and a half without ſerious challenge, while under the former it is ſaid to have been aboliſhed by inference by a public opinion which ſtill continued to tolerate the ſlave-trade.

But to the law and the teſtimony. The ninety-firſt article of the Body of Liberties appears as follows, under the head of

"*Liberties of Forreiners and Strangers.*

"91. There ſhall never be any bond ſlaverie, villinage or captivitie amongſt us unles it be lawfull captives taken in juſt warres, and ſuch ſtrangers as willingly ſelle themſelves or are ſold to us. And theſe ſhall have all the liberties and Chriſtian uſages

which the law of God eſtabliſhed in Iſraell concerning ſuch perſons doeth morally require. This exempts none from ſervitude who ſhall be Judged thereto by Authoritie." *M. H. S. Coll.*, III., viii., 231.

Theſe laws were not printed, but were publiſhed in manuſcript[1] under the ſuperintendence of a committee in which Deputy-Governor Endicott was aſſociated with Mr. Downing and Mr. Hauthorne, and, Governor Winthrop ſays, "eſtabliſhed for three years, by that experience to have them fully amended and eſtabliſhed to be perpetual." *Maſs. Records*, I., 344, 346. *Winthrop's Journal*, II., 55. By the ninety-eighth and laſt ſection of this code, it was decreed as follows:

"98. Laſtly becauſe our dutie and deſire is to do nothing ſuddainlie which fundamentally concerne us, we decree that theſe rites and liberties, ſhall be Audably read and deliberately weighed at every Generall Court that ſhall be held, within three yeares next inſueing, And ſuch of them as ſhall not be altered or repealed they ſhall ſtand ſo ratified, That no man ſhall infringe them without due puniſhment.

"And if any Generall Court within theſe next thre yeares ſhall faile or forget to reade and conſider them as aboveſaid, The Governor and Deputy Governor for the time being, and every Aſſiſtant preſent at ſuch Courts, ſhall forfeite 20 ſh. a man, and everie Deputie 10 ſh. a man for each neglect, which ſhall be

[1] There is no reaſon to doubt the authenticity of the ancient MS. which was the foundation of the very able and inſtructive paper of the late Mr. Francis C. Gray on "*The Early Laws of Maſſachuſetts*," as a part of which the Body of Liberties was printed in 1843.

paid out of their proper eſtate, and not by the Country or the Townes which chooſe them, and whenſoever there ſhall ariſe any queſtion in any Court amonge the Aſſiſtants and Aſſociates thereof about the explanation of theſe Rites and liberties, The Generall Court onely ſhall have power to interprett them." *M. H. S. Coll.*, III., viii., 236, 237.

It is not to be doubted that at the following ſeſſions of the General Court, "the lawes were read over," in accordance with this decree. And before the expiration of the three years, committees were appointed to reviſe the Body of Liberties, and orders relating to it were paſſed every year afterward until 1648, when the laws were firſt printed. *Gray's Reports*, IX., 513.[1]

Of this firſt printed edition of the laws it is ſuppoſed that no copy is now in exiſtence. *Ibid.* This is much to be regretted, as a compariſon might poſſibly throw ſome light on the change in the law of ſlavery, which appears in all the ſubſequent editions. Although hitherto entirely unnoticed, we regard it as highly important; for it takes away the foundation of a grievous charge againſt that God-fearing and law-abiding people. For, if "no perſon was ever born into legal ſlavery in Maſſachuſetts," there was a moſt ſhocking chronic violation of law in that Colony and Province for more than a century, hardly to be reconciled with their hiſtorical reputation.

[1] In the elaborate, learned, and moſt valuable note of Mr. Gray, here referred to, the reader will find references to all the original authorities, which it is needleſs to repeat in this place. We have been unable to verify his reference to *Maſs. Records*, II., 2, for proceedings of the General Court on the 20th May, 1642, in the common copies of that volume.

In the ſecond printed edition, that of 1660, the law appears as follows, under the title

"*BOND-SLAVERY.*

IT is Ordered by this Court & Authority thereof; That there ſhall never be any bond-ſlavery villenage or captivity amongſt us, unles it be Lawfull captives, taken in juſt warrs, [*or ſuch*] as [*ſhall*] willingly ſell themſelves, or are ſold to us, and ſuch ſhall have the liberties, & Chriſtian uſuage, which the Law of God eſtabliſhed in Iſrael, Concerning ſuch perſons, doth morally require, provided this exempts none from ſervitude, who ſhall be judged thereto by Authority. [1641.]" *Maſs. Laws, Ed.* 1660, *p.* 5.

The words italicized in brackets appear among the manuſcript corrections of the copy which (formerly the property of Mr. Secretary Rawſon, who was himſelf apparently the Editor of the volume) is now preſerved in the Library of the American Antiquarian Society at Worceſter, in Maſſachuſetts. It is plain, however, that the printed text required correction, and—although no better authority can poſſibly be demanded than that of the Editor himſelf—it is confirmed by the subſequent edition of 1672, in which the ſame error, having been repeated in the text, is made the occaſion of a correction in the printed table of errata. There is a want of accuracy even in this correction itſelf; but the intention is ſo obvious that it cannot be miſtaken. *Maſs. Laws, Ed.* 1672, *pp.* 10, 170.

To prevent any poſſible doubt which may ſtill linger in the mind of any reader at the end of the demonſtration through which we ourſelves firſt arrived

at this reſult, we will add the following record—evidence afterwards diſcovered—which it will puzzle the moſt aſtute critic to make "void and of none effect."

In May, 1670, on the laſt day of the month, a committee was appointed by the General Court "to pervſe all our lawes now in force, to collect & drawe vp any literall errors or miſplacing of words or ſentences therein, or any libertjes infringed, and to make a convenient table for the ready finding of all things therein, that ſo they may be fitted ffor the preſſe, & the ſame to preſent to the next ſeſſion of this Court, to be further conſidered off & approved by the Court." *Maſs. Records*, IV., ii., 453.

At the following ſeſſion of the Court, the committee preſented their report accordingly, and on the 12th October, 1670, the following order was made:

"The Court, having pervſed & conſidered of the returne of the comittee, to whom the revejw of the lawes was referred, &c., by the Generall Court in May laſt, as to the litterall erratars, &c., do order that in * * * * *

"Page 5, lj: 3, tit. Bondſlauery, read 'or ſuch as ſhall willingly,' &c." *Maſs. Records*, IV., ii., 467.

As the circumſtances under which all theſe laws and liberties were originally compoſed and after long diſcuſſion, minute examination, and repeated reviſions, finally ſettled and eſtabliſhed, forbid the ſuppoſition that ſlavery came in an unbidden or unwelcome gueſt—ſo is it equally impoſſible to admit that this alteration of the ſpecial law of ſlavery by the omiſſion of so important and ſignificant a word could have been accidental or without motive.

If under the original law the children of enſlaved captives and ſtrangers might poſſibly have claimed exemption from that ſervitude to which the recognized common law of nations aſſigned them from their birth; this amendment, by ſtriking out the word "ſtrangers," removed the neceſſity for alienage or foreign birth as a qualification for ſlavery, and took off the prohibition againſt the children of ſlaves being "born into legal ſlavery in Maſſachuſetts."

It is true there is little probability that in thoſe days the natural rights of theſe little heathen, born in a Chriſtian land, would have been much regarded, or that the owners of ſlave parents would have had much difficulty in quieting the title by having the increaſe of their chattels duly "judged" to ſervitude by authoritie," in accordance with the civil law; ſtill there might have been color for the claim to freedom, which this amendment effectually barred. And this was in accordance, too, with the law of Moſes—the children of ſlaves remained ſlaves, being the claſs deſcribed as "born in the houſe."

This Maſſachuſetts law of ſlavery was not a regulation of the ſtatus of indentured ſervants. "Bond-ſlavery" was not the name of their ſervice, neither is it placed among the "*Liberties of ſervants*," but thoſe of "*Forreiners and ſtrangers.*" And in all the editions of the laws, this diſtinction is maintained; "*Bond-ſlavery*" being invariably a ſeparate title. White ſervants for a term of years would hardly be deſignated as ſtrangers,[1] and a careful ſtudy of the whole ſubject

[1] John Cotton, in his letter to Cromwell, July 28, 1651, ſays: "the Scots, whom God delivered into your hands at Dunbarre, and whereof

juſtifies at leaſt the doubt whether the *privileges* of ſervants belonged to ſlaves at all.

The law muſt be interpreted in the light of contemporaneous facts of hiſtory. At the time it was made (1641), what had its authors to provide for?

1. Indian ſlaves — their captives taken in war.
2. Negro ſlaves — their own importations of "ſtrangers" obtained by purchaſe or exchange.
3. Criminals — condemned to ſlavery as a puniſhment for offences.

In this light, and only in this light, is their legiſlation intelligible and conſiſtent. It is very true that the code of which this law is a part "exhibits throughout the hand of the practiſed lawyer, familiar with the principles and ſecurities of Engliſh Liberty;" but who had ever heard, at that time, of the "common-law rights" of Indians and negroes, or anybody elſe but Engliſhmen?

Thus ſtood the ſtatute through the whole colonial period, and it was never expreſſly repealed. Baſed on the Moſaic code, it is an abſolute recognition of ſlavery as a legitimate ſtatus, and of the right of one man to ſell himſelf as well as that of another man to buy him. It ſanctions the ſlave-trade, and the perpetual bondage of Indians and negroes, their children and their children's children, and entitles Maſſachuſetts to precedence over any and all the other colonies

ſundry were ſent hither, we have been deſirous (as we could) to make their yoke eaſy. * * * They have not been ſold for ſlaves to perpetuall ſervitude, but for 6, or 7 or 8 yeares, as we do our owne." *Hutchinſon's Coll.*, 235. He certainly did not mean "our owne" Indians and negroes.

in ſimilar legiſlation. It anticipates by many years anything of the ſort to be found in the ſtatutes of Virginia, or Maryland, or South Carolina, and nothing like it is to be found in the contemporary codes of her ſiſter colonies in New England. *Compare Hildreth*, I., 278.

Yet this very law has been gravely cited in a paper communicated to the Maſſachuſetts Hiſtorical Society, and twice reprinted in its publications without challenge or correction, as an evidence that "ſo far as it felt free to follow its own inclinations, uncontrolled by the action of the mother country, Maſſachuſetts was hoſtile to ſlavery as an inſtitution." *M. H. S. Coll.*, IV., iv., 334. *Proc.*, 1855-58, *p.* 189.

And with the ſtatute before them, it has been perſiſtently aſſerted and repeated by all ſorts of authorities, hiſtorical and legal, up to that of the Chief Juſtice of the Supreme Court of the Commonwealth, that "ſlavery to a certain extent ſeems to have crept in; not probably by force of any law, for none ſuch is found or known to exiſt." *Commonwealth* vs. *Aves*, 18 *Pickering*, 208. *Shaw, C. J.*

The leading caſe in Maſſachuſetts is that of *Winchendon* vs. *Hatfield in error*, IV *Maſs. Reports*, 123. It relates to the ſettlement of a negro pauper who had been a ſlave as early as 1757, and paſſed through the hands of nine ſeparate owners before 1775. From the ninth he abſconded, and enliſted in the Maſſachuſetts Army among the eight-months' men, at Cambridge, in the beginning of the Revolutionary War. His term of ſervice had not expired when he was again ſold, in July, 1776, to another citizen of Maſſa-

chuſetts, with whom he lived about five weeks, when he enliſted into the three-years' ſervice, and his laſt owner received the whole of his bounty and part of his wages.

Edom London, for ſuch was the name of this revolutionary patriot, in 1806 was "poor," and "had become chargeable" to the town in which he reſided. That town magnanimouſly ſtruggled through all the Courts, from the Juſtices Court up to the Supreme Court of the Commonwealth, to ſhift the reſponsibility for the maintenance and ſupport of the old ſoldier from itſelf to one of the numerous other towns in which he had ſojourned from time to time as the ſlave of his eleven maſters. The attempt was unſucceſsful; but it is worthy of notice, as Chief Juſtice Parſons, in the deciſion on the appeal, ſettled ſeveral very important points concerning the laws of ſlavery in Maſſachuſetts. He said:

"Slavery was introduced into this country [Maſſachuſetts] ſoon after its firſt ſettlement, and was tolerated until the ratification of the preſent Conſtitution [the Conſtitution of 1780]. . . . The iſſue of the female ſlave, according to the maxim of the Civil law, was the property of her maſter."

With regard to this latter point, Chief Juſtice Dana, in directing a jury, in 1796, had ſtated as the unanimous opinion of the Court, that a negro born in the State before the Conſtitution of 1780, was born free, although born of a female ſlave.

Chief Juſtice Parſons, however, candidly declared that "it is very certain that the general practice and common uſage had been oppoſed to this opinion."

Chief Juſtice Parker, in 1816, cautiouſly confirmed this view of the ſubject by his predeceſſor. *Andover* vs. *Canton*, 13 *Maſs. Reports*, 551-552.

"The practice was . . . to conſider ſuch iſſue as ſlaves, and the property of the maſter of the parents, liable to be ſold and transferred like other chattels, and as aſſets in the hands of executors and adminiſtrators." He adds, "we think there is no doubt that, at any period of our hiſtory, the iſſue of a ſlave huſband and a free wife would have been declared free." [1]

"His children, if the iſſue of a marriage with a ſlave, would, immediately on their birth, become the property of his maſter, or of the maſter of the female ſlave."

Notwithſtanding all this, in Mr. Sumner's famous ſpeech in the Senate, June 28, 1854, he boldly aſſerted that "in all her annals, no perſon was ever born a ſlave on the ſoil of Maſſachuſetts," and "if, in point of fact, the iſſue of ſlaves was ſometimes held in bondage, it was never by ſanction of any ſtatute-law of Colony or Commonwealth."

And recent writers of hiſtory in Maſſachuſetts have aſſumed a ſimilar lofty and poſitive tone on this ſubject. Mr. Palfrey ſays: "In fact, no perſon was ever born into legal ſlavery in Maſſachuſetts." *Hiſt. N. E.*, II., 30, *note*. Neither Mr. Sumner nor Mr. Palfrey give any authorities for their ſtatements be-

[1] Kendall, who travelled through the northern parts of the United States in the years 1807 and 1808, referring to this ſubject, ſays: "While ſlavery was maintained in Maſſachuſetts, there was a particular temptation to negroes for taking Indian wives, the children of Indian women being acknowledged to be free." *Travels*, II., 179. See *Hiſt. Coll. Eſſex Inſtitute, Vol.* VII., *p.* 73. *Caſe of Priſcilla, &c., againſt Simmons.*

yond the caſes in *Maſſachuſetts Reports*, IV., 128, 129; XVI., 73, and *Cuſhing's Reports*, X., 410, which are alſo referred to by Mr. Juſtice Gray in a ſtill more recent and authoritative publication. The diſtinguiſhed ability of this gentleman, ſo long recognized and acknowledged at the bar in Maſſachuſetts, will do ample honor to the bench to which he is ſo juſtly advanced. We entertain the higheſt reſpect for his attainments, his judgment, and his critical ſagacity; but in this inſtance we think he has fallen into a ſerious error, which not even the great weight of his authority can eſtabliſh or perpetuate in hiſtory.

In an elaborate hiſtorical note to the caſe of *Oliver* vs. *Sale*, *Quincy's Reports*, 29, he ſays:

"Previouſly to the adoption of the State Conſtitution in 1780, negro ſlavery exiſted to ſome extent, and negroes held as ſlaves might be ſold, but *all children of ſlaves were by law free.*"

So diſtinct and poſitive an aſſertion ſhould have been fortified by unequivocal authority. In this caſe Mr. Gray gives us two or three dozen ſeparate references. Theſe are numerous and concluſive enough as to the facts in the firſt clauſes of his ſtatement—that negro ſlavery exiſted in Maſſachuſetts, and that negro ſlaves might be ſold; but for the laſt and moſt important part of it, that *all children of ſlaves were by law free*,[1] there is not an iota of evidence or author-

[1] In the caſe of *Newport* vs. *Billing*, which Mr. Gray believes to have been "the lateſt inſtance of a verdict for the maſter," it was found by the highest court in Maſſachuſetts, on appeal from a ſimilar deciſion in the inferior court, "that the ſaid Amos [Newport] was not a freeman, as he alledged, but the proper ſlave of the ſaid Joſeph [Billing]. *Records*, 1768, *fol.* 284. As this ſeems to have been one of the ſo-called "freedom

ity in the entire array, excepting the opinion of the Court in 1796, already referred to.

This "unanimous opinion of the Court," in 1796, which has been ſo often quoted to ſuſtain the reputation of Maſſachuſetts for early and conſiſtent zeal againſt ſlavery, will hardly ſuffice to carry the weight aſſigned to it. In the firſt place, the facts proved to the jury in the case itſelf were ſet at naught by the Court in the ſtatement of this opinion. We quote them, omitting the peculiar phraſeology by which they are diſguiſed in the report.

An action was brought by the inhabitants of Littleton, to recover the expenſe of maintaining a negro, againſt Tuttle, his former maſter. It was tried in Middleſex, October Term, 1796. The negro's name was Cato. His father, named Scipio, was a negro ſlave when Cato was born, the property of Nathan Chaſe, an inhabitant of Littleton. Cato's mother, named Violet, was a negro in the ſame condition, and the property of Joſeph Harwood. Scipio and Violet were lawfully married, and had iſſue, Cato, born in Littleton, January 18th, 1773, a ſlave, the property of the ſaid Harwood, as the owner of his mother. *Maſs. Reports*, IV., 128, *note*.

But whatever may be inferred from theſe facts taken in connection with the "opinion" of the Court, in 1796, we aſk the attention of the reader to another caſe a little later, before the ſame tribunal. In the caſe of *Perkins, Town Treaſurer of Topsfield*, vs. *Emerson*, tried in Eſſex, the Court held that a certain negro

caſes," it is to be regretted that Mr. Gray did not aſcertain from the files whether "the ſaid Amos" was a native of Maſſachuſetts!

girl born in the Province in Wenham in 1759, was a ſlave belonging to Emerſon from 1765 to 1776, when ſhe was freed. This deciſion was in November, 1799. *Dane's Abridgment*, II., 412. Thus it appears that the Supreme Judicial Court of Maſſachuſetts inſtructed a jury in 1796, by an unanimous opinion, that a negro born in the State before the Conſtitution of 1780, was born free, although born of a female ſlave. Three years later, the ſame Court and the ſame judges (three out of four),[1] held a negro girl born in the province in 1759 to have been the lawful ſlave of a citizen of Maſſachuſetts from 1765 to 1776. In the latter caſe, too, the deciſion of the Court was given on the queſtion of law alone, as preſented upon an agreed ſtatement of the facts. *MS. Copy of Court Records.*

A caſe in Connecticut preſents an illuſtration of great importance. It is that of "a fugitive ſlave, and attempted reſcue, in Hartford, 1703," of which an account is given in one of Mr. J. Hammond Trumbull's admirable articles on ſome of the Connecticut Statutes. *Hiſtorical Notes, etc.*, No. VI.

"The case laid before the Honorable General Aſſembly in October, 1704," after a ſtatement of facts, etc., proceeds with reaſons for the return of the fugitive, ſome of which we quote.

[1] The judges preſent at theſe Terms reſpectively were the following, viz.:

October Term, 1796, *in Middlesex:*
Francis Dana, *Chief Juſtice.*
Robert Treat Paine,
Increaſe Sumner,
Nathan Cuſhing,
Thomas Dawes, jr., *Juſtices.*

November Term, 1799, *in Eſſex:*
Francis Dana, *Chief Juſtice.*
Robert Treat Paine,
Theophilus Bradbury,
Nathan Cuſhing, *Juſtices.*

"1. *According to the laws and conſtant practice of this colony and all other plantations*, (as well as by the civil law) *ſuch perſons as are born of negro bond-women are themſelves* in like condition, that is, *born in ſervitude. Nor can there be any precedent in* this government, or *any of her Majeſty's plantations, produced to the contrary.*[1] And though the law of this colony doth not ſay that ſuch perſons as are born of negro women and ſuppoſed to be mulattoes, ſhall be ſlaves, (which was needleſs, becauſe of *the conſtant practice by which they are held as ſuch*,) yet it ſaith expreſſly that 'no man ſhall put away or make free his negro *or mulatto* ſlave,' etc., which undeniably ſhows and declares an approbation of ſuch ſervitude, and that mulattoes may be held as ſlaves within this government."

The value of this teſtimony on the ſubject is enhanced by the character and poſition of the witneſs. He was Gurdon Saltonſtall, born in Maſſachuſetts, the ſon of a magiſtrate, educated at Harvard College, and afterwards Governor of Connecticut,—"at that time the popular miniſter of the New London church, and nearly as diſtinguiſhed at the bar as in the pulpit. The friend and confidential adviſer of the governor (Winthrop), who was one of his pariſhioners, his influence was already felt in the Colonial Councils, and he was largely entruſted with the management of public affairs. In general ſcholarſhip, and in the extent of his profeſſional ſtudies, both in divinity and law, he had probably no ſuperior in the colony: as an advo-

[1] Lay, in his tract "*All Slave-Keepers Apoſtates*," *p.* 11., enumerating the hardſhips of the inſtitution, ſays, "Nor doth this ſatisfy, but their children alſo are kept in ſlavery, *ad infinitum*; . . . "

cate, according to the teſtimony of his contemporaries, he had no equal." *J. Hammond Trumbull's Hiſtorical Notes. Backus*, II., 35. *Trumbull's Connecticut, Vol.* I. (1797), 417. Mr. Trumbull alſo mentions a queſtion raiſed in 1722, as to the ſtatus of the children of Indian captive-ſlaves, in a memorial to the Legiſlature, from which it is apparent that no doubt was entertained as to the legal ſlavery of children of negroes or imported Indians from beyond ſeas.

Ample evidence is given elſewhere in these notes of the fact, that the children of ſlaves were actually held and taken to be ſlaves, the property of the owners of the mothers, liable to be ſold and transferred like other chattels and as aſſets in the hands of executors and adminiſtrators.[1] This fact comes out in many portions of this hiſtory; there is no one thing more patent to the reader. The inſtances are numerous, and it is needleſs to recapitulate them here; but it may be proper to refer to the facts that in the inſtructions of the town of Leiceſter to their representative in 1773, among the ways and means ſuggeſted for extinguiſhing ſlavery, they propoſed "that every negro child that ſhall be born in ſaid government after the enacting ſuch law ſhould be free at the ſame age that the children of white people are," and in the petition of the negro ſlaves for relief in

[1] "A bill of ſale, or other formal inſtrument, was not neceſſary to transfer the property in a ſlave, which was a mere perſonal chattel, and might paſs, as other chattels, by delivery." *Milford* vs. *Bellingham*, 16 *Maſs. Reports*, 110. Governor Dudley's report to the Board of Trade on ſlaves and the ſlave-trade in Maſſachuſetts, etc., in 1708, ſtated that "in Boston, there are 400 negro ſervants, *one half of whom were born here*." *Collections Amer. Stat. Aſſoc.*, I., 586.

1777 to the General Court of Maſſachuſetts, they humbly pray that "their children (who were born in this land of liberty) may not be held as ſlaves after they arrive at the age of twenty-one years." *Maſs. Archives. Revolutionary Reſolves, Vol.* VII., *p.* 132.

The Articles of Confederation of the United Colonies of New England, 19th May, 1643, which commence with the famous recital of their object in coming into thoſe parts of America, viz., "to advaunce the Kingdome of our Lord Jeſus Chriſt, and to enjoy the liberties of the Goſpell in puritie with peace," practically recognize the lawful exiſtence of ſlavery.

The fourth Article, which provides for the due adjuſtment of the expenſe or "charge of all juſt warrs whether offenſive or defenſive," concludes as follows:

"And that according to their different charge of eich Juriſdiccon and plantacon, the whole advantage of the warr (if it pleaſe God to bleſs their Endeavours) whether it be in lands, goods, or PERSONS, ſhall be proportionably devided among the ſaid Confederats." *Hazard*, II., 3. *Plymouth Records*, IX., 4. The ſame feature remained in the Conſtitution of the Confederacy to the end of its exiſtence.[1] See *Ratification of* 1672. *Plymouth Records*, X., 349.

The original of the Fugitive Slave Law proviſion in the Federal Conſtitution is to be traced to this

[1] The agreement between Leiſler of New York, and the Commiſſioners of Maſſachuſetts, Plymouth, and Connecticut, May 1, 1690, provided that "all plunder and *captives* (if any happen) ſhall be divided to y^e^ officers and ſoldiers according to y^e^ Cuſtome of Warr." *N. Y. Doc. Hiſt.*, II., 134, 157. Stoughton and Sewall were the Commiſſioners for Maſſachuſetts.

Confederacy, in which Maſſachuſetts was the ruling colony. The Commiſſioners of the United Colonies found occasion to complain to the Dutch Governor in New Netherlands, in 1646, of the fact that the Dutch agent at Hartford had harbored a fugitive Indian woman-ſlave, of whom they ſay in their letter: "Such a ſervant is parte of her maſter's eſtate, and a more conſiderable parte than a beaſt." A proviſion for the rendition of fugitives, etc., was afterwards made by treaty between the Dutch and the Engliſh. *Plymouth Colony Records*, IX., 6, 64, 190.

Hiſtorians have generally ſuppoſed that the transactions in 1644–5, in which Thomas Keyſer and one James Smith, the latter a member of the church of Boſton, were implicated, "firſt brought upon the colonies the guilt of participating in the traffic in African ſlaves." *Bancroft*, I., 173–4.

The account which we have given of the voyage of the firſt colonial ſlave-ſhip, the Deſire, shows this to have been an error, and that which we ſhall give of theſe tranſactions will expoſe another of quite as much importance.

Hildreth, in whoſe hiſtory the curious and inſtructive ſtory of New England theocracy is narrated with scrupulous fidelity, gives ſo clear an account of this buſineſs as to require little alteration, and we quote him with ſlight additions, and references to the authorities, which he does not give in detail.

This affair has been magnified by too precipitate an admiration into a proteſt on the part of Maſſachuſetts againſt ſlavery and the ſlave-trade. So far, however, from any ſuch proteſt being made, the firſt code

of laws in Maſſachuſetts eſtabliſhed ſlavery, as we have ſhown, and at the very birth of the foreign commerce of New England the African ſlave-trade became a regular buſineſs. The ſhips which took cargoes of ſtaves and fiſh to Madeira and the Canaries were accuſtomed to touch on the coaſt of Guinea to trade for negroes, who were carried generally to Barbadoes or the other Engliſh Iſlands in the Weſt Indies, the demand for them at home being ſmall.[1] In the caſe referred to, inſtead of buying negroes in the regular courſe of traffic, which, under the fundamental law of Maſſachuſetts already quoted, would have been perfectly legal,[2] the crew of a Boſton ſhip joined with ſome London veſſels on the coaſt, and, on pretence of ſome quarrel with the natives, landed a "murderer"—the expreſſive name of a ſmall piece of cannon—attacked a negro village on Sunday, killed many of the inhabitants, and made a few priſoners, two of whom fell to the ſhare of the Boſton ſhip. In the courſe of a lawſuit between the maſter, mate, and owners, all this ſtory came out, and one of the magiſtrates preſented a petition to the General Court, in which he charged the maſter and mate with a threefold offence,

[1] "One of our ſhips, which went to the Canaries with pipe-ſtaves in the beginning of November laſt, returned now [1645] and brought wine, and ſugar, and ſalt, and ſome tobacco, which ſhe had at Barbadoes, *in exchange for Africoes, which ſhe carried from the Iſle of Maio.*" *Winthrop's Journal*, II., 219.

[2] In awarding damages to Captain Smith againſt his aſſociate in this buſineſs, they would allow him nothing for the negroes; but the reaſon they give is worth quoting here:

"4. * * For the negars (*they being none of his, but ſtolen*) we thinke meete to alowe nothing." *Maſs. Records*, II., 129.

This was "the Court's opinion" "by both howſes." *Ib.*, III., 58.

murder, man-ſtealing, and Sabbath-breaking; the two firſt capital by the fundamental laws of Maſſachuſetts, and all of them "capital by the law of God." The magiſtrates doubted their authority to puniſh crimes committed on the coaſt of Africa; but they ordered the negroes to be ſent back, as having been procured not honeſtly by purchaſe, but unlawfully by kidnapping. *Hildreth*, I., 282. *Maſs. Records*, II., 67, 129, 136, 168, 176, 196; III., 46, 49, 58, 84. *Winthrop's Journal*, II., 243, 379.

In all the proceedings of the General Court on this occaſion, there is not a trace of anti-ſlavery opinion or ſentiment,[1] ſtill leſs of anti-ſlavery legiſlation; though both have been repeatedly claimed for the honor of the colony.

III

The coloniſts of Maſſachuſetts aſſumed to themſelves "a right to treat the Indians on the footing of Canaanites or Amalekites," and practically regarded them from the firſt as forlorn and wretched heathen, poſſeſſing few rights which were entitled to reſpect. *Bancroft*, III., 408. *Bp. Berkeley's Works*, III., 247.

[1] It is poſſible that the petition referred to in the following extract from the Records may have related to this ſubject; but it left no impreſſion which can be traced.

"29 May, 1644. Mr. Blackleach his petition about the Mores was conſented to, to be comitted to the elders, to enforme us of the mind of God herein, & then further to conſider it." *Maſs. Records*, II., 67. Mr. John Blackleach, a merchant, was of Salem as early as 1634, and repreſentative in 1636. Some of his letters are printed in *M. H. S. Coll.*, IV., vii., 146–155.

Sermon before the Soc. for the Prop. of the Gospel, 1731, *p.* 19. Cotton Mather's ſpeculations on their origin illuſtrate the temper of the times.

"We know not *When* or *How* theſe Indians firſt became Inhabitants of this mighty Continent, yet we may gueſs that probably the Devil decoy'd theſe miſerable Salvages hither, in hopes that the Goſpel of the Lord Jeſus Chriſt would never come here to deſtroy or diſturb his *Absolute Empire* over them." *Magnalia*, *Book* III., *Part* III.

The inſtructions from the Commiſſioners of the United Colonies to Major Gibbons, on being ſent againſt the Narraganſetts in 1645, further illuſtrates this ſpirit.

He was directed to have "due regard to the honour of God, who is both our ſword and ſhield, and to the diſtance which is to be obſerved betwixt Chriſtians and Barbarians, as well in warres as in other negociations." Of this Hutchinſon says: "It was indeed ſtrange that men, who profeſſed to believe that God hath made of one blood all nations of men for to dwell on all the face of the earth, ſhould upon every occaſion take care to preſerve this diſtinction. Perhaps nothing more effectually defeated the endeavors for Chriſtianizing the Indians. It ſeems to have done more: to have ſunk their ſpirits, led them to intemperance, and extirpated the whole race." *Hutchinſon's Collection of Papers*, 151.

In 1646, the Commiſſioners of the United Colonies made a very remarkable order, practically authorizing, upon complaint of treſpaſs by the Indians, the ſeizure of "any of that plantation of Indians that ſhall

entertain, protect, or reſcue the offender." The order further proceeds: "And, becauſe it will be chargeable keeping Indians in priſone, and if they ſhould eſcape, they are like to prove more inſolent and dangerous after, that upon ſuch ſeazure, the delinquent or ſatisfaction be againe demanded, of the Sagamore or plantation of Indians guilty or acceſsory as before, and if it be denyed, that then the magiſtrates of the Juriſdiccon deliver up the Indians ſeaſed to the party or parties indamaged, either to ſerve, or to be ſhipped out and exchanged for Negroes as the cauſe will juſtly beare." *Plymouth Records*, IX., 71.

The Commiſſioners themſelves were not blind to the ſeverity of this proceeding, although they alleged that it was "juſt."

There are here two features of hiſtorical importance which the reader will not fail to notice, viz., the export for trade of Indians for Negroes, and the meaſure of "juſtice" in thoſe days between the coloniſts and the natives.

It may be obſerved that in theſe notes we have not drawn the lines between the Plymouth Colony and that of the Maſſachuſetts Bay. In this connection they may juſtly be regarded as one; indeed, they cannot be ſeparated, for in theſe and ſimilar proceedings, to quote a ſignificant proverb of that day, "the Plymouth ſaddle was always on the Bay horſe."

In 1658, June 29, certain perſons were puniſhed by fines by the County Courts at Salem and Ipſwich for attending a Quaker meeting and otherwiſe "syding with the Quakers and abſenting themſelves from the publick ordinances." Among them were two children,

Daniel and Provided Southwick, ſon and daughter to Lawrence Southwick, who were fined ten pounds, but their fines not being paid, and the parties (as is ſtated in the proceedings) "pretending they have no eſtates, reſolving not to worke and others likewiſe have been fyned and more like to be fyned"—the General Court were called upon in the following year, May 11, 1659, to decide what courſe ſhould be taken for the ſatisfaction of the fines.

This they did, after due deliberation, by a reſolution empowering the County Treaſurers to ſell the ſaid perſons to any of the Engliſh nation at Virginia or Barbadoes—in accordance with their law for the ſale of poor and delinquent debtors. To accompliſh this they wreſted their own law from its juſt application, for the ſpecial law concerning fines did not permit them to go beyond impriſonment for non-payment. *Maſs. Laws*, 1675, *p.* 51. *Felt's Salem*, II., 581. *Maſs. Records*, IV., i., 366. *Maſs. Laws*, 1675, *p.* 6. *Biſhop's N. E. Judged*, 85. *Hazard*, II., 563.

The father and mother of theſe children, who had before ſuffered in their eſtate and perſons, were at the ſame time baniſhed on pain of death, and took refuge in Shelter Iſland, where they ſhortly afterwards died. *Maſs. Records*, IV., i., 367. *Hazard*, II., 564. *Biſhop*, 83. The Treaſurer, on attempting to find paſſage for the children to Barbadoes, in execution of the order of ſale, found "none willing to take or carry them." Thus the entire deſign failed, only through the reluctance of theſe ſhipmaſters to aid in its conſummation. *Biſhop*, 190. *Sewel's Hiſt. of the Quakers*, I., 278.

Provided Southwick was ſubſequently in the ſame year, in company with ſeveral other Quaker ladies, "whipt with tenn ſtripes," and afterwards "committed to priſon to be proceeded with as the law directs." *Maſs. Records*, IV., i., 411.

The indignant Quaker hiſtorian, in recounting theſe things, ſays, "After ſuch a manner ye have done to the *Servants* of the Lord, and for *ſpeaking* to one another, . . . and for *meeting* together, ranſacking *their Eſtates*, breaking open *their Houſes*, carrying away *their Goods* and *Cattel*, till ye have left none, then their *wearing apparel*, and then (as in Plimouth government) *their Land;* and when ye have left *them nothing*, ſell *them* for this which *ye* call *Debt*. Search the Records of former Ages, go through the Hiſtories of the Generations that are paſt; read the Monuments of the Antients, and ſee if *ever* there were *ſuch* a thing as this ſince the Earth was laid, and the Foundations thereof in the *Water*, and *out of the Water*. . . . O *ye* Rulers of Boſton, ye Inhabitants of the *Maſſachuſetts!* What ſhall I ſay unto *you?* Whereunto ſhall I liken *ye?* Indeed, I am at a ſtand, I have no Nation with *you* to compare, I have no People with *you* to parallel, I am at a loſs with *you* in this point; I muſt ſay of *you*, as *Balaam* ſaid of *Amalek* when his eyes were open, *Boſton, the firſt of the Nations that came out thus to war againſt, to ſtop Iſrael in their way to Canaan from Egypt.*" *Biſhop's N. E. Judged*, 90.

At the time of King Philip's War, the policy and practice of the Colony of Maſſachuſetts, with regard to ſlavery, had been already long ſettled upon the baſis of poſitive law. Accordingly the numerous

"captives taken in war" were diſpoſed of in the uſual way. The notes which follow are mainly from the official records of the colony, and will be ſufficient to ſhow the general current of public opinion and action at that period.

In Auguſt, 1675, the Council at Plymouth ordered the ſale of a company of Indians, "being men, weomen, and children, in number one hundred and twelve," with a few exceptions. The Treaſurer made the ſale "in the countryes behalfe." *Plymouth Records*, v., 173.

A little later the Council made a ſimilar diſpoſition of fifty-ſeven more (Indians) who "had come in a ſubmiſſive way." Theſe were condemned to perpetual ſervitude, and the Treaſurer was ordered and appointed "to make ſale of them, to and for the uſe of the collonie, as opportunity may preſent." *Ib.*, 174.

The accounts of the Colony of Maſſachuſetts for receipts and expenditures during "the late War," as ſtated from 25th June, 1675, to the 23d September, 1676, give among the credits the following:

"By the following accounts received in or as ſilver, viz.:
"Captives; for 188 priſoners at war ſold 397.13.00."

Plymouth Records, x., 401.

There is a peculiar ſignificance in the phrase which occurs in the Records—"ſent away by the Treaſurer." It means ſold into ſlavery. *Maſs. Records*, v., 58.

The ſtatiſtics of the traffic carried on by the Trea-

ſurers cannot be accurately aſcertained from any ſources now at command. But great numbers of Philip's people were ſold as ſlaves in foreign countries. In the beginning of the war Captain Moſeley captured eighty, who were confined at Plymouth. In September following one hundred and ſeventy-eight were put on board a veſſel commanded by Captain Sprague, who ſailed from Plymouth with them for Spain. *Drake*, 224.

Theſe proceedings were not without witneſſes againſt their injuſtice and inhumanity. The Apoſtle Eliot's earneſt remonſtrance is a glorious memorial of his fearleſs devotion to reaſon and humanity—to which neither rulers nor people of Maſſachuſetts were then inclined to liſten.

"To the Honorable the Governor and Council, ſitting at Boſton this 13t. of the 6t, 75, the humble petition of John Eliot, Sheweth that the terror of ſelling away ſuch Indians unto the Ilands for perpetual ſlaves, who ſhall yield up y^{m}ſelves to your mercy, is like to be an effectual prolongation of the warre, and ſuch an exaſperation of them, as may produce we know not what evil conſequences, upon all the land. Chriſt hath ſaide, bleſſed are the mercyfull for they ſhall obtain mercy. This uſeage of them is worſe than death . . . it ſeemeth to me, that to ſell them away for ſlaves is to hinder the inlargement of his [Chriſt's] kingdom . . . to ſell ſoules for money ſeemeth to me a dangerous merchandize. If they deſerve to die, it is far better to be put to death under godly governors, who will take religious care, that meanes may be uſed, that they may die penitently. . . . Deut. 23: 15–16.

If a fugitive ſervant from a Pagan Maſter might not be delivered to his maſter but be kept in Iſrael for the good of his ſoule, how much leſs lawful is it to ſell away ſoules from under the light of the goſpel, into a condition, where theire ſoules will be utterly loſt, ſo far as appeareth unto man." *Plymouth Colony Records*, x., 451–2. *Compare Mather's Magnalia, Book* VII., 109 (753), *concerning the neglect to proſelyte the Indians, etc.*

There is nothing to ſhow that "the Council gave heed to the petition of Eliot," but a careful examination of the archives diſcloſed only a report of a Committee of the General Court, dated Nov. 5, 1675, and adopted by the Magiſtrates and Deputies the ſame day, by which ſeveral were to be ſent away.[1] *MS. Letter.*

In 1676, November 4th, it was ordered that whereas there is an Acte or order made by the Councell of War bearing date July, 1676, prohibiting any male

[1] Eliot appears alſo to have been the firſt in America to lift up his voice againſt the treatment which Negroes received in New England. Towards the end of his life, Cotton Mather ſtates, "He had long lamented it with a Bleeding and Burning Paſſion, that the Engliſh uſed their Negro's but as their Horſes or their *Oxen*, and that ſo little care was taken about their immortal Souls; he look'd upon it as a Prodigy, that any wearing the *Name* of *Chriſtians* ſhould ſo much have the *Heart* of *Devils* in them, as to prevent and hinder the Inſtruction of the poor *Blackamores*, and confine the ſouls of their miſerable Slaves to a *Deſtroying Ignorance*, meerly for fear of thereby loſing the Benefit of their Vaſſalage; but now he made a motion to the *Engliſh* within two or three Miles of him, that at ſuch a time and Place they would ſend their *Negro's* once a week to him: For he would then *Catechise* them, and *Enlighten* them, to the utmoſt of his Power in the Things of their Everlaſting Peace; however, he did not live to make much Progreſs in this Undertaking." *Mather's Magnalia, Book* III., 207 (325). *Compare also p.* 209 (327).

Indian captive to abide in this Juriſdiction that is above fourteen years of age att the beginning of his or their captivity, and in caſe any ſuch ſhould continue in the Collonie after the time then prefixed they ſhould be forfeit to the uſe of the Govt, this Court ſees cauſe to ratify and confirme that order and acte, and do therefore order; that all ſuch as have any ſuch Indian male captive that they ſhall diſpoſe of them out of the Collonie by the firſt of December next on paine of forfeiting every ſuch Indian, or Indians to the uſe of the Collonie; and the Conſtables of each town of this Juriſdiction are hereby ordered to take notice of any ſuch Indian or Indians ſtaying in any of the reſpective towns of this Collonie after the time prefixed, and ſhall forthwith bring them to the Treaſurer to be diſpoſed of to the uſe of the Government as aforeſaid. *Plymouth Records*, XI., 242.

There were a few, about five or ſix, exceptions made to this order, in favor of certain Indians, who had been aſſured by Capt. Benjamin Church that they ſhould not be ſold to any foreign parts, upon good behavior, &c. *Ib.*, 242.

The Maſſachuſetts General Court made an order in 1677, 24 May, that the Indian children, youths or girls, whoſe parents had been in hoſtility with the Colony, or had lived among its enemies in the time of the war, and were taken by force, and given or ſold to any of the inhabitants of this juriſdiction, ſhould be at the diſpoſall of their maſters or their aſſignes, who were to inſtruct them in Civility and Chriſtian religion. *Maſs. Records*, V., 136. *Note the diſtinction between friendly Indians whoſe children were to be held*

until 24 years of age, both in this order and in Plymouth Records, v., 207, 223.

The Court, in the following year (1678), found cauſe to prohibit "all and every perſon and perſons within our juriſdiction or elſewhere, to buy any of the Indian children of any of thoſe our captive ſalvages that were taken and became our lawfull priſoners in our late warrs with the Indians, without ſpecial leave, liking and approbation of the government of this juriſdiction. *Ib.*, 253.

In the ſucceeding year (1679), the following entry appears in the records:

"In reference unto ſeverall Indians bought by Jonathan Hatch of Capt. Church, the brothers of the woman, deſireing ſhee might be releaſed, appeared in Court with the ſaid Jonathan Hatch, and came to compoſition with her for the freedom of both her and her huſband, which are two of the three Indians above named; and her brothers payed on that accompt the ſume of three pounds ſilver mony of New England, and have engaged to pay three pounds more in the ſame ſpecie, and then the ſaid man and woman are to be releaſed; and for the third of the ſaid Indians, it being younge, the Court have ordered, that it ſhall abide with the ſaid Jonathan Hatch untill it attains the age of 24 years, and then to be releaſed for ever." *Plymouth Records*, VI., 15

It were well if the record were no worſe; but to all this is to be added the baſeneſs of treachery and falſehood. Many of theſe priſoners ſurrendered, and ſtill greater numbers came in voluntarily to ſubmit, upon the promiſe that they and their wives and children

ſhould have their lives ſpared, and none of them transported out of the country. In one inſtance, narrated by the famous Captain Church himſelf, no leſs than "eight ſcore perſons" were "without any regard to the promiſes made them on their ſurrendering themſelves, carried away to Plymouth, there ſold and transported out of the country." *Church*, 23, 24, 41, 51, 57. Baylies, in his *Memoir of Plymouth Colony*, Part III., *pp.* 47, 48, gives ſome additional particulars of this affair.

"After the deſtruction of Dartmouth, the Plymouth forces were ordered there, and as the Dartmouth Indians had not been concerned in this outrage, a negotiation was commenced with them. By the perſuaſions of Ralph Earl, and the promiſes of Captain Eels, who commanded the Plymouth forces, they were induced to ſurrender themſelves as priſoners, and were conducted to Plymouth. Notwithſtanding the promiſes by which they had been allured to ſubmit, notwithſtanding the earneſt, vehement, and indignant remonſtrances of Eels, Church, and Earl, the government, to their eternal infamy, ordered the whole to be ſold as ſlaves, and they were tranſported out of the country, being about one hundred and ſixty in number. So indignant was Church at the commiſſion of this vile act, that the government never forgave the warmth and the bitterneſs of his expreſſions, and the reſentment that was then engendered induced them to withhold all command from this brave, ſkilful, honeſt, open-hearted and generous man, until the fear of utter deſtruction compelled them, ſubſequently, to entruſt him with a high command. This mean and treach-

erous conduct alienated all the Indians who were doubting, and even those who were ſtrongly prediſpoſed to join the Engliſh."

Eaſton, in his *Relation*, *p.* 21, says: "Philip being ſlead; about a 150 Indians came in to a Plimouth Garriſon volentarly. Plimouth authority ſould all for Slafes (but about ſix of them) to be carried out of the country."

Church's authority from Plymouth Colony to demand and receive certain fugitives (whether men, women, or children) from the authorities of Rhode Iſland government, Auguſt 28, 1676, is printed in *Hough's Eaſton's King Philip's War*, *p.* 188. He was "impowered to ſell and diſpoſe of ſuch of them, and ſoe many as he ſhall ſee cauſe for, there: to the Inhabitants or others, for Term of Life, or for ſhorter time, as there may be reaſons. And his actinge, herein, ſhall at all Times be owned and juſtefied by the ſaid Collony."

Nor did the Chriſtian Indians or Praying Indians eſcape the relentleſs hoſtility and cupidity of the whites. Beſides other cruelties, inſtances are not wanting in which ſome of theſe were ſold as ſlaves, and under accuſations which turned out to be utterly falſe and without foundation. *Gookin's Hiſt. of the Chriſtian Indians.*

Some of them are probably referred to by Eliot, in his letter to Boyle, Nov. 27, 1683, in which he ſays, "I deſire to take boldneſs to propoſe a requeſt. A veſſel carried away a great number of our ſurpriſed Indians, in the times of our wars, to ſell them for ſlaves; but the nations, whither ſhe went, would not

buy them. Finally, ſhe left them at Tangier; there they be, ſo many as live, or are born there. An Engliſhman, a maſon, came thence to Boſton, he told me they deſired I would uſe ſome means for their return home. I know not what to do in it; but now it is in my heart to move your honour, ſo to meditate, that they may have leave to get home, either from thence hither, or from thence to England, and ſo to get home. If the Lord ſhall pleaſe to move your charitable heart herein, I ſhall be obliged in great thankfulneſs, and am perſuaded that Chriſt will, at the great day, reckon it among your deeds of charity done unto them, for his name's ſake." *M. H. S. Coll.*, III., 183.

Cotton Mather furniſhes another extract appropriate in this connection.

"Moreover, 'tis a Propheſy in Deut. 28, 68. *The Lord ſhall bring thee into Egypt again with ſhips, by the way whereof I ſpake unto thee. Thou ſhalt ſee it no more again; and there ſhall ye be ſold unto your Enemies, and no Man ſhall buy you.* This did our Eliot imagine accompliſhed, when the Captives taken by us in our late Wars upon them, were ſent to be ſold, in the Coaſts lying not very remote from Egypt on the Mediterranean Sea, and ſcarce any Chapmen would offer to take them off." *Mather's Magnalia*, Book III., Part III.

Mr. Everett, in one of the moſt elaborate of his finiſhed and beautiful orations, has narrated the ſtory of two of the laſt captives in that famous war, in a paſſage of ſurpaſſing eloquence which we venture to quote:

"Preſident Mather, in relating the encounter of

the 1st of Auguſt, 1676, the laſt but one of the war, ſays, 'Philip hardly eſcaped with his life alſo. He had fled and leſt his *peage* behind him, alſo his ſquaw and ſon were taken captive, and are now priſoners at Plymouth. Thus hath God brought that grand enemy into great miſery before he quite deſtroy him. It muſt needs be bitter as death to him to loſe his wife and only ſon (for the Indians are marvellous fond and affectionate towards their children) beſides other relations, and almoſt all his ſubjects, and country alſo.'

"And what was the fate of Philip's wife and his ſon? This is a tale for huſbands and wives, for parents and children. Young men and women, you cannot underſtand it. What was the fate of Philip's wife and child? She is a woman, he is a lad. They did not ſurely hang them. No, that would have been mercy. The boy is the grandſon, his mother the daughter-in-law of good old Maſſaſoit, the first and beſt friend the Engliſh ever had in New England. Perhaps—perhaps now Philip is ſlain, and his warriors ſcattered to the four winds, they will allow his wife and ſon to go back—the widow and the orphan—to finiſh their days and ſorrows in their native wilderneſs. They are ſold into ſlavery, Weſt Indian ſlavery! an Indian princeſs and her child, ſold from the cool breezes of Mount Hope, from the wild freedom of a New England foreſt, to gaſp under the laſh, beneath the blazing ſun of the tropics! 'Bitter as death;' aye, bitter as hell! Is there anything,—I do not ſay in the range of humanity—is there anything animated, that would not ſtruggle againſt this?"

Everett's Addreſs at Bloody Brook, 1835; *Church*, 62, 63, 67, 68.

Well might the poet record his ſympathy for their fate—

> "Ah! happier they, who in the ſtrife
> For freedom fell, than o'er the main,
> Thoſe who in galling ſlavery's chain
> Still bore the load of hated life,—
> Bowed to baſe taſks their generous pride,
> And ſcourged and broken-hearted, died!"

or in view of this phaſe of civilization and progreſs, ſigh for that elder ſtate, when all were

> "Free as nature firſt made man,
> Ere the baſe laws of ſervitude began,
> When wild in woods the noble ſavage ran."

In the proſecution of his admirable hiſtorical labors, Ebenezer Hazard, of Philadelphia, endeavored to aſcertain what was done with the ſon of Philip. He wrote to the late Judge Davis, of Boſton, who was unable, at that time, to give a ſatisfactory anſwer. Mr. Hazard died in 1817; but Judge Davis was afterwards enabled to furniſh a very intereſting account of the affair, derived from documents communicated to him by Nahum Mitchell, Eſq.

From theſe documents he learned "that the queſtion, whether the boy ſhould be put to death, was ſeriouſly agitated, and the opinion of learned divines was requeſted on the ſubject. The Rev. Mr. Cotton, of Plymouth, and the Rev. Mr. Arnold, of Marſhfield, gave the following anſwer:

"The queſtion being propounded to us by our honored rulers, whether Philip's ſon be a child of

death! Our anſwer, hereunto is, that we do acknowledge, that rule, Deut. 24: 16, to be morall, and therefore perpetually binding, viz., that in a particular act of wickedneſs, though capitall, the crime of the parent doth not render his child a ſubject to puniſhment by the civill magiſtrate; yet, upon ſerious conſideration, we humbly conceive that the children of notorious traitors, rebells, and murtherers, eſpecially of ſuch as have bin principal leaders and actors in ſuch horrid villanies, and that againſt a whole nation, yea the whole Iſrael of God, may be involved in the guilt of their parents, and may, *ſalva republica*, be adjudged to death, as to us ſeems evident by the ſcripture inſtances of *Saul*, *Achan*, *Haman*, the children of whom were cut off, by the ſword of Juſtice for the tranſgreſſions of their parents, although concerning ſome of thoſe children, it be manifeſt, that they were not capable of being co-acters therein.

Samuel Arnold,
John Cotton."

September 7th, 1670.

The Rev. Increaſe Mather, of Boſton, offers theſe ſentiments on the queſtion, in a letter to Mr. Cotton, October 30, 1676.

"If it had not been out of my mind, when I was writing, I ſhould have ſaid ſomething about Philip's ſon. It is neceſſary that ſome effectual courſe ſhould be taken about him. He makes me think of Hadad, who was a little child when his father, (the Chief Sachem of the Edomites) was killed by Joab; and, had not others fled away with him, I am apt to think, that David would have taken a courſe, that Hadad ſhould never have proved a ſcourge to the next generation."

The Rev. James Keith, of Bridgewater, took a different view of the ſubject, and gave more benignant interpretations. In a letter to Mr. Cotton of the ſame date with Dr. Mather's, he ſays, "I long to hear what becomes of Philip's wife and his ſon. I know there is ſome difficulty in that pſalm, 137, 8, 9, though I think it may be conſidered, whether there be not ſome ſpecialty and ſomewhat extraordinary in it. That law, Deut. 24: 16, compared with the commended example of Amaſias, 2 Chron. 25: 4, doth ſway much with me, in the caſe under conſideration. I hope God will direct thoſe whom it doth concern to a good iſſue. Let us join our prayers, at the throne of grace, with all our might, that the Lord would ſo diſpoſe of all public motions and affairs, that his Jeruſalem in this wilderneſs may be the habitation of juſtice and the mountain of holineſs; that ſo it may be, alſo, a quiet habitation, a tabernacle that ſhall not be taken down."

The queſtion thus ſeriouſly agitated would not, in modern times, occur in any nation in Chriſtendom. Principles of public law, ſentiments of humanity, and the mild influence of the Goſpel, in preference to a recurrence of the Jewiſh diſpenſation, ſo much regarded by our anceſtors in their deliberations and deciſions,[1] would forbid the thought of inflicting puniſhment on children for the offences of a parent. It is gratifying to learn, that, in this inſtance, the meditated ſeverities were not carried into execution, but that the merciful

[1] In this diſcuſſion, however, both ſcripture rule and example were in favour of the priſoner. The caſe quoted by Mr. Keith from 2 Chronicles is directly in point. "But he ſlew not their children, but did as it is written in the law in the book of Moſes," &c.

ſpirit manifeſted in Mr. Keith's ſuggeſtions prevailed. In a letter from Mr. Cotton to his brother Mather, on the 20th of March following, on another ſubject, there is this incidental remark: 'Philip's boy goes now to be ſold.'" *Davis's Morton's Memorial, Appendix, pp.* 353–5.

In the winter of 1675–6, Major Waldron, a Commiſſioner, and Magiſtrate for a portion of territory claimed by Maſſachuſetts (now included in that of Maine), iſſued general warrants for ſeizing every Indian known to be a manſlayer, traitor, or conſpirator. Theſe precepts, which afforded every man a plauſible pretext to ſeize ſuſpected Indians, were obtained by ſeveral ſhipmaſters for the moſt ſhameful purpoſes of kidnapping and ſlave-trading. One with his veſſel lurked about the ſhores of Pemaquid, and notwithſtanding warning and remonſtrance, ſucceeded in kidnapping ſeveral of the natives, and, carrying them into foreign parts, ſold them for ſlaves. Similar outrages were committed farther eaſt upon the Indians about Cape Sable, "who never had been in the leaſt manner guilty of any injury done to the Engliſh." Hubbard adds to his account of this affair, "the thing alleadged is too true as to matter of Fact, and the perſons that did it, were lately committed to priſon in order to their further tryal." If the careful reſearch of Maſſachuſetts antiquarians can diſcover any record of the trial, conviction and *juſt* puniſhment of theſe offenders, it will be an honorable addition to their hiſtory—far more creditable than the conſtant reiteration of the ſtory of "the negro interpreter" in 1646, which has been ſo long in ſervice, "to bear witneſs againſt y^e^

haynos and crying ſinn of man-ſtealing," in behalf of "The Gen^rall Co^rte" of Maſſachuſetts. *Hubbard's Narrative*, 1677, *pp.* 29, 30. *Williamſon's Maine*, I., 531.

After the death of King Philip, ſome of the Indians from the weſt and ſouth of New England who had been engaged in the war, endeavored to conceal themſelves among their brethren of Penacook who had not joined in the war, and with them of Oſſapy and Pigwackett who had made peace.

By a "contrivance" (as Mather calls it) which ſavors ſtrongly of treachery, four hundred of theſe Indians were taken priſoners, one half of whom were declared to have been acceſſories in the late rebellion; and being "ſent to Boſton, ſeven or eight of them, who were known to have killed any Engliſhmen, were condemned and hanged; the reſt were ſold into ſlavery in foreign parts."

Some of thoſe very Indians, who were thus seized and ſold, afterwards made their way home, and found opportunity to ſatisfy their revenge during the war with the French and Indians known as King William's War. *Belknap*, I., 143, 245. *Mather's Magnalia*, *Book* VII., 55 (699).

IV.

At firſt, the number of ſlaves in Maſſachuſetts was comparatively ſmall, and their increaſe was not large until towards the cloſe of the ſeventeenth century. Edward Randolph, in 1676, in an anſwer to ſeveral

heads of inquiry, &c., ſtated that there were "not above 200 ſlaves in the colony, and thoſe are brought from Guinea and Madagaſcar." He alſo mentioned that ſome ſhips had recently ſailed to thoſe parts from Maſſachuſetts. *Hutchinſon's Collection of Papers, pp.* 485, 495. Governor Andros reported that the ſlaves were not numerous in 1678—"not many ſervants, and but few ſlaves, proportionable with freemen." *N. Y. Col. Doc.*, III., 263.

In May, 1680, Governor Bradſtreet anſwered certain Heads of Inquiry from the Lords of the Committee for Trade and Foreign Plantations. Among his ſtatements are the following:

"There hath been no company of blacks or ſlaves brought into the country ſince the beginning of this plantation, for the ſpace of fifty years, onely one ſmall Veſſell about two yeares ſince, after twenty months' voyage to Madagaſcar, brought hither betwixt forty and fifty Negroes, moſt women and children, ſold here for 10*l.*, 15*l.* and 20*l.* apiece, which ſtood the merchant, in near 40*l.* apiece: Now and then, two or three Negroes are brought hither from Barbadoes and other of his Majeſtie's plantations, and ſold here for about twenty pounds apiece. So that there may be within our Government about one hundred or one hundred and twenty. . . . . There are a very few blacks borne here, I think not above [five] or ſix at the moſt in a year, none baptized that I ever heard of. . ." *M. H. S. Coll.*, III., viii., 337.

The following century changed the record. Many "companies" of ſlaves were "brought into the country," and the inſtitution flouriſhed and waxed ſtrong.

Judge Sewall referred to the "numerouſneſs" of the ſlaves in the province in 1700. Gov. Dudley's report to the Board of Trade, in 1708, gave four hundred as then in Boſton, one half of whom were born there; and in one hundred other towns and villages one hundred and fifty more—making a total of five hundred and fifty. He ſtated that negroes were found unprofitable, and that the planters there preferred white ſervants "who are ſerviceable in war preſently, and after become planters." From January 24, 1698, to 25 December, 1707, two hundred negroes arrived in Maſſachuſetts.

Gov. Shute's information to the Lords of Trade, in 1720, Feb. 17, gave the number of ſlaves of Maſſachuſetts at 2,000, including a few Indians. He added that, during the ſame year, thirty-ſeven male and ſixteen female negroes were imported, with the remark, "No great difference for ſeven years laſt paſt." *Felt, Coll. Amer. Stat. Aſſoc.*, 1., 586.

In 1735, there were 2,600 negroes in the Province. In 1742, there were 1,514 in Boſton alone. *Douglaſs*, 1., 531. Theſe are probably very imperfect eſtimates, as it is well known that regular enumerations of the population were conſidered very objectionable by the people of the Bay. Some recalled the numbering of Iſrael by David, and perhaps all were jealous of the poſſible deſigns of the Government in England in obtaining accurate information of their numbers and reſources. It is a curious fact that the firſt cenſus in Maſſachuſetts, was a cenſus of negro ſlaves.

In 1754, an account of property in the Province liable to taxation being required, Gov. Shirley ſent a

ſpecial meſſage to the Houſe of Repreſentatives, in which he ſaid:

"There is one part of the Eſtate, viz., the Negro Slaves, which I am at a loſs how to come at the knowledge of, without your aſſiſtance." *Journal, p.* 119.

On the ſame day, November 19, 1754, the Legislature made an order that the Aſſeſſors of the ſeveral towns and diſtricts within the Province, forthwith ſend into the ſecretary's office the exact number of the negro ſlaves, both males and females, ſixteen years old and upwards, within their reſpective towns and diſtricts. *Ib.*[1]

This enumeration, as corrected by Mr. Felt, gives an aggregate of 4,489. The census of Negroes in 1764–5, according to the ſame authority, makes their number 5,779, in 1776, 5,249; in 1784, 4,377, in 1786, 4,371; and in 1790 (by the United States census) 6,001.[2]

The royal inſtructions to Andros, in 1688, as

[1] There is a curious illuſtration of "the way of putting it" in Maſſachuſetts, in Mr. FELT's account of this "cenſus of ſlaves," in the *Collections of the American Statiſtical Aſſociation, Vol.* I., *p.* 208. He ſays that the General Court paſſed this order "for the purpoſe of having an accurate account of ſlaves in our Commonwealth, *as a ſubject in which the people were becoming much intereſted, relative to the cauſe of liberty!*" There is not a particle of authority for this ſuggeſtion—ſuch a motive for their action never exiſted anywhere but in the imagination of the writer himſelf!

[2] It is to be regretted that we have no official authorities on the ſubject of the changes in this claſs of population during the period from 1776 to 1784. There is a moſt extraordinary, if not incredible, ſtatement made by the Duke de la Rochefoucault Liancourt in his *Travels through the United States . . . in the years* 1795, 1796, *and* 1797, of which a tranſlation was publiſhed in London in 1799. In that work, Vol. II., page 166, he ſays, "It is to be obſerved, that, in 1778, the general cenſus of Maſſachuſetts included eighteen thouſand ſlaves, whereas the ſubſequent cenſus of 1790 exhibits only ſix thouſand blacks."

Governor of New England, required him to "paſs a law for the reſtraining of inhuman ſeverity which may be uſed by ill maſters or overſeers towards the Chriſtian ſervants or ſlaves; wherein proviſion is to be made that the wilful killing of Indians and Negroes be puniſhed with death, and a fitt penalty impoſed for the maiming of them." *N. Y. Col. Doc.*, III., 547. The reader will note the diſtinction in theſe inſtructions between the *Chriſtian* ſervants or ſlaves, and the *Indians and Negroes*. It points to a feature of ſlavery in Maſſachuſetts, at that time, which we propoſe to notice in another portion of theſe notes.

The Law of 1698, Chapter 6, forbids trading or trucking with any "Indian, molato or negro ſervant or ſlave, or other known diſſolute, lewd, and diſorderly perſons, of whom there is juſt cauſe of ſuſpicion." Such perſons were to be puniſhed by whipping for ſo trading with money or goods improperly obtained.

The Law of 1700, Chapter 13, was enacted to protect the Indians againſt the exactions and oppreſſion which ſome of the Engliſh exerciſed towards them "by drawing them to conſent to covenant or bind themſelves or children apprentices or ſervants for an unreaſonable term, on pretence of or to make ſatisfaction for ſome ſmall debt contracted or damage done by them." Other ſimilar acts were afterwards paſſed in 1718 and 1725, the latter having a clauſe to protect them againſt kidnapping.

In 1701, the Repreſentatives of the town of Boſton were "deſired to promote the encouraging the bringing of white ſervants, and to put a period to Negroes being ſlaves." *Drake's Boſton*, 525. *M. H. S. Coll.*, II.,

viii., 184. We have no knowledge of the efforts made under this inſtruction of the town of Boſton, but they failed to accompliſh anything. Indeed, the very next enactment concerning ſlavery was a ſtep backward inſtead of an advance towards reform—a meaſure which turned out to be a permanent and effective barrier againſt emancipation in Maſſachuſetts.

The Law of 1703, Chapter 2, was in reſtraint of the "Manumiſſion, Diſcharge, or Setting free" of "Molatto or Negro ſlaves." Security was required againſt the contingency of theſe perſons becoming a charge to the town, and "none were to be accounted free for whom ſecurity is not given;" but were "to be the proper charge of their reſpective maſters or miſtreſſes, in caſe they ſtand in need of relief and ſupport, notwithſtanding any manumiſſion or inſtrument of freedom to them made or given," etc.[1] A practice was prevailing to manumit aged or infirm ſlaves, to relieve the maſter from the charge of ſupporting them. To prevent this practice, the act was

[1] Jonathan Sewall, writing to John Adams, February 31, 1760, puts the following caſe:

"A man, by will, gives his negro his liberty, and leaves him a legacy. The executor conſents that the negro ſhall be free, but refuſeth to give bond to the ſelectmen to indemnify the town againſt any charge for his ſupport, in caſe he ſhould become poor, (without which, by the province law, he is not manumitted,) or to pay him the legacy.

Query. Can he recover the legacy, and how?

John Adams, in reply, after illuſtrating in two caſes the legal principle that the intention of the teſtator, to be collected from the words, is to be obſerved in the conſtruction of a will, applied it to the caſe preſented as follows, viz.:

"The teſtator plainly intended that his negro ſhould have his liberty and a legacy; therefore the law will preſume that he intended his executor ſhould do all that without which he could have neither. That this in-

paſſed. *C. J. Parſons. Winchendon* vs. *Hatfield in error*, IV *Maſs. Reports*, 130. This act was ſtill in force as late as June, 1807, when it was reproduced in the reviſed laws, and continued until a much later period to govern the deciſions of courts affecting the ſettlement of town paupers. An unſucceſsful attempt to repeal it, will be found duly noticed in a ſubſequent portion of theſe notes.

The Law of 1703, Chapter 4, prohibited Indian, Negro and Molatto ſervants or ſlaves, to be abroad after nine o'clock, etc.

The Law of 1705, Chapter 6, "for the better preventing of a Spurious and Mixt Iſſue, &c.;" puniſhes Negroes and Molattoes for improper intercourſe with whites, by ſelling them out of the Province. It alſo

demnification was not in the teſtator's mind, cannot be proved from the will any more than it could be proved, in the firſt caſe above, that the teſtator did not know a fee ſimple would paſs a will without the word heirs; nor than, in the ſecond caſe, that the deviſe of a truſt, that might continue for ever, would convey a fee ſimple without the like words. I take it, therefore, that the executor of this will is, by implication, obliged to give bonds to the town treaſurer, and, in his refuſal, is a wrong doer; and I cannot think he ought to be allowed to take advantage of his own wrong, ſo much as to allege this want of an indemnification to evade an action of the caſe brought for the legacy by the negro himſelf.

But why may not the negro bring a ſpecial action of the caſe againſt the executor, ſetting forth the will, the deviſe of freedom and a legacy, and then the neceſſity of indemnification by the province law, and then a refuſal to indemnify, and, of conſequence, to ſet free and to pay the legacy?

Perhaps the negro is free at common law by the deviſe. Now, the province law ſeems to have been made only to oblige the maſter to maintain his manumitted ſlave, and not to declare a manumiſſion in the maſter's lifetime, or at his death, void. Should a maſter give a negro his freedom, under his hand and ſeal, without giving bond to the town, and ſhould afterwards repent and endeavor to recall the negro into ſervitude, would not that inſtrument be a ſufficient diſcharge againſt the maſter?" *Adams' Works*, I., 51, 55.

puniſhes any Negro or Mólatto for ſtriking a Chriſtian, by whipping at the diſcretion of the Juſtices before whom he may be convicted. It alſo prohibits marriage of Chriſtians with Negroes or Molattoes—and impoſes a penalty of Fifty Pounds upon the perſons joining them in marriage. It provides againſt unreaſonable denial of marriage to Negroes with thoſe of the ſame nation, by any Maſter—"any Law, Uſage, or Cuſtom, to the contrary notwithſtanding."

This proviſo againſt the unreaſonable denial of marriage to negroes is very intereſting. Legiſlation againſt the arbitrary exerciſe and abuſe of authority proves its exiſtence and the previous practice. It was as true then as it is now that the inſtitution of ſlavery was inconſiſtent with the juſt rules of Chriſtian morality.

In Pennſylvania, five years before, William Penn had propoſed to his Council, "the neceſſitie of a law [among others] about y^e^ marriages of negroes." The ſubject was referred to a committee of both houſes of the legiſlature, and reſulted in a Bill in the Aſſembly, "for regulating *Negroes* in their Morals and Marriages, etc.," which was twice read and rejected. *Penn. Col. Rec.*, I., 598. 606. *Votes of Aſſembly*, I., 120, 121. This propoſition of Penn was in accordance with the views of George Fox, whoſe teſtimony in regard to the treatment of ſlaves, given at Barbadoes in 1671, is elſewhere referred to in these notes. In his "Goſpel Family Order, being a ſhort diſcourſe concerning the Ordering of Families, both of Whites, Blacks, and Indians," he particularly enforced the neceſſity of

looking after the marriages of the blacks, to see that there was ſome order and ſolemnity in the manner, and that the marriages ſhould be recorded, and ſhould be binding for life. *See The Friend, Vol.* XVII. 29, 4*to.*, *Phil.* 1843.

No Chriſtian man or woman, Quaker or Puritan, could fail to be ſhocked at the looſeneſs of all such ties and relations under the ſlave ſyſtem. One ſolitary witneſs againſt ſlavery in Maſſachuſetts in 1700, referred to the well known "Temptations Maſters were under to connive at the Fornication of their Slaves, leſt they ſhould be obliged to find them Wives or pay their Fines." *Sewall*, 1700. The laws againſt the irregular commerce of the sexes were an awkward part of a ſyſtem which eſtabliſhed and protected ſlavery, and marriage (ſuch as it was) ſaved the expenſe of conſtant fines to maſters and miſtreſſes for delinquent ſlaves.

But what protection was there for the married ſtate or ſanction of marital or parental rights and duties? This law did not and could not protect or ſanction either, and muſt have been of little practical value to the ſlaves. Governed by the humor or intereſt of the maſter or miſtreſs, their marriage was not a matter of choice with them, more than any other action of their life. Who was to judge whether the denial of a maſter or miſtreſs was unreaſonable or not? And what remedy had the ſlave in caſe of denial?[1] The owner of a valuable female ſlave was to

[1] The caſe of *The Inhabitants of Stockbridge* vs. *The Inhabitants of Weſt Stockbridge*—regarding the ſettlement of a negro pauper (who had been a ſoldier in the American Army of the Revolution) preſents a deciſion of the

conſider what all the riſks of health and life were to be, and whether the increaſe of ſtock would reimburſe the loſs of ſervice.[1]

The breeding of ſlaves was not regarded with favor.[2] Dr. Belknap ſays, that "negro children were conſidered an incumbrance in a family; and when weaned, were given away like puppies." *M. H. S. Coll.*, I., iv., 200. They were frequently publicly advertiſed "to be given away,"—ſometimes with the additional inducement of a ſum of money to any one who would take them off.

At the ſame time there is no room for doubt that there were public and legalized marriages among ſlaves in Maſſachuſetts, ſubſequently to the paſſage of this act of 1705. Mr. Juſtice Gray ſtates that, "the ſubſequent records of Boſton and other towns ſhow that their banns were publiſhed like thoſe of white perſons.[3]

Supreme Judicial Court of Maſſachuſetts in 1817, not only recognizing the fact of the abſolute legal continuance of ſlavery in that State in the years 1770–1777; but ſettling a point of law which is intereſting in this connection. At that time "*no contract made with the ſlave was binding on the maſter; for the ſlave could have maintained no action againſt him, had he failed to fulfil his promiſe* [a promiſe to emancipate] which was an undertaking merely voluntary on his part." *Maſs. Reports*, XIV., 257.

[1] A Bill of Sale of a Negro Woman Servant in Boſton in 1724, recites that "Whereas Scipio, of Boſton aforeſaid, Free Negro Man and Laborer, purpoſes Marriage to Margaret, the Negro Woman Servant of the ſaid Dorcas Marſhall [a Widow Lady of Boſton]: Now to the Intent that the ſaid Intended Marriage may take Effect, and that the ſaid Scipio may Enjoy the ſaid Margaret without any Interruption," etc., ſhe is duly ſold, with her apparel, for Fifty Pounds. *N. E. Hiſt. and Gen. Reg.*, XVIII., 78.

[2] So early as the poet Heſiod, married ſlaves, whether male or female, were eſteemed inconvenient. *Works and Days*, *line* 406, alſo 602–3.

[3] Mr. Charles C. Jones, of Georgia, in his work on the *Religious Inſtruction of the Negroes in the United States*, publiſhed at Savannah, in 1842, gives, pp. 34, 35, memoranda of four inſtances of the kind, which he ob-

In 1745, a negro ſlave obtained from the Governor and Council a divorce for his wife's adultery with a white man. In 1758, it was adjudged by the Superior Court of Judicature, that a child of a female ſlave 'never married according to any of the forms preſcribed by the laws of this land,' by another ſlave, who 'had kept her company with her maſter's conſent,' was not a baſtard." *Quincy's Reports*, 30, *note*. This judgment indicates liberal views with regard to the law of marriage as applied to ſlaves, although we ſuſpect there was ſpecial occaſion for the exerciſe of charity and mercy which might deprive it of any authority as a leading caſe.

It is perfectly well known that it was practically ſettled in Maſſachuſetts that baptiſm was not emancipation—although there is no evidence in their ſtatutes to ſhow that the queſtion was ever mooted in that colony, as it was in other colonies, where legiſlation was found neceſſary to eſtabliſh the doctrine.

Still it was in the power of maſters in Maſſachuſetts to deny baptiſm to their ſlaves, as appears from the following extract, from Matthias Plant to the Secretary of the Society for the Propagation of the Goſpel, etc. Anſwers to Queries, from Newbury, October 25, 1727:

"6. Negroe Slaves, one of them is deſirous of baptiſm, but denied by her Maſter, a woman of wonderful ſenſe, and prudent in matters, of equal knowledge in Religion with moſt of her ſex, far exceeding any of her own nation that ever yet I heard of."

ſerved in looking over the old record of "Entryes for Publications" (for marriages) within the town of Boſton, two in the year 1707, and two in 1710.

About baptism of ſlaves "borne in the houſe, or bought with monie," see letter of Davenport to the younger Winthrop, June 14, 1666, and poſtscript. *M. H. S. Coll.* III., x., 60. 62.

Mr. Palfrey gives it as his opinion, that "From the reverence entertained by the Fathers of New England for the nuptial tie, it is ſafe to infer that ſlave huſbands and wives were never parted." *Hiſt. N. E.*, II., 30, *note.* The Fathers of New England alſo cheriſhed a due regard for parental and filial duties and reſponſibilities, yet it is certain that ſlave mothers and children were ſeparated. Reſting upon "the law of God, eſtabliſhed in Iſrael," the Puritan could have had no ſcruple about this matter—ſuch a condition of marriage to the ſlave muſt have been regarded as an axiom as it was by the Hebrew. *Compare Exodus*, XXI., 4, 5, 6. Mr. Palfrey's inference is not warranted by the facts.

In 1786, the legiſlature of the State of Maſſachuſetts paſſed an "Act for the orderly Solemnization of Marriage," by the ſeventh ſection whereof it was enacted "that no person authorized by this act to marry ſhall join in marriage any white perſon with any Negro, Indian or Mulatto, under penalty of fifty pounds; and all ſuch marriages ſhall be abſolutely null and void." The prohibition continued until 1843, when it was repealed by a ſpecial "act relating to marriage between individuals of certain races."

The statute of 1705 alſo provided an import duty of four pounds per head on every Negro brought into the Province from and after the 1st day of May, 1706, for the payment of which both the veſſel and maſter

were anſwerable. A penalty of double the amount of the duty on each one omitted was impoſed for refuſal or neglect to make the preſcribed entry of "Number, Names, and Sex, in the Impoſt Office." A drawback was allowed upon exportation, and the like advantage was allowed to the purchaſer of any Negro ſold within the Province, in caſe of the death of his Negro within six weeks after importation or bringing into the Province.

Mr. Drake ſays that, in 1727, "the traffic in ſlaves appears to have been more an object in Boſton than at any period before or ſince." *Hiſt. of Boſton*, 574, and in the following year (1728) an additional "Act more effectually to ſecure the Duty on the Importation of Negroes" was paſſed, by which more ſtringent regulations were adopted to prevent the smuggling of ſuch property into the Province, and the drawback was allowed on all negroes dying within twelve months.

This act expired by its own limitation in 1735, but another of a ſimilar character was paſſed in 1739, which recogniſed the old law of 1705 as being ſtill in force.[1] It reduced the time for the drawback on the death of negroes to ſix months after importation.

Free Negroes not being allowed to train in the

[1] "Dec. 7, 1737, Col. Royal petitions the General Court, that, having lately arrived from Antigua, he has with him ſeveral ſlaves for his own uſe, and not to ſell, and therefore prays that the duty on them be remitted. The duty was £4 a-head. This petition was laid on the table, and reſts there yet." *Brooks's Medford*, 435. The act of 1739 was for ten years, and therefore expired in 1749. We have found no repeal of the old law, but the proceedings concerning the act propoſed in 1767 would ſeem to ſhow all the old acts of Impoſt to be expired or obſolete.

Militia, an act paſſed in 1707, Chapter 2, required them to do ſervice on the highways and in cleaning the ſtreets, etc., as an equivalent. Thirty-three free negroes were mentioned in the minutes of the Selectmen of Boſton, in 1708, to whom, according to this law, two hundred and eighteen days of labor were aſſigned upon the highways and other public works. *Lyman's Report*, 1822. The ſame act prohibited them to entertain any ſervants of their own color in their houſes, without permiſſion of the reſpective maſters or miſtreſſes.

In 1712, an act was paſſed prohibiting the importation or bringing into the Province any Indian ſervants or ſlaves. The preamble recites the bad character of the Indians and other ſlaves, "being of a malicious, ſurley and revengeful ſpirit; rude and inſolent in their behaviour, and very ungovernable." A glimpſe of poſſible future reform is to be caught in this act, for it recognizes the increaſe of ſlaves as a "diſcouragement to the importation of White Chriſtian Servants." But its chief motive was in the peculiar circumſtances of the Province "under the ſorrowful effects of the Rebellion and Hoſtilities" of the Indians, and the fact that great numbers of Indian ſlaves were already held in bondage in the Province at the time.

This act had a ſpecial reference to Southern Indians, the Tuſcaroras and others, captives in war, chiefly from South Carolina. Governor Dudley afterwards entered into correſpondence with other colonial governors, about preventing the ſale of Indians from that Province to the Northern colonies. Similar acts were paſſed by Pennſylvania in 1712,

New Hampſhire in 1714, and Connecticut and Rhode Iſland in 1715.

Under the earlieſt laws of taxation in Maſſachuſetts, ſlaves muſt have been rated (if taxed at all) as polls, the owners paying for them as for other ſervants and children, "ſuch as take not wages." This continued until the period of the Province Charter, when, in the year 1692, "every male ſlave of ſixteen years old and upwards" was rated "at Twenty Pounds Eſtate." In 1694, "all Negro's, Molattoes and Indian Servants, as well male as female, of 16 years old and upwards, at the rate of 12*d.* per poll ſame as other polls." In 1695, "all Negro's, Molatto, and Indian Servants, males of 14 years of age and upward at the rate of 20*l.* eſtate, and Females at 14*l.* eſtate, unleſs diſabled by infirmity." They were ſubſequently in the ſame year rated "as other perſonal eſtate," which mode was continued in 1696, 1697, and 1698, in the latter year "according to the ſound judgment and diſcretion of the Aſſeſſors, *not excluding faculties.*"

This rating for "faculties" was a prominent feature in the early tax-laws of Maſſachuſetts, and was continued after the commencement of the preſent century.[1]

It was applied to white men in Maſſachuſetts from the beginning, being intended as a juſt valuation for thoſe who had arts, trades, and faculties, by the produce of which they were "more enabled to bear the publick charge than common laborers and Workmen,

[1] Mr. Felt ſays, in his memoranda, under the date of 1829, "the rating for faculties, long a prominent item in our former tax-acts, and not unfrequently made a ſubject of pleaſant remark, has been dropped, like other notions of ancient cuſtom." *Coll. Amer. Stat. Aſſoc.*, I., 502. *See also pp.* 297, 374.

as *Butchers, Bakers, Brewers, Victuallers, Smiths, Carpenters, Taylors, Shoomakers, Joyners, Barbers, Millers and Maſons*, with all other manual perſons and Artiſts." *Maſs. Laws, Ed.* 1672, *p.* 24. The law of 1698, however, appears to have been the firſt, if not the only one, in which this feature was applied to the "Negroes, Molattoes and Indians" in bondage; and may be juſtly regarded as an indication of progreſs, for it was an admiſſion that theſe unfortunate creatures had "faculties," valuable to their owners, if not to themſelves.[1]

There was little variation in theſe laws during the entire colonial period—all Indian, Negro, and Mulatto ſervants continuing to be rated as perſonal property—excepting that occaſionally ſome of thoſe who were ſervants for a term of years, but not for life, were numbered and rated as polls.

In 1716, an attempt was made to modify this feature of the legiſlation of Maſſachuſetts. The following extract from Judge Sewall's Diary is copied from the original. Though quoted by Coffin, in his *Hiſtory of Newbury*, 188, and Felt, in the *Coll. Amer.*

[1] The early records of the town of Boſton preſerve the fact that one Thomas Deane, in the year 1661, was prohibited from employing a negro in the manufacture of hoops under a penalty of twenty ſhillings, for what reaſon is not ſtated. *Lyman's Report*, 1822. Phillis Wheatley's was not the only inſtance, in Boſton, of the negro's capacity for intellectual improvement. A worthy Engliſhman, Richard Dalton, Eſq., a great admirer of the Greek claſſics, becauſe of the tenderneſs of his eyes, taught his negro boy, Cæſar, to read to him diſtinctly any Greek writer, without underſtanding the meaning or interpretation. *Douglaſs*, ii., 345. In the *Boſton Chronicle* for September 21, 1769, is advertiſed:—"To be ſold, a Likely Little negroe boy, who *can ſpeak the French language*, and very fit for a Valet."

Stat. Aſſociation, I., 586, it is not correctly printed by either.

"1716. I eſſayed June 22, to prevent Indians and Negroes being rated with Horſes and Hogs; but could not prevail. Col. Thaxter bro't it back" [from the Deputies], "and gave as a reaſon of y^r" [their] "Nonagreement, They were juſt going to make a New Valuation."

This conciſe mention of Judge Sewall's benevolent "eſſay," indicates that he had firſt propoſed the matter in the Council, of which he was then a member; and that the Council agreeing, their deciſion was ſent down to the Houſe for their concurrence. But the Houſe non-concurred; and ſignified by Colonel Thaxter, that they declined their aſſent to the reſolve of the Council, for the reaſon that "they were juſt going to make a New Valuation;" and as in the preceding valuations of the property of their conſtituents, Indian, Negro, and Mulatto ſlaves had been prominent articles, they muſt keep on ſtill in the old track; Indians, Negroes, and Mulattoes muſt ſtill be valued as property, and for this ſpecies of property their owners muſt ſtill be taxed. *MS. Letter of Rev. Samuel Sewall.*

In 1718, all Indian, Negro, and Mulatto ſervants for life were eſtimated as other Perſonal Eſtate—viz: Each male ſervant *for life* above fourteen years of age, at fifteen pounds value; each female ſervant for life, above fourteen years of age, at ten pounds value. The aſſeſſor might make abatement for cauſe of age or infirmity. Indian, Negro, and Mulatto Male ſervants *for a term of years* were to be numbered and

rated as other Polls, and not as Perſonal Eſtate.[1] In 1726, the aſſeſſors were required to eſtimate Indian, Negro, and Mulatto ſervants proportionably as other Perſonal Eſtate, according to their ſound judgment and diſcretion. In 1727, the rule of 1718 was reſtored, but during one year only, for in 1728 the law was the ſame as that of 1726; and ſo it probably remained, including all ſuch ſervants, as well for term of years as for life, in the rateable eſtates. We have ſeen the ſupply bills for 1736, 1738, 1739, and 1740, in which this feature is the ſame.

And thus they continued to be rated with horſes, oxen, cows, goats, ſheep, and ſwine, until after the commencement of the War of the Revolution. We have not ſeen the law, but Mr. Felt ſtates that "in 1776 the colored polls were taxed the ſame as the white polls, and ſo continued to be." *Coll. Amer. Stat. Aſſoc.*, I., 475. *See alſo pp.* 203, 311, 345, 411.

In the inventory of Captain Paul White, in 1679, was "one negrow = 30*l.*" In 1708, an Indian boy from South Carolina brought 35*l.* An Indian girl brought fifteen pounds, at Salem, in Auguſt, 1710. The higheſt price paid for any of a cargo brought into Boſton, by the ſloop Katherine, in 1727, was eighty pounds. The eſtate of Samuel Morgaridge, who died in 1754, included the following: "Item, three negroes 133*l.* 6*s.* 8*d.*" *Coffin's Newbury*, 188, 336. *Coll. Eſſex Inſtitute*, I., 14. *Felt's Salem*, II., 416.

"The Guinea Trade," as it was called then, ſince known and branded by all civilized nations as piracy,

[1] Another act of the year 1718 forbade, under heavy penalties, Maſters of Ships to carry off "any *bought* or hired ſervant or apprentice."

whoſe beginnings we have noticed, continued to flouriſh under the auſpices of Maſſachuſetts merchants down through the entire colonial period, and long after the boaſted Declaration of Rights in 1780 had terminated (?) the legal exiſtence of ſlavery within the limits of that State. *Felt's Salem*, II., 230, 261, 265, 288, 292, 296. To gratify thoſe who are curious to ſee what the inſtructions given by reſpectable merchants in Maſſachuſetts to their ſlave captains were in the year 1785, we copy them from *Felt's Salem*, II., 289–90; probably the only ſpecimen extant.[1]

"———, Nov. 12, 1785.

"Capt ———.

"Our brig,[2] of which you have the command, being cleared at the office, and being in every other reſpect complete for ſea; our orders are, that you embrace the firſt fair wind and make the beſt of your way to the coaſt of Africa, and there inveſt your cargo in ſlaves. As ſlaves, like other articles, when brought to market, generally appear to the beſt advantage; therefore, too critical an inſpection cannot be paid to them before purchaſe; to ſee that no dangerous diſtemper is lurking about them, to attend particularly to their age, to their countenance, to the ſtraightneſs of their limbs, and, as far as poſſible to the goodneſs or badneſs of their conſtitution, &c. &c., will be very conſiderable objects.

"Male or female ſlaves, whether full grown or not, we cannot particularly inſtruct you about; and on this head ſhall only obſerve, that prime male ſlaves generally ſell beſt in any market. No people require more kind and tender treatment to exhilarate their ſpirits, than the Africans; and, while on the one hand you are attentive to this, remember that on the other hand, too much circumſpection cannot be obſerved by yourſelf and people, to prevent their taking the advantage

[1] *Brooks's Medford* preſerves ſimilar inſtructions in 1759, and a ſpecimen of the ſlave captain's day-book on the coaſt of Africa, *pp.* 436–7.

[2] This veſſel was probably the Brig Favorite. *Compare Felt's Salem*, II., 287 *and* 291.

of ſuch treatment by inſurrection, &c. When you conſider that on the health of your ſlaves, almoſt your whole voyage depends; for all other riſques, but mortality, ſeizures and bad debts, the underwriters are accountable for;—you will therefore particularly attend to ſmoking your veſſel, waſhing her with vinegar, to the clarifying your water with lime or brimſtone, and to cleanlineſs among your own people, as well as among the ſlaves.

"As the factors on the coaſt have no laws but of their own making, and of courſe ſuch as ſuit their own convenience, they therefore, like the Iſraelites of old, do whatſoever is right in their own eyes; in conſequence of which you ought to be very careful about receiving gold duſt, and of putting your cargo into any but the beſt hands, or if it can be avoided, and the ſame diſpatch made, into any hands at all, on any credit. If you find that any ſaving can be made by bartering rum for ſlops, and ſupplying your people with ſmall ſtores, you will do it; or even if you cannot do it without a loſs, it is better done than left undone; for ſhifts of clothes, particularly in warm climates, are very neceſſary. As our intereſt will be conſiderable, and as we ſhall make inſurance thereon, if any accident ſhould prevent your following the track here pointed out, let it be your firſt object to proteſt publicly, why, and for what reaſon you were obliged to deviate. You are to have four ſlaves upon every hundred, and four at the place of ſale; the priviledge of eight hogſheads, and two pounds eight ſhillings per month; —theſe are all the compenſations you are to expect for the voyage.

"Your firſt mate is to have four hogſheads privilege, and your ſecond mate two, and wages as per agreement. No ſlaves are to be ſelected out as priviledged ones, but muſt riſe or fall with the general ſales of the cargo, and average accordingly. We ſhall expect to hear from you, by every opportunity to Europe, the Weſt Indies, or any of theſe United States; and let your letters particularly inform us, what you have done, what you are then doing, and what you expect to do. We could wiſh to have as particular information as can be obtained, reſpecting the trade in all its branches on the coaſt; to know if in any future time, it is probable a load of N. E. Rum could be ſold for bills of exchange on London, or any part of Europe; or, for gold duſt; and what deſpatch in this caſe might be made.

"You will be careful to get this information from gentlemen of veracity, and know of them if any other articles would anſwer from

this quarter. We ſhould be glad to enter into a contract, if the terms would anſwer, with any good factor for rum, &c. If any ſuch would write us upon the ſubject, and encloſe a memorandum with the prices annexed, ſuch letters and memorandums ſhall be duly attended to. We are in want of about five hundred weight of camwood, and one large elephant's tooth of about 80 lbs., which you will obtain. If ſmall teeth can be bought from 15 to 30 lbs., ſo as to ſell here without a loſs, at three ſhillings, you may purchaſe 200 lbs. Should you meet with any curioſities on the coaſt, of a ſmall value, you may expend 40 or 50 gallons of rum for them. Upon your return you will touch at St. Pierre's, Martinico, and call on Mr. John Mounreau for your further adviſe and deſtination. We ſubmit the conducting of the voyage to your good judgment and prudent management, not doubting of your beſt endeavours to ſerve our intereſt in all caſes; and conclude with committing you to the almighty Diſpoſer of all events.

"We wiſh you health and proſperity,

"And are your friends and owners."

The ſlaves purchaſed in Africa were chiefly ſold in the Weſt Indies, or in the Southern colonies; but when theſe markets were glutted, and the price low, ſome of them were brought to Maſſachuſetts. The ſtatiſtics of the trade are ſomewhat scattered, and it is difficult to bring them together, but enough is known to bring the ſubject home to us. In 1795, one informant of Dr. Belknap could remember two or three entire cargoes, and the Doctor himſelf remembered one ſomewhere between 1755 and 1765 which conſiſted almoſt wholly of children. Sometimes the veſſels of the neighboring colony of Rhode Iſland, after having ſold their prime ſlaves in the Weſt Indies, brought the remnants of their cargoes to Boſton for ſale. *Coll. M. H. S.*, I., iv., 197.

The records of the ſlave-trade and ſlavery everywhere are the ſame—the ſame diſregard of human

rights, the ſame indifference to ſuffering, the ſame contempt for the oppreſſed races, the ſame hate for thoſe who are injured. It has been aſſerted that in Maſſachuſetts, not only were the miſeries of ſlavery mitigated, but ſome of its worſt features were wholly unknown. But the record does not bear out the ſuggeſtion; and the traditions of one town at leaſt preſerve the memory of the moſt brutal and barbarous[1] of all, "raiſing ſlaves for the market." *Barry's Hanover*, 175.

The firſt newſpapers publiſhed in America illuſtrate among their advertisements the peculiar features of the inſtitution to which we refer, and in their ſcanty columns of intelligence may be found thrilling accounts of the barbarous murders of maſters and crews by the hands of their ſlave-cargoes.[2] The caſe of the Amiſtad negroes had its occaſional parallel in the colonial hiſtory of the traffic—excepting that the men of New England had a ſympathy at home in the 17th and 18th centuries, which was juſtly withheld from their Spaniſh and Portugueſe imitators in the 19th. Nor was that region wholly exempt from the terror by day and by night of ſlave inſurrections. In *Coffin's Newbury*, 153, is a notice of a conſpiracy of Indian and negro ſlaves "to obtain their inalienable rights,"—apparently a ſcheme of ſome magnitude.

[1] "The ſlave-trade can be ſupported only by barbarians; for civilized nations purchaſe ſlaves, but do not produce them." *Gibbon, Extraits de mon Journal*, Oct. 19, 1763. What would the hiſtorian of the Decline and Fall of the Roman Empire have ſaid of the Virginia of the nineteenth century!

[2] *Boſton News Letter*, No. 1399, *New England Weekly Journal*, No. 214, *Boſton News Letter*, No. 1422, No. 1423.

As the advantages of advertiſing came to be underſtood, the deſcriptions of ſlave property became more frequent and explicit. Negro men, women, and children were mixed up in the ſales with wearing apparel, Gold Watches, and other Goods[1]—"very good Barbados Rum" is offered with "a young negro that has had the Small Pox"[2]—and competitors offer "Likely negro men and women juſt arrived"[3]—"negro men *new* and negro boys who have been in the country ſome time,"[4] and alſo "juſt arrived, a choice parcel of negro boys and girls."[5] "A likely negro man *born in the country*, and bred a Farmer, fit for any ſervice,"[6] "a negro woman about 22 years old, with a boy about 5 months,"[7] &c., a "likely negro woman about 19 years and a child of about ſix months of age *to be ſold together or apart*,"[8] and "a likely negro man, *taken by execution*, and to be ſold by publick auction at the Royal Exchange Tavern in King Street, at ſix o'clock this afternoon,"[9] muſt conclude theſe extracts.

At this point it may be neceſſary to interpoſe a caution with reference to the judgment which muſt be pronounced againſt the policy which has been illuſtrated

[1] Boſton News Letter, No. 1402. [2] N. E. Journal, No. 200.

[3] N. E. Journal, No. 217. [4] N. E. Journal, No. 230.

[5] Boſton News Letter, No. 1438, Auguſt 12th to 19th, 1731.

[6] This man was offered for ſale by the Widow and Adminiſtratrix to the Eſtate of Thomas Amory in 1731. Boſton News Letter, No. 1413.

[7] Boſton News Letter, No. 1487, July 20th to July 27th, 1732.

[8] N. E. Weekly Journal, No. 267, May 1ſt, 1732.

[9] The Boſton Gazette and Country Journal, No. 594, Auguſt 18, 1766. This advertiſement is a concluſive anſwer to the claim that "no evidence is found of ſuch taking in execution in Maſſachuſetts." *Dane's Abridgment*, II., 314.

in theſe notes ; and a recent writer of Engliſh hiſtory has ſo clearly ſtated our own views, that his language requires very little change here.

It would be to miſread hiſtory and to forget the change of times, to ſee in the Fathers of New England mere commonplace ſlavemongers ; to themſelves they appeared as the elect to whom God had given the heathen for an inheritance ; they were men of ſtern intellect and fanatical faith, who, believing themſelves the favorites of Providence, imitated the example and aſſumed the privileges of the choſen people, and for their wildeſt and worſt acts they could claim the ſanction of religious conviction. In ſeizing and enſlaving Indians, and trading for negroes, they were but entering into poſſeſſion of the heritage of the ſaints ; and New England had to outgrow the theology of the Elizabethan Calviniſts before it could underſtand that the Father of Heaven reſpected neither perſon nor color, and that his arbitrary favor—if more than a dream of divines—was confined to ſpiritual privileges. *Compare Froude's Hiſtory of England, Vol.* VIII., 480.

It was not until the ſtruggle on the part of the coloniſts themſelves to throw off the faſt-cloſing ſhackles of Britiſh oppreſſion culminated in open reſiſtance to the mother-country, that the inconſiſtency of maintaining ſlavery with one hand while pleading or ſtriking for freedom with the other, compelled a reluctant and gradual change in public opinion on this ſubject.

If it be true that at no period of her colonial and provincial hiſtory was Maſſachuſetts without her

"proteſtants" againſt the whole ſyſtem; their example was powerleſs in that day and generation. The words and thoughts of a Williams, an Eliot, and a Sewall, fell unheeded and unnoticed on the ears and hearts of the magiſtrates and people of their time, as the acorn fell two centuries ago in the foreſts by which they were ſurrounded.[1]

V.

But the humane efforts of Roger Williams and John Eliot to abate the ſeverity of judgment againſt captives, and mitigate the horrors of ſlavery in Maſſachuſetts, hardly amounted to a poſitive proteſt againſt the inſtitution itſelf. In their time there was no public opinion againſt ſlavery, and probably very little exerciſe of private judgment againſt it. Even among the Quakers the inner light had not yet diſcloſed its enormity, or awakened tender conſciences to its utter wickedneſs.

There were two ſignal exceptions to the general

[1] In this ſentence, as originally printed in the Hiſtorical Magazine, a "Dudley" was included among thoſe indicated as having been in advance of their contemporaries on this ſubject. The reference was to Paul Dudley, who was the author of a tract, publiſhed in 1731, entitled, "An Eſſay on the Merchandiſe of Slaves and Souls of Men. With an Application to the Church of Rome." This title, and references to the tract by others, gave us the impreſſion that it was againſt Slavery; but an opportunity recently enjoyed of examining the tract itſelf, showed the miſtake. It is altogether "an Application to the Church of Rome,"—in fact, "an oration againſt Popery," of which Maſſachuſetts had a much greater horror than of ſlavery.

theory and practice of that period on this ſubject, both of which deſerve to be had in everlaſting remembrance. We ſhall make no apology for noticing them in this place, although their connection with the hiſtory of ſlavery in Maſſachuſetts is very remote.

Among the "Acts and Orders made at the Generall Court of Election held at Warwicke this 18th day of May, anno 1652," "The Commiſſioners of Providence and Warwicke being lawfully mett and ſett," on the ſecond day of their ſeſſion (19th May, 1652), enacted and ordered as follows, viz. :

"WHEREAS, there is a common courſe practiſed among Engliſhmen to buy negers, to that end they may have them for ſervice or ſlaves for ever ; for the preventinge of ſuch practices among us, let it be ordered, that no blacke mankind or white being forced by covenant bond, or otherwiſe, to ſerve any man or his aſſighnes longer than ten yeares, or untill they come to bee twentiefour yeares of age, if they bee taken in under fourteen, from the time of their cominge within the liberties of this Collonie. And at the end or terme of ten yeares to ſett them free, as is the manner with the Engliſh ſervants. And that man that will not let them goe free, or ſhall ſell them away elſewhere, to that end that they may be enſlaved to others for a long time, hee or they ſhall forfeit to the Collonie forty pounds." *R. I. Records*, I., 248.

This noble act ſtands out in ſolitary grandeur in the middle of the ſeventeenth century, the firſt legislative enactment in the hiſtory of this continent, if not of the world, for the ſuppreſſion of involuntary ſervitude. But, unhappily, it was not enforced, even

in the towns over which the authority of the Commiſſioners extended.[1]

The other exception to which we have referred is to be found in the following declaration againſt ſlavery by the Quakers of Germantown, Pennſylvania, in 1688. Theſe were a "little handful" of German Friends from Cresheim, a town not far from Worms, in the Palatinate.

We are indebted to the curious and zealous reſearch of Mr. Nathan Kite, of Philadelphia, for the publication of this intereſting memorial. It appeared in *The Friend, Vol.* XVII., *No.* 16, *January* 13, 1844. The paper from which Mr. Kite copied was the original. At the foot of the addreſs, John Hart, the clerk of the Monthly Meeting, made his minute, and that paper having been then forwarded to the Quarterly Meeting, received a few lines from Anthony Morris, the clerk of that body, to introduce it to the Yearly Meeting, to which it was then directed.

"This is to the monthly meeting held at Richard Worrell's:

"Theſe are the reaſons why we are againſt the traffic of men-body, as followeth: Is there any that would be done or handled at this manner? viz., to be ſold or made a ſlave for all the time of his life? How fearful and faint-hearted are many at ſea, when they ſee a ſtrange veſſel, being afraid it ſhould be a Turk,

[1] *Compare Arnold*, I., 240. We omit his miſtaken deference to Maſſachuſetts in regard to the Act of 1646—ſo long miſunderſtood or miſrepreſented as a proteſt againſt ſlavery. See *ante, pp.* 28–30. Alſo *Bancroft*, I., 174, and *Hildreth*, I., 373.

and they ſhould be taken, and ſold for ſlaves into Turkey. Now, what is *this* better done, than Turks do? Yea, rather it is worſe for them, which ſay they are Chriſtians; for we hear that the moſt part of ſuch negers are brought hither againſt their will and conſent, and that many of them are ſtolen. Now, though they are black, we cannot conceive there is more liberty to have them ſlaves, as [than] it is to have other white ones. There is a ſaying, that we ſhould do to all men like as we will be done ourſelves; making no difference of what generation, deſcent, or colour they are. And thoſe who ſteal or rob men, and thoſe who buy or purchaſe them, are they not all alike? Here is liberty of conſcience, which is right and reaſonable; here ought to be likewiſe liberty of the body, except of evil-doers, which is another caſe. But to bring men hither, or to rob and ſell them againſt their will, we ſtand againſt. In Europe, there are many oppreſſed for conſcience-ſake; and here there are thoſe oppreſſed which are of a black colour. And we who know that men muſt not commit adultery —ſome do commit adultery *in* others, ſeparating wives from their huſbands, and giving them to others: and ſome ſell the children of theſe poor creatures to other men. Ah! do conſider well this thing, you who do it, if you would be done at this manner—and if it is done according to Chriſtianity! You ſurpaſs Holland and Germany in this thing. This makes an ill report in all thoſe countries of Europe, where they hear of [it,] that the Quakers do here handel men as they handel there the cattle. And for that reaſon ſome have no mind or inclination to come hither.

And who ſhall maintain this your cauſe, or plead for it? Truly, we cannot do ſo, except you ſhall inform us better hereof, viz.: that Chriſtians have liberty to practiſe theſe things. Pray, what thing in the world can be done worſe towards us, than if men ſhould rob or ſteal us away, and ſell us for ſlaves to ſtrange countries; ſeparating huſbands from their wives and children. Being now this is not done in the manner we would be done at, [by]; therefore, we contradict, and are againſt this traffic of men-body. And we who profeſs that it is not lawful to ſteal, muſt, likewiſe, avoid to purchaſe ſuch things as are ſtolen, but rather help to ſtop this robbing and ſtealing, if poſſible. And ſuch men ought to be delivered out of the hands of the robbers, and ſet free as in Europe. Then is Pennſylvania to have a good report, inſtead, it hath now a bad one, for this ſake, in other countries: Eſpecially whereas the Europeans are deſirous to know in what manner *the Quakers* do rule in *their* province; and moſt of them do look upon us with an envious eye. But if this is done well, what ſhall we ſay is done evil?

"If once theſe ſlaves (which they ſay are ſo wicked and ſtubborn men,) ſhould join themſelves—fight for their freedom, and handel their maſters and miſtreſſes, as they did handel them before; will theſe maſters and miſtreſſes take the ſword at hand and war againſt theſe poor ſlaves, like, as we are able to believe, ſome will not refuſe to do? Or, have theſe poor negers not as much right to fight for their freedom, as you have to keep them ſlaves?

"Now conſider well this thing, if it is good or

bad. And in caſe you find it to be good to handel theſe blacks in that manner, we deſire and require you hereby lovingly, that you may inform us herein, which at this time never was done, viz., that Christians have ſuch a liberty to do ſo. To the end we ſhall be ſatisfied on this point, and ſatisfy likewiſe our good friends and acquaintances in our native country, to whom it is a terror, or fearful thing, that men ſhould be handelled ſo in Pennſylvania.

"This is from our meeting at Germantown, held y^e^ 18th of the 2d month, 1688, to be delivered to the monthly meeting at Richard Worrell's.

"Garret Henderich,
Derick op de Graeff,
Francis Daniel Pastorius,
Abram op de Graeff.

"At our monthly meeting, at Dublin, y^e^ 30th 2d mo., 1688, we having inſpected y^e^ matter, above mentioned, and conſidered of it, we find it ſo weighty that we think it not expedient for us to meddle with it *here*, but do rather commit it to y^e^ conſideration of y^e^ quarterly meeting; y^e^ tenor of it being related to y^e^ truth.

"On behalf of y^e^ monthly meeting,
"Jo. Hart.

"This abovementioned, was read in our quarterly meeting, at Philadelphia, the 4th of y^e^ 4th mo., '88, and was from thence recommended to the yearly meeting, and the above ſaid Derrick, and the other two mentioned therein, to preſent the ſame to y^e^ above

ſaid meeting, it being a thing of too great weight for this meeting to determine.

"Signed by order of y^e^ meeting.

"ANTHONY MORRIS."

The minutes of the Yearly Meeting, held at Burlington in the ſame year, record the reſult of this firſt effort among the Quakers.

"At a Yearly Meeting, held at Burlington the 5th day of the 7th Month, 1688.

"A paper being here preſented by ſome German Friends Concerning the Lawfulneſs & Unlawfulneſs of Buying & Keeping of Negroes It was adjudged not to be ſo proper for this Meeting to give a Poſitive Judgment in the Caſe It having ſo general a Relation to many other Parts & therefore at preſent they Forbear It." *Extract from the Original Minutes, copied by Nathan Kite. Compare Bettle, in Penn. Hiſt. Soc. Coll.*, I., 365.

Richard Baxter has been repreſented as having "echoed the opinions of Puritan Maſſachuſetts." *Bancroft*, III., 412. We have already ſhown that the Puritans of Maſſachuſetts were not hoſtile to ſlavery. Neither was Baxter; for he expreſſly recognized the lawfulneſs of the purchaſe and uſe of men as ſlaves, although he denounced man-ſtealing as piracy. The principal point of his Chriſtian Directory (publiſhed in 1673) in this matter, was concerning the religious obligations growing out of the relation of maſter and ſlave. *Works*, IV., 212–20., XVII., 330., XIX., 210.

Morgan Godwyn, a clergyman of the Church of England, who wrote and publiſhed in 1680 "The Negro's and Indian's Advocate, ſuing for their Admiſſion into the Church," etc., hardly intimates a doubt of the lawfulneſs of their ſlavery, while he pleads for their humanity and right to religion againſt a very general opinion of that day, which denied them both.

Dean Berkeley, in his famous ſermon before the Venerable Society in 1731, ſpeaks of "the irrational contempt of the Blacks, as Creatures of another Species, who had no right to be inſtructed or admitted to the Sacraments." *Sermon, p.* 19.

And George Keith (then Quaker), whose paper againſt the practice was ſaid to be given forth by the appointment of the meeting held by him in the city of Philadelphia, about the year 1693, gave a ſtrict charge to Friends "that they ſhould ſet their negroes at liberty, *after ſome reaſonable time of ſervice.*" *Gabriel Thomas's Hiſtory of Pennſylvania, etc.*, 1698, *pp.* 53, 54. This was probably the pamphlet quoted by Dr. Franklin in his letter to John Wright, 4th November, 1789. *Works*, x., 403.

Keith appears ſimply to have repeated the words of George Fox in Barbadoes in 1671, when he urged the religious training of the negroes, as well as kind treatment, in place of "cruelty towards them, as the manner of ſome hath been and is; and that after certain years of ſervitude they ſhould make them free." *Journal*, II., 140. For a more particular account of this teſtimony of Fox, see *The Friend, Vol.* XVII., *pp.* 28, 29. 4to. Phil. 1843. The explicit

anſwer of Fox to the charge that the Quakers "taught the negroes to rebel," ſhows very clearly that anti-ſlavery doctrines were no part of the Quaker creed at that time. *Ibid.*, *pp.* 147–9. *Compare* 454. *See alſo Ralph Sandiford's Brief Examination, etc., Preface.*

And for half a century afterwards "that people were as greedy as any Body in keeping Negroes for their Gain," ſo as to induce the belief that they "approved of it as a People with one conſent unanimouſly." *Lay*, 84. Ralph Sandiford, in 1729, in his "Brief Examination," etc., thus bemoaned the fact, "that it hath defaced the preſent Diſpenſation."

"Had the Friends ſtood clear of this Practice, that it might have been anſwered to the Traders in Slaves that there is a People called *Quakers* in *Pennſylvania* that will not own this practice in Word or Deed, then would they have been a burning and a ſhining Light to theſe poor Heathen, and a Precedent to the Nations throughout the Univerſe which might have brought them to have ſeen the Evil of it in themſelves, and glorifyed the Lord on our Behalf, and like the Queen of the *Eaſt*, to have admired the Glory and Beauty of the Church of God. But inſtead thereof, the tender ſeed in the Honeſt-hearted is under Suffering, to ſee both Elders and Miniſters as it were cloathed with it, and their offspring after them filling up the Meaſure of their Parents' Iniquity; which may be ſuffered till ſuch Time that Recompence from Him that is juſt to all his Creatures opens that Eye the god of this World has blinded. Though I would not be underſtood to pervert the Order of the Body, which conſiſts of Servants and Maſters, and the

Head cannot ſay to the Foot, *I have no need of thee;* but it is the Converting Men's Liberty to our Wills, who have not, like the Gibeonites, offered themſelves willingly, or by Conſent given their Ear to the Door-poſt, but are made ſuch by Force, in that Nature that deſires to Lord it over their Fellow Creatures, is what is to be abhorred by all Chriſtians." *pp.* 9, 10.

Again, he ſays in another place: "But in Time this dark Trade creeping in amongſt us to the very Miniſtry, becauſe of the profit by it, hath ſpread over others like a Leproſy, to the Grief of the Honeſt-hearted." *Preface.*

Public ſentiment and opinion againſt ſlavery were firſt aroused and ſtimulated in America in the latter part of the ſeventeenth century by ſympathy for the Chriſtian captives, Dutch and Engliſh, who were enſlaved by the Turks and the pirates of Northern Africa. *Lay's "All Slave-keepers Apoſtates."* The efforts to ranſom and releaſe theſe unfortunate perſons, excited by the terrible ſorrow of relatives and friends, kinſmen and countrymen, brought home to ſome minds (though few) the injuſtice of their own dealings with the negroes. The earlieſt writers againſt ſlavery urged that argument with peculiar force and unction, but with little effect. They ſeem to have made no impreſſion on the legiſlation of the colonies, and curious and zealous reſearch only can recover the memorials of their righteous teſtimonies.

The earlieſt poſitive public challenge to ſlavery in Maſſachuſetts of which we have any knowledge, was in the year 1700, when a learned, pious, and honored magiſtrate entered the liſts alone, and founded his

ſolitary blaſt in the ears of his brother magiſtrates and the people, who liſtened in amazement and wonder, not unmingled with ſorrow and contempt. His performance is all the more remarkable from the fact that it ſtands out in the hiſtory of the time ſeparate and diſtinct as "the voice of one crying in the wilderneſs."

Samuel Sewall, at that time a Judge of the Superior Court, and afterwards Chief-Juſtice, publiſhed a brief tract in 1700, entitled: "*The Selling of Joſeph a Memorial.*" It filled three pages of a folio ſheet, ending with the imprint: "*Boſton of the Maſſachuſetts; Printed by Bartholomew Green and John Allen. June 24th*, 1700."

The author preſented a copy of this tract "not only to each member of the General Court at the time of its publication, but alſo to numerous clergymen and literary gentlemen with whom he was intimate." *MS. Letter. Compare Briſſot*, I., 224. Although thus extenſively circulated at that day, it has for many years been known apparently only by tradition, as nearly all the notices of it which we have ſeen are confined to the fact of its publication early in the eighteenth century, the date being nowhere correctly ſtated.

Beyond this, it appears to have been unknown to our hiſtorians, and is now reproduced probably for the firſt time in the preſent century. Indeed, we have met with no quotation even from it later than 1738, when it was reprinted in Pennſylvania, where anti-ſlavery took an earlier and deeper root, and bore earlier fruit, than in any other part of America.[1]

[1] It was reprinted as a part of Benjamin Lay's tract, "*All Slave-Keepers that keep the Innocent in Bondage, Apoſtates . . .*," in which it occupies

Its rarity and peculiar intereſt will juſtify us in placing the reprint before our readers in this connection. It is ſomewhat remarkable that ſo ſignal a teſtimony againſt ſlavery ſhould have eſcaped the reſearch of thoſe who have in their cuſtody "the hiſtoric fame" of Maſſachuſetts. It is a moſt honorable memorial of its venerated author.

"THE SELLING OF JOSEPH A MEMORIAL.

By the Hon'ble JUDGE SEWALL in New England.

"FORASMUCH *as* LIBERTY *is in real value next unto* Life; *None ought to part with it themſelves, or deprive others of it, but upon moſt mature conſideration.*

"The Numerouſneſs of Slaves at this Day in the Province, and the Uneaſineſs of them under their Slavery, hath put many upon thinking whether the Foundation of it be firmly and well laid; ſo as to ſuſtain the Vaſt Weight that is built upon it. It is moſt certain that all Men, as they are the Sons of *Adam*, are Co-heirs, and have equal Right unto Liberty, and all other outward Comforts of Life. GOD *hath given the Earth* [*with all its commodities*] *unto the Sons of Adam, Pſal.*, 115, 16. *And hath made of one Blood all Nations of Men, for to dwell on all the face of the Earth, and hath determined the Times before appointed, and the bounds of their Habitation: That they ſhould ſeek the Lord. Foraſmuch then as we are the Offspring of* GOD, &c. *Acts* 17. 26, 27, 29. Now, although the Title given by the laſt ADAM doth infinitely better Men's Eſtates, reſpecting GOD and themſelves; and grants them a moſt beneficial and inviolable Leaſe under the Broad Seal of Heaven, who were before only Tenants at Will; yet through the Indulgence of GOD to our Firſt Parents after the Fall, the outward Eſtate of all and every of their Children, remains the

pp. 199–207 incluſive. The title of Lay's tract gives the imprint, "*Philadelphia, Printed for the Author*, 1737;" but it was not publiſhed until the following year. *See The American Weekly Mercury*, No. 973, Aug. 17–24, 1738, and following numbers; eſpecially No. 982, Oct. 19–26, 1738, in which is printed the repudiation of Lay and his book, by the Yearly Meeting.

ſame as to one another. So that Originally, and Naturally, there is no ſuch thing as Slavery. *Joſeph* was rightfully no more a Slave to his Brethren, than they were to him; and they had no more Authority to *Sell* him, than they had to *Slay* him. And if *they* had nothing to do to ſell him; the *Iſhmaelites* bargaining with them, and paying down Twenty pieces of Silver, could not make a Title. Neither could *Potiphar* have any better Intereſt in him than the *Iſhmaelites* had. *Gen.* 37, 20, 27, 28. For he that ſhall in this caſe plead *Alteration of Property*, ſeems to have forfeited a great part of his own claim to Humanity. There is no proportion between Twenty Pieces of Silver and LIBERTY. The Commodity itſelf is the Claimer. If *Arabian* Gold be imported in any quantities, moſt are afraid to meddle with it, though they might have it at eaſy rates; leſt it ſhould have been wrongfully taken from the Owners, it ſhould kindle a fire to the Conſumption of their whole Eſtate. 'Tis pity there ſhould be more Caution uſed in buying a Horſe, or a little lifeleſs duſt, than there is in purchaſing Men and Women: Whereas they are the Offspring of God, and their Liberty is,

. . . *Auro pretioſior Omni.*

" And ſeeing God hath ſaid, *He that Stealeth a Man, and Selleth him, or if he be found in his Hand, he ſhall ſurely be put to Death.* Exod. 21, 16. This Law being of Everlaſting Equity, wherein Man-Stealing is ranked among the moſt atrocious of Capital Crimes: What louder Cry can there be made of that Celebrated Warning.

Caveat Emptor!

" And all things conſidered, it would conduce more to the Welfare of the Province, to have White Servants for a Term of Years, than to have Slaves for Life. Few can endure to hear of a Negro's being made free; and indeed they can ſeldom uſe their Freedom well; yet their continual aſpiring after their forbidden Liberty, renders them Unwilling Servants. And there is ſuch a diſparity in their Conditions, Colour, and Hair, that they can never embody with us, & grow up in orderly Families, to the Peopling of the Land; but ſtill remain in our Body Politick as a kind of extravaſat Blood. As many Negro Men as there are among us, ſo many empty Places are there in our Train Bands, and the places taken up of Men that might make Huſbands for our Daughters. And the Sons and Daughters of *New England* would

become more like *Jacob* and *Rachel*, if this Slavery were thruſt quite out of Doors. Moreover it is too well known what Temptations Maſters are under, to connive at the Fornication of their Slaves; leſt they ſhould be obliged to find them Wives, or pay their Fines. It ſeems to be practically pleaded that they might be lawleſs; 'tis thought much of, that the Law ſhould have ſatisfaction for their Thefts, and other Immoralities; by which means, *Holineſs to the Lord* is more rarely engraven upon this ſort of Servitude. It is likewiſe moſt lamentable to think, how in taking Negroes out of *Africa*, and ſelling of them here, That which GOD has joined together, Men do boldly rend aſunder; Men from their Country, Huſbands from their Wives, Parents from their Children. How horrible is the Uncleanneſs, Mortality, if not Murder, that the Ships are guilty of that bring great Crouds of theſe miſerable Men and Women. Methinks when we are bemoaning the barbarous Uſage of our Friends and Kinsfolk in *Africa*, it might not be unreaſonable to enquire whether we are not culpable in forcing the *Africans* to become Slaves amongſt ourſelves. And it may be a queſtion whether all the Benefit received by *Negro* Slaves will balance the Accompt of Caſh laid out upon them; and for the Redemption of our own enſlaved Friends out of *Africa*. Beſides all the Perſons and Eſtates that have periſhed there.

" Obj. 1. *Theſe Blackamores are of the Poſterity of Cham, and therefore are under the Curſe of Slavery.* Gen. 9, 25, 26, 27.

" *Anſ.* Of all Offices, one would not beg this; viz. Uncall'd for, to be an Executioner of the Vindictive Wrath of God; the extent and duration of which is to us uncertain. If this ever was a Commiſſion; How do we know but that it is long ſince out of Date? Many have found it to their Coſt, that a Prophetical Denunciation of Judgment againſt a Perſon or People, would not warrant them to inflict that evil. If it would, *Hazael* might juſtify himſelf in all he did againſt his maſter, and the *Iſraelites* from 2 *Kings* 8, 10, 12.

" But it is poſſible that by curſory reading, this Text may have been miſtaken. For *Canaan* is the Perſon Curſed three times over, without the mentioning of *Cham*. Good Expoſitors ſuppoſe the Curſe entailed on him, and that this Propheſie was accompliſhed in the Extirpation of the *Canaanites*, and in the Servitude of the *Gibeonites*.

Vide Pareum. Whereas the Blackmores are not deſcended of *Canaan*, but of *Cuſh.* Pſal. 68, 31. *Princes ſhall come out of Egypt* [Mizraim]. *Ethiopia* [Cuſh] *ſhall ſoon ſtretch out her hands unto God.* Under which Names, all *Africa* may be comprehended; and their Promiſed Converſion ought to be prayed for. *Jer.* 13, 23. *Can the Ethiopian change his Skin?* This ſhows that Black Men are the Poſterity of *Cuſh.* Who time out of mind have been diſtinguiſhed by their Colour. And for want of the true, *Ovid* aſſigns a fabulous cauſe of it.

Sanguine tum credunt in corpora ſumma vocato
Æthiopum populos nigrum traxiſſe colorem.
Metamorph. lib. 2.

"Obj. 2. *The* Nigers *are brought out of a Pagan Country, into places where the Goſpel is preached.*

"*Anſ.* Evil muſt not be done, that good may come of it. The extraordinary and comprehenſive Benefit accruing to the Church of God, and to *Joſeph* perſonally, did not rectify his Brethren's Sale of him.

"Obj. 3. *The Africans have Wars one with another: Our Ships bring lawful Captives taken in thoſe wars.*

"*Anſw.* For aught is known, their Wars are much ſuch as were between *Jacob's* Sons and their Brother *Joſeph.* If they be between Town and Town; Provincial or National: Every War is upon one ſide Unjuſt. An Unlawful War can't make lawful Captives. And by receiving, we are in danger to promote, and partake in their Barbarous Cruelties. I am ſure, if ſome Gentlemen ſhould go down to the *Brewſters* to take the Air, and Fish: And a ſtronger Party from *Hull* ſhould ſurpriſe them, and ſell them for Slaves to a Ship outward bound; they would think themſelves unjuſtly dealt with; both by Sellers and Buyers. And yet 'tis to be feared, we have no other Kind of Title to our *Nigers. Therefore all things whatſoever ye would that men ſhould do to you, do you even ſo to them: for this is the Law and the Prophets.* Matt. 7, 12.

'Obj. 4. Abraham *had Servants bought with his Money and born in his Houſe.*

"*Anſ.* Until the Circumſtances of *Abraham's* purchaſe be recorded, no Argument can be drawn from it. In the mean time, Charity obliges us to conclude, that He knew it was lawful and good.

"It is Obſervable that the *Israelites* were ſtrictly forbidden the buying or ſelling one another for Slaves. *Levit.* 25. 39. 46. *Jer.* 34. 8–22. And GOD gaged His Bleſſing in lieu of any loſs they might conceit they ſuffered thereby, *Deut.* 15. 18. And ſince the partition Wall is broken down, inordinate Self-love ſhould likewiſe be demoliſhed. GOD expects that Chriſtians ſhould be of a more Ingenuous and benign frame of Spirit. Chriſtians ſhould carry it to all the World, as the *Israelites* were to carry it one towards another. And for Men obſtinately to perſiſt in holding their Neighbours and Brethren under the Rigor of perpetual Bondage, ſeems to be no proper way of gaining Aſſurance that God has given them Spiritual Freedom. Our Bleſſed Saviour has altered the Meaſures of the ancient Love Song, and ſet it to a moſt Excellent New Tune, which all ought to be ambitious of Learning. *Matt.* 5. 43. 44. *John* 13. 34. Theſe *Ethiopians*, as black as they are, ſeeing they are the Sons and Daughters of the Firſt *Adam*, the Brethren and Siſters of the Laſt ADAM, and the Offspring of GOD; They ought to be treated with a Reſpect agreeable.

"*Servitus perfecta voluntaria, inter Chriſtianum & Chriſtianum, ex parte ſervi patientis ſæpe eſt licita, quia eſt neceſſaria; ſed ex parte domini agentis, & procurando & exercendo, vix poteſt eſſe licita; quia non convenit regulæ illi generali: Quæcunque volueritis ut faciant vobis homines, ita & vos facite eis. Matt.* 7. 12.

"*Perfecta ſervitus pœnæ, non poteſt jure locum habere, niſi ex delicto gravi quod ultimum ſupplicium aliquo modo meretur: quia Libertas ex naturali æſtimatione proxime accedit ad vitam ipſam, & eidem a multis præferri ſolet.*

"Ames. Cas. Conſc. Lib. 5. Cap. 23. Thes. 2. 3."

Thus ſignally and clearly did Judge Sewall expoſe the miſerable pretences on which ſlavery and the ſlave-trade were then juſtified in Maſſachuſetts, as they continued to be long years after he "ſlept with his fathers." And he exhibited in his correſpondence his deſire that "the wicked practice of ſlavery" might be

taken away, as well as his ſtrong conviction that there would be "no great progreſs in Goſpellizing till then." *Letter to Henry Newman, Dec.—Jan.*, 1714–15. It is manifeſt that he was far in advance of his day and generation in theſe views, and he has himſelf left the record that he met more "frowns and hard words" than ſympathy! His teſtimony did not go unchallenged, nor was its publication allowed to paſs without reply. JOHN SAFFIN, a judge of the ſame court with Judge Sewall, and a ſlaveholder, printed an anſwer the next year, of which we regret to ſay we have been able to find no copy. Could it be found, it would undoubtedly be an intereſting document and very important in illuſtration of the hiſtory of ſlavery in Maſſachuſetts. We might naturally expect to find in it ſome references to the laws, the principles, and the practices of the Puritan Fathers of that colony.[1]

[1] Since this portion of our work was firſt printed, in the Hiſtorical Magazine for June, 1864, Sewall's tract has been reprinted by the Maſſachuſetts Hiſtorical Society, from an original preſented to its Library by the Hon. Robert C. Winthrop. *Proc. M. H. S.*, 1863–64, *pp.* 161–5. And, what is of much more importance in this connection, a copy of Saffin's anſwer has been diſcovered. It is a ſmall quarto, entitled "A | Brief and Candid Anſwer to a late | Printed Sheet entituled | THE SELLING OF JOSEPH | whereunto is annexed, | a True and Particular Narrative by way of Vindication of the | Author's Dealing with and Proſecution of his Negro Man Servant | for his vile and exhorbitant Behaviour towards his Maſter and his | Tenant, Thomas Shepard; which hath been wrongfully repreſented | to their Prejudice and Defamation. | By JOHN SAFFIN, Eſqr.: | Boſton: Printed in the Year 1701." The original is now in the poſſeſſion of GEORGE BRINLEY, Eſq., of Hartford, Conn. We are indebted to the reſearch and ſagacity of Mr. J. HAMMOND TRUMBULL, Preſident of the Connecticut Hiſtorical Society, for the diſcovery of Saffin's tract and permiſſion to make the preſent uſe of it. Saffin's original petitions to the General Court in regard to this affair, one referring to his pamphlet as in print, etc., etc., are preſerved in the *Maſs. Archives*, IX., 152, 153.

The following letter from Judge Sewall, which illuſtrates the ſubject further, was addreſſed

"*To the Revd. & aged Mr. John Higginſon.*

Apr. 13, 1706.

"Sir,

"I account it a great Favour of God, that I have been priviledged with the Acquaintance and Friendſhip of many of the Firſt Planters in New England: and the Friendſhip of your ſelf, as ſuch, has particularly oblig'd me. *It is now near Six years agoe since I printed a Sheet in defence of Liberty. The next year after, Mr. Saffin ſet forth a printed Anſwer. I forbore troubling the Province with any Reply, untill I ſaw a very Severe Act paſſing againſt Indians and Negros, and then I Reprinted that Queſtion, as I found it ſtated and anſwered in the Athenian Oracle; which I knew nothing of before laſt Autumn was twelve moneths, when I accidentally caſt my Eye upon it. Amidſt the Frowns and hard Words I have met with for this Undertaking, it is no ſmall refreſhment to me, that I have the Learned, Reverend & Aged Mr. Higginſon for my Abetter. By the interpoſition of this Breſt-Work, I hope to carry on and manage this Enterpriſe with Safety and Succeſs.* I have incloſed the Prints. I could be glad of your Anſwer to one Caſe much in agitation among us at this day: viz., Whether it be not for the Honor of G. and of N. E. to reſerve entire and untouch'd the Indian Plantation of Natick, and other Lands under the ſame Circumſtances? that the lying of those Lands unoccupied and undeſired by the Engliſh, may be a valid and Laſting Evidence, that we deſire the Con-

verſion and Wellfare of the Natives, and would by no means Extirpat them, as the Spaniards did? There is one thing more I would mention, and that is, I am verily perswaded that the Set time for the Drying up of the Apocalyptical Euphrates, is very nigh, if not come: and I earneſtly beſpeak the Aſſiſtance of your Prayers in that momentous Concern: wᶜʰ I do with the more Confidence, becauſe you were Liſted in that Service above fifty years ago. Pray, Sir! Come afreſh into the Confederation. Let me alſo entreat your Prayers for me, and my family, that the Bleſſing of G. may reſt upon the head of every one in it by reaſon of the good will of Him who dwell'd in the Buſh. My ſervice to Madam Higginſon. I am, Sir,

"Your humble Servᵗ.

"S. S."

We are unable to give any account of the Act againſt Indians and Negroes, whoſe ſeverity induced Sewall to renew his efforts in their behalf. Theſe efforts were probably ſucceſsful, as none appears to have been paſſed into a law at all anſwering to his deſcription in its proviſions, and in point of time; or if paſſed, it muſt have been ſpeedily repealed. If the Act referred to ſhould be found, it might furniſh a ſtriking illuſtration of the views of the time concerning the ſtatus of theſe unhappy races of men.

We ſhall therefore re-produce here "that Queſtion" as "ſtated and anſwered in the Athenian Oracle," which Sewall uſed to ſo good purpoſe in defending the rights of Indians and Negroes againſt the hoſtile legislation of Maſſachuſetts, in the early years of the eighteenth century.

From the Athenian Oracle, Vol. II., *pp.* 460–63.

"Q. *We read in* Gen. 17. 12: And he that is eight days old ſhall be Circumciſed among you, every Man-child in their Generation. He that is born in the Houſe, or bought with Money of any Stranger that is not of thy Seed. *This was God's Covenant with* Abraham, *and in him with all the Jews; which Covenant by Chriſt's coming into the World, being aboliſhed, and the Covenant of Baptiſm inſtituted in its ſtead;* The Queſtion is, *Whether thoſe Merchants and Planters in the* Weſt Indies, *as well all other parts of the World, that buy Negroes, or other Heathen Servants or Slaves, are not indiſpenſably bound to bring ſuch Servants to be Baptized, as well as* Abraham *was to Circumciſe his Stranger Servants? Conſequently, what's to be thought of thoſe Chriſtian Maſters, who refuſe to let ſuch Servants be baptized; becauſe if they were, they wou'd have their freedom at a certain term of Years allow'd by the Laws of the ſeveral Plantations?*

"A. We have met with this Queſtion before, though to comply with the Gentleman's deſire, we'll here give it a larger Anſwer; tho' in the firſt Place, we muſt obſerve a falſe ſuppoſition in the wording of it. That God's Covenant with *Abraham* was aboliſhed by the Covenant he made with us by our Saviour, and conſequently they are two *different Covenants;* whereas they were rather the *ſame Covenant,* with two different *Seals;* we ſay the Covenant God made with *Abraham,* was not a *Covenant of Works,* but of *Faith,* as well as that he makes by Chriſt with all Believers; nay, was the very ſame with it, Chriſt being promiſed in God's Covenant with *Abraham,* when 'twas ſaid, *That in his ſeed ſhould all the Nations of the Earth be bleſſed;* which is interpreted of Chriſt by the inſpired Writers; and this is further evident from the Apoſtles way of Arguing, *Rom.* 4. 11. 13. *He received the Sign of Circumciſion, a Seal of the Righteouſneſs of the Faith, which he had yet being uncircumciſed, that he might be Father of all them that believe, though they be not Circumciſed; for the Promiſe that he ſhould be the Heir of the World, was not to* Abraham, *or to his ſeed through the Law; but through Faith,* etc.

"Now to the Queſtion. If *Abraham* was oblig'd to Circumciſe all that were born of his Houſe, and that were bought with money of

the *Stranger* (the Samaritan Verſion has it בַּרְבָּרָה *Barbarah*, whence Βάρβαρος a Barbarian, names that all Nations have ever ſince flung at one another, and the *Hebrews* as often call'd by it among the Greeks as any. If he was to do this, ought not all Chriſtians by *Parity* of Reaſon to do the like by their *Slaves* and *Servants?* We anſwer, Yes, and much more, as the *Goſpel* is now more clearly revealed than 'twas to *Abraham*, who indeed ſaw Chriſt, and rejoic'd, but 'twas in darker *Types* and *Prophecies*. But in order to a more full ſatisfaction of this Difficulty, it may be further convenient to enquire; whether Negro's Children are to be *Baptized*, and for grown Perſons what Preparation is required of 'em? To the firſt, a great Man of our Church was of an opinion, That a Negro's Child ought to be baptiz'd, as well as any others; the Promiſe reaching *To all that were afar off, as well as to Believers and their Children*, and in this caſe, the right of the child is in the Maſter,[1] not the Slave; and if Chriſt dy'd for all, why ſhould not the Vertues of his Death be apply'd to all; who do nothing to reſiſt it, for the waſhing away their Original Pravity? Again, as we argue in the caſe of Infant Baptiſm. If Infants were in the Covenant before Chriſt, how come they ſince to be excluded? So we may here, and perhaps more generally; If all Infants, born in *Abraham's* houſe, or bought with Money of the Stranger or *Barbarian* (who often ſold their own Children then, as they do now) if they were then to have the Seal of the Covenant, how have they ſince forfeited it? Why mayn't they be capable of a nobler Seal, 'tis true, but yet of the ſame Covenant made with all Mankind by Chriſt, that *promiſ'd Seed*, in whom, as before, all Nations ſhould be bleſſed, and the breach repaired that was made in *Adam;* as was, we are ſure, the expreſs opinion of St. *Jerom*, who in his diſputation with the *Pelagian*, *Ep.* 17, has remarkable Expreſſions. *Why are Infants Baptized, ſays the Pelagian?* The Orthodox anſwers, *That in Baptiſm their*

[1 At a meeting of the General Aſſociation of the Colony of Connecticut, 1738, "It was inquired—whether the infant ſlaves of Chriſtian maſters may be baptized in the right of their maſters—they ſolemnly promiſing to train them in the nurture and admonition of the Lord: and whether it is the *duty* of ſuch maſters to offer ſuch children and thus religiouſly to promiſe. Both queſtions were affirmatively anſwered. *Records as reported by Rev. C. Chapin, D. D., quoted in Jones's Religious Inſtruction of the Negroes, etc., p.* 34.]

Sins may be remitted. The *Pelagian* replies, Where did they ever ſin? The *Orthodox* rejoyns, that *S. Paul* ſhall anſwer for him, who ſays in the fifth of the *Rom., Death reign'd from* Adam *to* Moſes, *even over thoſe who had not ſinn'd, according to the ſimilitude of* Adam's *Tranſgreſſion.* And he quotes St. *Cyprian* in the ſame place, both to his and our Purpoſe, *That if Remiſſion of Sins is given even to greater and more notorious Sinners, and none is Excepted from Grace, none prohibited from Baptiſm, much leſs ought an Infant to be deny'd Baptiſm, who has no Sin of his own, but only that of his Father* Adam *to anſwer for.* This for Children, and there's yet leſs doubt of thoſe who are of Age to anſwer for themſelves, and would ſoon learn the Principles of our Faith, and might be taught the Obligation of the Vow they made in Baptiſm, as there's little doubt but *Abraham* inſtructed his *Heathen Servants*, who were of Age to learn, in the Nature of *Circumciſion*, before he *Circumciſ'd* them; nor can we conclude much leſs from God's own noble Teſtimony of him, *Gen.* 18. 19. *I know him, that he will command his Children and his Houſehold, and they ſhall keep the way of the Lord.*

"What then ſhould hinder but theſe be *Baptized?* If only the Covetouſneſs of their Maſters, who for fear of loſing their Bodies, will venture their Souls; which of the two are we to eſteem the greater *Heathens?* Now that this is notorious Matter of Fact, that they are ſo far from perſuading thoſe poor Creatures to Come to *Baptiſm*, that they diſcourage them from it, and rather hinder them as much as poſſible, though many of the wretches, as we have been informed, earneſtly deſire it; this we believe, none that are concern'd in the Plantations, if they are ingenuous, will deny, but own they don't at all care to have them Baptized. Talk to a *Planter* of the *Soul* of a *Negro*, and he'll be apt to tell ye (or at leaſt his Actions ſpeak it loudly) that the Body of one of them may be worth twenty Pounds; but the Souls of an hundred of them would not yield him one Farthing; and therefore he's not at all ſolicitous about them, though the true Reaſon is indeed, becauſe of that Cuſtom of giving them their Freedom after turning Chriſtians, which we know not if it be Reaſonable; we are ſure the Father of the *Faithful* did not ſo by thoſe Servants whom he had Circumciſed. 'Tis no where required in Scripture. St. *Paul* indeed bids Maſters not be *cruel* and *unreaſonable* to their Slaves, eſpecially if Brethren or Chriſtians; but he no where bids them

give 'em their Liberty, nor do's Chriſtianity alter any *Civil Right;* nor do's the ſame Apoſtle, in all his excellent Plea for *Oneſimus,* once tell his *Maſter* 'tis his Duty to ſet him *Free;* all he deſires is, he'd again *receive* and *forgive* him; nay, he tells Servants, 'tis their Duty, in whatever ſtate they are call'd therein to abide; beſides, ſome Perſons, nay, Nations ſeem to be born for Slaves; particularly many of the *Barbarians* in *Africa,* who have been ſuch almoſt from the beginning of the World, and who are in a much better Condition of Life, when Slaves among us, then when at Liberty at Home, to cut Throats and Eat one another, eſpecially when by the Slavery of their Bodies, they are brought to a Capacity of Freeing their Souls from a much more unſupportable Bondage. Though in the mean time, if there be ſuch a Law or Cuſtom for their *Freedom,* to encourage 'em to Chriſtianity, be it reaſonable or otherwiſe, this is certain, that none can excuſe thoſe who for that Reaſon ſhould any way hinder or diſcourage 'em from being Chriſtians; ſome of whoſe excuſes are almoſt too ſhameful to repeat, ſince they ſeem to reflect on the Chriſtian Religion, as if that made Men more untractable and ungovernable, than when bred in Ignorance and Heatheniſm, which muſt proceed from the Perverſeneſs of ſome Tempers, as before, fitter for *Slaves* than *Freedom;* or for want of good Inſtruction, when they have nothing but the name of Chriſtianity, without underſtanding any thing of the Obligation thereof; or Laſtly, From the bad Examples of their Maſter's themſelves, who live ſuch lives as often ſcandalize theſe honeſter Heathens."

We ſhall force no inferences from this document as to the character of the legiſlation againſt which it was directed. It is an argument for the "right to Religion," in that day ſo univerſally denied, in practice at leaſt, to enſlaved Indians and Negroes, and their offspring, that it would be ſtrange, if true, that Maſſachuſetts furniſhed any but occaſional exceptions to the prevailing rule.[1]

[1] "Slaves were admitted to be church members at a period when church members had peculiar political privileges." *Quincy's Reports,* 30, *note.* This is Mr. Justice Gray's ſtatement on the following authorities:

We have previouſly noticed Sewall's "eſſay" to prevent Indians and Negroes being rated with brutes in the tax-laws, in the year 1716. Three years later, a new occaſion preſented itſelf for the renewal of his efforts in behalf of the oppreſſed. A maſter had killed his negro ſlave, and was about to anſwer for the offence before the Court. One of the judges ſeems to have deſired the aid and counſel of the Chief Juſtice in his

1. *Winthrop's Journal*, II., 26, and Savage's note. "Mo. 2. 13. [1641]. A negro maid, ſervant to Mr. Stoughton of Dorcheſter, being well approved by divers years' experience, for ſound knowledge and true godlineſs, was received into the church and baptized." Mr. Savage's note is, "Similar inſtances have been common enough ever ſince."

2. *Ancient Charters*, 117. "To the end the body of the freemen may be preſerved of honeſt and good men: It is ordered, that henceforth no man ſhall be admitted to the freedom of this Commonwealth, but ſuch as are members of ſome of the churches within the limits of this juriſdiction."

3. *Bancroft's Hiſtory U. S.*, I., 360. "The ſervant, the bondman, might be a member of the church, and therefore a freeman of the Company."

Notwithſtanding this array of authority, we muſt ſuggeſt our doubts, 1ſt. Whether the notice itſelf by Winthrop is not a palpable evidence of the extraordinary and exceptional character of the incident that a negro maid-ſervant ſhould be baptized and received into the church? Mr. Savage's remark cannot be regarded as authority, not being ſuſtained by references to any ſimilar inſtances. 2d. Whether a ſingle inſtance has ever been found or is known in the hiſtory of Maſſachuſetts, during the period referred to, in which a ſervant or bondman, black or white, actually became a freeman of the Company?

Mr. Palfrey indulges in ſome pleaſing ſpeculations on this topic. "A negro ſlave might be a member of the church, and this fact preſents a curious queſtion. As a church-member, he was eligible to the political franchiſe; and if he ſhould be actually inveſted with it, he would have a part in making laws to govern his maſter,—laws with which his maſter, if a non-communicant, would have had no concern, except to obey them." Touchſtone wiſely ſaid there was "much virtue in If," and Dr. South has a maxim that "we are not to build certain rules on the contingency of human actions." Whether the hiſtorian recalled either "inſtance," we cannot ſay; but here he evidently recognized the impropriety of conſtructing hiſtory on a frame of conjectural contingencies, and frankly admitted at the end of his

preparations for the caſe, and Sewall's Letter-Book preſerves the following memoranda of what he communicated.

"The pooreſt Boys and Girls in this Province, ſuch as are of the loweſt Condition; whether they be Engliſh, or Indians, or Ethiopians: They have the ſame Right to Religion and Life, that the Richeſt Heirs have.

"And they who go about to deprive them of this Right, they attempt the bombarding of HEAVEN, and the Shells they throw, will fall down upon their own heads.

"Mr. Juſtice Davenport, Sir, upon your deſire, I have ſent you theſe *Quotations*, and my *own Senti-*

note, "it is improbable that the Court would have made a ſlave—while a ſlave—a member of the Company, though he were a communicant." *History of New England*, II., 30, *note*. As to baptiſm of ſlaves in Maſſachuſetts, ſee *ante*, *pp.* 58–59. *Compare Hurd's Law of Freedom and Bondage*, *Vol.* I., *pp.* 165, 210, 358. The famous French *Code Noir* of 1685 obliged every planter to have his Negroes baptized, and properly inſtructed in the doctrines and duties of Chriſtianity. Nor was this the only important and humane proviſion of that celebrated ſtatute, to which we may ſeek in vain for any parallel in Britiſh Colonial legiſlation. Its influence was felt in England, and may have given riſe to thoſe humane inſtructions, one of which we have already quoted (*p.* 52). Another required his Majeſty's Governors "with the aſſiſtance of our Council to find out the beſt means to facilitate and encourage the Converſion of Negros and Indians to the Chriſtian Religion." *N. Y. Col. Doc.*, III., 374. Evelyn, in his Diary, gives an intereſting account of the determination of the King, James II., on this point. At Wincheſter, 16 September, 1685, he ſays, "I may not forget a reſolution which his Majeſty made, and had a little before entered upon it at the Council Board at Windſor or Whitehall, that the negroes in the Plantations ſhould all be baptized, exceedingly declaiming againſt the impiety of their maſters prohibiting it, out of a miſtaken opinion that they would be *ipſo facto* free; but his Majeſty perſiſts in his reſolution to have them chriſtened, which piety the Biſhop bleſſed him for." *Works*, II., 245. This was good Biſhop Ken, the Chriſtian Pſalmiſt.

ments. I pray GOD, the Giver and Guardian of Life, to give his gracious Direction to you, and the other Juſtices; and take leave, who am your brother and moſt humble ſervant,

" Samuel Sewall.

" Boſton, July 20, 1719.

" I incloſed alſo the *Selling of Joſeph*, and my Extract out of the *Athenian Oracle.*

" To Addington Davenport, Eſqr., etc., going to Judge Sam[l]. Smith of Sandwich, for killing his Negro."

That ſuch arguments were neceſſary, or even regarded as appropriate on ſuch an occaſion, is a fact full of meaning. We have previouſly intimated a doubt whether the ſlave could claim any right or privilege of protection under the laws which were known as the " *Liberties of Servants;*" and in connection with the inſtructions to Andros in 1688, we have called the attention of the reader to the diſtinction between the *Chriſtian* ſervants or ſlaves and the *Indians and Negroes.* The former were to be protected againſt the inhuman ſeverity of ill-maſters or overſeers, while the latter were to be ſo far advanced in the ſcale of humanity, that the " *wilful* killing " of them ſhould " be puniſhed with *death*, and a fitt penalty impoſed for the maiming of them."

We cannot, however, at preſent attempt to determine what were the actual legal reſtraints upon the power of a maſter over his ſlave, in Maſſachuſetts. We do not know that the materials for ſuch a deter-

mination exiſt anywhere ſave in ſuch records as remain of thoſe ancient tribunals of the Colony and Province by which alone the rights of perſons and of property were then, as now, judicially aſcertained and regulated. There are abundant modern ſtatements of opinion on theſe points, but we cannot recall a ſingle inſtance in which theſe ſtatements are fortified by good and ſufficient teſtimony from the ancient and contemporary records or authorities; and we cannot doubt that the reader of theſe notes will ſympathize in our deſire to reſt on facts rather than opinions. For example, in the particular caſe above referred to, the awful ſolemnity with which the Chief Juſtice communicates his charge to his brother magiſtrate when about to "judge" a maſter for "killing his Negro," gives peculiar intereſt to the reſult; and it is greatly to be regretted that the record of the trial, conviction, and puniſhment of ſuch an offender ſhould be concealed among the neglected rubbiſh of any Maſſachuſetts Court-Houſe. If Samuel Smith of Sandwich was hung for the murder of his ſlave in Maſſachuſetts in the year 1719, it is due to the hiſtoric fame of the Province that the world ſhould know it!

We are perfectly aware that the opinion has prevailed that the negro or mulatto or Indian ſlave in Maſſachuſetts, "always had many rights which raiſed him far above the *abſolute* ſlave." Theſe are nowhere more favorably ſtated than by Nathan Dane, in his great work on American Law. *Abridgment*, II., 313. He conſiders the ſubject in eight points of view:

"1. The maſter has no control over the religion

of ſuch ſlave, any more than over the religion of any other member of his family;

"2. None over his life; if he killed him, he was puniſhable as for killing a freeman;

"3. The maſter was liable to his ſlave's action, for beating, wounding or immoderately chaſtiſing him, as much as for immoderately correcting an apprentice, or a child;

"4. The ſlave was capable of holding property, as a deviſee or legatee, and as recovered for wounds, etc., ſo much ſo, if the maſter took away ſuch property, his ſlave could ſue him by *prochein ame;*

"5. If one took him from his maſter without his conſent, he could not have trover, but only ſue, as for taking away his other ſervant; on the whole the ſlave had the right of property and of life, as apprentices had, and the only difference was 'an apprentice is a ſervant for time, and the ſlave is a ſervant for life.' In Connecticut, the ſlave was, by ſtatute, ſpecially forbidden to contract; no ſuch ſtatute is recollected in Maſſachuſetts;

"6. If a ſlave married a free woman, with the conſent of his maſter, he was emancipated, for his maſter had ſuffered him to contract a relation inconſiſtent with a ſtate of ſlavery; 'hereby the maſter abandoned his right to him as a ſlave, as a minor child is emancipated from his father when he is married.' *Ld. Raymond*, 356;

"7. A ſlave however could be ſold, and in ſome ſtates be taken in execution for his maſter's debts; but no evidence is found of ſuch taking in execution in Maſſachuſetts;

"8. On the principles of the Engliſh Common Law, men may be made *ſlaves for life* for *crimes*, and ſo clearly, by our preſent law. Property in a negro [was] acquired without deed. 1 *Dal.*, 169."

Now, if all theſe points had been well taken and could be fortified by the neceſſary amount of hiſtorical teſtimony, they would unqueſtionably make a very good caſe. But unhappily they are mainly theoretical ſtatements derived from abſtract reaſoning on general principles, of which no ſuch applications were thought of in the period to which they are aſſigned. Yet the formality with which they are ſtated, and the dignified place they hold in a book of great authority, give them an importance beyond the conjectures which are generally ventured as to how far the lot of the ſlave was mitigated in Maſſachuſetts.

Mr. Dane copied them with but ſlight alterations, chiefly in favor of Maſſachuſetts, from the treatiſe of Judge Reeve on "*Domeſtic Relations*," *pp.* 340–41, publiſhed in 1816. There is no reference to the ſtatutes, nor to any judicial deciſions on any point, excepting as here quoted, either in original or copy.

Shall we be accounted preſumptuous, if we add a few comments as well as a reference to the facts already preſented, which muſt throw great doubts over the whole array of rights thus claimed as having been accorded to ſlaves in Maſſachuſetts?

The right to religion and life was not clearly recognized as belonging equally to bond-ſlave and freeman. Mr. Dane altered Judge Reeve's ſtatement of the latter point. Judge Reeve ſaid, "if he killed him,

he was *liable to the ſame puniſhment* as for killing a freeman." The alteration indicates the nature of the doubt which may have ariſen in the mind of Mr. Dane when he wrote it, "he was *puniſhable* as for killing a freeman." No doubt he was puniſhable. The incident which we have preſented of the maſter called to anſwer before the Court for the fact of killing his negro ſhows this. So too, in the firſt Maſſachuſetts Code, even "the Bruite Creature" is protected againſt "Tirrany and Crueltie" by the very next ſtatute after that which eſtabliſhes ſlavery—a ſignificant ſequence!

Here let it be remembered that the original law of ſlavery in Maſſachuſetts gave to ſlaves "all the liberties and Chriſtian uſages which the law of God, eſtabliſhed in Iſrael concerning ſuch perſons, doth morally require." Now the Mosaic Law here recognized and reënacted did not protect the life of a heathen ſlave againſt his maſter's violence, by the penalty of "life for life," and although ſuch violence might be puniſhed, the kind and degree of puniſhment is not now to be aſcertained. *Exodus*, xxi., 20, 21. And there is a marked diſtinction to be obſerved in regard to the Hebrew, though a ſlave, who is favorably compared with the hired ſervant and ſojourner in contraſt with the bondman. *Leviticus*, xxv., 39, 40. To what extent the "rigor" of heathen bondage among the Jews was ſoftened into "liberties and Chriſtian uſages" among the Puritans is a queſtion of fact and not of opinion. What was morally required by the law of God eſtabliſhed in Iſrael, in this as in all ſimilar buſineſs, was a matter reſerved for their own deciſion, in their own General Court and other tribunals. And

this general proviſion in the original law ſeems to have been the only one to which the ſlave could appeal, or more properly by which the conduct of the maſter could be regulated, in the government and diſpoſition of his chattel. It is certain that moſt of the ſpecial proviſions of the law reſpecting maſters and ſervants had no application to ſlaves, and we have already expreſſed the doubt whether ſlaves enjoyed any of the privileges of ſervants under that law.

Where is the evidence that Indians and Negroes in bondage were entitled to protection as other ſervants? and that the maſter was liable to his ſlave's action for beating, wounding, or immoderately chaſtiſing, etc.? It is far more probable that the condition of the ſervant was practically aſſimilated to that of the ſlave, than that the ſlave ſhared any of the privileges accorded by ſtatute to the ſervant. It would add much to our knowledge on this ſubject, if the examples ſhould be adduced to ſhow at what period in the hiſtory of Maſſachuſetts the Indian and negro ſlave *firſt* acquired a ſtatus in Court as a proſecutor, or in any other capacity than as a criminal at the bar, before which he was often enough called to anſwer under the unjuſt and unequal legiſlation of that period. If it was at any time before the American Revolution—how came it to paſs that, in 1783, a fine of forty ſhillings againſt a maſter for "beating, bruiſing, and otherwiſe evilly intreating" his negro-ſlave, gave "a mortal wound to ſlavery in Maſſachuſetts?" And further, if a ſlave could recover againſt his maſter damages for cruelty, why was it neceſſary to reſort to the ſuit "by *prochein ame*" to enable him to keep his recovery?

Again, where is the evidence that ſlaves were capable of holding property, etc., beyond the occaſional and exceptional permiſſion to enjoy ſome privileges as a *peculium*, with the profits of which they might in ſome caſes be enabled even to purchaſe their manumiſſion? Could ſlaves take and hold real eſtate in Maſſachuſetts? "No ſervant, either man or maid," was permitted "to give, ſell or truck any commodity whatſoever without licenſe from their Maſters, during the time of their ſervice, under pain of fine, or corporal puniſhment, at the diſcretion of the Court, as the offence ſhall deſerve." *Maſs. Laws, Ed.* 1672, *p.* 104. Is it probable that a ſlave was on any better footing in this reſpect than a white ſervant?

As to the form of action by which a maſter ſhould ſue for the unlawful taking of his ſlave without his conſent—the only examples of ſuch ſuits in Maſſachuſetts to which we are able to refer, contradict the opinion that he could not have trover, but muſt ſue in treſpaſs *per quod ſervitium amiſit*. *Goodſpeed* v. *Gay*, *Maſs. Sup. Court Records*, 1763, *fol.* 47, 101. *Alliſon* v. *Cockran*, *Ibid.* 1764, *fol.* 103. The right to maintain trover for a negro was a matter of courſe in Maſſachuſetts, for there can be no queſtion as to the fact that he might be held and ſold as a chattel under the laws of that Colony and Province, and trover lies by any one who has any ſpecial property in a chattel, with the right to immediate poſſeſſion. *Compare Gray*, *in Quincy's Reports*, 93, *note*, where all the authorities are cited.

The marriage of ſlaves in Maſſachuſetts has already

been noticed, and it is obvious that the legiſlators of Maſſachuſetts never intended that ſuch marriages ſhould confer any rights or impoſe any duties which were incompatible with the ſtate of ſlavery; and it may ſafely be alleged that no inſtance can be produced of the emancipation of a ſlave as a legal conſequence of marriage with a free woman.[1]

The candor of the admiſſion "that a ſlave however could be ſold, and in ſome ſtates be taken in execution for his maſter's debts," is unhappily qualified by the aſſertion that "no evidence is found of ſuch taking in execution in Maſſachuſetts." The only reaſon it was not found was, that it was not hunted; for the failure to find it muſt have been either from want of diſpoſition or lack of diligence.

But we have ſaid enough on theſe topics to put thoſe who are moſt intereſted upon inquiry. Thoſe who are familiar with ſuch reſearches and have opportunities of eaſy reference to the records and files of the Courts in Maſſachuſetts during the period of which we are writing, can probably collate a ſufficient number of examples to ſettle all theſe queſtions by authority. They will undoubtedly illuſtrate the gradual amelioration of all the various forms of oppreſſion, but theſe changes muſt be held to mark the era of their hiſtorical development. If they prove that the doubts we have

[1] We have been unable to verify the reference to "Lord Raymond, 356," as to the analogous emancipation of a minor child "from his father when he is married"—but we have high authority for the ſtatement that the laws of Maſſachuſetts know of no ſuch emancipation. 15 *Maſs. Reports*, 203.

ſuggeſted are not well founded, we ſhall be moſt gratified with the reſult.

The ultimate theory of ſlavery in all ages and nations has been reduced to a very brief and comprehenſive ſtatement. Dr. Maine, in his admirable treatiſe on Ancient Law, ſays that "the ſimple wiſh to uſe the bodily powers of another perſon as a means of miniſtering to one's own eaſe or pleaſure is doubtleſs the foundation of ſlavery and as old as human nature." And again, "there ſeems to be ſomething in the inſtitution of ſlavery which has at all times either ſhocked or perplexed mankind, however little habituated to reflection, and however ſlightly advanced in the cultivation of its moral inſtincts." To ſatisfy the conſcience of the maſter, the Greeks eſtabliſhed the idea of intellectual inferiority of certain races and conſequent natural aptitude for the ſervile condition. The Romans declared the doctrine of a ſuppoſed agreement between victor and vanquiſhed, in which the firſt ſtipulated for the perpetual ſervices of his foe, and the other gained in conſideration the life which he had legitimately forfeited. *Compare Maine*, 162–66.

The Puritans of New England appear to have been neither ſhocked nor perplexed with the inſtitution, for which they made ample proviſion in their earlieſt code. They were familiar with the Greek and Roman ideas on the ſubject, and added the conviction that ſlavery was eſtabliſhed by the law of God, and that Chriſtianity always recognized it as the antecedent Moſaic practice. On theſe foundations, is it ſtrange that it held its place ſo long in the history of Maſſachuſetts?

It has been said that the firſt ſtep towards the deſtruction of ſlavery was the reſtraint or prohibition of the importation of ſlaves. But it would be abſurd to regard laws for this purpoſe as an expreſſion of humane conſideration for the negroes. Graham, in his hiſtory, characterizes ſuch a view of the moſt ſtringent one ever made in any of the Colonies, as an "impudent abſurdity." *Hiſt. U. S.*, iv., 78. We have already noticed the Maſſachuſetts acts of 1705, with the additional acts of 1728 and 1739, impoſing and enforcing the collection of an import duty of four pounds per head upon all negroes brought into the Province.

There is no indication in the acts themſelves, nor have we been able to find any evidence, that they were intended other than as revenue acts, beyond that which we have preſented in theſe notes.

We have heretofore quoted the inſtruction of the town of Boſton in 1701. It is not improbable that it was the reſult of Judge Sewall's efforts in 1700. Fruitleſs as it was, it ſhows that even then ſome were wiſe enough to ſee that the importation of negroes was not ſo beneficial to the Crown or Country as that of white ſervants would be. In 1706, an eſſay or "*Computation that the Importation of Negroes is not ſo profitable as that of White Servants*," was publiſhed in Boſton, which may properly be reproduced here. It was the firſt newſpaper article againſt the importation of negroes publiſhed in America, and appeared in the *Boſton News-Letter*, No. 112, June 10, 1706. We are inclined to attribute this article alſo to Judge Sewall.

"By laſt Year's Bill of Mortality for the Town of *Boſton*, in *Number* 100 *News-Letter*, we are furniſhed with a Liſt of 44 Negroes dead laſt year, which being computed one with another at 30*l.* per Head, amounts to the Sum of One Thouſand three hundred and Twenty Pounds, of which we would make this Remark: That the Importing of Negroes into this or the Neighboring Provinces is not ſo beneficial either to the Crown or Country, as White Servants would be.

"For Negroes do not carry Arms to defend the Country as Whites do.

"Negroes are generally Eye-Servants, great Thieves, much addicted to Stealing, Lying and Purloining.

"They do not People our Country as Whites would do whereby we ſhould be ſtrengthened againſt an Enemy.

"By Encouraging the Importing of White Men Servants, allowing ſomewhat to the Importer, moſt Huſbandmen in the Country might be furniſhed with Servants for 8, 9, or 10*l.* a Head, who are not able to launch out 40 or 50*l.* for a Negro the now common Price.

"A Man then might buy a White Man Servant we ſuppoſe for 10*l.* to ſerve 4 years, and Boys for the ſame price to Serve 6, 8, or 10 years; If a White Servant die, the Loſs exceeds not 10*l.* but if a Negro dies, 'tis a very great loſs to the Huſbandman; Three years Intereſt of the price of the Negro, will near upon if not altogether purchaſe a White Man Servant.

"If Neceſſity call for it, that the Huſbandman muſt fit out a Man againſt the Enemy; if he has a Negro he cannot ſend him, but if he has a White Servant, 'twill anſwer the end, and perhaps save his Son at home.

"Were Merchants and Maſters Encouraged as already ſaid to bring in Men Servants, there needed not be ſuch Complaint againſt Superiors Impreſſing our Children to the War, there would then be Men enough to be had without Impreſſing.

"The bringing in of ſuch Servants would much enrich this Province becauſe Huſbandmen would not only be able far better to manure what Lands are already under Improvement, but would alſo improve a great deal more that now lyes waſte under Woods, and enable this Province to ſet about raiſing of Naval Stores, which would be greatly advantageous to the Crown of England, and this Province.

"For the raiſing of Hemp here, ſo as to make Sail-cloth and

Cordage to furniſh but our own ſhipping, would hinder the Importing it, and ſave a conſiderable ſum in a year to make Returns for which we now do, and in time might be capacitated to furniſh England not only with Sail-cloth and Cordage, but likewiſe with Pitch, Tar, Hemp, and other Stores which they are now obliged to purchaſe in Foreign Nations.

"Suppoſe the Government here ſhould allow Forty Shillings per-head for five years, to ſuch as ſhould Import every of theſe years 100 White Men Servants, and each to ſerve 4 years, the coſt would be but 200*l.* a year, and a 1000*l.* for the 5 years. The firſt 100 Servants, being free the 4th year they ſerve the 5th for Wages, and the 6th there is 100 that goes out into the Woods, and ſettles a 100 Families to Strengthen and Baracado us from the Indians, and alſo a 100 Families more every year ſucceſſively.

"And here you ſee that in one year the Town of Boſton has loſt 1320*l.* by 44 Negroes, which is alſo a loſs to the Country in general, and for a leſs loſs (if it may be improperly be ſo called) for a 1000*l.* the Country may have 500 Men in 5 years time for the 44 Negroes dead in one year.

"A certain perſon within theſe 6 years had two Negroes dead computed both at 60*l.* which would have procured him ſix white Servants at 10*l.* per head to have Served 24 years, at 4 years apiece, without running ſuch a great riſque, and the Whites would have ſtrengthened the Country, that Negroes do not.

"'Twould do well that none of thoſe Servants be liable to be Impreſſed during their Service of Agreement at their first Landing.

"That ſuch Servants being Sold or Tranſported out of this Province during the time of their Service, the Perſon that buys them be liable to pay 3*l.* into the Treaſury."

A third of a century after the publication of Judge Sewall's tract, another made its appearance, entitled "A Teſtimony againſt that Anti-Chriſtian Practice of making Slaves of Men Wherein it is ſhewed to be contrary to the Diſpenſation of the Law, and Time of the Goſpel, and very oppoſite both to Grace and Nature. By Elihu Coleman. Matthew 7. 12.

Therefore all things whatſoever ye would that men ſhould do unto you, do ye even ſo to them, for this is the Law and the Prophets. Printed in the year 1733." *MS. Copy in the Library of the American Antiquarian Society.* This writer was a miniſter of the Society of Friends, and of Nantucket. His work was written in 1729–30. *Coffin's Newbury, p.* 338. *Macy's Nantucket, p.* 279.

At the Nantucket Monthly Meeting, in 1716, it was determined as "y^e^ ſenſe and judgment of this meeting, that it is not agreeable to truth for Friends to purchaſe ſlaves and hold them term of life." *Macy's Nantucket, p.* 281.

In 1755, March 10, the town of Salem authorized a petition to the General Court againſt the importation of negroes. *Felt's Salem,* II., 416. There may have been other occaſional efforts of this ſort, but they muſt have been comparatively few and fruitleſs.

We have thus noticed the moſt important, if not the only anti-ſlavery demonſtrations which appear in the hiſtory of Maſſachuſetts down to the period immediately preceding the Revolution. Excepting thoſe already mentioned, we know of no public advocates for the ſlave in that Colony and Province until the cry of reſiſtance to Britiſh tyranny began to reſound through the Colonies.

James Otis's great ſpeech in the famous Cauſe of the Writs of Aſſiſtance in 1761—the firſt ſcene of the firſt act of oppoſition to the arbitrary claims of Great Britain—declared the rights of man, inherent and inalienable. In that ſpeech the poor negroes were not

forgotten. None ever aſſerted their rights in ſtronger terms. *Adams's Works*, x., 315. Mr. Bancroft poſtpones Otis's "proteſt againſt negro ſlavery" to a later year (1764), when he tranſlated the "ſcathing ſatire" of Monteſquieu in his aſſertion and proof of the rights of the Britiſh Colonies. This difference in time is not material for our preſent purpoſe. Many years were to paſs away before his views on this ſubject were accepted by the children's children of thoſe to whom his words then ſounded like a rhapſody and an extravagance.

It was a ſtrong arm, and it ſtruck a ſturdy blow, but the wedge recoiled and flew out from the tough black knot of ſlavery, which was deſtined to outlaſt the fierceſt fires of the Revolution in Maſſachuſetts, thus kindled with live coals from the altar of univerſal liberty.

John Adams heard the words of Otis, and "ſhuddered at the doctrine he taught," and to the end of his long life continued "to ſhudder at the conſequences that may be drawn from ſuch premiſes." Yet John Adams "adored the idea of gradual abolitions." *Works*, x., 315. For his later views on emancipation, see *Works*, vi., 511., x., 379.

The views expreſſed by Otis muſt have ſounded ſtrangely in the ears of men who "lived (as John Adams himſelf ſays he did) for many years in times when the practice [of ſlavery] was not diſgraceful, when the beſt men in my vicinity thought it not inconſiſtent with their character." *Works*, x., 380. If there was a prevailing public ſentiment againſt ſlavery in Maſſachuſetts—as has been conſtantly claimed of

late—the people of that day, far leſs demonſtrative than their deſcendants, had an extraordinary way of not ſhowing it. Hutchinſon, who was undoubtedly the man of his time moſt familiar with the hiſtory of his native province, ſays in his firſt volume, publiſhed in 1764, *p.* 444, "Some judicious perſons are of opinion that the permiſſion of ſlavery has been a publick miſchief." This is certainly the indication of a very mild type of oppoſition—by no means of a pervading public ſentiment.

John Adams was not alone in his aſtoniſhment at the ideas expreſſed by Otis. Theſe ideas were new as they were ſtartling to the people of Maſſachuſetts in that day. And to the calm judgment of the hiſtorian there is nothing ſtrange in the fact that the foremoſt man of his time in that province ſhould have ſhuddered at the doctrines which Otis taught. More than a century paſſed away before all the ancient badges of ſervitude could be removed from the colored races in Maſſachuſetts, if indeed it be even now true that none of thoſe diſabilities which ſo ſtrongly mark the ſocial ſtatus of the negro ſtill linger in the legiſlation of that State.

VI.

Among the ſtrongeſt indications of the coming change in opinion on this ſubject, the "ſuits for liberty," as they are called, challenge attention. They are alſo known as "ſuits for freedom," and "ſuits for ſervice," in which ſlaves "ſued their maſters for free-

dom and for recompence for their ſervice, after they had attained the age of twenty-one years."[1] *M. H. S. Coll.*, I., iv. 202.

There had been a caſe in Connecticut as early as 1703, in which a maſter was ſummoned to anſwer, before a County Court, "to Abda, a mulatto, in an action of the caſe, for his unjuſt holding and detaining the ſaid Abda in his ſervice as his bondſman, for the ſpace of one year laſt paſt." The damages were laid at 20*l.* The reſult was a verdict againſt the maſter for 12*l.* damages—"thereby virtually eſtabliſhing Abda's right to freedom." *J. H. Trumbull's Notes from the Original Papers, etc. Conn. Courant, Nov.* 9, 1850. In this caſe, the ground on which the ſlave reſted his claim appears to have been his white blood.

The earlieſt of theſe caſes in Maſſachuſetts, of which we have any knowledge, is noticed in the Diary of John Adams. It was in the Superior Court at Salem, in 1766. Under date of Wedneſday, November 5th, he ſays: "Attended Court; heard the trial of an action of treſpaſs, brought by a mulatto woman, for damages, for reſtraining her of her liberty. This is called ſuing for liberty; the firſt action that ever I knew of the ſort, though I have heard there have been many." *Works*, II., 200.

[1] If any of theſe deciſions in Maſſachuſetts ſuſtained the claims for wages, they are in strong contrast with the highest Engliſh authority of the period. Many actions were brought in the Engliſh Courts, by negro ſlaves against their masters for wages; but Lord Mansfield, the great oracle of the Common Law, was accustomed to deal very ſummarily with them. He has left a very emphatic record on this point:

"When ſlaves have been brought here, and have commenced actions for their wages, I have always nonſuited the plaintiff." *The King* v. *the Inhabitants of Thames Ditton.* 4 *Doug.*, 300.

We ſuppoſe this to have been the caſe of *Jenny Slew* vs. *John Whipple, jr.*, the record of which we copy here.

"Jenny Slew of Ipſwich in the County of Eſſex, ſpinſter, Pltff., agſt. John Whipple, Jun., of ſaid Ipſwich Gentleman, Deft., in a Plea of Treſpaſs for that the ſaid John on the 29th day of January, A. D. 1762, at Ipſwich aforeſaid with force and arms took her the ſaid Jenny, held and kept her in ſervitude as a ſlave in his ſervice, and has reſtrained her of her liberty from that time to the fifth of March laſt without any lawfull right & authority ſo to do and did her other injuries againſt the peace & to the damage of ſaid Jenny Slew as ſhe ſaith the ſum of twenty-five pounds. This action was firſt brought at laſt March Court at Ipſwich when & where the parties appeared & the caſe was continued by order of Court to the then next term when & where the Pltff appeared & the ſaid John Whipple Jun, came by Edmund Trowbridge, Eſq. his attorney & defended when he ſaid that there is no ſuch perſon in nature as Jenny Slew of Ipſwich aforeſaid, Spinſter, & this the ſaid John was ready to verify wherefore the writ ſhould be abated & he prayed judgment accordingly which plea was overruled by the Court and afterwards the ſaid John by the ſaid Edmund made a motion to the Court & praying that another perſon might endorſe the writ & be ſubject to coſt if any ſhould finally be for the Court but the Court rejected the motion and then the Deft. ſaving his plea in abatement aforeſaid ſaid that he is not guilty as the plaintiff contends, & thereof put himſelf on the Country, & then the cauſe was continued to this term, and now the Pltff. reſerving to herſelf the liberty of joining iſſue on the Deft's plea aforeſaid in the appeal ſays that the defendant's plea aforeſaid is an inſufficient anſwer to the Plaintiff's declaration aforeſaid and by law ſhe is not held to reply thereto & ſhe is ready to verify wherefore for want of a ſufficient anſwer to the Plaintiff's declaration aforeſaid ſhe prays judgment for her damages & coſts & the defendant conſenting to the waving of the demurrer on the appeal ſaid his plea aforeſaid is good & becauſe the Pltff refuſes to reply thereto He prays judgment for his coſt. It is conſidered by the Court that the defendant's plea in chief aforeſaid is good & that the ſaid John Whipple recover of the ſaid Jenny Slew coſts tax at
the Pltff appealed to the next Superior Court of Judicature to be holden

for this County & entered into recognizance with ſureties as the law directs for proſecuting her appeal to effect." *Records of the Inferior Court of C. C. P., Vol. —, (Sep. 1760 to July 1766), page 502.*

"Jenny Slew of Ipſwich, in the County of Eſſex, Spinſter, Appellant, verſus John Whipple, Jr. of ſaid Ipſwich, Gentleman Appellee from the judgment of an Inferior Court of Common Pleas held at Newburyport within and for the County of Eſſex on the laſt Tueſday of September 1765 when and where the appellant was plaint., and the appellee was defendant in a plea of treſpaſs, for that the ſaid John upon the 29th day of January, A. D. 1762, at Ipſwich aforeſaid with force and arms took her the ſaid Jenny held & kept her in ſervitude as a ſlave in his ſervice & has reſtrained her of her liberty from that time to the fifth of March 1765 without any lawful right or authority ſo to do & did other injuries againſt the Peace & to the damage of the ſaid Jenny Slew, as ſhe ſaith, the ſum of twenty-five pounds, at which Inferior Court, judgment was rendered upon the demurrer then that the ſaid John Whipple recover againſt the ſaid Jenny Slew coſts. This appeal was brought forward at the Superior Court of Judicature &c., holden at Salem, within & for the County of Eſſex on the firſt Tuesday of laſt November, from whence it was continued to the laſt term of this Court for this County by conſent & ſo from thence unto this Court, and now both parties appeared & the demurrer aforeſaid being waived by conſent & iſſue joined upon the plea tendered at ſaid Inferior Court & on file. The caſe after full hearing was committed to a jury ſworn according to law to try the ſame who returned their verdict therein upon oath, that is to ſay, they find for appellant reverſion of the former judgment four pounds money damage & coſts. It's therefore conſidered by the Court, that the former judgment be reverſed & that the ſaid Slew recover againſt the ſaid Whipple the ſum of four pounds lawful money of this Province damage & coſts taxed *9l. 9s. 6d.*

"Exon. iſſued 4 Dec. 1766." *Records of the Superior Court of Judicature (Vol. 1766–7), page 175.*

The caſe of *Newport* vs. *Billing* has been previouſly noticed, *p. 22, note.* It is not improbable that this was the caſe in which John Adams was en-

gaged, in the latter part of September, 1768, when he "attended the Superior Court at Worceſter and the next week proceeded to Springfield, where I was accidentally engaged in a cauſe between a negro and his maſter." *Works*, II., 213.

The next caſe was that which has been for more than half a century the grand *cheval de bataille* of the champions of the hiſtoric fame of Maſſachuſetts—the caſe of *James* v. *Lechmere*, in Middleſex, in 1769. This is the caſe referred to in a recent paper read before the Maſſachuſetts Hiſtorical Society, in which the writer felt at liberty to "indulge a pride equally juſt and generous, that here, in the Courts of the Province, the ruling of Lord Mansfield [in the caſe of Somerſet] was anticipated by two years, in favor of perſonal freedom and human rights." *M. H. S. Proc.*, 1863–4, *p.* 322. That is to ſay, as the ſame writer expreſſes it elſewhere, in the caſe of *James* v. *Lechmere*, "the right of a maſter to hold a ſlave had been denied, by the Superior Court of Maſſachuſetts, and upon the ſame grounds, ſubſtantially, as thoſe upon which Lord Mansfield diſcharged Somerſet,[1] when his caſe came before him." *Waſhburn's Judicial Hiſt. of Maſs.*, 202. Compare alſo *M. H. S.*

[1] The abſurdity of the claim ſet up for Maſſachuſetts is not diminiſhed by the fact that no caſe in the hiſtory of Engliſh Law has been more misunderſtood and miſrepreſented than the Somerſet caſe itſelf.

Thirteen years later (27 April, 1785), Lord Mansfield himſelf ſtated expreſſly "that his deciſion went no farther than that the maſter cannot by force compel the ſlave to go out of the Kingdom." At the ſame time he alſo ſaid, with reference to the alleged extinction of villenage, "villains in groſs may in point of law ſubſiſt at this day. But the change of cuſtoms and manners has effectually aboliſhed them in point of fact." *The King* v. *The Inhabitants of Thames Ditton*, 4 *Doug.*, 300. In the ſame year, the

Proc., 1855–58, *pp.* 190–91, and *Coll.*, IV., iv., *pp.* 334–5.

It is a pity to diſturb theſe cheriſhed fancies, but the truth is that this caſe, ſo often quoted "as having determined the unlawfulneſs of ſlavery in Maſſachuſetts, is *ſhown by the records and files of Court to have been brought up from the Inferior Court by ſham demurrer, and, after one or two continuances, ſettled by the parties. Rec.*, 1769, *fol.* 196." *Gray in Quincy's Reports*, 30, *note.*

We muſt not omit to note in paſſing another intereſting fact recently developed. James Somerſet, the ſubject of the great Engliſh "ſuit for liberty," was not a Virginia or Weſt India ſlave, as has been

ſame great exponent of Engliſh Law expreſsly recognized property in ſlaves on board a ſlave-trader, in an action on a policy of aſſurance. The demand on the policy was for the loſs of a great many ſlaves by mutiny. *Jones* vs. *Schmoll.* 1 *Term Reports*, 130, *note.* Add to all this the notorious facts that ſlaves were bought and ſold in England long after the time when it has been alleged that "Lord Mansfield *firſt* eſtabliſhed the grand doctrine that the air of England is too pure to be breathed by a ſlave;" that it was not until 1807 that ſhe aboliſhed her ſlave-trade, and twenty-ſeven weary years more elapſed before ſhe ſet her ſlaves free in her colonies; and we can, without referring to the earlier hiſtory of her royal and parliamentary, national and individual patronage of ſlavery and the ſlave-trade, or her cowardly ſympathy with the ſlaveholders' rebellion, eſtimate the value of Earl Ruſſell's recent declaration, that Great Britain has always been hoſtile to ſlavery. "The Britiſh nation have always entertained, and ſtill entertain, the deepeſt abhorrence of laws by which men of one color were made ſlaves of men of another color. The efforts by which the United States Government and Congreſs have ſhaken off ſlavery have, therefore, the warmeſt ſympathies of the people of theſe Kingdoms." *Earl Ruſſell to Mr. Adams, Auguſt* 20, 1865. No language or hiſtory within our knowledge furniſhes fit epithet or parallel for ſuch conſummate hypocriſy and reckleſs diſregard of the truth of hiſtory. It would be an inſult to the "hiſtoric fame" of that unhappy Jewish ſect to refer to the Phariſees. Perhaps it is enough to ſay it is the empty "palaver" of a British Prime Miniſter!

generally ſtated, but a negro-ſlave from Maſſachuſetts! where he lived with his owner, Mr. Charles Stewart, who held an office in the cuſtoms and reſided in Boſton. *Proc. M. H. S.*, 1863–64, *p.* 323.

Mr. Stewart left Boſton on the firſt of October, 1769, and arrived in London on the tenth of November following. He was accompanied by this ſlave, who continued in his ſervice until the firſt of October, 1771, when he ran away. His owner found means to ſeize and ſecure him, and had placed him on board a veſſel bound for Jamaica, in the cuſtody of the captain, who was to carry him there to be ſold. This was on the 26th November, 1771. He was reſcued by a writ of habeas corpus, and the proceedings in the caſe terminated in his releaſe on the 22d June, 1772

There was a caſe in Nantucket, about the years 1769–1770, in which Mr. Rotch, a member of the Society of Friends, received on board a veſſel called the Friendſhip, at that time engaged in the whale-fiſhery, and commanded by Eliſha Folger, a young ſlave by the name of "Boſton," belonging to the heirs of William Swain. At the termination of the voyage, he paid to "Boſton" his proportion of the proceeds. The maſter, John Swain, brought an action againſt the captain of the veſſel, in the Court of Common Pleas of Nantucket, for the recovery of his ſlave; but the jury returned a verdict in favor of the defendant, and the ſlave is ſaid to have been "manumitted by the magiſtrates." Swain took an appeal from this judgment to the Supreme Court at Boſton, but never proſecuted it. *Lyman's Report*, 1822.

Another caſe is mentioned in a letter of Thomas Pemberton, dated at Boſton, March 12, 1795, in reply to the Circular of Dr. Jeremy Belknap, dated Boſton, February 17, 1795, as follows:

"The firſt inſtance I have heard of a negro requeſting his freedom *as his right* belonged, I am informed, to Dr. Stockbridge, of Hanover, in Plymouth County. His maſter refuſed to grant it, but by aſſiſtance of lawyers he obtained it, this about the year 1770."

Mr. Gray mentions the caſe of *Cæſar* vs. *Taylor*, in Eſſex, 1772, in which "the wife of a ſlave was not allowed to teſtify againſt him," and "the defendant in an action of falſe impriſonment was not permitted under the general iſſue to prove that the plaintiff was his ſlave." *Quincy's Reports*, 30, *note*.

In September or October, 1773, an action was brought in the Inferior Court, in Eſſex, againſt Richard Greenleaf, of Newburyport, by Cæſar [Hendrick], a colored man, whom he claimed as his ſlave, for holding him in bondage. He laid the damages at fifty pounds. A letter from Newburyport, October 10th, ſays, "We have lately had our Court week when the novel caſe of Cæſar againſt his maſter in an action of fifty pounds lawful money damages for detaining him in ſlavery was litigated before a jury of the County, who found for the *plaintiff eighteen pounds damages and coſts*." John Lowell, Eſq., afterward Judge Lowell, was counſel for the plaintiff. *Coffin's Newbury*, 241, 339.

Nathan Dane notices this caſe in his Abridgment and Digeſt of American Law. He ſays:

"As early as 1773, many negroes claimed their freedom, and brought actions of treſpaſs againſt their maſters for reſtraining them. A. D. 1773, one Cæſar brought treſpaſs againſt his maſter, and declared that he, with force and arms, aſſaulted the plaintiff and impriſoned him, and ſo with force and arms againſt the plaintiff's will, hath there held, kept, and reſtrained him in ſervitude, as the ſaid G.'s ſlave, for ſo long a time, etc.

"In this caſe the maſter proteſted the plaintiff was his *mulatto ſlave*, and that he, the maſter, was not held by law to anſwer him; but for plea the maſter ſaid he was not guilty. The parties agreed any ſpecial matter might be given in evidence, etc. Counſel, Farnham and Lowell." *Dane's Abridgment*, II., 426.

Another caſe is mentioned as "brought on at the Inferior Court of Common Pleas for the County of Eſſex for July term [1774], between Mr. Caleb Dodge of Beverly, and his negro ſervant, in which the referees gave a verdict in favor of the negro, by which he obtained his freedom, there being no law of the province to hold a man to ſerve for life." *The Watchman's Alarm, etc., p.* 28, *note.* Yet the writer of this pamphlet ſuggeſted the "aboliſhing of this vile cuſtom of ſlave-making, either by a law of the province, Common Law, (which I am told has happily ſucceeded in many inſtances of late) or by a voluntary releaſement." *Ibid., p.* 27.

Mr. Dane alſo refers to the caſe of *Cæſar* vs. *Taylor*, and gives the following view of the ſubject generally:

"In theſe caſes there ſeem to have been doubts

if ſlavery exiſted in Maſſachuſetts; the cauſes were generally argued on general principles; the maſters urged, in ſupport of ſlavery, the practice of ancient and ſome modern nations; alſo the Provincial Statutes of 10 W. 3., ch. 6.; 1 & 2 Anne, ch. 2.; and 4 & 5 Anne, ch. 6.

"The plaintiffs argued that by Engliſh Law, *ſlavery* could not exiſt, and that we had nothing to do with any other, except the Provincial Statutes; that if theſe eſtabliſhed ſlavery, it was merely by *implication*, and that natural liberty was never to be taken away by implication; that at common law *partus non ſequitur ventrem*, though it might be otherwiſe by the civil law, which England, in this caſe, had never adopted; that marriage and providing for children was a right and a duty which only free perſons could perform; that the Goſpel forbid men to ſell their brethren; and that the plaintiffs were *Chriſtians*, and, if held in ſlavery, could not perform their Chriſtian duties; that even villainage is aboliſhed by Engliſh law, and that the common law abhorred ſlavery. But it was admitted by the plaintiff's counſel, that ſlavery might be eſtabliſhed by expreſs law; and the defendants urged, and it ſeems long to have been underſtood, that the Provincial Statutes did expreſſly recognize and eſtabliſh ſlavery, as in the caſes above ſtated, and in many others.

"In 1773, etc., ſome ſlaves did recover againſt their maſters; but theſe caſes are no evidence that there could not be ſlaves in the Province, for ſometimes maſters permitted their ſlaves to recover to get clear of maintaining them as *paupers* when old and infirm;

the effect, as then generally underſtood, of a judgment againſt the maſter on this point of ſlavery; hence, a very feeble defence was often made by the maſters, eſpecially when ſued by the old or infirm ſlaves, as the maſters could not even manumit their ſlaves, without indemnifying their towns againſt their maintenance, as town paupers." *Dane's Abridgment*, II., 426–7.

Chief-Juſtice Parſons alſo, in the caſe of *Winchendon* vs. *Hatfield in error*, confirms this view.

"Several negroes, born in this country of imported ſlaves demanded their freedom of their maſters by ſuit at law, and obtained it by a judgment of court. The defence of the maſter was feebly made, for ſuch was the temper of the times, that a reſtleſs diſcontented ſlave was worth little; and when his freedom was obtained in a courſe of legal proceedings, the maſter was not holden for his future ſupport, if he became poor." IV *Maſs. Reports*, 128.

The reference by the Chief-Juſtice to the circumſtance that theſe negroes litigant were "born in this country," points to the queſtion, whether hereditary ſlavery was legal in Maſſachuſetts? which is alſo touched in the previous reference by the counſel for the ſlaves, as ſtated by Mr. Dane, to the difference between the rules of the Common Law and the Civil Law.

The Rev. Dr. Belknap, in his account of theſe ſuits, ſays, "On the part of the blacks it was pleaded, that the royal charter expreſſly declared all perſons born or reſiding in the province, to be as free as the King's ſubjects in Great Britain; that by the laws of England, no man could be deprived of his liberty but by

the judgment of his peers; that the laws of the province reſpecting an evil exiſting, and attempting to mitigate or regulate it, did not authorize it; and, on ſome occaſions, the plea was, that though the ſlavery of the parents be admitted, yet no diſability of that kind could deſcend to children." *M. H. S. Coll.*, I., iv., 203.

How far the arguments here noticed were urged in theſe various ſuits, and whether in any of them theſe points were judicially ſtated and determined, we are unable to ſay. We have previouſly examined the legal hiſtory of hereditary ſlavery in Maſſachuſetts; and it may be proper in this connection to add ſomething with reſpect to the other pleas mentioned by Belknap. And firſt, the alleged rights of the Indians and Negroes under the royal charter, and laws of England. The proviſion referred to is ſubſtantially the ſame in both Colony and Province charters, and is in the words following, viz:

"That all and every of the ſubjects of us, our heirs and ſucceſſors, which go to and inhabit within our ſaid province and territory, and every of their children which ſhall happen to be born there, or on the ſeas in going thither, or returning from thence, ſhall have and enjoy all liberties and immunities of free and natural ſubjects within the dominions of us, our heirs and ſucceſſors, to all intents, conſtructions, and purpoſes whatſoever, as if they and every of them were born within our realm of England."

The preamble to the Body of Liberties in 1641, which declares the civil privileges of the inhabitants of the Colony, might alſo have been referred to in this

line of argument. Still, it is a hiſtorical fact that the guaranties of the royal charters, and the Common Law of England as a perſonal law of privilege, did not extend to Aliens, Negroes, or Indians.[1]

The other plea, "that the laws of the province reſpecting an evil exiſting, and attempting to mitigate or regulate it did not authorize it," could avail nothing againſt the other ſtern hiſtorical fact that ſlavery exiſted in Maſſachuſetts "by virtue and equity of an expreſs Law of the Country warranting the ſame, eſtabliſhed by a General Court, and ſufficiently publiſhed; or in caſe of the defect of a Law in any particular caſe, by the word of God, . . . to be judged by the General Court." Was it ſaid that the colony-law was annulled with the Charter, by the authority of which it was made? Still the uſage had prevailed and acquired force as the common law of the Province. The validity of the judgment againſt the Charter in 1684, which was denied by the Houſe of Commons, and "queſtioned by very great authority in England," was never admitted in Maſſachuſetts. 9 *Gray*, 517. There was nothing in the repeal of the Colony charter to affect the private rights of the coloniſts. *Ibid.*, 518. And generally the rights of the inhabitants, as well as the penalties to which they might be ſubjected, continued to be determined by the effect and according to the form of the colonial and provincial legiſlation, i. e. the common law of Maſſachuſetts, rather than by

[1] See Hurd's *Law of Freedom and Bondage in the United States, Vol.* I., *pp.* 196, 197, 201: a perfect treaſure-houſe of law and hiſtory on its ſubject, for which every ſtudent of American Hiſtory owes him a large debt of gratitude.

the ancient common law of England. 5 *Pickering*, 203. 7 *Cuſhing*, 76, 77. 13 *Pickering*, 258. 13 *Metcalf*, 68–72.

But whatever may have been the pleas or arguments in theſe ſuits, or the opinions which influenced their various reſults; the fact remains that, although "the bonds of ſlavery" may have been "looſened" by theſe proceedings, and "the verdicts of juries in favor of liberty," the legal effect of ſuch verdicts reached none but the parties immediately concerned; and the inſtitution of ſlavery continued to be recognized by law in Maſſachuſetts, defying all direct attempts to deſtroy it.

The queſtion however had been raiſed, and ſlavery was challenged. Dr. Belknap ſays, that "the controverſy began about the year 1766." *M. H. S. Coll.* I., iv., 201. We ſhall endeavor to indicate the principal features of its progreſs in their juſt relations, without diſparagement and without exaggeration.

The town of Worceſter, by inſtructions in 1765, required their repreſentative to "uſe his influence to obtain a law to put an end to that unchriſtian and impolitic practice of making ſlaves of the human ſpecies, and that he give his vote for none to ſerve in His Majeſty's Council, who will uſe their influence againſt ſuch a law." *Boſton News-Letter*, June 4, 1765, quoted by *Buckingham, Newſpaper Literature*, I., 31.

The town of Boſton, in May, 1766, inſtructed their Repreſentatives as follows, viz.: "And for the total aboliſhing of ſlavery among us, that you move for a law to prohibit the importation and the pur-

chaſing of ſlaves for the future." *Lyman's Report*, 1822.

This action was confirmed by a new vote in the following year. At the Town-Meeting on the 16th of March, 1767, the queſtion came up, as to whether the Town would adhere to that part of its Inſtructions, and it paſſed in the affirmative.[1] *Drake's Boſton*, 728–9. It is alſo ſaid, though probably true of a later period only, that "In ſome of the country towns they voted to have no ſlaves among them, and that their maſters be indemnified from any expence, [after they had granted them freedom] that might ariſe by reaſon of their age, infirmities, or inability to ſupport themſelves." *Letter of Mr. Thomas Pemberton to Dr. Jeremy Belknap, Boſton, Mch.* 12, 1795.

In 1767, an anonymous tract of twenty octavo pages againſt ſlavery made its appearance. It was entitled "*Conſiderations on Slavery, in a Letter to a Friend.*" It was written by Nathaniel Appleton, a merchant of Boſton, afterwards a member of the firſt Committee of Correſpondence and a zealous patriot during the Revolutionary ſtruggle. *Appleton Memorial*, 36.

On March 2d, 1769, the reverend Samuel Webſter of Saliſbury, Maſſachuſetts, publiſhed "an earneſt addreſs to my country on ſlavery." An extract is given by Mr. Coffin in his *Hiſtory of Newbury*, *p.* 338.

[1] The reader will note the coincidence of this proceeding with that in the Legiſlature on the ſame day, when it was "*Ordered, that the Matter ſubſide.*" See *poſt*, *p.* 127.

James Swan, "a Scotſman," and merchant in Boſton, publiſhed "A Diſſuaſion to Great Britain and the Colonies, from the Slave-Trade to Africa—ſhewing the Injuſtice thereof, etc." It ſeems to have been in "the form of a ſermon," and the writer was apparently better ſatisfied with a ſecond edition reviſed and abridged, which he put forth in 1773, at the earneſt deſire of the Negroes in Boſton, in order to anſwer the purpoſe of ſending a copy to each town.

In 1767, the firſt movement was made in the Legiſlature to procure the paſſage of an act againſt ſlavery and the ſlave-trade.

On the 13th March, a bill was brought into the Houſe of Repreſentatives "to prevent the *unwarrantable and unuſual* Practice or Cuſtom of inſlaving Mankind in this Province, and the importation of ſlaves into the ſame." It was read a firſt time, and the queſtion was moved, whether a ſecond reading be referred to the next ſeſſion of the General Court? which was paſſed in the negative. Then it was moved, that a clauſe be brought into the bill, for a limitation to a certain time, and the queſtion being put, it paſſed in the affirmative; and it was further ordered, that the bill be read again on the following day, at ten o'clock. *Journal*, 387.

On the 14th, the bill "to prevent the *unwarrantable and unnatural* Practice," etc., was read a ſecond time, and the queſtion was put whether the third reading be referred to the next May ſeſſion? This paſſed in the negative, and it was ordered that the Bill be read a third time on Monday next at three o'clock. *Ibid.*, 390.

On the 16th, "The Bill for preventing the *unnatural and unwarrantable* Cuſtom of enſlaving Mankind in this Province, and the Importation of Slaves into the Same, was Read according to order, and, after a Debate,

"*Ordered that the Matter ſubſide*, and that Capt. Sheaffe, Col. Richmond, and Col. Bourne, be a Committee to bring in a Bill for laying a Duty of Impoſt on Slaves importing into this Province." *Ibid.*, 393.

On the 17th, a Bill for laying a Duty of Impoſt upon the Importation of Slaves into this Province was read a firſt and ſecond time, and ordered for a third reading on the next day at eleven o'clock. *Ibid.*, 408.

On the 18th, "the bill for laying an Impoſt on the Importation of Negro and other Slaves, was read a third time, and the queſtion was put, whether the enacting this bill ſhould be referred to the next May ſeſſion, that the Minds of the Country may be known thereupon? Paſſed in the Negative. Then the Queſtion was put, Whether a clauſe ſhall be bro't in to limit the Continuance of the Act to the Term of one year? Paſſed in the Affirmative, and Ordered, that the Bill be recommitted." *Ibid.*, 411. In the afternoon of the ſame day, the bill was read with the amendment, and having paſſed to be engroſſed, was "ſent up by Col. Bowers, Col. Gerriſh, Col. Leonard, Capt. Thayer, and Col. Richmond." *Ibid.*, 411.

The bill was read a firſt time in the Council on the 19th of March, and on the 20th was read a ſecond time and paſſed to be engroſſed "as taken into a new draft." On being ſent down to the Houſe of Repre-

ſentatives for concurrence, in the afternoon of the ſame day, it was "Read and unanimouſly non-concurred, and the Houſe adhere to their own Vote. Sent up for concurrence." *Ibid. Compare Gen. Court Records, May* 1763 *to May* 1767, *p.* 485.

And thus the bill diſappeared and was loſt. It was the neareſt approach to an attempt to aboliſh ſlavery, within our knowledge, in all the Colonial and Provincial legiſlation of Maſſachuſetts. The bills againſt the importation of ſlaves cannot juſtly be regarded as direct attempts to aboliſh the inſtitution of ſlavery, whatever may have been the motives which influenced the action concerning them. The bill itſelf of 1767 has not been found, and it is not unlikely that its proviſions may have been leſs poſitive and ſtringent than its title, which is the chief authority for what little anti-ſlavery reputation it enjoys. Could it be recovered, it might illuminate the record we have given, and throw much light on the ſubject generally. It is apparent from the record that whatever may have been the height to which the zeal of anti-ſlavery had carried the agitation of the ſubject on this occaſion, it was duly "ordered, that the Matter ſubſide;"[1] ſo that it was only an Impoſt Act which finally tried to ſtruggle forth into exiſtence, and periſhed in the effort. If indeed it was an attempt at abolition, the failure was ſo ſignal and deciſive that it was not renewed until ten years afterward, when, as we ſhall ſee, it failed again.

[1] The reader will ſee hereafter, in the frequent uſe of this parliamentary phraſe by the Legiſlature of Maſſachuſetts, that an order to "*ſubſide*" continued to be their favorite method of reducing anti-ſlavery inflammation.

That terror of inſurrection, ſo often and aptly illuſtrated in the common phraſe of "ſleeping over a volcano," that continuous and awful dread which conſcious tyranny feels, but hates to acknowledge, we have already ſaid, was not unknown even in Maſſachuſetts, where the ſervile claſs was always a comparatively ſmall element of the population. In times of civil commotion and popular excitement, the danger was more imminent, and the fear was more freely expreſſed.

During the difficulties between the people of the town of Boſton and the Britiſh ſoldiers in 1768, John Wilſon, a captain in the 59th Regiment, was accuſed of exciting the ſlaves againſt their maſters, aſſuring them that the ſoldiers had come to procure their freedom; and that, "with their aſſiſtance, they ſhould be able to drive the Liberty Boys to the devil." He was arreſted on the complaint of the ſelectmen, and was bound over for trial; "but, owing to the manœuvres of the Attorney-General, the indictment was quaſhed, and Wilſon left the Province about the ſame time." *Drake's Boſton*, 754.

There was a ſimilar alarm in September, 1774. It is noticed in one of the letters of Mrs. John Adams to her huſband, dated at Boſton Garriſon, 22d September, 1774.

"There has been in town a conſpiracy of the negroes. At preſent it is kept pretty private, and was diſcovered by one who endeavored to diſſuade them from it. He being threatened with his life, applied to Juſtice Quincy for protection. They conducted in this way, got an Iriſhman to draw up a pe-

tition to the Governor [Gage], telling him they would fight for him provided he would arm them, and engage to liberate them if he conquered. And it is ſaid that he attended ſo much to it, as to conſult Percy[1] upon it, and one Lieutenant Small has been very buſy and active. There is but little ſaid, and what ſteps they will take in conſequence of it I know not. I wiſh moſt ſincerely there was not a ſlave in the province; it always appeared a moſt iniquitous ſcheme to me to fight ourſelves for what we are daily robbing and plundering from thoſe who have as good a right to freedom as we have. You know my mind upon this ſubject." *Adams Letters*, I., 24.

In 1771, the ſubject of the Slave-Trade was again introduced into the Legiſlature. On the 12th April, in that year, a bill "to prevent the Importation of Slaves from Africa" was read the firſt time and ordered to a ſecond reading on the following day at ten o'clock. *Journal*, 211. On the 13th, the bill was read the ſecond time, and the further conſideration was postponed till the following Tueſday morning. *Ibid.*, 215. On the 16th the bill was re-committed. *Ibid.*, 219.

On the 19th, a "Bill to prevent the Importation of Negro Slaves into this Province" was read the firſt time and ordered a ſecond reading "to-morrow at eleven o'clock." *Ibid.*, 234. On the 20th, it was "read a ſecond time and ordered to be read again on Monday next, at Three o'clock." On the 22d, it

[1] Brigadier-General the Right Honorable Hugh, Earl Percy, afterwards Duke of Northumberland, was Colonel of the 5th Regiment, or Northumberland Fuſileers, at that time ſtationed in Boſton.

was read the third time, and paſſed to be engroſſed. *Ibid.*, 236. On the 24th, it was read and paſſed to be enacted. *Ibid.*, 240.

It was duly ſent to the Council for concurrence, and on the ſame day, "James Otis, Eſq., came down from the honorable Board, to propoſe an Amendment on the engroſſed bill for preventing the Importation of Slaves from *Africa*, and laid the Bill on the Table;" whereupon "The Houſe took the propoſed Amendment into conſideration, and concur'd with the honorable Board therein, then the Bill was ſent up to the honorable Board." *Ibid.*, 242–3.

We have been unable to procure any record of the doings of the Council on the ſubject, excepting the following entry in the Records of the General Court:

"Wedneſday, April 24, 1771, etc. etc. An Engroſſed Bill intituled 'An Act to prevent the Importation of Negro Slaves into this Province' having paſſed the Houſe of Repreſentatives to be Enacted. In Council, Read a third time and paſſed a concurrence to be enacted."

This act failed to obtain the approval of Governor Hutchinſon, and we are fortunately able to preſent his views on the ſubject, as communicated to Lord Hillſborough, Secretary of State for the Colonies, in a letter dated May, 1771.

"The Bill which prohibited the importation of Negro Slaves appeared to me to come within his Majeſty's Inſtruction to Sir Francis Bernard, which reſtrains the Governor from Aſſenting to any Laws of a new and unuſual nature. I doubted beſides

whether the chief motive to this Bill which, it is ſaid, was a ſcruple upon the minds of the People in many parts of the Province of the lawfulneſs, in a meerly moral reſpect, of ſo great a reſtraint of Liberty, was well founded, ſlavery by the Provincial Laws giving no right to the life of the ſervant and a ſlave here conſidered as a Servant would be who had bound himſelf for a term of years exceeding the ordinary term of human life, and I do not know that it has been determined he may not have a Property in Goods, notwithſtanding he is called a Slave.

"I have reaſon to think that theſe three[1] bills will be again offered to me in another Seſſion, I having intimated that I would tranſmit them to England that I might know his Majeſty's pleaſure concerning them." 27 *Maſs. Archives*, 159–60.

Theſe are intereſting and important ſuggeſtions. It is apparent that at this time there was no ſpecial inſtruction to the royal governor of Maſſachuſetts, forbidding his approval of acts againſt the ſlave-trade. Hutchinſon evidently doubted the genuineneſs of the "chief motive" which was alleged to be the inſpiration of the bill, the "meerly moral" ſcruple againſt ſlavery; but his reaſonings furniſh a ſtriking illuſtration of the changes which were going on in public opinion, and the gradual ſoftening of the harſher features of ſlavery under their influence. The non-importation agreements throughout the Colonies, by which America was trying to thwart the commercial ſelfiſhneſs of her rapacious Mother, had rendered the

[1] The other two bills were a *Marine Corporation Bill* and a *Salem Militia Bill.*

provincial viceroys peculiarly ſenſitive to the ſlighteſt manifeſtation of a diſpoſition to approach the ſacred precincts of thoſe prerogatives by which King and Parliament aſſumed to bind their diſtant dependencies: and the "ſpirit of non-importation" which Maſſachuſetts had imperfectly learned from New York was equally offenſive to them, whether it interfered with their cheriſhed "trade with Africa," or their favorite monopolies elſewhere.

In 1773, the attempt to diſcourage the ſlave-trade was renewed. The repreſentatives from Salem had been inſtructed, May 18, 1773, to uſe their exertions to prevent the importation of negroes into Maſſachuſetts "as repugnant to the natural rights of mankind, and highly prejudicial to the Province." *Felt, Annals*, II., 416. The town of Medford alſo directed their member to "uſe his utmoſt influence to have a final period put to that moſt cruel, inhuman and unchriſtian practice, the ſlave-trade." *Swan's Diſſuaſion, etc., Reviſed Ed.*, 1773, *p.* x. The town of Leiceſter, May 19, 1773, inſtructed their repreſentative on this ſubject, as follows:

"And, as we have the higheſt regard for (ſo as even to revere the name of) liberty, we cannot behold but with the greateſt abhorrence any of our fellow creatures in a ſtate of ſlavery.

"Therefore we ſtrictly enjoin you to uſe your utmoſt influence that a ſtop may be put to the ſlave-trade by the inhabitants of this Province; which, we apprehend, may be effected by one of theſe two ways: either by laying a heavy duty on every negro imported or brought from Africa or elſewhere into this

Province; or, by making a law, that every negro brought or imported as aforeſaid ſhould be a free man or woman as ſoon as they come within the juriſdiction of it; and that every negro child that ſhall be born in ſaid government after the enacting ſuch law ſhould be free at the ſame age that the children of white people are; and, from the time of their birth till they are capable of earning their living, to be maintained by the town in which they are born, or at the expenſe of the Province, as ſhall appear moſt reaſonable.

"Thus, by enacting ſuch a law, in proceſs of time will the blacks become free; or, if the Honorable Houſe of Repreſentatives ſhall think of a more eligible method, we ſhall be heartily glad of it. But whether you can juſtly take away or free a negro from his maſter, who fairly purchaſed him, and (although illegally; for ſuch is the purchaſe of any perſon againſt their conſent, unleſs it be for a capital offence) which the cuſtom of this country has juſtified him in, we ſhall not determine; but hope that unerring Wiſdom will direct you in this and in all your other important undertakings." *Waſhburn's Leiceſter*, 442.

The town of Sandwich, in Barnſtable County, voted, May 18, 1773, "that our repreſentative is inſtructed to endeavor to have an Act paſſed by the Court, to prevent the importation of *ſlaves* into this country, and that all children that ſhall be born of ſuch Africans as are now ſlaves among us, ſhall, after ſuch Act, be free at 21 years of age." *Freeman's Hiſtory of Cape Cod*, II., 114.

There may have been other towns in which ſimilar

meaſures were taken to influence the action of the Legiſlature, but we have no knowledge of any beyond thoſe already noticed. The negroes themſelves alſo began to move in the matter, encouraged by the "ſpirit of liberty which was rife in the land."

On the 25th June, 1773, in the afternoon ſeſſion of the Houſe of Repreſentatives, a petition was read "of Felix Holbrook, and others, Negroes, praying that they may be liberated from a State of Bondage, and made Freemen of this Community; and that this Court would give and grant to them ſome part of the unimproved Lands belonging to the Province, for a Settlement, or relieve them in ſuch other Way as ſhall ſeem good and wiſe upon the Whole." Upon this it was "ordered, that Mr. Hancock, Mr. Greenleaf, Mr. Adams, Capt. Dix, Mr. Paine, Capt. Heath, and Mr. Pickering conſider this Petition, and report what may be proper to be done." *Journal*, *p.* 85.

This "Committee on the Petition of Felix Holbrook, and others, in behalf of themſelves and others; praying to be liberated from a State of Slavery, reported" on the 28th June, 1773, P. M., "that the further Conſideration of the Petition be referred till next Seſſion," and it was ſo referred accordingly. *Ibid.*, 94.

Among other indications of the growing intereſt in the ſubject, is the fact that at the annual commencement of Harvard College, Cambridge, July 21, 1773, a forenſic diſputation on the legality of enſlaving the Africans was held by two candidates for the bachelor's degree; namely, Theodore Parſons and Eliphalet Pearſon, both of whom were natives of Newbury.

The queſtion was "whether the ſlavery, to which Africans are in this province, by the permiſſion of law, ſubjected, be agreeable to the law of nature?" The work was publiſhed at Boſton, the ſame year, in an octavo pamphlet of forty-eight pages. *Coffin's Newbury*, 339.

The following letter alſo ſhows that the buſineſs before the Legiſlature was not wholly neglected or forgotten during the interval between the ſeſſions.

SAMUEL ADAMS TO JOHN PICKERING, JR.

"Boſton, Janʸ. 8, 1774.

"Sir,

"As the General Aſſembly will undoubtedly meet on the 26th of this month, the Negroes whoſe petition lies on file, and is referred for conſideration, are very ſolicitous for the Event of it, and having been informed that you intended to conſider it at your leiſure Hours in the Receſs of the Court, they earneſtly wiſh you would compleat a Plan for their Relief. And in the meantime, if it be not too much Trouble, they aſk it as a favor that you would by a Letter enable me to communicate to them the general outlines of your Deſign. I am, with ſincere regard," etc.

On the 26th January, 1774, P.M., "a Petition of a number of Negro Men, which was entered on the Journal of the 25th of June laſt, and referred for Conſideration to this Seſſion," was "read again, together with a Memorial of the ſame Petitioners and *Ordered*, that Mr. Speaker, Mr. Pickering, Mr. Hancock, Mr.

Adams, Mr. Phillips, Mr. Paine, and Mr. Greenleaf conſider the ſame and report." *Journal*, 104.

All this preliminary preparation reſulted at length in "a Bill to prevent the Importation of Negroes and others as Slaves into this Province," which was read the firſt time on the 2d March, 1774, and ordered to be read again the next day. *Ibid.*, 221. On the 3d, it was read the ſecond time in the morning, and in the afternoon the third time, and paſſed to be engroſſed, when it was ſent up to the Council Board for concurrence, by Col. Gerriſh, Col. Thayer, Col. Bowers, Mr. Pickering, and Col. Bacon. *Ibid.*, 224. On the 4th March, the bill was returned as "paſſed in Council with Amendments." *Ibid.*, 226. On the 5th, the Houſe voted to concur with the Council, *ibid.*, 228; and on the 7th, paſſed the bill to be enacted. *ibid.*, 237. On the 8th, it received the final ſanction of the Council, and only required the approval of the Governor to become a law. That approval, however, it failed to obtain; the only reaſon given in the record being "the Secretary ſaid [on returning the approved bills] that his Excellency had not had time to conſider the other Bills that had been laid before him."[1] *Ibid.*, 243. Compare alſo for Council proceedings, *General Court Records*, xxx., 248, 264.

To this hiſtory, derived from the records, we are fortunately able to add a copy of the Bill itſelf, which is preſerved in the *Maſs. Archives*, *Domeſtic Relations*, 1643–1774, *Vol.* 9, 457.

[1] The General Court was prorogued March 9th, and diſſolved March 30th, 1774. *General Court Records*, xxx., 280–81.

Anno Regni Regis Georgii Tertii &c Decimo Quarto

An Act to prevent the importation of Negroes or other Perſons as Slaves into this Province; and the purchaſing them within the ſame; *and for making proviſion for relief of the children of ſuch as are already ſubjected to ſlavery Negroes Mulattoes & Indians born within this Province.*

Whereas the Importation of Perſons as Slaves into this Province has been found detrimental to the intereſt of his Majeſty's ſubjects therein; And it being apprehended that the abolition thereof will be beneficial to the Province—

Be it therefore Enacted by the Governor Council and Houſe of Repreſentatives that whoſoever ſhall after the Tenth Day of April next import or bring into this Province by Land or Water any Negro or other Perſon or Perſons whether Male or Female as a Slave or Slaves ſhall for each and every ſuch Perſon ſo imported or brought into this Province forfeit and pay the ſum of one hundred Pounds to be recovered by preſentment or indictment of a Grand Jury and when ſo recovered to be to his Majeſty for the uſe of this Government: or by action of debt in any of his Majeſty's Courts of Record and in caſe of ſuch recovery the one moiety thereof to be to his majeſty for the uſe of this Government the other moiety to the Perſon or Perſons who ſhall ſue for the ſame.

And be it further Enacted that from and after the Tenth Day of April next any Perſon or Perſons that ſhall purchaſe any Negro or other Perſon or Perſons as a Slave or Slaves imported or brought into this Province as aforeſaid ſhall forfeit and pay for every Negro or other Perſon ſo purchaſed Fifty Pounds to be recovered and diſpoſed of in the ſame way and manner as before directed.

And be it further Enacted that every Perſon, concerned in importing or bringing into this Province, or purchaſing any ſuch Negro or other Perſon or Perſons as aforeſaid within the ſame; who ſhall be unable, or refuſe, to pay the Penalties or forfeitures ordered by this Act; ſhall for every ſuch offence ſuffer Twelve months impriſonment without Bail or mainpriſe.

Provided allways that nothing in this act contained ſhall extend to ſubject to the Penalties aforeſaid the Maſters, Mariners, Owners or

Freighters of any ſuch Veſſel or Veſſels, as before the ſaid Tenth Day of April next ſhall have ſailed from any Port or Ports in this Province, for any Port or Ports not within this Government, for importing or bringing into this Province any Negro or other Perſon or Perſons as Slaves who in the proſecution of the ſame voyage may be imported or brought into the ſame. *Provided* he ſhall not offer them or any of them for ſale.

Provided alſo that this act ſhall not be conſtrued to extend to any ſuch Perſon or Perſons, occaſionally hereafter coming to reſide within this Province, or paſſing thro' the ſame, who may bring ſuch Negro or other Perſon or Perſons as neceſſary ſervants into this Province provided that the ſtay or reſidence of ſuch Perſon or Perſons ſhall not exceed Twelve months or that ſuch Perſon or Perſons within ſaid time ſend ſuch Negro or other Perſon or Perſons out of this Province there to be and remain, and alſo that during ſaid Reſidence ſuch Negro or other Perſon or Perſons ſhall not be ſold or alienated within the ſame. ∀ *And be it further Enacted and declared that nothing in this act contained ſhall extend or be conſtrued to extend for retaining or holding in perpetual ſervitude any Negro or other Perſon or Perſons now inſlaved within this Province but that every ſuch Negro or other Perſon or Perſons ſhall be intituled to all the Benefits ſuch Negro or other Perſon or Perſons might by Law have been intituled to, in caſe this act had not been made.*

In the Houſe of Repreſentatives March 2, 1774. Read a firſt & ſecond Time. March 3, 1774. Read a third Time & paſſed to be engroſſed. Sent up for Concurrence.

T. Cushing, *Spkr.*

In Council March 3, 1774. Read a firſt Time. 4. Read a ſecond Time and paſſed a Concurrence to be Engroſſed with the Amendment at ∀ dele the whole Clauſe. Sent down for Concurrence.

Thos. Flucker, *Secry.*

In the Houſe of Repreſentatives March 4, 1774. Read and concurred.

T. Cushing, *Spkr.*

That portion of the title to the bill which we have

italicized is ſtricken out in the original. We have alſo retained and italicized the clauſe which was ſtricken out by the amendment of the Council. They form a part of the hiſtory of the bill, though not of the bill itſelf as "paſſed to be enacted."

Such was the reſponſe of the Great and General Court of Maſſachuſetts to the petition of her negro-ſlaves in 1773–4. They prayed that they might be "liberated from a State of Bondage, and made Freemen of the Community; and that this Court would give and grant to them ſome part of the unimproved Lands belonging to the Province for a Settlement, or relieve them in ſuch other Way as ſhall ſeem good and wiſe upon the Whole." Not one of their prayers was anſwered. It would ſeem that an attempt was made to include in the bill, an indirect legiſlative approval of ſome of the doctrines maintained by Counſel for the negroes in the "freedom ſuits;" but even this failed; and a prohibitory act againſt the importation of ſlaves was offered to the Governor for his approval, which it was known beforehand could not be obtained.

Whether Hutchinſon had actually received an inſtruction from the Crown on the ſubject at this time or not, there is no room for doubt as to the general policy of Great Britain. She had aided her colonial offspring to become ſlaveholders; ſhe had encouraged her merchants in tempting them to acquire ſlaves; ſhe herſelf excelled all her competitors in ſlave-ſtealing; and from the reign of Queen Anne, the ſlave-trade was among her moſt envied and cheriſhed monopolies, its protection and increaſe being a princi-

pal feature in her commercial policy. The great "diſtinction" of the Treaty of Utrecht, as the Queen expreſſly called it, was that the Aſſiento or Contract for furniſhing the Spaniſh Weſt Indies with Negroes, ſhould be made with England, for the term of thirty years, in the ſame manner as it had been enjoyed by the French for ten years before. *Queen's Speech, 6 June*, 1712.

This was what her great ſtatesmen and divines of the Church of England were ſo eager and proud to ſecure for their country! For all her ſacrifices in the war, the millions of treaſure she had ſpent, the blood of her children ſo prodigally ſhed, with the glories of Blenheim, of Ramillies, of Oudenarde, and Malplaquet, England found her conſolation and reward in seizing and enjoying, as the lion's ſhare[1] of reſults of the Grand Alliance againſt the Bourbons, the excluſive right for thirty years of ſelling African ſlaves to the Spaniſh Weſt Indies and the Coaſt of America! *Compare Macknight's Bolingbroke*, 346–8. Who will wonder that men who had thus been taught to believe "that the Negro-Trade on the Coaſt of Africa was the chief and fundamental ſupport of the Britiſh Colonies and Plantations" in America, ſhould frown upon legiſlation in the colonies ſo utterly inconſiſtent with the intereſts of Britiſh Commerce, or that the

[1] By the articles of the Grand Alliance, England and all the other states ſubſcribing them were pledged neither to enter into any ſeparate treaty with the enemy, nor ſeek to negotiate for themſelves any exceptional privilege to the excluſion of the other members of the Confederacy. Of courſe this obligation was totally diſregarded by England, who inſisted on the conceſſion of the Aſſiento Contract by France and Spain before the propoſals for peace were even communicated to the rest of the Allies!

modeſt efforts of Maſſachuſetts in 1774, ſhould be met by Hutchinſon and Gage with the ſame ſpirit which, in 1775, dictated the reply of the Earl of Dartmouth to the earneſt remonſtrance of the Agent of Jamaica againſt the policy of the government: "We cannot allow the colonies to check or diſcourage, in any manner, a traffic ſo beneficial to the nation." *Bridges' Jamaica*, II., 475. *Notes.*

We cannot be accuſed of belittling the reſiſtance thus preſented to any colonial interference with the ſlave-trade, when we expreſs our regret that the legiſlative annals of Maſſachuſetts record no attempt to repeal the local laws by which ſlavery had been eſtabliſhed, regulated, and maintained. Such a meaſure, which ſhould alſo have granted the relief prayed for by the negroes in their petition, and embodied the wiſe ſuggeſtions of the town of Leiceſter (*ante*, *p.* 133), might well have encountered leſs ſerious oppoſition from the ſervants of the Crown than this twice-rejected non-importation act of 1774.[1]

In the brief ſeſſion of the General Court at Salem, in June, 1774, after Hutchinſon's ſucceſſor, Gage, the laſt Royal Governor, had commenced his adminiſtration, the ſame bill ſubſtantially, for the variations are unimportant, was hurried through the forms of legiſlation. It was introduced, read a firſt, ſecond, and third time, and paſſed to be engroſſed on the ſame day,

[1] The rhetorical flouriſhes with which Lord Mansfield ornamented his deciſion in the famous caſe of Somerſet would have furniſhed an excellent preamble to ſuch an act. The caſe was well known in Maſſachuſetts, having been reprinted more than once. But the General Court of Maſſachuſetts had no more intention than Lord Mansfield had power to aboliſh ſlavery at that period.

10th June. *Journal*, 27. On the 16th, the engroſſed bill was read and paſſed to be enacted. *Ibid.*, 41. In the Council, on the ſame day, it was read a third time and paſſed a concurrence to be enacted. *Gen. Court Records*, xxx., 322. On the following day, June 17th, the General Court was diſſolved. Like that of which it was a copy, the bill appears "not to have been conſented to by the Governor."

The fact is not to be diſguiſed that theſe efforts were political movements againſt the government as much as anything elſe. Sympathy for the ſlave, and moral ſcruples againſt ſlavery, became leſs urgent and troubleſome after the royal negative had become powerleſs againſt the legiſlation of the people of Maſſachuſetts. The fact that moſt of the States were ſlow or relaxed their efforts, after the power came into their hands, and they were "uncontrolled by the action of the Mother Country," would not diminiſh the credit due to Maſſachuſetts, if ſhe had taken the lead and maintained it. But that honor is not hers! Nor did the ſeparate action of any of the States effectually limit, much leſs deſtroy, this infamous traffic.

The Continental Aſſociation, adopted and ſigned by all the members of the Congreſs on the 20th of October, 1774, for carrying into effect the non-importation, non-conſumption, and non-exportation reſolve of the 27th of September, provided for the diſcontinuance of the Slave-Trade. The Continental Congreſs, on the 6th of April, 1776, formally "*Reſolved*, That no ſlave be imported into any of the thirteen United Colonies." There is reaſon to be-

lieve that this reſolution received the unanimous aſſent of the Congreſs. *Force's Dec. of Independence, p.* 42. But no proviſion was made in the Articles of Confederation to hinder the importation of ſlaves, and this pernicious commerce was never abſolutely cruſhed until the power of the nation was exerciſed againſt it under the authority of the Conſtitution.

Slavery, however, was not forgotten or neglected for want of notice. In the firſt Provincial Congreſs of Maſſachuſetts, October 25, 1774,

"Mr. Wheeler brought into Congreſs a letter directed to Doct. Appleton, purporting the propriety, that while we are attempting to free ourſelves from our preſent embarraſſments, and preſerve ourſelves from ſlavery, that we alſo take into conſideration the ſtate and circumſtances of the negro ſlaves in this province. The ſame was read, and it was moved that a Committee be appointed to take the ſame into conſideration. After ſome debate thereon, the queſtion was put, whether the matter now ſubſide, and it paſſed in the affirmative." *Journals*, 29.

In May, 1775, the Committee of Safety (Hancock and Warren's Committee) came to a formal reſolution, which is certainly one of the moſt ſignificant documents of the period.

"*Reſolved*, That it is the opinion of this Committee, as the conteſt now between Great Britain and the Colonies reſpects the liberties and privileges of the latter, which the Colonies are determined to maintain, that the admiſſion of any perſons, as ſoldiers, into the army now raiſing, but only ſuch as are freemen, will be inconſiſtent with the principles that

are to be ſupported, and reflect dishonor on this Colony, and that no ſlaves be admitted into this army upon any conſideration whatever."

This reſolution being communicated to the Provincial Congreſs (June 6, 1775), was read, and ordered to lie on the table for further conſideration. It was probably allowed to "ſubſide," like the former propoſition. The prohibition againſt the admiſſion of ſlaves into the Maſſachuſetts Army clearly recognizes ſlavery as an exiſting inſtitution.

The negroes of Briſtol and Worceſter having petitioned the Committee of Correſpondence of the latter county to aſſiſt them in obtaining their freedom, it was reſolved, in a Convention held at Worceſter, June 14, 1775, "That we abhor the enſlaving of any of the human race, and particularly of the negroes in this country, and that whenever there ſhall be a door opened, or opportunity preſent for anything to be done towards the emancipation of the negroes, we will uſe our influence and endeavor that ſuch a thing may be brought about." *Lincoln's Hiſt. of Worceſter*, 110.

The high tory writers of 1775 were not ſlow to avail themſelves of the argument of inconſiſtency againſt the whigs of the day. One writer ſaid:

"Negroe ſlaves in Boſton! It cannot be! It is nevertheleſs very true. For though the Boſtonians have grounded their rebellions on the 'immutable laws of nature,' and have reſolved in their Town Meetings, that 'It is the firſt principle in civil ſociety, founded in nature and reaſon, that no law of ſociety can be binding on any individual, without his conſent given by himſelf

in perſon, or by his repreſentative of his own free election; yet, notwithſtanding the immutable laws of nature, and this public reſolution of their own in Town Meetings, they actually have in town two thouſand Negroe ſlaves, who neither by themſelves in perſon, nor by repreſentatives of their own free election ever gave conſent to their preſent ſtate of bondage." *Mein's Sagittarius's Letters, pp.* 38, 39.

On June 5th, 1774, two diſcourſes on liberty were delivered at the North Church in Newburyport, by Nathaniel Niles, M. A.,—which were printed in a pamphlet of ſixty pages. A brief paſſage near the cloſe of the firſt diſcourſe preſents a ſtrong argument againſt the inſtitution. *pp.* 37, 38.

In 1774, Deacon Benjamin Colman, of Byfield Church, Newbury, Maſſachuſetts, made himſelf conſpicuous in his neighborhood by his exertions againſt ſlavery. In the Eſſex Journal, of Newburyport, July 20, 1774, an eſſay of his was publiſhed, in which he ſays:

"And this iniquity *is eſtabliſhed by law in this province*, and although there have been ſome feeble attempts made to break the yoke and ſet them at liberty, yet the thing is not effected, but they are ſtill kept under the civil yoke of bondage.' *Coffin's Newbury*, 340.

In the following year, Sept. 16, 1775, the ſame zealous deacon addreſſed a letter to a member of the General Court, "by whom (he thought) this idolatry ſhould be thrown down, and a reformation take place by the authority of that legiſlative power." His appeals to the love of freedom, which was then the

cry of the whole land, are moſt forcible, and his ſtrong fears of the further judgments of God as a conſequence of this "capital ſin of theſe States," ſlavery, are full of warning. He concludes with the following paragraph, which is not leſs intereſting in this connection from the ſpecial reference to Boſton—in his pious improvement of an important fact already ſet forth in theſe Notes:

"But, Sir, you may be ready too haſtily to conclude from this writing that my mind is ſo faſtened upon the ſlave-trade, as if it were the only crime that we were chargeable with, or that God was chaſtening us for. As I have ſaid before, ſo ſay I again, our tranſgreſſions are multiplied, but yet this crime is more particularly pointed at than any other. WAS BOSTON THE FIRST PORT ON THIS CONTINENT THAT BEGAN THE SLAVE-TRADE, *and are they not the firſt ſhut up by an oppreſſive act, and brought almoſt to deſolation, wherefore, Sir, though we may not be peremptory in applying the judgments of God, yet I cannot paſs over ſuch providences without a remark.* But to conclude. I entreat and beſeech you by all the love you have for this town, by all the regard you have for this diſtreſſed, bleeding province, as for the American Colonies in general, that you exert yourſelf, and improve your utmoſt endeavors at the Court to obtain a diſcharge for the ſlaves from their bondage. If this was done, I ſhould expect ſpeedy deliverance to ariſe to us, but if *this oppreſſion is ſtill continued and maintained by authority*, I can only ſay, my ſoul ſhall weep in ſecret places for that crime." *Ibid.*, 342.

VII.

In the autumn of 1776, ſympathy for the ſlave in Maſſachuſetts received a freſh impulſe. Two negro men, captured on the high ſeas, were advertiſed for ſale at auction, as a part of the cargo and appurtenances of a prize duly condemned in the Maritime Court.[1] This advertiſement rouſed the ſpirit of hoſtility to ſlavery to a remarkable degree, and the Legiſlature were excited to begin the work of reform apparently with great earneſtneſs and vigor.

On Friday, Sept. 13, 1776, at the afternoon ſeſſion, the Maſſachuſetts Houſe of Repreſentatives

"*Reſolved*, That Wedneſday next, at three o'clock in the afternoon, be aſſigned for chooſing a committee to be joined with a Committee of the Honorable Board, to take under conſideration the condition of the African Slaves, now in this State, or that hereafter may be brought into it, and to report." *Jour. H. of R.*, 105.

We find no record of proceedings in accordance with this reſolution until a little more than a month later, when, on the 19th of October, 1776, it was "Ordered, that Mr. Sergeant, Mr. Murrey, Mr. Appleton, and Capt. Stone, with ſuch as the honorable

[1] This was the Hannibal, a ſloop of ſixty tons, commanded by William Fitzpatrick, and taken while on a voyage from Jamaica to Turk's Island. *Am. Archives*, v., iii., 258. An advertiſement in the *New England Chronicle*, Auguſt 15, 1776, announces the Maritime Court for ye Middle Diſtrict to be held at Boſton, 5th September, 1776, to try the Juſtice of the Capture of the Sloop called the Hannibal, etc., and her Cargo and Appurtenances.

Houſe may join be a Committee to take under conſideration the condition of the African ſlaves now in this State [or that may be hereafter brought into this State] or may be hereafter brought into it and report." *Journal H. of R., p.* 127. This reſolution was concurred in by the Council, and William Sever, Benjamin Greenleaf, and Daniel Hopkins, Eſqrs., were joined on the part of the Board. *Gen. Court Records, Vol.* XXXIII., *p.* 55. We have made diligent ſearch for further action under this reſolution and appointment of the Committee, but have failed to diſcover any trace of it. The matter was probably "allowed to ſubſide" again.

On the ſame day, however, in which the Houſe firſt determined to give attention to the condition of the African ſlaves, on the 13th of September, 1776, their reſolution to that effect was immediately followed by another "to prevent the ſale of two negro men lately brought into this State, as priſoners taken on the high ſeas, and advertiſed to be ſold at Salem, the 17th inſt., by public auction." *Journal, p.* 105. The reſolve does not appear on the Journal, but from the files preſerved among the Archives of the State, we are enabled to preſent it as thus originally paſſed, viz.:

"IN THE HOUSE OF REPRESENTATIVES, SEPT. 13, 1776:

"WHEREAS this Houſe is credibly informed that two negro men lately brought into this State as priſoners taken on the High Seas are advertiſed to be ſold at Salem, the 17th inſtant, by public auction,

"*Reſolved,* That the ſelling and enſlaving the human ſpecies is a

direct violation of the natural rights alike veſted in all men by their Creator, and utterly inconſiſtent with the avowed principles on which this and the other United States have carried their ſtruggle for liberty even to the laſt appeal, and therefore, that all perſons connected with the ſaid negroes be and they hereby are forbidden to ſell them or in any manner to treat them otherways than is already ordered for the treatment of priſoners of war taken in the ſame veſſell or others in the like employ and if any ſale of the ſaid negroes ſhall be made, it is hereby declared null and void.

"Sent up for concurrence,

"SAML. FREEMAN, *Speaker, P. T.*

"In Council, Sept. 14, 1776. Read and concurred as taken into a new draught. Sent down for concurrence.

JOHN AVERY, *Dpy. Secy.*

"In the Houſe of Repreſentatives, Sept. 14, 1776. Read and non-concurred, and the Houſe adhere to their own vote. Sent up for concurrence.

J. WARREN, *Speaker.*

"In Council, Sept. 16, 1776. Read and concurred as now taken into a new draft. Sent down for concurrence.

JOHN AVERY, *Dpy. Secy.*

"In the Houſe of Repreſentatives, Sept. 16, 1779. Read and concurred.

J. WARREN, *Speaker.*

"Conſented to.

JER. POWELL,
W. SEVER,
B. GREENLEAF,
CALEB CUSHING,
B. CHADBOURN,
JOHN WHETCOME,
ELDAD TAYLOR,
S. HOLTEN,
JABEZ FISHER,
B. WHITE,
MOSES GILL,
DAN'L. HOPKINS,
BENJ. AUSTIN,
WM. PHILLIPS,
D. SEWALL,
DAN'L HOPKINS."

We give a more particular account of the legiſlative hiſtory and progreſs of this reſolve, derived from the journals.

The ſubject reappears on the Journal of the Houſe of the 14th September, as follows:

"David Sewall, Eſq., brought down the reſolve which paſſed the Houſe yeſterday, forbidding the ſale of two negroes, with the following vote of Council thereon, viz.: *In Council*, Sept. 14, 1776. Read and concurred, as taken into a new draught. Sent down for concurrence. Read and non-concurred, and the Houſe adhere to their own vote. Sent up for concurrence." *Ibid.*, 106.

The members of the Council preſent on the 14th September, 1776, were

James Bowdoin,	Moses Gill,
Benjamin Greenleaf,	Benjamin Austin,
Richard Derby,	Samuel Holten,
Jer. Powell,	Benjamin White,
Caleb Cushing,	Henry Gardner,
Benjamin Chadburn,	Jabez Fisher,
William Seaver,	William Phillips,
John Winthrop,	David Sewall,
Thomas Cushing,	Joseph Cushing,
Eldad Taylor,	Daniel Hopkins.

General Court Records, etc., p. 581.

The Council Minutes, as contained in the *General Court Records*, *March* 13, 1776—*Sept.* 18, 1776, *pp.* 581–2, under the date of September 14th, 1776, give the reſolve as finally paſſed, with the addition, "In Council. Read and concurred. Conſented to by the major part of the Council." This, however, is an error, as appears not only from the entry on the

Journal of the Houſe and the original document from the files as given above, but alſo from the following minute of the Council in the ſame volume of Records. Under date of 16th September—the following members of Council being preſent,

Jer. Powell,	Benjamin Greenleaf,
John Winthrop,	Eldad Taylor,
Jno. Whetcomb,	William Phillips,
William Seaver,	Caleb Cushing,
Benjamin Chadburn,	Samuel Holten,
Jabez Fisher,	David Sewall,—

Rev. Mr. [John] Murray came up with a Meſſage from the Houſe to acquaint the Board that it was their deſire to know whether the reſolve reſpecting the ſale of Negroes at Salem had paſſed.

David Sewall, Eſq., went down with a meſſage to acquaint the Hon. Houſe that it was under conſideration of the Board. *Ibid.*, *pp.* 585, 589.

On the ſame day, 16th September, 1776, the final diſpoſition of the matter in the Houſe is thus recorded in their journal.

"John Whitcomb, Eſq., brought down the reſolve forbidding the ſale of two negroes, with the following vote of Council thereon, viz.: *In Council*, Sept. 16, 1776. Read and concurred, as now taken into a new draught. Sent down for concurrence. Read and concurred." *Ibid.*, 109. The reſolve, as finally paſſed by the General Court, appears in the printed volume of reſolves for that period.

"LXXXIII. Reſolve forbidding the ſale of two Negroes brought in as Priſoners; Paſſed September 14, [16th,] 1776.

"Whereas this Court is credibly informed that two Negro Men lately taken on the High Seas, on board the ſloop *Hannibal*, and brought into this State as Priſoners, are advertized to be ſold at *Salem*, the 17th inſtant, by public Auction:

"*Reſolved*, That all Perſons concerned with the ſaid Negroes be, and they are hereby forbidden to ſell them, or in any manner to treat them otherwiſe than is already ordered for the Treatment of Priſoners taken in like manner; and if any Sale of the ſaid Negroes ſhall be made it is hereby declared null and void; and that whenever it ſhall appear that any Negroes are taken on the High Seas and brought as Priſoners into this State, they ſhall not be allowed to be Sold, nor treated any otherwiſe than as Priſoners are ordered to be treated who are taken in like Manner." *Reſolves*, *p.* 14.

The high-toned, bold, and unequivocal declaration of anti-ſlavery principles, with which it originally ſet out, is gone; but it is ſtill the moſt honorable document of Maſſachuſetts legiſlation concerning the negro. To appreciate its importance and properly to underſtand this ſubject of negro captures and recaptures, it is neceſſary to extend our inquiry beyond the limits of the legiſlation of a ſingle Colony; and we ſhall therefore make no apology for preſenting to the reader in this place the reſults of our examination of the national legiſlation and action with reference thereto.

Its practical importance was obvious, and the neceſſity of an uniform rule was too apparent to admit of a doubt. Accordingly the Continental Congreſs, on the 14th of October, 1776—juſt one month after the proceedings in the Legiſlature of Maſſachu-

ſetts concerning the two negroes captured in the Hannibal—appointed a ſpecial Committee of three members (Mr. Rich. Henry Lee, Mr. Wilſon, and Mr. Hall) "to conſider what is to be done with Negroes taken by veſſels of war, in the ſervice of the United States." We have found no report of this Committee, nor are we able to ſay what action, if any, was taken until a later period of the war.

The Continental Congreſs, by reſolutions of 25th November, 1775, had recommended it to the ſeveral Legiſlatures to erect Courts, or give juriſdiction to the Courts in being, for the purpoſe of determining concerning captures. Still, from the beginning, Congreſs exerciſed the power of controlling, by appeal, the ſeveral admiralty juriſdictions of the States. *Journal, 6th March, 22d May,* 1779, *21ſt March, 24th May,* 1780. *Journal H. of R. Pa., Jan.* 31, 1780.

Congreſs had preſcribed a rule of the diſtribution of prizes, and an early act of Maſſachuſetts is curiouſly illuſtrative of the doctrine of a divided ſovereignty. By Chapter XVI. of the laws of 1776, it was provided that diſtribution ſhould take place according to the Laws of this Colony, when prizes were taken by the Forces or the Inhabitants thereof; and when they ſhall be taken by the fleet and army of the United Colonies, then to diſtribute and diſpoſe of them according to the Reſolves and Orders of the Congreſs. *Compare Chapter* X., 1776, *and Chapter* I., 1775, *p.* 9.

Maſſachuſetts ratified the Articles of Confederation in 1778, and the confederation was completed March 1ſt, 1781. The ninth article gave to the United States in Congreſs aſſembled the ſole and ex-

cluſive right of eſtabliſhing rules for deciding, in all caſes, what captures on land or water ſhall be legal, and in what manner prizes taken by land or naval forces in the ſervice of the United States ſhall be divided or appropriated, as well as eſtabliſhing courts for receiving and determining finally appeals in all caſes of captures.

Accordingly, Congreſs proceeded to legiſlate on the ſubject, and, during the year 1781, completed an ordinance, aſcertaining what captures on water ſhall be lawful, in purſuance of the powers delegated by the confederation in ſuch caſes. On the 4th of June, 1781, an ordinance was reported for eſtabliſhing a court of appeals, etc. On the 25th of the ſame month the ſubject was diſcuſſed, and, on the 17th of July, 1781, the ordinance having been further debated, was recommitted, and the committee were inſtructed to prepare and bring an ordinance for regulating the proceedings of the admiralty courts of the ſeveral States in caſes of capture, to reviſe and collect into one body the reſolutions of Congreſs and other convenient rules of deciſion, and to call upon the ſeveral Legiſlatures to aid by neceſſary proviſions the powers reſerved to Congreſs by the Articles of Confederation on the ſubject of captures from the enemy. On the 21ſt of September, 1781, Congreſs reſumed the ſecond reading of the ordinance reſpecting captures, and on the queſtion to agree to the following paragraph, the yeas and nays were required by Mr. Matthews, of South Carolina: "On the recapture by a citizen of any negro, mulatto, Indian, or other perſon from whom labor or ſervice is lawfully claimed

by *another citizen*, ſpecific reſtitution ſhall be adjudged to the claimant, whether the original capture ſhall have been made on land or water, a reaſonable ſalvage being paid by the claimant to the recaptor, not exceeding one-fourth part of the value of ſuch labor or ſervice, to be eſtimated according to the laws of the State *of which the claimant ſhall be a citizen :* but if the ſervice of ſuch negro, mulatto, Indian or other perſon, captured below high water mark, ſhall not be legally claimed *by a citizen of theſe United States*, he ſhall be ſet at liberty."

It was adopted by a vote of twenty ayes to two noes. Both noes were from the South Carolina delegates. By the method of voting in that Congreſs, the vote was ſeven States in the affirmative, and one in the negative—four States not voting. The affirmative States were Georgia, Virginia, Maryland, Pennſylvania, New York, Rhode Iſland, and Maſſachuſetts. States not voting, North Carolina, Delaware, New Jerſey, and Connecticut, although all their delegates preſent voted in the affirmative. On the 27th September, when the ordinance came up for a third reading, an attempt was made to obtain a ſecond vote on this paragraph, but it was ruled to be out of order. The ordinance was farther debated November 8, 13, 30, and ſome important changes were made, which will appear on compariſon of the paſſages in italics. It was finally paſſed, apparently without oppoſition, on the 4th of December, 1781, as follows:

"On the recapture by a citizen of any negro, mulatto, Indian, or other perſon, from whom labor or ſervice is lawfully claimed by *a State or a citizen of*

a State, ſpecific reſtitution ſhall be adjudged to the claimant, whether the original capture ſhall have been made on land or water, *and without regard to the time of poſſeſſion by the enemy*, a reaſonable ſalvage being paid by the claimant to the recaptor, not exceeding 1-4th of the value of ſuch labor or ſervice, to be eſtimated according to the laws of the State *under which the claim ſhall be made.*

"But if the ſervice of ſuch negro, mulatto, Indian, or other perſon, captured below high water mark, ſhall not be legally claimed *within a year and a day from the ſentence of the Court*, he ſhall be ſet at liberty." Thus the action of the legiſlative authorities—colonial or ſtate and continental or national—was virtually an affirmation of the received law on the ſubject, which was founded on the doctrine of *poſt liminium* derived from the civil law.

This, however, applied only to recaptures. There is no ſpecial proviſion for caſes of capture of ſlaves belonging to the enemy—to whom probably the old doctrine was held to apply, that they were lawful prize, and as ſuch liable to ſale for the benefit of the captors. This had been the general, if not univerſal, rule.

Sir Leoline Jenkins, in a letter written in 1674, reſpecting negroes in a Dutch prize-veſſel, ſays that it will not be controverted that on the ſtatute of Prize "negroes are to be reputed Goods and merchandizes in this ſhip, as they are, generally ſpeaking, a part of the commerce of thoſe parts." *Wynne's Life of Sir L. Jenkins, p. 707, quoted by John C. Hurd.*

Negroes, captured in Canada, during the wars

between the Engliſh and French, were ſent to the Weſt India Iſlands for ſale. *Col. Doc.*, x., 131.; *bis*, 138, 140. In 1747, the Engliſh having captured a negro ſervant, the French took pains to reclaim him, but the Engliſh refuſed to ſurrender him on the ground that *every negro is a ſlave, wherever he happens to be, and in whatever Country he may reſide. N. Y. Col. Doc.*, x., 210. This precedent was referred to in a ſimilar caſe in 1750, with a ſimilar deciſion, which was *acquieſced in by both Engliſh and French. Ib.*, 213. See alſo the 47th article of Capitulation for the Surrender of Canada in 1760. *N. Y. Col. Doc.*, x., 1118.

In 1761, upon the reduction of Martinico, Maj.-Gen. Monckton ordered the negroes which were taken to be ſold, and the money to be divided amongſt the ſubalterns attached to his army. *Ibid.*, VIII., 250.

During the American War, the ſlaves of the rebel coloniſts were regarded by the Engliſh as proper ſubjects of prize and booty. The *N. E. Chronicle*, July 4, 1776, ſtates that the "negroes carried off when the [Britiſh] Army and Fleet were obliged to evacuate the Town and Harbor [of Boſton] were ſent to Louisburgh, to dig Coal for their Tyrannical Maſters. Theſe Blacks, were commanded by a certain Captain Lindſey." It was eſtimated that not leſs than 30,000 were carried off from Virginia. *Hildreth*, III., 355. And thouſands were carried off from South Carolina, Georgia, and other States. Mr. Jefferſon, in his letter to Gordon, refers to thoſe who were ſent to the Weſt Indies, and exchanged for rum, ſugar, coffee, and fruit. *Works*, II., 427.

In 1779, Sir Henry Clinton iſſued the following proclamation:

"*By his Excellency, Sir* HENRY CLINTON, *K.B., General, and Commander-in-Chief of all His Majeſty's Forces within the Colonies lying on the Atlantic Ocean, from Nova Scotia to Weſt Florida, incluſive, &c., &c., &c.:*

"PROCLAMATION.

"WHEREAS, The Enemy have adopted a practice of enrolling NEGROES among their troops: I do hereby give Notice, that all NEGROES taken in Arms, or upon any military Duty, ſhall be purchaſed for [*the public ſervice at*] a ſtated price; the Money to be paid to the Captors.

"But I do moſt ſtrictly forbid any Perſon to ſell or claim Right over any NEGROE, the Property of a Rebel, who may take refuge with any part of this Army: And I do promiſe to every NEGROE who ſhall deſert the Rebel Standard full Security to follow within theſe Lines any occupation which he ſhall think proper.

"Given under my Hand, at Head-Quarters, PHILIPSBURGH, the 30th day of June 1779.

"H. CLINTON.

"By his Excellency's Command,
"JOHN SMITH, Secretary."

When this proclamation was firſt iſſued, the words encloſed within brackets were not in it. They were added in the publication two months later—with a ſtatement that the omiſſion was a miſtake of the printers.

This method of dealing with captive negroes was not confined to the Britiſh Army at that time.

At the capture of Stony Point by General Wayne, three negroes were taken among the ſpoils, and although we have not been able to determine what diſ-

poſition was finally made of them, the following letter of General Wayne on the ſubject is not without intereſt here. Writing from New Windſor on the 25th July, 1779, to Lieut.-Col. Meigs, he ſays:

"The wiſh of the officers to free the three Negroes after a few Years Service meets my moſt hearty approbation, but as the Chance of War or other Incidents may prevent the officer [owner] from Complying with the Intention of the Officers, it will be proper for the purchaſer or purchaſers to ſign a Condition in the Orderly Book.

" . . . I would chearfully join them in their Immediate Manumiſſion—if a few days makes no material difference, I could wiſh the ſale put off until a Conſultation may be had, and the opinion of the Officers taken on this Buſineſs." *Dawſon's Stony Point*, *pp.* 111, 118.

The diſcuſſions which aroſe out of the breaches of the Treaty of Peace in 1783, which put negroes on the ſame footing with any other article of property, and the ſettlement made by Mr. Jay's Treaty in 1794, furniſh an authoritative ſtatement of the prevailing views of public law concerning the ſtatus of negroes. Hamilton, in his Camillus, No. III., ſays:

"Negroes, by the law of the States, in which ſlavery is allowed, are perſonal property. They, therefore, on the principle of thoſe laws, like horſes, cattle, and other moveables, were liable to become booty—and belonged to the enemy [captor] as ſoon as they came into his hands." *American Remembrancer*, I., 57.

Gen. Waſhington, the Continental Congreſs, and

the Commiſſioners appointed by Congreſs in 1783 to ſuperintend the embarkation of the Britiſh from New York, all concurred in this view. Indeed the Commiſſioners, Egbert Benſon, William S. Smith, and Daniel Parker, ſhowed concluſively that they had no heſitation in conſidering negroes, horſes, and other property, as being preciſely on the ſame footing; and ſelected a claim for a negro as one of the ſtrongeſt that could be found to enforce a compliance with the ſtipulation in the Seventh Article of the Treaty. Nor did the Britiſh Miniſtry at any period of the negotiations raiſe any queſtion as to this doctrine.

The differences of opinion, and the arguments of both parties in the National Congreſs, only confirm the fact, which indeed is obvious enough from the language of the Article. This was in 1795, during the firſt ſeſſion of the fourth Congreſs, when the Houſe of Repreſentatives embraced many of the ableſt men in the country. *Debates on the Britiſh Treaty, Part* II., *pp.* 129, 147, 253, 291–2, 301. *Papers relative to Great Britain, pp.* 5–9.

After the laſt war with England ſimilar difficulties and diſcuſſions aroſe with reference to the firſt article of the Treaty of Ghent, which protected the rights of our citizens in their "ſlaves or other private property." After a long ſtruggle of the characteriſtic diplomacy of Great Britain to evade it, a large ſum was paid as indemnity for the ſlaves carried off in violation of the treaty ſtipulation.

The doctrine of prize in negroes fell only with the Slave-Trade, and the Courts of England were very ſlow to recogniſe its fall. As late as 1813, Sir William

Scott condemned one hundred and ninety-nine ſlaves, as "good and lawful prize to the captors," declaring at the ſame time that "ſlaves are deemed *perſonal property*, and paſs to the captors under the words of the Prize Act, 'Goods or Merchandizes.'" 1 *Dodſon's Reports*, 263.

The earlieſt judicial recognition, within our knowledge, of the fact that negroes were no longer to be held and taken as "good and lawful prize to the captors," was in the United States Diſtrict Court, in South Carolina, in July, 1814. It appears that the queſtion was regarded as new. The Court previouſly had not proceeded to condemnation of ſlaves brought in as prize of war; but ordered their confinement as priſoners.[1] And in ſome caſes, they had been received as ſuch by the Britiſh authority reſident at Charleſton. The intereſt of parties requiring a formal deciſion on the point of prize, the libel was filed, in this caſe, *Joſeph Almeida, Captain of the American Privateer Caroline*, v. *Certain Slaves*. Mr. Juſtice Drayton ſaid he had never had any doubt on the ſubject, and declared that "Slaves captured in time of war cannot be libelled as prize: nor will the Diſtrict Court of the United States conſider them as priſoners of war. The Court conſiders the diſpoſition of them as a matter of State, in which the judiciary ſhould not interfere." *Hall's Law Journal*, v., 459.

In view of all theſe facts, the Maſſachuſetts Reſolve of September 16th, 1776, juſtly challenges our admiration. It lights up the dreary record with a

[1] They were informally conſidered as priſoners, not ſo decreed by Court.

ſudden and brilliant glare, as of a light ſhining in great darkneſs. Although ſhorn of its magnanimous declaration of principles, in its progreſs through the legiſlature, its terms would ſtill introduce a new theory and practice into the law of nations, annihilating the doctrine of prize in negroes, which had been everywhere maintained before, and which continued without queſtion elſewhere. If it was really adhered to, it deſerves all the honor that has been claimed for it as a long ſtride in advance of all the world in civilization and humanity. But the Legiſlature of Maſſachuſetts could only regulate the action of their own prize Courts and their own citizens, and did not at that time attempt to give law to the whole continent. They then recognized the fact that they could not diveſt the title of ſlave-owners in the other Colonies in captured ſlaves, and their obligation to reſtore them in caſes of recapture. Called upon to deal with a larger number of negroes, under circumſtances more embarraſſing than in the caſe already detailed, they appear to have been ſatisfied with their own declared poſition, and did not attempt to extend the principle of their new rule to all negro ſlaves who came or were brought within their juriſdiction.

In the month of June, 1779, the prize-ſhip, Victoria, was brought into the port of Boſton. The Victoria was a Spaniſh ſhip which had cleared from South Carolina for Cadiz. On her paſſage ſhe was attacked by an Engliſh privateer, made a ſucceſsful reſiſtance, and captured her aſſailant, who had on board thirty-four negroes which had been taken from the plantations of ſeveral gentlemen in South Carolina.

The Spaniard, after taking the negroes on board and injuring the veſſel, diſmiſſed her. A few days afterward the ſhip fell in with and was taken by two Britiſh letters of marque and ordered into New York. On her paſſage there ſhe was recaptured by the Hazard and Tyrannicide, two veſſels in the ſervice of Maſſachuſetts, and brought ſafely into port. On the 21ſt of June, by order of the Board of War, ſhe was placed in charge of Capt. Johnſon, to direct the unloading, etc., in behalf of the State. The Board of War immediately repreſented to the Legiſlature the facts relating to the negroes thus "taken on the high ſeas and brought into the State;" being evidently unable to apply the reſolution of 1776 to this caſe.

On the 23d of June, 1779, it was ordered in the Houſe of Repreſentatives, "that Gen. Lovell, Capt. Adams, and Mr. Cranch be a committee to conſider what is proper to be done with a number of negroes brought into port in the prize ſhip called the Lady Gage."[1] *Journal, p.* 60. The next day, "the committee appointed to take into conſideration the ſtate and circumſtances of a number of negroes lately brought into the port of Boſton, reported a reſolve directing the Board of War to inform our delegates in Congreſs of the ſtate of facts relative to them, to put them into the barracks on Caſtle Iſland, and cauſe them to be ſupplied and employed." *Ibid., pp.* 63, 64. The reſolution was immediately paſſed and concurred in by the Council. It appears in the printed volume, among the Reſolves of June, 1779.

[1] This name of "Lady Gage" is probably a miſtake, for this proceeding evidently led to the reſolution of the following day.

"CLXXX. Reſolve on the Repreſentation of the Board of War reſpecting a number of negroes captured and brought into this State. Paſſed June 24, 1779.

"On the repreſentation made to this Court by the Board of War, reſpecting a number of negroes brought into the Port of Boſton, on board the Prize Ship Victoria:

"*Reſolved*, that the Board of War be and they are hereby directed forthwith to write to our Delegates in Congreſs, informing them of the State of Facts relating to ſaid Negroes, requeſting them to give information thereof to the Delegates from the State of *South Carolina*, that ſo proper meaſures may be taken for the return of ſaid Negroes, agreeable to their deſire.

"And it is further *Reſolved*, that the Board of War be and they hereby are directed to put the ſaid Negroes, in the mean time, into the barracks on Caſtle Iſland in the Harbor of Boſton, and cauſe them to be ſupplied with ſuch Proviſion and Clothing as ſhall be neceſſary for their comfortable ſupport, putting them under the care and direction of ſome Prudent perſon or Perſons, whoſe buſineſs it ſhall be to ſee that the able-bodied men may be uſefully employed during their ſtay in carrying on the Fortifications on ſaid Iſland, or elſewhere within the ſaid Harbor; and that the Women be employed according to their ability in Cooking, Waſhing, etc. And that the ſaid Board of War keep an exact Account of their Expenditures in ſupporting ſaid Negroes." *Reſolves*, *p.* 51.

This reſolve was immediately carried into execution. On the 28th of June, Edward Revely, the prize-maſter, was ordered to "deliver Thos. Knox from ſhip Victoria the Negroes that are on board for the purpoſe of their being ſent to Caſtle Iſland pr. Order of Court," and accordingly there were "34 Negroes delivered." At the ſame time, the Board of War ordered the "iſſue to the Negroes at Caſtle Iſland—1 lb. of Beef, 1 lb. of Rice pr. day," upon the orders of Lt.-Col. Revere, the commandant of Caſtle

Iſland. *Minutes Board of War.* His letter of inſtructions from the Board is as follows:

"War Office, 28 June, 1779.

"Lt.-Col. Revere,

"Agreeable to a Reſolve of Court we ſend to Caſtle Iſland and place under your care the following Negroes, viz.:

[19] Men,
[10] Women,
[5] Children,

lately brought into this Port in the Spaniſh retaken Ship Victoria. The Men are to be employed on the Fortifications there or elſewhere in the Harbor, in the moſt uſeful manner, and the Women and Children, according to their ability, in Cooking, Waſhing, etc. They are to be allowed for their ſubſiſtence One lb. of Beef, and one lb. of Rice per day each, which Commiſſary Saliſbury will furniſh upon your order, and this to continue until our further orders.

"By Order of the Board."

In accordance with the reſolve of Court, the Board of War, by their Preſident, Samuel P. Savage, addreſſed a letter to Meſſrs. Gerry, Lovell, Holten, etc., etc., delegates from Maſſachuſetts in the Continental Congreſs, dated War Office, 29th June, 1779, in which are ſet forth the principal facts in the caſe, and the inſtructions of the Legiſlature. In concluſion, the Preſident ſays, "Every neceſſary for the ſpeedy diſcharge of theſe people, we have no doubt you will take, that as much expenſe as poſſible may be ſaved

to thoſe who call themſelves their owners." This letter alſo gives the number of the negroes, and the names of the ſeveral gentlemen from whoſe plantations they were taken, viz.:

"5 Men 4 Women 4 Boys 1 Girl belonging to Mr. Wm. Vryne.

"9 Men 1 Woman belonging to Mr. Anthony Pawley.

"1 Man belonging to Mr. Thomas Todd.

"2 Men 3 Women belonging to Mr. Henry Lewis.

"2 Men 2 Women belonging to Mr. William Pawley.

"One of the negroes is an elderly ſenſible man, calls himſelf James, and ſays he is free, which we have no reaſon to doubt the truth of. He alſo ſays that he with the reſt of the Negroes were taken from a place called Georgetown." *Maſs. Archives, Vol.* 151, 292–94.

Theſe negroes were not all detained at Caſtle Iſland, until their owners were heard from. One method of providing for them is noticed in the following extract:

"In 1779, Col. Paul Revere, who commanded there [Caſtle Iſland] had ſeveral orders from the Council to let part of them [negroes quartered on the Iſland] live as ſervants, with perſons in different towns. An expreſs condition of ſuch licenſe was, they ſhould be returned whenever the public authorities required." *Felt: Coll. Am. Stat. Aſſoc.*, 1., 206–7.

Theſe orders of the Council began as ſoon as the negroes were ſent to the Iſland, the firſt one we have

found bearing date June 30th, 1779, by which Mr. Joſhua Brackett was to have a Negro Boy "ſuch as he may chooſe," etc. *Maſs. Archives, Vol.* 175, 374. See alſo ſimilar order for three Negro Boys to be delivered to Hon. Henry Gardner, July 5, 1779. *Ibid.*, 385.

Moſt of them, however, muſt have remained at Caſtle Iſland, as appears from a return of the negroes there, October 12th, 1779. It is a ſingular circumſtance that ſuch a return ſhould be made, apparently to the Legiſlature, with a brief and touching report, from John Hancock—one of the moſt intereſting documents connected with this ſubject. The original, from which we copy, is in the *Maſs. Archives, Vol.* 142, 170. The portions which are in *italics* are in the autograph of Hancock.

Boston, Oct^r. 12, 1779. A Return of y^e Negroes at Caſtle Iſland, Viz. :

Negro Men.

1. Anthony.
2. Partrick.
3. Padde.
4. Isaac.
5. Quash.
6. Bobb.
7. Anthoney
8. Adam.
9. Jack.
10. Gye.
11. June.
12. Rhodick.
13. Jack.
14. Fuller.
15. Lewis.

The above men are ſtout fellows.

Negro Boys.

No. 1. Smart.
2. Richard.

Boys very ſmall.

Negro Woomen.	Negro Girls.
No. 1. Kittey.	No. 1. Lysett.
2. Lucy.	2. Sally.
3. Milley.	3. Mercy.
4. Lander.	
Pretty large.	*Rather ſtout.*

Gentlemen,

The Scituation of theſe Negroes is pitiable with reſpect to Cloathing.

I am, Gen^t^.

Your very hum. Serv^t^.

John Hancock.[1]

Oct. 12, 1779.

On the 15th of November, 1779, a petition was read in the Council, from Iſaac Smith, John Codman, and William Smith, in behalf of William Vereen and others, of the State of South Carolina, then in Boſton, praying that a number of Negroes which were taken from them by a Britiſh privateer, and retaken by two armed veſſels belonging to Maſſachuſetts, might be delivered to them. The Council, upon hearing the petition, ordered "that Moſes Gill, Eſq., with ſuch as the Honorable Houſe ſhall join, be a Committee to take into conſideration this petition, and report what may be proper to be done thereon." The reſolution was immediately ſent to the Houſe, who concurred, and joined Capt. Williams of Salem, and Mr. Davis of Boſton, for the Committee.

On the 17th of November, another petition was preſented in Council, from John Winthrop, "pray-

[1] John Hancock had been appointed "Captain of the Caſtle and Fort on Governor's Iſland," on the 6th of October, 1779. *Reſolves*, CLXXVIII, *p.* 111. *Compare Journal, pp.* 54, 60.

ing that certain negroes, who were brought into this State by the *Hazard* and *Tyrannicide*, may be delivered to him." This petition was alſo committed to the "committee appointed on the petition of Iſaac Smith and others," by a concurrent vote of both Houſes.

On the 18th of November, "Jabez Fiſher, Eſq., brought down a report of the Committee of both Houſes on the petition of Iſaac Smith, being by way of reſolve, directing the Board of War to deliver ſo many of the negroes therein mentioned, as are now alive. Paſſed in Council, and ſent down for concurrence." The order of the Houſe is, "Read and concurred, as taken into a new draught." Sent up for concurrence."

It is printed among the reſolves of November, 1779.

"XXXI. Reſolve relinquiſhing this State's claim to a number of Negroes, paſſed November 18, 1779.

"Whereas a number of negroes were re-captured and brought into this State by the armed veſſels Hazard and Tyrannicide, and have ſince been ſupported at the expenſe of this State, and as the original owners of ſaid Negroes now apply for them:

"Therefore *Reſolved*, That this Court hereby relinquiſh and give up any claim they may have upon the ſaid owners for re-capturing ſaid negroes: Provided they pay to the Board of War of this State the expence that has ariſen for the ſupport and cloathing of the Negroes aforeſaid." *Reſolves, p.* 131.[1]

The Maſſachuſetts act of April 12, 1780, more effectually providing for the ſecurity, ſupport, and exchange of priſoners of war brought into the State,

[1] The original reſolve is in *Maſs. Archives, Vol.* 142, 29, and is endorſed "Negroes captured in the ſhip Victoria," and "Entered page 454."

was paſſed in accordance with the Reſolutions of Congreſs, adopted January 13th, 1780. *Laws*, 1780, *Chap.* v., *pp.* 283, 4. It declares with reference to "all Priſoners of War, whether captured by the Army or Navy of the United States, or armed Ships or Veſſels of any of the United States, or by the Subjects, Troops, Ships, or Veſſels of War of this State, and brought into the ſame, or caſt on ſhore by ſhipwreck on the coaſt thereof . . . . . , all ſuch priſoners, ſo brought in or caſt on ſhore (including Indians, Negroes, and Molatoes) be treated in all reſpects as priſoners of war to the United States, any law or reſolve of this Court to the contrary notwithſtanding." A previous law of 1777, repealed by this act, contained no ſpecial proviſion concerning this claſs of captures. *Laws*, 1777, *Chap.* xxxv., *p.* 114.

On Friday, the 23d of January, 1784, Governor Hancock ſent a meſſage to the Legiſlature, tranſmitting papers received during the receſs from October 28th, 1783, to January 21ſt, 1784, "among which (he ſays) is one from his Excellency the Governor of South Carolina, reſpecting the detention of ſome Negroes here, belonging to the ſubjects of that State. I have communicated it to the Judges of the Supreme Judicial Court—their obſervations upon it are with the Papers. I have made no reply to the letter, judging it beſt to have your deciſion upon it." *Journal H. of R.*, *Vol.* iv., *pp.* 308, 9. The Secretary, in communicating the meſſage to the Houſe, ſaid he had laid the papers before the Senate, with his Excellency's requeſt to ſend them to the Houſe. *Ibid.*, *p.* 310.

On the ſame day, in the Senate, the meſſage was read with accompanying papers, and referred to a joint committee of both Houſes. *Senate Journal*, IV., 277. *Houſe Journal*, IV., 311.

On the 23d of March following, a report of the committee, "by way of order," was read and accepted in the Senate, and concurred in by the Houſe. *Senate Journal*, IV., 441. In the Houſe, "The Hon. Mr. Warner brought down the report of the Committee on Governor Gerrard's[1] letter, being an Order requeſting his Excellency the Governor to tranſmit a copy of the opinions of the Judges of the Supreme Judicial Court on the caſe complained of, for the information of the ſaid Governor Gerrard." *Houſe Journal*, IV., 496. The order is printed among the Reſolves, March, 1784.

"CLXXI. Order requeſting the Governor to write to Governor *Guerard* of *South Carolina*, incloſing the letter of the Judges of the Supreme Judicial Court, March 23d, 1784.

"*Ordered*, that his Excellency the Governor be requeſted to write to Excellency *Benjamin Guerard*, Governor of *South Carolina*, incloſing for the information of Governor Guerard, the letter of the Judges of the Supreme Judicial Court of this Commonwealth, with the copy in the ſaid letter referred to, upon the ſubject of Governor *Guerard's* letter, dated the ſixth October, 1783." *p.* 141.

[1] Benjamin Guerard was Governor of the State of South Carolina from 1783 to 1785.

We have made diligent efforts to find the papers referred to among the files preſerved in the State-Houſe at Boſton, but without ſucceſs. We have alſo endeavored to procure them from the Archives of the State of South Carolina, with no more ſatisfactory reſult. Fortunately, however, we have been favored with the following extracts and memorandum, which were made by Mr. Bancroft at Columbia, S. C., ſeveral years ago.

From Mr. Bancroft's MSS., America, 1783, Vol. II.

GOVERNOR GUERARD TO GOVERNOR HANCOCK, 6th October, 1783.

EXTRACT. "That ſuch adoption is ſavoring rather of the Tyranny of Great Britain which occaſioned her the loſs of theſe States—that no act of Britiſh Tyranny could exceed the encouraging the negroes from the State owning them to deſert their owners to be emancipated—that it ſeems arbitrary and domination —aſſuming for the Judicial Department of any one State, to prevent a reſtoration voted by the Legiſlature and ordained by Congreſs. That the liberation of our negroes diſcloſed a ſpecimen of Puritaniſm I ſhould not have expected from gentlemen of my Profeſſion."

MEMORANDUM. "He had demanded fugitives, carried off by the Britiſh, captured by the North, and not given up by the interference of the Judiciary." "Governor Hancock referred the ſubject to the Judges."

Judges Cushing and Sargent to Governor Hancock, Boſton, Dec. 20, 1783.

Extract. "How this determination is an attack upon the ſpirit, freedom, dignity, independence, and ſovereignty of South Carolina, we are unable to conceive. That this has any connection with, or relation to Puritaniſm, we believe is above y^r^ Excellency's comprehenſion as it is above ours. We ſhould be ſincerely ſorry to do anything inconſiſtent with the Union of the States, which is and muſt continue to be the baſis of our Liberties and Independence; on the contrary we wiſh it may be ſtrengthened, confirmed, and endure for ever."

Whether Governor Hancock recognized in the ſubjects of this correſpondence any of his old Caſtle Iſland acquaintances, does not appear; but we entertain no doubt that they were the ſame, or a part of the ſame negroes whoſe "pitiable" condition "with reſpect to cloathing," he had reported to the authorities in October, 1779. Why or how it happened that any of them were ſtill within the juriſdiction of Maſſachuſetts, we cannot explain. The exigencies of the war in South Carolina, which was threatened or invaded and overrun during the greater part of the intervening period (1779–83), may have prevented ſome of the owners from proſecuting promptly their intention to reclaim their ſlaves or returning with them to that State. The ſlaves themſelves may have become familiar with their new homes, and willing or deſirous to remain with their new maſters in the various towns

to which they had been ſcattered, and where they had been permitted to live under the orders of Council, and their new maſters may have become warmly intereſted in the deſire to keep them. Under ſuch circumſtances the authorities may have found it difficult to obtain a compliance with the agreement to return them when called for, without enforcing the reclamation in the courts of law. Add to all this, the diſpoſition of ſome of the Supreme Court judges "to ſubſtitute an unwritten higher law, interpreted by individual conſcience, for the law of the land and the decrees of human tribunals"—and we ſhall not be ſurpriſed at the reſult indicated in theſe imperfect memorials of the proceedings in 1783, '84.

We may expect from future reſearches in Maſſachuſetts more light on this as well as other points indicated in theſe Notes; and we truſt eſpecially that theſe deficiencies may "compel a diſcovery" of the opinions of the Judges. They would furniſh an extremely important illuſtration of the ſtate and progreſs of anti-ſlavery ideas in 1783, bearing directly on the conſtruction of the Conſtitution of 1780, which we have ſtill to diſcuſs. The only additional item we have found which may bear on this caſe is the following:

In the Supreme Judicial Court of the Commonwealth of Maſſachuſetts, Suffolk, 26th Auguſt, 1783, the following named negroes were brought up on habeas corpus and diſcharged, the Court declaring the mittimus inſufficient to hold them.

Affa Hall, wife of Prince Hall,
Quaſh, Robert,

John Polly, Anthony,
Jack Phillips, Peggy, wife of ſaid An-
George Polly, thony.

Records, 1783, *fol.* 177, 178.

VIII.

We return again to trace the progreſs of public opinion on ſlavery in Maſſachuſetts during the Revolution. It is indicated in part by the public preſs of the time. William Gordon, afterward well known as the author of a hiſtory of the Revolution, was very buſy as a writer on this and kindred topics. In Letter V (of a ſeries), dated Roxbury, September 21, 1776, he ſays:

"The Virginians begin their Declaration of Rights with ſaying, 'that *all* men are born equally free and independent, and have certain inherent natural rights, of which they cannot, by any compact, deprive themſelves or their poſterity; among which are the enjoyment of life and *liberty*.' The Congreſs declare that they 'hold theſe truths to be ſelf-evident, that all men are created *equal*, that they are endowed by their Creator with certain *unalienable rights*, that among theſe are life, *liberty* and purſuit of happineſs.' The Continent has rang with affirmations of the like import. If theſe, Gentlemen, are our genuine ſentiments, and we are not provoking the Deity, by acting hypocritically to ſerve a turn, let us apply earneſtly and heartily to the extirpation of ſlavery from among ourſelves. Let the State allow of nothing beyond ſervi-

tude for a ſtipulated number of years, and that only for ſeven or eight, when perſons are of age, or till they are of age: and let the deſcendants of the Africans born among us, be viewed as free-born; and be wholly at their own diſpoſal when one-and-twenty, the latter part of which age will compenſate for the expenſe of infancy, education, and ſo on.[1]"

In the Independent Chronicle, November 14, 1776, there is a Plan for the gradual extermination of ſlavery out of the Colony of Connecticut. It was ſent to the publiſhers by Dr. Gordon, from Roxbury, Nov. 2, 1776. This plan is very ſevere on ſlaveholders, and portraying the death-bed ſcene of one of them, raiſes the query, whether he is ſinner or ſaint? Gordon himſelf ſays, "I ſhall ſay nothing further of the plan, than that, tho' I am well pleaſed, to have the abſurdity of perpetuating ſlavery expoſed, I am not for unfainting every man that through the power of prevailing prejudice and cuſtom, is chargeable with inconſiſtency and abſurdity: for if ſo, who then can be ſaved?"

A "Son of Liberty" writes vigorouſly againſt ſlavery in the Independent Chronicle, November 28, 1776. He calls loudly for legiſlation, etc., "that no laws be in exiſtence contrary to ſound reaſon and revelation."

At this period, advertiſements of ſlave-property were common in the newſpapers. We quote a few ſpecimens:

[1] The methods propoſed in this letter do not give any countenance to the modern theories that ſlavery was illegal, and that hereditary ſlavery was always contrary to law in Maſſachuſetts.

From the Independent Chronicle, October 3, 1776.

" *To be* SOLD A ſtout, hearty, likely NEGRO GIRL, fit for either Town or Country. Inquire of Mr. *Andrew Gilleſpie, Dorcheſter, Octo.* 1., 1776."

From the ſame, October 10.

" A hearty NEGRO MAN, with a ſmall ſum of Money to be given away."

From the ſame, November 28.

" To SELL—A Hearty likely NEGRO WENCH about 12 or 13 Years of Age, has had the Small Pox, can waſh, iron, card, and ſpin, etc., for no other Fault but for want of Employ."

From the ſame, February 27, 1777.

" WANTED a NEGRO GIRL between 12 and 20 Years of Age, for which a good Price will be given, if ſhe can be recommended."

From the Continental Journal, April 3, 1777.

" *To be* SOLD, a likely NEGRO MAN, twenty-two years old, has had the ſmall-pox, can do any ſort of buſineſs; ſold for want of employment."

" *To be* SOLD, a large, commodious Dwelling Houſe, Barn, and Outhouſes, with any quantity of land from 1 to 50 acres, as the Purchaſer ſhall chooſe within 5 miles of Boſton. Alſo a ſmart well-tempered NEGRO BOY of 14 years old, not to go out of this State and *ſold for* 15 *years only, if he continues to behave well.*"

From the Independent Chronicle, May 8, 1777.

" *To be* SOLD, for want of employ, a likely ſtrong NEGRO GIRL, about 18 years old, underſtands all ſorts of houſehold buſineſs, and can be well recommended."

Theſe and ſimilar advertiſements drew forth the following communication to the Printers from Dr. Gordon; but without any immediate effect, if we may judge from the fact that the laſt advertiſement above was continued in the ſame paper in which was publiſhed

Mr. Gordon's Hint on Slavery.

Independent Chronicle, May 15, 1777.

"Meſſieurs Printers,

"I would hope that you are the Sons of Liberty from principle, and not merely from intereſt, wiſh you therefore to be conſiſtent, and never more to admit the ſale of negroes, whether boys or girls, to be advertiſed in your papers. Such advertiſements in the preſent ſeaſon are peculiarly ſhocking. The multiplicity of buſineſs that hath been before the General Court may apologize for their not having attended to the caſe of ſlaves, but it is to be hoped that they will have an opportunity hereafter, and will, by an Act of the State, put a final ſtop to the public and private ſale of them, which may be ſome help towards eradicating ſlavery from among us. If God hath made of one blood, all nations of men, for to dwell on all the face of the earth, I can ſee no reaſon why a black rather than a white man ſhould be a ſlave.

"Your humble Servant,

"William Gordon.

"N. B. I mean the above as a hint alſo to the other printers."

But although the Boſton newſpapers ſtill continued to advertiſe ſlave-property, and, as we ſhall hereafter

ſee, in a manner even more ſhocking to the modern reader, it is to this period we are to refer the laſt attempt in the Legiſlature to put an end to ſlavery in Maſſachuſetts. It is the moſt emphatic, if indeed it is not the only direct, attack made on that inſtitution in all their legiſlation. The Legiſlature were alſo at this time beginning their firſt eſſay at conſtitution-making—the eſtabliſhment of a new ſyſtem of government for the State. The failure of this attack on ſlavery was as ſignal and complete as poſſible, while the method by which it was accompliſhed preſents a curious illuſtration of the growth of the ſentiment and principle of nationality. It is not amiſs to remember, that in the firſt and laſt and only direct and formal attempt to aboliſh ſlavery in Maſſachuſetts, the popular branch of the Legiſlature of that State laid the bill for that purpoſe on the table, with a direction "that application be made to Congreſs on the ſubject thereof."

On the 18th of March, 1777, another petition of Maſſachuſetts ſlaves was preſented to the Legislature, as appears from the following entry on the Journal of that date:

"A petition of Lancaſter Hill, and a number of other negroes, praying the Court to take into conſideration their ſtate of bondage, and paſs an act whereby they may be reſtored to the enjoyment of that freedom which is the natural right of all men. Read and committed to Judge Sergeant, Mr. Dalton, Mr. Appleton, Col. Brooks, and Mr. Story."

The original petition is preſerved among the Archives of Maſſachuſetts, and furniſhes ſome addi-

tional intereſting particulars. They pray for the paſſage of an act, "whereby they may be reſtored to the enjoyment of that freedom, which is the natural right of all men, and *their children* (*who were born in this land of liberty*) *may not be held as ſlaves after they arrive at the age of twenty-one years.*" The petition is ſigned by Lancaſter Hill, Peter Beſs, Briſter Slenfen, Prince Hall, Jack Pierpont (his × mark), Nero Funelo (his × mark), and Newport Sumner (his × mark). It bears date January 13th, 1777, and has the following endorſement: "Mar. 18. Judge Sergeant, Mr. Dalton, Mr. Appleton, Coll. Brooks, Mr. Story, Mr. Lowell and to conſider y^e^ matter at large Mr. Davis." *Maſs. Archives, Revolutionary Reſolves, Vol.* VII., *p.* 132.

The addition of "Mr. Lowell and to conſider y^e^ matter at large Mr. Davis" indicates further proceedings, which we are unable to give, in conſequence of the deficiencies in all the copies of the Journals known to us. The action of the Legiſlature, however, reſulted in a bill, which was probably drawn by Judge Sargent, who was the firſt named of this committee.

On Monday afternoon, June 9th, 1777, "a Bill entitled an Act for preventing the Practice of holding perſons in Slavery" was "read a firſt time, and ordered to be read again on Friday next, at 10 o'clock, A. M." *Journ.*, 19. On the 13th, the bill was "read a ſecond time, and after Debate thereon, it was moved and ſeconded, That the ſame lie upon the Table, and that Application be made to Congreſs on the ſubject thereof; and the Queſtion being put, it paſſed in the Affirmative, and Mr. Speaker, Mr.

Wendell, and Col. Orne, were appointed a Committee to prepare a letter to Congreſs accordingly, and report." *Journ.*, 25. On the following day, Saturday, June 14th, "the Committee appointed to prepare a Letter to Congreſs, on the ſubject of the Bill for preventing the Practice of holding Perſons in Slavery, reported." Their report was "Read and Ordered to lie." *Journ.*, 25. We find no further trace of it.

"STATE OF MASSACHUSETTS BAY. IN THE YEAR OF OUR LORD, 1777.

"An act for preventing the practice of holding perſons in Slavery.

"WHEREAS, the practice of holding Africans and the children born of them, or any other perſons, in Slavery, is unjuſtifiable in a civil government, at a time when they are aſſerting their natural freedom; wherefore, for preventing ſuch a practice for the future, and eſtabliſhing to every perſon reſiding within the State the invaluable bleſſing of liberty.

"*Be it Enacted*, by the Council and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,—That all perſons, whether black or of other complexion, above 21 years of age, now held in Slavery, ſhall, from and after the day of next, be free from any ſubjection to any maſter or miſtreſs, who have claimed their ſervitude by right of purchaſe, heirſhip, free gift, or otherwiſe, and they are hereby entitled to all the freedom, rights, privileges and immunities that do, or ought of right to belong to any of the ſubjects of this State, any uſage or cuſtom to the contrary notwithſtanding.

"*And be it Enacted*, by the authority aforeſaid, that all written deeds, bargains, ſales or conveyances, or contracts without writing, whatſoever, for conveying or transferring any property in any perſon, or to the ſervice and labor of any perſon whatſoever, of more than twenty-one years of age, to a third perſon, except by order of ſome court of record for ſome crime, that has been, or hereafter ſhall be made, or by their own voluntary contract for a term not exceeding ſeven years, ſhall be and hereby are declared null and void.

"And WHEREAS, divers perſons now have in their ſervice negroes,

mulattoes or others who have been deemed their ſlaves or property, and who are now incapable of earning their living by reaſon of age or infirmities, and may be deſirous of continuing in the ſervice of their masters or miſtreſſes,—*be it therefore Enacted*, by the authority aforeſaid, that whatever negro or mulatto, who ſhall be deſirous of continuing in the ſervice of his maſter or miſtreſs, and ſhall voluntarily declare the ſame before two juſtices of the County in which ſaid maſter or miſtreſs reſides, ſhall have a right to continue in the ſervice, and to a maintenance from their maſter or miſtreſs, and if they are incapable of earning their living, ſhall be ſupported by the ſaid maſter or miſtreſs, or their heirs, during the lives of ſaid ſervants, anything in this act to the contrary notwithſtanding.

"*Provided*, nevertheleſs, that nothing in this act ſhall be underſtood to prevent any maſter of a veſſel or other perſon from bringing into this State any perſons, not Africans, from any other part of the world, except the United States of America, and ſelling their ſervice for a term of time not exceeding five years, if twenty-one years of age, or, if under twenty-one, not exceeding the time when he or ſhe ſo brought into the State ſhall be twenty-ſix years of age, to pay for and in conſideration of the tranſportation and other charges ſaid maſter of veſſel or other perſon may have been at, agreeable to contracts made with the perſons ſo tranſported, or their parents or guardians in their behalf, before they are brought from their own country." *Maſs. Archives: Revolutionary Reſolves, Vol. vii., p.* 133.

An endorſement on the bill is, "Ordered to lie till the ſecond Wedneſday of the next Seſſion of the General Court." It was not taken up at that time, nor at any other time that we can diſcover.

We have ſaid that Judge Sargent was probably the author of this bill. He was a very ſtrong advocate of anti-ſlavery doctrines, and ſubſequently, in his career as a Judge of the Supreme Court, had a principal agency in accompliſhing the overthrow of ſlavery by judicial conſtruction, without the aid of legiſlation in which he had failed.

There is among the archives of Maſſachuſetts the following draft of a bill, evidently the original of the preceding act, which appears to have been written by Judge Sargent on the back of a note addreſſed to him by Rev. Dr. Eliot, an eminent miniſter of Boſton who took a very prominent part in the patriotic proceedings of the Revolutionary period.

"In y^e^ year of our Lord 1777.

"An Act for preventing y^e^ wicked & unnatural Practice of holding Perſons in Slavery.

"Whereas y^e^ unnatural practice in this ſtate of holding certain Perſons in Slavery, more particularly thoſe tranſported from Africa & y^e^ children born of ſuch perſons, is contrary to y^e^ laws of Nature, a ſcandal to profeſſors of y^e^ Religion of Jeſus, & a diſgrace to all good Governments, more eſpecially to ſuch who are ſtruggling againſt Oppreſſion & in favour of y^e^ natural & unalienable Rights of human nature—

"Wherefore in ſome meaſure to ſecure the bleſſings of freedom to ſuch who ſhall be hereafter born within this State—

"*Be it Enacted* by y^e^ Council & Houſe of Repreſentatives in general court aſſembled & by y^e^ authority of y^e^ ſame that all perſons who ſhall be born within y^e^ limits of this ſtate from & after y^e^ day of next whether their parents be black or white, or eſteemed Bond or free, of whatſoever nation, People or condition, ſuch perſons born as afores'd ſhall be & hereby are intitled to all y^e^ freedom, Rights, Liberties, privileges & immunities that do or of right ought to belong unto free & natural born ſubjects of this State, any uſage or cuſtom to y^e^ contrary notwithſtanding—

"And for y^e^ effectual preventing of y^e^ unnatural practice of ſelling promiſcuouſly and transferring a property in our fellow creatures, disgraceful to human nature, & a ſcandal to profeſſing chriſtians—Therefore *Be it Enacted* by y^e^ authority aforeſaid that all bargains, ſales, conveyances & other writings or contract without writing whatſoever for y^e^ conveying or transferring of any property in our fellow creatures or of y^e^ labour or ſervice of any perſons whatſoever of more than

twenty-one years of age to a third perſon other than of ſuch perſon who ſhall voluntarily make himſelf a party to ſuch Inſtruments or writings or where he ſhall be ſubjected to ſuch ſale, or ſervice by virtue of y^e^ order of ſome court of Record, made after y^e^ day of next ſhall be null & void to all intents, conſtructions & purpoſes whatſoever, any Law, Uſage or cuſtom to y^e^ contrary in any wiſe notwithſtanding." *Maſs. Archives: Vol.* 142, 58.

On the 11th of September, 1777, a petition was read in the Houſe of Repreſentatives, from the ſelectmen of the town of Woburn, praying an abatement of their quota of men for the Continental Army, for *Slaves*, Idiots, Inſane, Captives, &c., and thoſe under age. The petitioners had leave to withdraw their petition.

A trace of the exerciſe of private judgment and one phaſe of public opinion ſoon afterwards, on this ſubject, may be ſeen in the following extract from the Journal of the Houſe of Repreſentatives, 24th September, 1777:

"A Petition of Joſeph Prout of Scarborough, ſetting forth that Mr. William Vaughan lately told his two Negroes that by an Act of Court all Negroes were made free, in conſequence whereof they have ſince left him, and one of them has hired himſelf to ſaid Vaughan, who withholds him from the Petitioner, therefore praying relief. Read and diſmiſſed." *p.* 86.

As the efforts towards the formation of a State Conſtitution gradually ſtrengthened and took ſhape, the ſubject of ſlavery and the ſtatus of the negro came up again and again. There was a conflict of opinions and intereſts, and the newſpapers of the day bear witneſs to its progreſs. The friends of the negro did

not by any means have it all their own way. The muſes were invoked on both ſides. In the Independent Chronicle of the 29th Jan., 1778, nearly a column of the paper is occupied with about one hundred lines of verſe ridiculing negro equality, which was reſponded to by another production in verſe in the paper of the 12th February. This brought out a rejoinder, alſo in verſe, in the following week, Feb. 19th, 1778.

The diſcuſſion was not confined to theſe poetical champions. As early as the 8th of January, 1778, Doctor Gordon took up one phaſe of the buſineſs with an article in the Independent Chronicle, in which he ſaid:

"Would it not be ridiculous, inconſiſtent and unjuſt, to exclude *freemen* from voting for repreſentatives and ſenators, though otherwiſe qualified, becauſe their ſkins are black, tawny or reddiſh? Why not diſqualified for being long-noſed, ſhort-faced, or higher or lower than five feet nine? A black, tawny or reddiſh ſkin is not ſo unfavorable an hue to the genuine ſon of liberty, as a tory complection. Has any other State diſqualified freemen for the color of their ſkin? I do not recollect any; and if not, the diſqualification militates with the propoſal in the Confederation, that the free inhabitants of each State ſhall, upon removing into any other State, enjoy all the privileges and immunities belonging to the free citizens of ſuch State."

With regard to the proceedings of the Legiſlature-Convention of 1777–1778, little is known; but the draft of a Conſtitution was prepared, which was debated at length, approved by the Convention, preſented to the Legiſlature, and ſubmitted to the people,

by whom it was rejected. *Barry: Hiſtory of Maſs.*, II., 175.

We have been fortunate enough to recover a fragment of the debates in the Convention, which bears on our ſubject. It ſhows that there was a continued conteſt in that body between thoſe who ſupported and thoſe who oppoſed negro equality, in which the latter carried the day; and alſo that it was after debate—not unconſciouſly or without notice—that a majority of the Legiſlature of Maſſachuſetts, ſpecially inſtructed to frame the organic law for the new State, deliberately, in the year 1778, excluded negroes, Indians, and mulattoes from the rights of citizenſhip.

From the Independent Chronicle, September 23, 1779.

Mr. WILLIS.

Pleaſe to inſert the following in your Independent Chronicle, and you will oblige the publick's friend and humble servant,

JOHN BACON.

Stockbridge, Sept. 10, 1779.

"*Open thy mouth, judge righteouſly, plead the cauſe of the poor and needy.*"—KING SOLOMON.

The subſtance of a ſpeech delivered in the late Convention, on a motion being made for reconſidering a vote, by which this clauſe, "except Negroes, Indians and Mulattoes," in the twenty-third article of the report of the Committee, was inſerted.

Mr. PRESIDENT:—As I have from the beginning of theſe debates been oppoſed to that clauſe, the eraſure of which has now been moved for, I beg leave briefly to lay the reaſons of my oppoſition before this honorable Convention.

In the firſt place, Mr. Preſident, by retaining this clauſe in our Conſtitution, we make ourſelves ſingular, or nearly ſo. No Conſtitution on the Continent, one only excepted, bears the leaſt complexion of this kind. Say the honorable and patriotick Convention of Pennſylvania, in their Bill of Rights, Art. 7: "all free men having a ſuffi-

cient evident common intereſt with, and attachment to the community, have a right to elect officers, or be elected into office." The conſtitutions in general which have been formed of late through the Continent, breathe a like conſiſtent and genuine ſpirit of liberty. But be this as it may, Sir, whether we hereby make ourſelves ſingular or not, I have other reaſons to offer for being in favor of the motion. By holding up this clauſe in our conſtitution, we ſap the foundation of that liberty which we are now defending at the expenſe of all that blood and treaſure which we ſo liberally part with in the proſecution of the preſent war with Great Britain; by holding up this clauſe, we contradict the fundamental principle on which we engaged in our preſent oppoſition to that power. The principle on which we engaged in this oppoſition, Sir, I take to be this, that repreſentation and taxation are reciprocal,—that we, not being repreſented in the Parliament of Great Britain, Parliament had no right to tax us without our conſent. When the Parliament of Great Britain aſſumed this power and plead the charter of this (then) Province to juſtify their claim, we in our turn, not only plead the ſame charter in oppoſition to ſuch claim, but even contended, that on ſuppoſition the charter gave them this power, yet it was a power ſo inconſiſtent with the eſſential natural rights of men, that no contract whatever could, in ſuch caſe, bind us. On this principle, Sir, we engaged in the preſent war,—on this principle we ſuppoſe ourſelves juſtified in reſiſting, even to blood, that power which would thus arbitrarily exact upon us; and on the ſame principle, I conceive, the perſons excepted in the clauſe now before the Convention, would be juſtified in making the ſame oppoſition againſt us which we are making againſt Great Britain: If not, Mr. Preſident, let any gentleman point out the difference between the two caſes; no eſſential difference has yet been pointed out by any gentleman who has ſpoke to the queſtion, and no ſuch difference, I preſume, does in fact exiſt.

But I am apprised of an objection that is made by gentlemen on the oppoſite ſide. They ſay, "that by being protected by our laws (without any ſhare in the repreſentation) they ſecure benefits which are fully equivalent to the tax which we lay upon them." This, Sir, is the very argument by which Great Britain pretend to ſupport their claim of taxing us; and I confeſs, Sir, it appears to me, in every view, as fully to juſtify their pretenſions with reſpect to us, as it does ours with reſpect to thoſe perſons who are the ſubject of the preſent debate. So

that, by retaining this clauſe in our conſtitution, we bring ourſelves into this unhappy dilemma, that either in one caſe or the other, we muſt, out of our own mouth, and by our own conduct, be condemned. So far as we can juſtify our conduct in our preſent oppoſition to Great Britain, ſo far it muſt be condemned as it relates to thoſe who are mentioned in the article now before us and vice verſa. But this is not all, Mr. Preſident; Who are to ſet a value on the privileges which theſe people enjoy under our government? Do we allow them a voice in the contract? By no means. We ſet a price upon our own commodity, and oblige them to give it whether they will or not; and this, not as to the *luxuries* of life, not as to the *neceſſaries* of life only, but even *life itself*. And if we may take upon us, without their conſent, to ſet a value upon thoſe benefits which they receive from our laws, and make them pay accordingly, we may, on the ſame principle, ſet theſe benefits at a higher or lower price, and ſo tax them in a greater or leſs proportion according to our own ſovereign pleaſure. According to our own avowed principles, if we may take from them one farthing in this way, we may by the ſame rule, take from them every farthing they poſſeſs. Nay more, we may ſubject them to perpetual ſervitude, as being no more than a juſt compenſation for the benefit they receive in having their lives protected by our laws; and if this is not to eſtabliſh ſlavery by a conſtitution, the foundations of which, it is pretended, are laid in the moſt extenſive principles of liberty, I confeſs, Sir, I am utterly ignorant of what the terms *liberty* and *ſlavery* mean.

But it is further urged by gentlemen on the oppoſite ſide, "that the caſe now before the Convention is widely different from that between us and Great Britain,—that Great Britain aſſume a right to impoſe taxes on us of which they pay no part themſelves,—that the more they lay upon us, the leſs they have to pay themſelves,—that hence there is to them a ſtrong inducement to bear us down by exorbitant taxation; whereas we, in taxing theſe people, tax ourſelves at the ſame time." But who, Mr. Preſident, perceives not the futility and deceit of this argument? If we are to tax them, not as members of our community, but as receiving particular benefits from our laws, what ſecurity can they have that we ſhall not multiply taxes upon them in proportion to the value which our caprice or covetouſneſs may ſet upon theſe ſuppoſed benefits. And whether we tax ourſelves at the ſame time that we tax them, or not, is wholly immaterial: They are

to be taxed on quite a different footing from that on which we are taxed ourſelves; yea, as perſons who do not belong to our community, and the more we lay upon them, the leſs we ſhall certainly have to pay ourſelves.

But it is ſtill further urged by gentlemen on the other ſide, "that theſe perſons are *foreigners*, and therefore not intitled to a voice in legiſlation."

But how does this appear, Mr. Preſident? What, unleſs it be their color, conſtitutes them foreigners? Are they not Americans? Were they not (moſt of them at leaſt) born in this country? Is it not a fact, that thoſe who are not natives of America, were forced here by us, contrary, not only to their own wills, but to every principle of juſtice and humanity? I wiſh, Sir, theſe gentlemen would tell us what they mean by *foreigners*. Do they mean by it, ſuch perſons, whoſe anceſtors came from ſome other country? If ſo, who of us is not a foreigner? Or do they mean to include under the denomination of *foreigners*, all thoſe who are not born in this State, how long ſoever they may have lived among us, whatever property they may have acquired, whatever connexions they may have formed, or however they may have been incorporated with us by our preſent laws and conſtitution? Theſe people, Sir, by our preſent conſtitution, are intitled to the ſame privileges with any of their fellow-ſubjects; and by what authority we are now to wreſt theſe rights and privileges from them, I cannot conceive, unleſs by dint of mere power. And I hope, Sir, that right, as founded in mere power, is not to receive a ſanction from our conſtitution.

But there is one argument more which has been urged by gentlemen on the oppoſite ſide, as being of great weight and importance, which is this, "That by eraſing this clauſe out of the conſtitution, we ſhall greatly offend and alarm the Southern States." Should this be the caſe, Sir, it would be ſurpriſing indeed! But can it be ſuppoſed, Mr. Preſident, that any of the ſiſter States will be offended with us, becauſe we don't ſee fit to do that which they themſelves have not done? Nay, more, will they be offended or alarmed that we do not violate thoſe eſſential rights of human nature which they have taken the moſt effectual care to eſtabliſh and ſecure? It will not bear a ſuppoſition; the argument, Sir, is moſt ridiculous and abſurd.

In fine, Sir, I hope we ſhall not be ſo inconſiſtent with ourſelves,

ſo deſtitute of all regard to common juſtice and the natural rights of men, as to ſuffer this form of conſtitution to go abroad with this exceptionable clauſe; I hope the motion will obtain, and the clauſe be reprobated by the Convention. But ſhould this not be the caſe, ſhould it eventually appear that there is ſo great a want of virtue within theſe walls, I ſtill hope there will be found among the people at large, virtue enough to trample under foot a form of government which thus ſaps the foundation of civil liberty, and tramples on the rights of men.

We have already intimated that theſe liberal and enlightened views did not prevail. On the contrary, the "Conſtitution and Form of Government for the State of Maſſachuſetts Bay, agreed upon by the Convention of ſaid State, February 28, 1778, to be laid before the ſeveral towns and Plantations in ſaid State, for their Approbation or Diſapprobation," has the following article:

"V. Every male inhabitant of any town in this State, being *free*, and twenty-one years of age, *excepting Negroes, Indians and molattoes*, ſhall be intitled to vote for a Repreſentative or Repreſentatives, as the caſe may be. . . . ," etc.[1]

This not only excludes Negroes, Indians, and Molattoes from the chief right of citizenſhip, but alſo recognizes the exiſtence of ſlavery in the State; and although it was rejected by an overwhelming vote, we have ſeen no evidence that this feature of the inſtrument elicited ſuch oppoſition as might be expected in a community already prepared for negro emancipation and enfranchiſement. In the famous Eſſex Reſult, the ableſt document on the ſubject now to be found—

[1] The remainder of the ſection relates to reſidence and property qualifications, etc.

an elaborate report, written by Theophilus Parſons, of a Committee appointed by the Ipſwich Convention for the expreſs purpoſe of ſtating the non-conformity of this Conſtitution to the true principles of government applicable to the territory of the Maſſachuſetts Bay—the fifth article is not referred to; and the exiſtence of ſlavery, although earneſtly deprecated, is clearly recognized, as well as the impracticability of immediate emancipation.

"The opinions and conſent of the majority muſt be collected from perſons, delegated by every freeman of the State for that purpoſe. Every freeman who hath ſufficient diſcretion ſhould have a voice in the election of his legiſlators. . . . All the members of the State are qualified to make the election, unleſs they have not ſufficient diſcretion, or are ſo ſituated as to have no wills of their own. Perſons not twenty-one years old are deemed of the former claſs. . . . Women alſo. . . . Slaves are of the latter claſs and have no wills. But are ſlaves members of a free government? We feel the abſurdity, and would to God, the ſituation of America and the tempers of its inhabitants were ſuch, that the ſlaveholder could not be found in the land." *Reſult of the Convention, etc., pp.* 28, 29.

Dr. Gordon continued his zealous championſhip of the colored races, and in one of his letters on the propoſed Conſtitution [1] attacked this Fifth Article in a moſt pungent ſtyle of oppoſition. Gordon's rela-

[1] Letter No. 11., to the Freemen of the Maſſachuſetts Bay, dated Roxbury, April 2d, 1778, publiſhed in the Continental Journal, April 9th, 1778.

tions with the Legiſlature had been moſt intimate, as Chaplain to both Houſes, and he well knew how reluctantly the partiſans of ſlavery were giving ground. We quote the paſſages referred to:

"The complexion of the 5th Article is blacker than that of any African; and if not altered, will be an everlaſting reproach upon the preſent inhabitants; and evidence to the world, that they mean their own rights only, and not thoſe of mankind, in their cry for liberty. I remember not, that any State have been ſo inconſiſtent as to declare in their Conſtitution, however they may practice, that a freeman ſhall not have the right of voting, merely becauſe of his being a Negro, an Indian, or a Molatto. I am ſorry the Convention did not take the hint when given in time, and avoid this public ſcandal. It hath been argued, that were Negroes admitted to vote, the Southern States would be offended, and we ſhould be ſoon crowded with them from thence. This would be to ſuppoſe the Southern States as weak as the argument. Will not the Negroes be as likely to crowd into the State, if they may be free, though they are debarred the right of voting? Will any be ſo hardy as to fly in the face of all the declarations through the Continent, and aſſert that the Negroes are made to be, and are fit for nothing but ſlaves? Let ſuch know, that in Jamaica, there are a number of free Negroes, who, reſenting the tyranny of their maſters, freed themſelves from ſlavery, and continued in a ſtate of war for ſeveral years, till at length King George the IId., by letters patent, empowered two gentlemen to conclude a treaty of peace and friendſhip with them, which was

done on the 1ſt of March, 1739, wherein they had their liberties confirmed. The exception of Indians is ſtill more odious, their anceſtors having been formerly proprietors of the country. As to Molattoes they ſhould have been defined. We ſhould have been told, whether it intended the offspring of a white and Negro, or alſo of a white and Indian; and whether the immediate offspring alone, or any of their remote deſcendants, ſo that the blood of a white being intermixed with that of a Negro or Indian, it ſhould be contaminated to the lateſt poſterity, and cut off the male offspring to the hundredth generation, from the right of voting in an election.

"Gentlemen, blot out the exception, and thereby wipe off from the country in general, the diſgrace that has been brought upon it by the Convention in particular. If any are afraid, that the Bay inhabitants will, in conſequence of it, at ſome diſtant period, become Negroes, Indians or Molattoes, let the General Court guard againſt it by future Acts of State."

Dr. Gordon had already become very obnoxious to the members of the Legiſlature, and was ſummarily diſmiſſed from his office of Chaplain to both Houſes, April 4th–6th, 1778, in conſequence of his Letter I, publiſhed in the Independent Chronicle, April 2d, 1778, in which he was ſaid to have "raſhly reflected upon the General Court," and "miſrepreſented their conduct," etc.

In Boſton, the ſubject of ſlavery became the source of angry contention, which grew into public diſorder and riots. Thomas Kench, in Col. Craft's Regiment of Artillery, then on Caſtle Iſland, had applied to the

Legiſlature for leave to raiſe a detachment of negroes for military ſervice. This was on the third of April, 1778. On the ſeventh of the ſame month he addreſſed a ſecond letter to the Council, as follows:

"The letter I wrote before I heard of the diſturbance with Col. Seares, Mr. Spear, and a number of other gentlemen, concerning the freedom of negroes, in Congreſs Street. It is a pity that riots should be committed on the occaſion, as it is juſtifiable that negroes ſhould have their freedom, and none amongſt us be held as ſlaves, as freedom and liberty is the grand controverſy that we are contending for; and I truſt, under the ſmiles of Divine Providence we ſhall obtain it, if all our minds can but be united; and putting the negroes into the ſervice will prevent much uneaſineſs, and give more ſatisfaction to thoſe that are offended at the thoughts of their ſervants being free.

"I will not enlarge, for fear I ſhould give offence; but ſubſcribe myſelf," &c. *Maſs. Arch.*, *Vol.* 199, 80, 84.

The propoſed Conſtitution failed to paſs the ordeal of the popular judgment, ſo far as an opinion could be gathered from the very partial returns made of the votes. A hundred and twenty towns neglected to expreſs any opinion at all; and but twelve thouſand perſons, out of the whole State, went to the polls to anſwer in any way. Five-ſixths of them, however, voted in the negative. *Adams's Works:* IV., 214. Thus the Conſtitution was rejected, negro clauſe and all ſharing the ſame fate. We have no means of aſcertaining the exact ſtate of parties on this ſubject; but there can be no doubt that there was a wide difference of opinions among the people.

From the proceedings of the town of Boſton, it does not appear that the citizens of that place objected to the negro excluſion, although they were unanimous againſt the conſtitution. In Cambridge it was voted down unanimouſly, all the voters preſent being Freemen, more than 21 years of age, and neither "a Negro, Indian or Molatto." *Independent Chronicle: June* 4, 1778.

On the contrary, the town of Dartmouth notes the inconſiſtency of excluding the negroes, &c., and favors their equal recognition, but at the ſame time aſſures the public that there is no Negro, Indian or Molatto among their voters. *Continental Journal, June*, 1778.

It is not by any means well aſcertained at what period, if ever, the negro was placed on the footing of political equality with the white man in Maſſachuſetts. Public opinion has been juſtly characterized as a power often quite as ſtrong as the law itſelf. At once the great Ruler, Lawgiver, and Judge of the Anglo-Saxon race, it has held its throne and ſeat of judgment nowhere more firmly than in Maſſachuſetts. The ſlave was "emancipated by the force of public opinion;" and the ſame authority, without the abſolute declaration and forms of law, continued to exclude the negro from actual practical equality of civil and political as well as ſocial rights.

A "petition of ſeveral poor negroes and mulattoes," who were inhabitants of the town of Dartmouth, dated at that place on the 10th of February, 1780, shows the condition they were in at that time. They humbly repreſent:

"That we being chiefly of the African extract, and

by reaſon of long bondage and hard ſlavery, we have been deprived of enjoying the profits of our labor or the advantage of inheriting eſtates from our parents, as our neighbors the white people do, having ſome of us not long enjoyed our own freedom; yet of late, contrary to the invariable cuſtom and practice of the country, we have been, and now are, taxed both in our polls and that ſmall pittance of eſtate which, through much hard labor and induſtry, we have got together to ſuſtain ourſelves and families withall. We apprehend it, therefore, to be hard uſage, and will doubtleſs (if continued) reduce us to a ſtate of beggary, whereby we ſhall become a burthen to others, if not timely prevented by the interpoſition of your juſtice and power.

"Your petitioners further ſhow, that we apprehend ourſelves to be aggrieved, in that, *while we are not allowed the privilege of freemen of the State, having no vote or influence in the election of thoſe that tax us*, yet many of our color (as is well known) have cheerfully entered the field of battle in the defence of the common cauſe, and that (as we conceive) againſt a ſimilar exertion of power (in regard to taxation), too well known to need a recital in this place.

"We moſt humbly request, therefore, that you would take our unhappy caſe into your ſerious conſideration, and, in your wiſdom and power, grant us relief from taxation, while under our preſent depreſſed circumſtances," &c.

This petition was addreſſed "to the Honorable Council and Houſe of Repreſentatives, in General Court aſſembled, for the State of Maſſachuſetts Bay,

in New England." The loſs or imperfections of the journals of this period prevent us from knowing what, if any, action was had on this petition, but a memorandum in the handwriting of the leading petitioner, on the copy from which the above was taken, tells the story:

"This is the copy of the petition which we did deliver unto the Honorable Council and Houſe, for relief from taxation in the days of our diſtreſs. But we received none. JOHN CUFFE."

Another copy of the petition was found, with the date, "January 22d, 1781," not ſigned, by which it would appear that they intended to renew their application to the government for relief.

The records of the town of Dartmouth alſo ſhow that theſe colored inhabitants reſiſted the payment of taxes, and the 22d of April, 1781, they applied to the ſelectmen of the town, "to put a ſtroke in their next warrant for calling a town-meeting, ſo that it may legally be laid before ſaid town, by way of vote, to know the mind of ſaid town, *whether all free negroes and mulattoes ſhall have the ſame privileges in this ſaid town of Dartmouth as the white people have*, reſpecting places of profit, chooſing of officers, and the like, together with all other privileges in all caſes that ſhall or may happen or be brought in this our ſaid Town of Dartmouth." *Nell's Colored Patriots of the Revolution, pp.* 87–90.

It has been ſtated that theſe proceedings reſulted in eſtabliſhing the right of the colored man to the elective franchiſe in Maſſachuſetts, and that a law was enacted by the legiſlature granting him all the privi-

leges belonging to other citizens. *Ibid.*, *pp.* 90, 77. But we can find no evidence to corroborate this ſtatement, which is alſo entirely inconſiſtent with ſubſequent legiſlation.

As late as 1795, the political ſtatus of the negro in Maſſachuſetts was by no means definitely determined. Dr. Belknap gave, as the reſult of his inquiries on the ſubject, the ſtatement that they were "equally under the protection of the laws as other people. Some gentlemen (ſays he) whom I have conſulted, are of opinion, that they cannot elect, nor be elected, to the offices of government; others are of a different opinion." Mr. Thomas Pemberton was one of the perſons referred to by Dr. Belknap, and in his letter of March 12, 1795, ſays expreſſly that "the qualifications required by the Maſſachuſetts Conſtitution prevents the people of colour from their being electors or elected to any public office."

Dr. Belknap continues, "For my own part, I ſee nothing in the conſtitution which diſqualifies them either from electing or being elected, if they have the other qualifications required; which may be obtained by blacks as well as by whites. Some of them certainly *do* vote in the choice of officers for the ſtate and federal governments, and no perſon has appeared to conteſt their right. Inſtances of the election of a black to any publick office are very rare. I knew of but one, and he was a town-clerk in one of our country towns. He was a man of good ſenſe and morals, and had a ſchool education. If I remember right, one of his parents was black and the other either a white or mulatto. He is now dead." *M. H. S. Coll.*, I., iv., 208.

The queſtion muſt have been regarded as of little practical importance, for the relative number of negroes was ſmall; and of thoſe all but a very inſignificant fraction were excluded by the property qualification. Had it been regarded with intereſt enough to call for an authoritative deciſion, there is little room for doubt what it would have been.

IX.

We come now to the Conſtitution of 1780, the inſtrument by which it is alleged that ſlavery was aboliſhed in Maſſachuſetts. In the illuſtration of our ſubject, its hiſtory is very important, and demands careful and accurate criticism.

After the failure of the attempt in 1778, a convention of delegates choſen for the purpoſe was decided upon to form a conſtitution of government. They were elected in the ſummer of 1779, and met at Cambridge on the 1ſt of September of that year. On the 3d they reſolved to prepare a Declaration of Rights of the people of the Maſſachuſetts Bay, and alſo to proceed to the framing a new Conſtitution of Government. On the next day, Sept. 4th, a Committee of thirty perſons was choſen to prepare a Declaration of Rights and the form of a Conſtitution. On the 6th September, the Convention adjourned until the 28th October, for the purpoſe of giving the Committee time to prepare a report. Immediately upon the adjournment, the General Committee met in Boſton, and delegated the duty of preparing a draught of a

Conſtitution to a ſub-committee of three members—James Bowdoin, Samuel Adams, and John Adams. By this ſub-committee the taſk was committed to John Adams, who performed it. The preparation of a Declaration of Rights was intruſted by the General Committee to Mr. Adams alone. His own ſtatement with regard to it is, "The Declaration of Rights was drawn by John Adams; but the article reſpecting religion, was referred to ſome of the clergy or older and graver perſons than myſelf, who would be more likely to hit the taſte of the public." *MS. Letter of John Adams to William D. Williamſon*, 25 February, 1812, quoted in *Williamſon's Maine*, II, 483, note. *Adams's Works:* IV., 215–16.

The firſt Article of the Declaration of Rights, as reported to the Convention, was as follows:

"ART. 1. All men are born equally free and independent, and have certain natural, eſſential and unalienable rights: among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, poſſeſſing, and protecting their property; in fine; that of ſeeking and obtaining their ſafety and happineſs." *Report, p.* 7.

This article, as reported, met with no oppoſition, elicited little or no diſcuſſion, and was accepted with but ſlight and unimportant verbal amendments. *Journal, p.* 37. It ſtands thus in the Conſtitution of Maſſachuſetts:

"ART. 1. All men are born free and equal, and have certain natural, eſſential, and unalienable rights; among which may be reckoned the right of enjoying, and defending their lives and liberties; that of ac-

quiring, poſſeſſing, and protecting property; in fine, that of ſeeking and obtaining their ſafety and happineſs." *Conſtitution*, *p.* 7.

Its language is nearly the ſame with that of the firſt article of the Bill of Rights of Virginia, written by George Maſon, and adopted by her Convention on the 12th of June, 1776, when "Virginia proclaimed the Rights of Man." *Bancroft*, VIII., 381. The ſame language, common in thoſe days, became more familiar in the Declaration of Independence, on the 4th of July, 1776, and in the Pennſylvania Declaration of Rights, July 15th—September 28th, 1776; and this affirmation of natural and even unalienable rights had long ceaſed to be a novelty before Maſſachuſetts repeated it in her Convention of 1779–80. The Conſtitution was ſubmitted to the people in March, adopted by a popular vote in June, and the new government went into operation on the 25th of October, 1780.

It is a remarkable ſtatement for a Maſſachuſetts writer to make, but it is undoubtedly true, that "much intereſt has been felt of late years to know when, and under what circumſtances, ſlavery ceaſed to exiſt in Maſſachuſetts." *M. H. S. Coll.*, IV., iv., 333. The fact that Daniel Webſter had not been able a few years before his death to determine this queſtion ſatisfactorily, is pretty good evidence that it was doubtful; and will go far to juſtify a good degree of caution in its deciſion. In 1836, Chief-Juſtice Shaw made an intereſting ſtatement on this point:

"How or by what act particularly, ſlavery was aboliſhed in Maſſachuſetts, whether by the adoption

of the opinion in Somerſet's caſe, as a declaration and modification of the common law, or by the Declaration of Independence, or by the Conſtitution of 1780, it is not now very eaſy to determine, and it is rather a matter of curioſity than utility; it being agreed on all hands, that if not aboliſhed before, it was ſo by the Declaration of Rights." *Commonwealth* v. *Aves*, 18 *Pickering*, 209.

Few perſons can now be found hardy enough to date the abolition of ſlavery in Maſſachuſetts from Lord Mansfield's deciſion in the Somerſet caſe, or the Declaration of Independence. But the received opinion in Maſſachuſetts is, that the firſt article of the Declaration of Rights was not ſimply the declaration of an abſtract principle or dogma, which might be wrought out into a practical ſyſtem by ſubſequent legiſlation, but was *intended* to have the active force and concluſive authority of law; to diveſt the title of the maſter, to break the bonds of the ſlave, to annul the condition of ſervitude, and to emancipate and ſet free by its own force and efficacy, without awaiting the enforcement of its principles by judicial deciſion. *Compare* 7 *Gray*, 478. 5 *Leigh*, 623.

We have made diligent inquiry, ſearch, and examination, without diſcovering the ſlighteſt trace of poſitive contemporary evidence to ſhow that this opinion is well founded. The family traditions which have deſignated the elder John Lowell as the author of the Declaration, and aſſigned the intention to aboliſh ſlavery as the expreſs motive for its origin, will not ſtand the teſt of hiſtorical criticiſm. The truth is, that the bold judicial conſtruction by which

it was afterwards made the inſtrument of virtual abolition, was only gradually reached and ſuſtained by public opinion—the Court having advanced many ſteps further than was intended by the Convention or underſtood by the people, in their deciſion on this ſubject. If it were poſſible that ſuch a purpoſe could have been avowed in the Convention and wrought into their work, without oppoſition, it certainly could not have paſſed abſolutely without notice. Such a converſion would be too ſudden to be genuine; and if we follow the facts in their natural chronological order, the actual reſult will fall into its due place and poſition without force or violation of the truth of hiſtory.

Now there is no evidence of oppoſition, either in the Convention or out of it. Not even a notice of this important revolution, in the newſpapers of the day or elſewhere, has rewarded our earneſt and careful ſearch. John Adams, the author of the Bill of Rights, was not in favor of immediate emancipation (*see ante*, *p.* 110). The moſt ſtrenuous anti-ſlavery men were unconſcious of any ſuch intention or reſult for a long time afterward; and the newſpapers continued to adverti ſe the ſales of negroes as before. There is nothing to ſhow that ſo great a change was contemplated or realized, and thoſe who maintain it would have us believe that the people of Maſſachuſetts, like the Romans on another memorable occaſion, ſuddenly became quite another people.[1]

The addreſs of the Convention, on ſubmitting the reſult of their labors to their conſtituents, makes no

[1] "Ad primum nuntium cladis Pompeianæ populus Romanus repente factus eſt alius."

alluſion whatever to this ſubject. No one can read it —ſetting forth as it does the principal features of the new plan of government, the grounds and reaſons upon which they had formed it, with their explanations of the principal parts of the ſyſtem—and retain the belief that they had conſciouſly, deliberately, and intentionally adopted the firſt clauſe in the Declaration of Rights for the expreſs purpoſe of aboliſhing ſlavery in Maſſachuſetts. The ſame Bill of Rights provided that "no part of the property of any individual, can, with juſtice, be taken from him, or applied to public uſes, without his own conſent, or that of the repreſentative body of the people," and, in another clauſe, that "no ſubject ſhall be . . . deprived of his property but by the judgment of his peers, or the law of the land." *Conſtitution*, *p.* 10, 11. Did the members of that Convention intend deliberately to diveſt the recognized title to property of their fellow-citizens, amounting to not leſs than half a million of dollars, without a word of explanation of the high grounds of juſtice or public policy on which they baſed their action? If any further evidence is needed in this connection, it may be found in the ſubſequent ſuits, with the entire proceedings and arguments of counſel, by which the reſult of virtual abolition was finally ſecured; as well as in the legiſlative proceedings which followed —all utterly inconſiſtent with the theory of a direct and intentional abolition by the Convention and People. *Compare Waſhburn*, *in M. H. S. Coll.*, IV., iv., 333—346.

We have ſaid that earneſt anti-ſlavery men at that time were not aware of the alleged intention of the

Convention to aboliſh ſlavery by the declaration in the Bill of Rights. We have previouſly referred to the earneſt efforts of Deacon Colman, of Newbury, againſt ſlavery as early as 1774–'75. A controverſy between him and his conſervative miniſter, as ſhown in the Church Records from 1780 to 1785, demonſtrates this fact. The miniſter was the father of Theophilus Parſons, afterwards ſo well known in the State of Maſſachuſetts as Chief Juſtice—the "Giant of the Law." In the Deacon's Teſtimony and Declaration, he ſays:

"The ſlaves in this State have petitioned for Liberty and Freedom from Bondage, ſince our Troubles began, in the moſt importunate and humble manner; *yet they are not ſet free in a general way.* . . . . Magiſtrates, Miniſters and common people have had a hand in this Iniquitous Trade. . . . . Should you plead, Sir, the Law of the Land, or the practice of the people, as an excuſe in your favour; I anſwer, that neither the law of the land, nor the commonneſs of the people's practice in this affair, alters the nature of the Crime at all: for that which is Wrong in its own nature, can never be made right by any law or practice of men." *Coffin's Newbury:* 342–50.

This was written November 7th, 1780, after the eſtabliſhment of the new government, and months after the Convention had completed their work and ſubmitted it to the people.

The records of the church at Byfield contain a long account of the controverſy between Mr. Parſons and his zealous anti-ſlavery deacon—neither of whom appears to have been aware that ſlavery, which was

the ſubject of their diſpute, had been aboliſhed, either "virtually" or otherwiſe.

As late as the 3d of November, 1783, the deacon, *who had been ſuſpended from communion on account of the violence of his zeal againſt the inſtitution*, addreſſed the brethren by a communication, in which he declared that they had ſhut him out of their communion "for bearing Teſtimony againſt the deteſtable practice of Slave keeping, and making merchandiſe of human people." He adds, "you can't but be ſenſible the practice of Slave keeping is Reprobated, and Abhorr'd by the moſt Godly people through this State," etc. All seem to be utterly ignorant of the abolition intention of the firſt clauſe in the Declaration of Rights. *See Coffin's Newbury: pp. 342 et seqq.*

Let us turn again to the newſpapers. Have the advertiſements, which provoked the indignation of Doctor Gordon in 1776, diſappeared before the new Conſtitution and the firſt article of the Bill of Rights? Let the following ſelections anſwer the query! They are from papers publiſhed during the continuance of the Convention, and the year following, until ſix months after the new government went into operation.

From the Continental Journal, November 25, 1779.

"*To be* SOLD A likely NEGRO GIRL, 16 years of Age, for no fault, but want of employ."

From the ſame, December 16th, 1779.

"*To be* SOLD, A Strong likely NEGRO GIRL," &c.

From the Independent Chronicle, March 9th, 1780.

"*To be* SOLD, for want of employment, an exceeding likely NEGRO GIRL, aged ſixteen."

From the ſame, March 30th and April 6th, 1780.

"*To be* SOLD, very Cheap, for no other Reaſon than for want of Employ, an exceeding Active NEGRO BOY, aged fifteen. Alſo, a likely NEGRO GIRL, aged ſeventeen."

From the Continental Journal, Auguſt 17, 1780.

"*To be* SOLD, a likely NEGRO BOY."

From the ſame, Auguſt 24th and September 7th.

"*To be* SOLD or LETT, for a term of years, a ſtrong, hearty, likely NEGRO GIRL."

From the ſame, Oct. 19th and 26th, and Nov. 2d.

"*To be* SOLD, a likely NEGRO BOY, about eighteen years of Age, fit for to ſerve a Gentleman, to tend horſes or to work in the Country."

From the ſame, October 26th, 1780.

"*To be* SOLD, a likely NEGRO BOY, about 13 years old, well calculated to wait on a Gentleman. Inquire of the Printer."

"*To be* SOLD, a likely young Cow and CALF. Inquire of the Printer."

Independent Chronicle, Dec. 14th, 21ſt, 28th, 1780.

"A NEGRO CHILD, *ſoon expected, of a good breed*, may be owned by any Perſon inclining to take it, and Money with it."

Continental Journal, Dec. 21, 1780, and Jan. 4, 1781.

"*To be* SOLD, a hearty, ſtrong NEGRO WENCH, about 29 years of age, fit for town or country."

The terms of the following announcement indicate the fact that "notions of Freedom" were beginning to find their way into other heads beſides thoſe of maſters and miſtreſſes.

From the Continental Journal, March 1, 1781.

"*To be* SOLD, an extraordinary likely NEGRO WENCH, 17 years old, ſhe can be warranted to be ſtrong, healthy and good-natured, *has no notion of Freedom*, has been always uſed to a Farmer's Kitchen and dairy, and is not known to have any failing, but being with Child, which is the only cauſe of her being ſold."[1]

This advertiſement, which was repeated for two weeks after in the papers of the 8th and 15th March, muſt cloſe our quotations of this ſort. If it was not the laſt publiſhed in Maſſachuſetts, it ought to have been! It brings us in point of time to the period in which ſuits growing out of the relations of maſter and ſlave were brought in the courts of law, which ultimately reſulted in extending the Declaration in the Bill of Rights to enſlaved Indians and Negroes—preaching deliverance to the captives, and ſetting at liberty them that were bruiſed—the virtual abolition of ſlavery.

No contemporaneous report appears to be extant, of the deciſions by which the general queſtion of the legality of ſlavery in Maſſachuſetts was determined. Chief-Juſtice Parſons, in 1806, in the caſe ſo frequently quoted before, ſtated that, "in the firſt action involving the right of the maſter, which came before

[1] This reminds us of the period in Britiſh hiſtory when Ireland was the greateſt mart for Engliſh ſlaves. In thoſe days, when any one had more children or ſervants than he could keep, he took them to the ready market of Briſtol, and there found Iriſh merchants, ready to purchaſe. Malmesbury affirms, that it was no uncommon thing to behold young girls, expoſed to ſale there, in a ſtate of pregnancy, which raiſed their value *Bridge's Jamaica*: II., *Notes*, 455–6.

the Supreme Judicial Court after the eſtabliſhment of the Conſtitution, the judges declared that, by virtue of the firſt article of the Declaration of Rights, ſlavery in this State was no more." IV. *Maſs. Reports*, 128. The report does not ſtate what caſe was here referred to, and there has been a conſiderable difference of opinion among thoſe who have referred to the ſubject. The accounts are various and inconſiſtent, agreeing only in one reſpect, that a determination gradually grew up to *conſider ſlavery as aboliſhed*, notwithſtanding the failure of every attempt to deſtroy it by legiſlation.

The caſe of Elizabeth Freeman, better known as "Mum Bet," has been ſtated by ſome as the turning-point of legal deciſion; in which Judge Theodore Sedgwick defended the ſlave, who was pronounced free. The biographer of Mr. Sedgwick in the New American Cyclopædia ſays: "This, it is believed, was the firſt fruit of the declaration in the Maſſachuſetts Bill of Rights that 'all men are born free and equal,' and led to the end of ſlavery in Maſſachuſetts."[1]

The Duke de la Rochefoucault Liancourt gives an account of the termination of ſlavery in Maſſachuſetts, which is the more intereſting that it may have been derived from Mr. Sedgwick himſelf, with whom he was acquainted at Philadelphia, and whoſe hoſpitality he enjoyed in Maſſachuſetts. He ſays: "In 1781, ſome negroes, prompted by private ſuggeſtion,

[1] A writer in the Edinburgh Review, for January, 1864, repreſents this caſe as having occurred in 1772, and the reſult of the Maſſachuſetts Conſtitution of 1780!

maintained that they were not ſlaves: they found advocates, among whom was Mr. Sedgwick, now a member of the Senate of the United States; and the cauſe was carried before the Supreme Court. Their counſel pleaded, 1°. That no antecedent law had eſtabliſhed ſlavery, and that the laws which ſeemed to ſuppoſe it were the offspring of error in the legiſlators, who had no authority to enact them:—2°. That ſuch laws, even if they had exiſted, were annulled by the new Conſtitution. They gained the cauſe under both aſpects: and the ſolution of this firſt queſtion that was brought forward ſet the negroes entirely at liberty, and at the ſame time precluded their pretended owners from all claim to indemnification, ſince they were proved to have poſſeſſed and held them in ſlavery without any right. As there were only a few ſlaves in Maſſachuſetts, the deciſion paſſed without oppoſition, and baniſhed all further idea of ſlavery." *Travels, etc.*, II., 166, 212–13.

John Quincy Adams, in reply to a queſtion put by John C. Spencer, ſtated that "a note had been given for the price of a ſlave in 1787. This note was ſued, and the Court ruled that the maker had received no conſideration, as man could not be ſold. From that time forward, ſlavery died in the Old Bay State." *Nell's Colored Patriots*, 59.

There is now, however, little room for doubt that the leading caſes were thoſe concerning a ſlave named Quork Walker, belonging to Nathaniel Jenniſon, a farmer of the town of Barre, in Worceſter County. The ſlave deſerted his maſter, and was received and employed as a ſervant by John Caldwell, a neighbor,

alſo a farmer.[1] The ſlave had been beaten and impriſoned, and otherwiſe maltreated by his maſter, whether before or after his deſertion, or both, does not appear. Out of theſe principal facts grew the ſeries of actions in the Courts which we are now briefly to ſketch. Two of them were commenced in the Inferior Court of Common Pleas for the County of Worceſter, at the June Term in 1781. They were entitled, *Nathaniel Jenniſon* vs. *John and Seth Caldwell*, and *Quork Walker* vs. *Nathaniel Jenniſon*.

The firſt was a ſuit for damages for enticing away the ſlave from his maſter, etc., which reſulted in a verdict againſt the friends of the ſlave, and an aſſeſſment of damages at twenty-five pounds (25*l.*) in lawful gold or ſilver, or bills of public credit equivalent thereto, and coſts of ſuit at[2] in like money, in favor of the maſter. From this judgment the friends of the ſlave appealed.

The ſecond was a ſuit for damages for aſſault and beating, etc., which reſulted in a verdict againſt the maſter. The jury found that the ſaid Quork was a freeman, and not the proper negro ſlave of the defendant, and aſſeſſed damages for the plaintiff in the ſum of fifty pounds (50*l.*) in lawful gold or ſilver, or bills of public credit equivalent thereto. The coſts were taxed at 6*l.* 11*s.* 7*d*, like money. From this judgment the maſter appealed.

Both appeals came on at the next Term of the Su-

[1] Jenniſon's wife was a Caldwell, and he acquired poſſeſſion of this ſlave, in right of his wife, who owned him before marriage. It may be that this controverſy originated in ſome family quarrel.

[2] The amount of coſts is not ſtated in the record.

perior Court, held at Worceſter on the third Tueſday (18th) of September, 1781, before Judges Sargent, Sewall, and Sullivan.

In the firſt caſe, *Nathaniel Jenniſon, App^t.*, vs. *Quork Walker*, the recorded reſult was—"And now the Appellant being called comes into Court, but does not produce and give into Court atteſted copies of the writ, Judgment, or of the Evidences filed in the Inferior Court, as the law directs, wherefore it is ordered that his default be recorded." *Docket September Term*, 1781, *in Worceſter. Records*, 1781, *fol.* 79. In his ſubſequent attempts to procure a re-entry of this cauſe, Jenniſon grounded his petition to the Legiſlature on the allegation that he had "confided in his Council to produce the papers from the Court of Common Pleas, which papers the ſaid Council failed to produce, by means whereof he became defaulted, and judgment was rendered againſt him." *Maſs. Reſolves*, 1782, *p.* 182.

Quork Walker, Compt., vs. *Nathaniel Jenniſon*, accordingly obtained an affirmation of the judgment. As recorded in the Superior Court, it is a "Judgment for 50*l.* Gold or Silver, or Bills of public Credit of the new Emiſſion equivalent 1 7-8th for one Silver Dollar. Damage and coſts taxed at 9*l.* 10*s.* 7*d.* Exon. iſſued Feb. 6th, 1782." The Legiſlature granted a ſtay of execution by their reſolve of March 5th, 1782. *Reſolves, p.* 182. The legiſlative proceedings on this ſubject will be noticed hereafter.

In the appeal of the ſecond caſe, *John Caldwell et al. App^ts.* vs. *Nathaniel Jenniſon*, the Jury found "the Appellants not guilty in manner and form as the

Appellee in his Declaration has alleged;" and they accordingly had Judgment for Coſts. *Records*, 1781, *fol.* 79, 80.

The array of counſel in this caſe was diſtinguiſhed, being, for the Appellants, Caleb Strong and Levi Lincoln; and for the Appellee, Simeon Strong, John Sprague, and William Stearns. Mr. Waſhburn, in his paper on "the Extinction of Slavery in Maſſachuſetts," gives an intereſting account of theſe ſuits, and prints "the *ſubſtance*" of Mr. Lincoln's brief, which is ſo important as to provoke our ſincere regret that he did not print it entire and without modification. *M. H. S. Coll.*, iv., iv., 340–44.

The reſult of the civil actions encouraged the friends of the ſlave to proceed ſtill further; and an indictment was found at the ſame Term of the Court (September, 1781) againſt the maſter "for aſſault and battery, and falſe impriſonment." It was not tried until nearly two years later, April Term, 1783, when the defendant was found guilty and ſentenced to be fined 40*s.*, pay coſts of proſecution, and ſtand committed till ſentence be performed. *Records*, 1783, *fol.* 85.

Dr. Belknap wrote and printed, in the year 1795, a notice of this trial, which we copy.

"In 1781, at the Court in Worceſter County, an indictment was found againſt a white man for aſſaulting, beating, and impriſoning a black. He was tried at the Supreme Judicial Court in 1783. His defence was, that the black was his ſlave, and that the beating, etc., was the neceſſary reſtraint and correction of the maſter. This was anſwered by citing the aforeſaid

clauſe in the declaration of rights. The judges and jury were of opinion that he had no right to impriſon or beat the negro. He was found guilty and fined 40 ſhillings. This deciſion was a mortal wound to ſlavery in Maſſachuſetts." *M. H. S. Coll.*, I., iv., 203.

When owners of ſlaves found that under the new régime they were to be held liable in damages for correction of their ſlaves, they were not ſlow to ſee the neceſſary conſequences, and at once appealed to the Legiſlature, if they approved the judgment of the Court, to releaſe them from the ſtatute obligations growing out of their relations under the law of ſlavery in Maſſachuſetts. Nor did their anxiety diminiſh when fine and impriſonment for criminal breach of the peace were added to civil damages for the ſame offence. Had the members of the Convention entertained the opinions which have ſince been aſcribed to them, there would have been no room left for doubtful conſtruction of general principles, for all the laws which ſuſtained ſlavery would have been expreſsly repealed, by the very firſt legiſlatures under the Conſtitution, in which many of the ſame men were preſent. But the Legiſlature conſidered, heſitated, and did nothing. Their proceedings would ſeem to have been governed by caprice, if we did not recognize the difficulties under which they labored, and the various and conflicting elements which controlled them.

The firſt movement in the Legiſlature was made at about the ſame time the ſuits were begun at Worceſter. In the Houſe of Repreſentatives, on the 9th of June, 1781, it was "*Ordered*, that Mr. Lowell, Col. Aſhley, and Mr. Robbins be a Committee with

ſuch as the honorable Senate ſhall join, to conſider a Remonſtrance of a number of perſons *owning negro ſervants*, and to report what may be proper to be done thereon." Mr. Lowell promptly declined to ſerve on this committee, for the next entry is, "Mr. Lowell is excuſed, and Dr. Dunſmore is put on in his room." *Journal, Vol.* II., *p.* 50. The order was ſent up for concurrence, and we find on the ſame day, in the Senate, a concurrence in the appointment of "Doct. Denſmore in the room of Mr. Lowell reſigned, excuſed by the Houſe." *Journal*, II., 24. On the 12th of June, the Senate refuſed to concur in the "Order of the Houſe on the Remonſtrance and petition of Nathan Jenniſon and others *owning Negro Servants*." *Ibid.*, 28.

We have been unable to find this memorial, in which other ſlaveholders beſides Jenniſon joined, apparently with a remonſtrance againſt the very firſt ſteps in thoſe proceedings whoſe reſults they had no difficulty in foretelling. In all the ſubſequent applications for legiſlative relief, Jenniſon appears alone.

In the Houſe of Repreſentatives, on the 28th of January, 1782, a petition was read from Nathaniel Jenniſon, praying for leave to re-enter an appeal of an action againſt Quock Walker, which had been defaulted through the neglect of his counsel, at the Supreme Judicial Court next to be holden at Worceſter. It was referred to Mr. Metcalf, Mr. Smead, and Mr. Chamberlain, who reported the ſame day a reſolve granting his prayer, which was read and accepted, and ſent up for concurrence. *Journal, Vol.* II., 487, 492. The Senate, on the 14th of February, refuſed to

concur, *Journal, Vol.* II., 263, but on the 5th of March paſſed a reſolve directing, on the petition of Jenniſon, that the petitioner ſerve the adverſe party with an atteſted copy of the Petition, and to ſhow cauſe. This reſolve was concurred in by the Houſe. *Ibid.*, 300. It is printed in the book of reſolves, March, 1782, *p.* 182.

On the 18th of April, 1782, this matter came up again in the Senate, Jenniſon having complied with the previous reſolve; and his petition, together with the anſwer of Quock Walker, was read. It was then "ordered, that Iſrael Nichols, Eſq., with ſuch as the Houſe ſhould join be a Committee to conſider this Petition and the Anſwer, hear the parties and report." On the following day, the Houſe concurred and appointed Meſſrs. Feſſenden and White upon the joint Committee. This committee of both Houſes preſented their report on the 29th of April, on which it was "Ordered that the Petition lie till ſufficient evidence be produced that the petitioner loſt his Law." *Senate Journal*, II., 344, 363. *Houſe Journal*, II., 676.

The next movement opens a wider view of the whole affair. In the Houſe of Repreſentatives, on the 18th of June, a new petition was preſented from Nathaniel Jenniſon, "ſetting forth that he was deprived of ten Negro Servants by a judgment of the Supreme Judicial Court on the following clauſe of the Conſtitution, 'That all men are born free and equal,' and praying that if ſaid judgment is approved of, he may be freed from his obligations to ſupport ſaid negroes." *Journal*, III., 99.

Jenniſon's original memorial, of which the notice

on the Journal is an abſtract, is ſtill preſerved. He reſpectfully "ſhows that by the Bill of Rights prefixed to the Conſtitution of Government, it is among other things declared 'that all men are born free and equal,'—*which clauſe in the ſaid Conſtitution has been the ſubject of much altercation and diſpute—that the Judges of the Supreme Judicial Court have ſo conſtrued the ſame as to deprive your memorialiſt of a great part of his property*, to which he thought his title good, not only by ancient and eſtabliſhed uſage, but by the Laws of the Land. That your Memorialiſt having been poſſeſſed of Ten Negro Servants, moſt of whom were born in his family, ſome of them young and helpleſs, others old and infirm, is now informed that by *the determination of the Supreme Judicial Court, the ſaid Clauſe in the Bill of Rights is ſo to be conſtrued, as to operate to the total diſcharge and manumiſſion of all Negro Servants whatſoever.* What the true meaning of ſaid Clauſe in the Conſtitution is, your Memorialiſt will not undertake to ſay, but it appears to him the operation thereof in manner aforementioned, is *very different from what the People apprehended at the time the ſame was eſtabliſhed.*"

He argues that "they could not mean to offend the Southern States in ſo capital a point *with them*, and thereby to endanger the Union, and what is more, they could not mean to eſtabliſh a doctrine repugnant and contradictory to the revealed word of God." He enforces the latter argument by abundant quotation from the 25th chapter of Leviticus; and concludes his memorial with an earneſt appeal to the Legiſlature, that if ſervants are to be made free, their maſters may alſo be emancipated—regarding the ſtatute obligation

to provide for the freedmen whenever they ſhould be in want, as a ſpecies of ſlavery alſo inconſiſtent with the Bill of Rights.

Jenniſon's Memorial was at once "committed to Colonel Pope, Mr. Stow, and Dr. Manning." *Journal*, III., 99. We find no further direct trace of it, but, three days afterward, a bill was introduced into the Houſe, entitled "an Act repealing an Act entitled an Act relating to Molatto and Negro ſlaves;" which was read a firſt time and referred to the next ſeſſion of the General Court. *Journal*, III., 418. The act thus propoſed to be repealed was the old Province Law of 1703, Chap. 2, whoſe proviſions in reſtraint of emancipation, etc., we have previouſly noticed (*ante*, *pp.* 53–4); and whoſe repeal would be in accordance with the alternative propoſition in the memorial of Jenniſon.

Whether they were ſtimulated by the new views of the ſubject in the Houſe, or "ſufficient evidence had been produced" to ſatisfy them that Jenniſon had "loſt his law," we cannot ſay; but on the 3d of July, 1782, the Senate paſſed another resolve, "on the petition of Nathaniel Jennison, permitting him to re-enter his appeal, etc., at the Supreme Judicial Court at Worceſter." They ſent it down for concurrence, but, this time, the Houſe refuſed to concur. *Senate Journal*, III., 109.

Having taken the initiative towards repealing the old laws concerning the rights and obligations of maſters and ſlaves, they may have thought it unneceſſary to promote judicial action, until the new ſyſtem ſhould be perfected. Nearly three months

afterward, on the 26th of September, 1782, they ſent a meſſage to the Senate to requeſt that the petition (and reſolve thereon) of Mr. Nathaniel Jenniſon, "on the files of the Senate, might be ſent down to the Houſe, which was done. *Houſe Journal*, III., 203. *Senate Journal*, III., 151. We find no further action of either branch of the Legiſlature on this petition.[1]

At the next ſeſſion of the General Court, on the 7th of February, 1783, the bill for repealing the Act of 1703, which had been ſo referred, was brought up and read, and "Saturday, 10 o'clock, aſſigned for the ſecond reading thereof." *Houſe Journal*, III., 436. On the 8th, "the bill was taken up and debated. Whereupon it was ordered that Mr. Sedgwick, Gen. Ward, Mr. Dwight, Mr. Dane, and Mr. Cranch, be a Committee to bring in a bill upon the following principles:

1ſt. Declaring that there never were legal ſlaves in this Government.

2d. Indemnifying all Maſters who have held ſlaves *in fact*.

3d. To make ſuch proviſions for the ſupport of Negroes and Molattoes as the Committee may find moſt expedient." *Ibid.*, 444.

[1] Nathaniel Jenniſon appears again with a petition in the Houſe, on the 29th of May, 1784, praying that a judgment obtained againſt him in a court of law might be ſet aſide. It was referred to a committee, who reported, on the 2d of June, 1784, a reſolve granting its prayer. Debate enſued, and the reſolve was re-committed. On the 4th of June, the committee reported another reſolve for ſtaying the execution therein mentioned in part, and granting a new trial. This was accepted and ſent up for concurrence. *Journal*, V., 19–20, 30, 37. We have been unable to aſcertain whether the judgment and execution referred to have any connection with the ſlave caſes.

On the 28th of February, "a Bill intituled an Act reſpecting Negroes and Molattoes was read the firſt time, and Saturday, 10 o'clock, aſſigned for the ſecond reading thereof." *Ibid.*, 529. It was read a ſecond time on the firſt of March; and, on the 4th, was read a third time, paſſed to be engroſſed, and ſent up for concurrence. *Ibid.*, 537. In the Senate, on the 7th of March, "a Bill entitled 'An Act reſpecting Negroes and Molattoes' was read the firſt time, and ten o'clock to-morrow is aſſigned for the ſecond reading." *Senate Journal*, III., 413.

But it never had that ſecond reading; and this laſt attempt in the legiſlative annals of Maſſachuſetts, to provide, at the ſame time, for the hiſtory and law of ſlavery within her own borders, came to an untimely end, like all its predeceſſors.

If the bill ſhould be found, and its hiſtory more fully explained, eſpecially the cauſes of its failure, much additional light may be thrown upon the ſtate of public opinion in Maſſachuſetts on this ſubject in 1783. As to the propoſed declaration, that there never were *legal* ſlaves in Maſſachuſetts, we need only ſay, that its authors could hardly have been familiar with all the facts of that hiſtory which they thus determined to ſum up in a contradiction. Neither that, nor the propoſition to indemnify maſters for their loſſes by emancipation from this illegal and illuſive ſlavery, which never had any lawful exiſtence, was ever heard of again in that day and generation. But the failure to make ſuitable proviſion for the ſupport of Negroes and Mulattoes, led to ſerious difficulties, great embarraſſment in the law-courts and

Legiſlature, conſtant and continued litigation, in which the State authorities, towns, and individuals continued ſtruggling until the last pauper Indian, negro, or mulatto, who had been a ſlave, relieved himſelf and the community by dying off.[1] It is a humiliating fact, which ſhould not be omitted here, that the moſt diſtinct and permanent evidence of ſervice of the colored patriots of the Revolution, belonging to Maſſachuſetts (moſt of whom were or had been ſlaves), has been found in the reports of the law courts in pauper caſes.

Upon a compariſon of the condition of the negro in Maſſachuſetts, before and after emancipation, Dr. Belknap ſaid that, "unleſs *liberty* be reckoned as a compenſation for many inconveniencies and hard-

[1] Many petitions were preſented to the Legiſlature concerning the support of pauper negroes. The committee on the revision of the laws were inſtructed to report who was reſponsible. *Journals*, IX., 85, 125. In 1790, the Houſe were requeſted to decide whether they were chargeable to the State or Towns. *Ib.*, X., 230. In 1793, on the 8th of March, "a Bill determining Indians, Negroes, and Mulattoes, who are objects of charity, to be the poor of this commonwealth," was read in the Houſe, and committed to Mr. Sewall, Mr. Thompson, and Mr. Smead. *Maſs. Spy, March* 21, 1793. Dr. Belknap ſtated, in 1795, that the queſtion had not then been decided, either in the Legiſlature or by the courts. *M. H. S. Coll.*, I., iv., 208. In the caſe of *Shelburne* vs. *Greenfield*, in Hampſhire, 1795, the court decided that certain ſlaves had gained a ſettlement where their masters were ſettled, and therefore were not chargeable on the commonwealth as State paupers. They gave no opinion on the point, whether they were to be the charge of the town, or of their late maſters; nor was this point decided when James Sullivan communicated the report of this caſe, with others, for publication in 1798. *M. H. S. Coll.*, I., v., 46, 47. In the caſe of *The Inhabitants of Shelburne* vs. *The Inhabitants of Greenfield*, 1795, the children of two negro ſlaves were conſidered to have their ſettlement in the latter town, becauſe their parents had a ſettlement there under their maſter; although the parents were married, and their children born, in Shelburne. *MS. referred to in Andover* vs. *Canton*, 13 *Maſs. Reports*, 552.

ſhips, the former condition" was in moſt caſes preferable. This was in 1795. In 1846 a Maſſachuſetts author wrote as follows reſpecting their deſcendants remaining in the State:

"A prejudice has exiſted in the community, and ſtill exiſts againſt them on account of their color, and on account of their being the deſcendants of ſlaves. They cannot obtain employment on equal terms with the whites, and wherever they go a ſneer is paſſed upon them, as if this ſportive inhumanity were an act of merit. They have been, and are, moſtly ſervants, or doomed to accept ſuch menial employment as the whites decline. They have been, and are, ſcattered over the Commonwealth, one or more in over two thirds of all the towns; they continue poor, with ſmall means and opportunities for enjoying the ſocial comforts and advantages which are ſo much at the command of the whites. Thus, though their legal rights are the ſame as thoſe of the whites, their condition is one of degradation and dependence, and renders exiſtence leſs valuable, and impairs the duration of life itſelf. . . . Owing to their color and the prejudice againſt them, they can hardly be ſaid to receive . . . even ſo cordial a ſympathy as would be ſhown to them in a *ſlave* ſtate, owing to their different poſition in ſociety." *Chickering's Statistical View*, *p.* 156. In view of theſe facts, it will hardly be deemed ſtrange, that the ſame writer calmly contemplated their extinction as a race, comforting himſelf with the reflection, that "many inſtances of ſimilar diſplacement are to be found in hiſtory." *Ibid.*, *pp.* 159–60.

X.

We have ſtill to notice two acts of legiſlation in Maſſachuſetts, which were paſſed in the year 1788—eight years after the alleged termination of ſlavery in that State by the adoption of the Conſtitution. Theſe acts were paſſed juſt after the adoption of the Federal Conſtitution by the State Convention.

The firſt is the only one directly and poſitively hoſtile to ſlavery to be found among all their ſtatutes. It is a very remarkable fact that the reluctance of the Legiſlature to meet the ſubject fairly and fully in front ſhould have left their ſtatute-book in ſo questionable a ſhape. With Portia, glowing with delight at the unſucceſsful choice of her ſable ſuitor, they ſeem to have wiſhed to ſay,

> " A gentle riddance : draw the curtains ; go—
> Let all of his complexion chuſe me ſo."
>
> *Merchant of Venice*, Act II., Sc. VIII.

But neither the cupidity of their ſlave-trading merchants, nor the peculiar improvidence of the negro —the one ſharpened by ſucceſsful gain, the other hardened into hopeleſs acquieſcence with pauperiſm—would permit this "gentle riddance," and although the "curtains" have been "drawn" over theſe disagreeable features for nearly a century, the hiſtorian of ſlavery muſt let in the light upon them.

As early as 1785, the Legiſlature inſtituted an inquiry as to the meaſures proper to be adopted by them to diſcountenance and prevent any inhabitant of the Commonwealth being concerned in the ſlave-

trade. A joint committee was appointed on the ſubject, Jan. 25th, 1785—William Heath and John Lowell on the part of the Senate, and Mr. Reed, Mr. Hoſmer, and Mr. Sprague, of the Houſe. The inquiry was alſo extended to the condition of negroes then in the Commonwealth, or who might thereafter come or be brought into it. *H. of R. Journals*, v., 222. Bills were prepared and referred to the Committee on the Reviſion of the Laws, with inſtruction to reviſe all the laws reſpecting negroes and mulattoes, and report at the next ſitting of the General Court. *Ib.*, 342.

In the following year, March 1, 1786, a joint order was made for a committee to report meaſures for preventing negroes coming into the Commonwealth from other States. *H. of R. Journals*, vi., 463. Another ſimilar order was made by the Houſe of Repreſentatives in 1787. *Journals*, vii., 524.

Earlier in the ſame year, February 4, 1787, a number of African blacks petitioned the Legiſlature for aid to enable them to return to their native country. *Ib.*, vii., 381. A Quaker petition againſt the ſlave-trade was read in the Senate, June 20, 1787, and not accepted, but referred to the Reviſing Committee, who were directed to report a bill upon "the ſubject matter of negroes in this Commonwealth at large." *Senate, Vol.* viii., 81. *H. of R., Vol.* viii., 88.

The prohibition of the ſlave-trade by Maſſachuſetts was at laſt effected in 1788. A moſt flagrant and outrageous caſe of kidnapping occurred in Boſton in the month of February, in that year. *M. H. S. Coll.*, i., iv., 204. Additional particulars may be found by reference to the newſpapers of the day. Eſpecially

The N. Y. Packet, *Feb.* 26 and *Aug.* 29, 1788. This infamous tranſaction arouſed the public indignation, and all claſſes united in urging upon the Legislature the paſſage of effectual laws to prevent the further proſecution of the traffic, and protect the inhabitants of the State againſt the repetition of ſimilar outrages.

Rev. Dr. Jeremy Belknap was one of the foremoſt in promoting the paſſage of this act. He conſulted ſome of his friends as to the practicability of improving the occaſion to effect the abolition of ſlavery in the State. His brother-in-law, Mr. Samuel Eliot, agreed with him that the time was moſt opportune, but ſaid the difficulty in ſuch caſes was, who ſhould ſtep forward,—and recommended him to ſuggeſt to the Aſſociation of miniſters, at their next meeting, a petition to the General Court, whoſe ſeſſion was then about to commence; if he failed to gain the co-operation of the miniſters, to apply to the Humane Society, and at all events to have a petition drafted.

Mr. Belknap drew up a petition, which his friends pronounced "incapable of amendment," gained the ſupport of the Aſſociation, and of a large number of citizens beſides. The blacks alſo preſented a petition,[1] written by Prince Hall, one of their number, and there was alſo that of the Quakers in 1787, already noticed, before the Legiſlature. *Life of Belknap*, 159, 160.

The movement was ſucceſsful, and on the 26th of March, 1788, the Legiſlature of Maſſachuſetts paſſed

[1] The petition of the negroes, 27th February, 1788, is in the Maſſachuſetts Spy, 24th April, 1788.

"*An Act to prevent the Slave-Trade, and for granting Relief to the Families of ſuch unhappy Perſons as may be Kidnapped or decoyed away from this Commonwealth.*" By this law it was enacted "that no citizen of this Commonwealth, or other perſon reſiding within the ſame," ſhall import, tranſport, buy, or ſell any of the inhabitants of Africa as ſlaves or ſervants for term of years, on penalty of fifty pounds for every perſon ſo miſuſed, and two hundred pounds for every veſſel fitted out and employed in the traffic. All inſurance made on ſuch veſſels to be void, and of no effect. And to meet the caſe of kidnapping, when inhabitants were carried off, actions of damage might be brought by their friends—the latter giving bonds to apply the moneys recovered to the uſe and maintenance of the family of the injured party.

A proviſo was added, "*That this act do not extend to veſſels which have already ſailed, their owners, factors, or commanders, for, and during their preſent voyage, or to any inſurance that ſhall have been made, previous to the paſſing of the ſame.*" How far this proviſo may be juſtly held to be a legiſlative ſanction of the traffic, we leave the reader to decide. It is obvious that the "public ſentiment" of Maſſachuſetts in 1788 was not ſtrong enough againſt the ſlave-trade, even under the atrocious provocation of kidnapping in the ſtreets of Boſton, to treat the pirates, who had already ſailed, as they deſerved. Rome was not built in a day,—neither could the modern Athens rejoice in an anti-ſlavery Minerva, freſh in an inſtant from the brain of the almighty "public ſentiment" of Maſſachuſetts.

This act, as we have ſeen, paſſed on the 25th of March, 1788. It was accompanied by another act, paſſed on the following day, hardly leſs hoſtile to the negro than this was to ſlavery—the pioneer of a ſeries of ſimilar acts (though leſs ſevere) which have ſubjected the new States to moſt unſparing cenſure.

The Maſſachuſetts Law, entitled "*An act for ſuppreſſing and puniſhing of Rogues, Vagabonds, common Beggars, and other idle, diſorderly, and lewd Perſons,*" was preſented in the Senate on the 6th of March, 1788. It went through the uſual ſtages of legiſlation, with various amendments, and was finally paſſed on the 26th of March, 1788. It contains the following very remarkable proviſion:

"V. *Be it further enacted by the authority aforesaid* [the Senate and Houſe of Repreſentatives in General Court aſſembled], that no perſon being an African or Negro, other than a ſubject of the Emperor of Morocco, or a citizen of ſome one of the United States (to be evidenced by a certificate from the Secretary of the State of which he ſhall be a citizen), ſhall tarry within this Commonwealth, for a longer time than two months, and upon complaint made to any Juſtice of the Peace within this Commonwealth, that any ſuch perſon has been within the ſame more than two months, the ſaid Juſtice ſhall order the ſaid perſon to depart out of this Commonwealth, and in caſe that the ſaid African or Negro ſhall not depart as aforeſaid, any Juſtice of the Peace within this Commonwealth, upon complaint and proof made that ſuch perſon has continued within this Commonwealth ten days after notice given him or her to depart as afore-

ſaid, ſhall commit the ſaid perſon to any houſe of correction within the county, there to be kept to hard labour, agreeable to the rules and orders of the ſaid houſe, until the Seſſions of the Peace, next to be holden within and for the ſaid county; and the maſter of the ſaid houſe of correction is hereby required and directed to tranſmit an atteſted copy of the warrant of commitment to the ſaid Court on the firſt day of their ſaid ſeſſion, and if upon trial at the ſaid Court, it ſhall be made to appear that the ſaid perſon has thus continued within the Commonwealth, contrary to the tenor of this act, he or ſhe ſhall be whipped not exceeding ten ſtripes, and ordered to depart out of this Commonwealth within ten days; and if he or ſhe ſhall not ſo depart, the ſame proceſs ſhall be had and puniſhment inflicted, and ſo *toties quoties.*" [1]

The edition from which we copy is the earlieſt claſſified edition of "The Perpetual Laws of the Commonwealth of Maſſachuſetts," and is not to be found in Part I. among thoſe relating to "The Publick and Private Rights of Perſons," nor among the "Miſcellaneous" Statutes, but in "Part IV.," concerning "*Criminal* Matters." We doubt if anything in human legiſlation can be found which comes nearer branding color as a crime!

By this law, it will be obſerved that all negroes,

[1] The old provincial ſtatute, from which this law was mainly copied, provided for the correction by whipping, etc., of the rogues and vagabonds (without diſtinction of color) for whoſe benefit the original law was deſigned; but in the progreſs of this law through the Legiſlature, this feature was ſtricken out of that portion of the bill, but the "African or Negro" gained what the "rogue and vagabond" loſt by the change. *Compare Maſs. Prov. Laws of* 1699, *Chap.* VI., and *Journal of H. of R.*, VIII., 500.

reſident in Maſſachuſetts, not citizens of ſome one of the States, were required to depart in two months, on penalty of being apprehended, whipped, and ordered to depart. The proceſs and puniſhment could be renewed every two months. The only contemporary explanation of the deſign of the law which we have met with is to the effect that it was intended to prevent fugitive ſlaves from reſorting to that State, in hopes to obtain freedom, and then being thrown as a deadweight upon that community. *Belknap*, 1795. A recent writer ſtates that this "enactment was ſaid to have been the work of her [Maſſachuſetts] leading lawyers, who were ſufficiently ſagacious to foreſee the dangerous conſequences of that conſtitutional proviſion which, on reſtoring fugitives from labor, not only threatened to diſturb the public peace, but the ſtability of the ſyſtem." *Amory's Life of Sullivan*, I., 226, *note*. We give this illuſtration of legal ſagacity in Maſſachuſetts for what it is worth, although we are ſatisfied that the ſtatute itſelf clearly illuſtrates the intention of thoſe who framed it. *Expoſitio contemporanea eſt optima.*

Realizing the "deadweight" already reſting upon them in the body of their own free negroes (though comparatively ſmall in number), they evidently thought it "ſagacious" to prevent any addition to it. Future reſearch muſt aſcertain who were "citizens" of Maſſachuſetts in 1788, before we can ſafely declare that even Maſſachuſetts Negroes, Indians, and Mulattoes, were exempted from the alternative of exile or the penalties of this ſtatute. The reader will not fail to notice below, the arbitrary and illegal extenſion of the ſtatute, in its application to "people of color,

commonly called Mulattoes, *preſumed* to come within the *intention*" of the law.

We have met with one example of the enforcement of this law, which is almoſt as "ſingular" as the ſtatute itſelf. In the *Maſſachuſetts Mercury, Boston, printed by Young and Minns, Printers to the Honorable the General Court, September* 16, 1800, *No.* 22, *Vol.* XVI., the following notice occupies a conſpicuous place, filling a column of the paper:

NOTICE TO BLACKS.

THE Officers of Police having made return to the Subſcriber of the names of the following perſons, who are Africans or Negroes, not ſubjects of the Emperor of *Morocco* nor citizens of the *United States,* the ſame are hereby warned and directed to depart out of this Commonwealth before the 10th day of October next, as they would avoid the pains and penalties of the law in that caſe provided, which was paſſed by the Legislature, March 26, 1788.

CHARLES BULFINCH,
Superintendant.

By order and direction of the Selectmen.

OF PORTSMOUTH.

Prince Patterson, Eliza Cotton,
Flora Naſh.

RHODE ISLAND.

Thomas Nichols and Philis Nichols,
Hannah Champlin, Plato Alderſon,
Raney Scott, Jack Jeffers,
Thomas Gardner, Julius Holden,
Violet Freeman, Cuffy Buffum,
Sylvia Gardner, Hagar Blackburn,
Dolly Peach, Polly Gardner,
Sally Alexander, Philis Taylor.

PROVIDENCE.

Dinah Miller, Silvia Hendrick,
Rhode Allen, Nancy Hall,
Richard Freeman, Elizabeth Freeman,
Nancy Gardner, Margaret Harriſon.

CONNECTICUT.

Briſtol Morandy, John Cooper,
Scipio Kent, Margaret Ruſſell,
Phœbe Seamore, Phœbe Johnſon,
Jack Billings.

NEW LONDON.

John Denny, Thomas Burdine,
Hannah Burdine.

NEW YORK.

Sally Evens, Sally Freeman,
Cæſar Weſt and Hannah Weſt,
Thomas Peterſon, Thomas Santon,
Henry Sanderſon, Henry Wilſon,
Robert Willet, Edward Cole,
Mary Atkins, Polly Brown,
Amey Spalding, John Johnſon,
Rebecca Johnſon, George Homes,
Prince Kilſbury, Abraham Fitch,
Joſeph Hicks, Abraham Francis,
Elizabeth Francis, Sally Williams,
William Williams, Rachel Pewinck,
David Dove, Eſther Dove,
Peter Bayle, Thomas Boſtick,
Katy Boſtick, Prince Hayes,
Margaret Bean, Nancy Hamik,
Samuel Benjamin, Peggy Ocamum,
Primus Hutchinſon.

PHILADELPHIA.

Mary Smith, Richard Allen,
Simon Jeffers, Samuel Poſey,
Peter Francies, Prince Wales,
Elizabeth Branch, Peter Guſt,
William Brown, Butterfield Scotland,

Clariſſa Scotland, Cuffy Cummings,
John Gardner, Sally Gardner,
Fortune Gorden, Samuel Stevens.

BALTIMORE.

Peter Larkin and Jenny Larkin,
Stepney Johnſon, Anne Melville.

VIRGINIA.

James Scott, John Evens,
Jane Jackſon, Cuffey Cook,
Oliver Naſh, Robert Woodſon,
Thomas Thompſon.

NORTH CAROLINA.

James Jurden, Polly Johnſon,
Janus Crage.

SOUTH CAROLINA.

Anthony George, Peter Cane.

HALIFAX.

Catherine Gould, Charlotte Gould,
Cato Small, Philis Cole,
Richard M'Coy.

WEST INDIES.

James Morfut and Hannah, his wife,
Mary Davis, George Powell,
Peter Lewis, Charles Sharp,
Peter Hendrick, William Shoppo and
Mary Shoppo, Iſaac Johnſon,
John Pearce, Charles Eſings,
Peter Branch, Newell Symonds,
Roſanna Symonds, Peter George,
Lewis Victor, Lewis Sylveſter,
John Laco, Thomas Foſter,
Peter Jeſemy, Rebecca Jeſemy,
David Bartlet, Thomas Grant,
Joſeph Lewis, Hamet Lewis,
John Harriſon, Mary Brown,
Boſton Alexander.

CAPE FRANCOIS.

Caſme Franciſco and Nancy, his wife,
Mary Fraceway.

AUX CAYES.

Suſannah Roſs.

PORT AU PRINCE.

John Short.

JAMAICA.

Charlotte Morris, John Robinſon.

BERMUDA.

Thomas Williams.

NEW PROVIDENCE.

Henry Taylor.

LIVERPOOL.

John Mumford.

AFRICA.

Francis Thompſon, John Brown,
Mary Joſeph, James Melvile,
Samuel Bean, Hamlet Earl,
Calo Gardner, Charles Mitchel,
Sophia Mitchel, Samuel Frazier,
Samuel Blackburn, Timothy Philips,
Joſeph Ocamum.

FRANCE.

Joſeph ——

ISLE OF FRANCE.

Joſeph Lovering.

LIST OF INDIANS AND MULATTOES.

The following perſons from ſeveral of the *United States*, being people of colour, commonly called Mulattoes, are preſumed to come within the intention of the ſame law; and are accordingly warned and directed to depart out of the Commonwealth before the 10th day of October next.

RHODE ISLAND.

Peter Badger, Kelurah Allen,
Waley Green, Silvia Babcock.

PROVIDENCE.

Polly Adams, Paul Jones.

CONNECTICUT.

John Brown,
John Way and
Peter Virginia,
Lucinda Orange,
Britton Doras,
Frank Francies.
Polly Holland,
Nancy Way,
Leville Steward,
Anna Sprague,
Amos Willis,

NEW-LONDON.

Hannah Potter.

NEW-YORK.

Jacob and Nelly Cummings,
John Schumagger,
Peggy Willouby,
Mary Reading,
John Miles,
Betſy Harris,
Suſannah Foſter,
Mary Thomſon,
Lucy Glapcion,
Eliza Williams,
Cæſar and Sylvia Caton,
William Guin.
James and Rebecca Smith,
Judith Chew,
Thomas Willouby,
John Reading,
Charles Brown,
Hannah Williams,
Duglaſs Brown,
Thomas Burros,
James and Freelove Buck,
Lucy Lewis,
Diana Bayle,
—— Thompſon,

ALBANY.

Elone Virginia,
Lydia Reed,
Rebecca Reed and
Abijah Reed and
Abijah Reed, Jr.,
Betſy Reed.

NEW-JERSEY.

Stephen Boadley,
Hannah Victor.

PHILADELPHIA.

Polly Boadley,
Hannah Murray,
Nancy Principeſo,
George Jackſon,
Moſes Long.
James Long,
Jeremiah Green,
David Johnſon,
William Coak,

MARYLAND.

Nancy Guſt.

BALTIMORE.

John Clark, Sally Johnſon.

VIRGINIA.

Sally Hacker, Richard,
John Johnſon, Thomas Steward,
Anthony Paine, Mary Burk,
William Hacker, Polly Loſours,
Betſy Guin, Lucy Brown.

AFRICA.

Nancy Doras.[1]

This notice muſt have been generally publiſhed in Boſton, and was copied in other cities without the liſt of names. We have met with it in the Commercial Advertiſer of the 20th September, 1800, and the Daily Advertiſer, 22d September, 1800, both in New York. Alſo in the Gazette of the United States and Daily Advertiſer of 23d September, 1800, in Philadelphia.

The only comments of the Boſton preſs on the ſubject which we have ſeen indicate that it was simply carrying out the original deſign of the act, to abate pauperiſm;[2] but references to it in the New York and Philadelphia papers hint at another probable cauſe

[1] Mr. Nell, in his work on the Colored Patriots of the American Revolution, notices (*pp.* 96–97), an African Benevolent Society, inſtituted at Boſton, in 1796. He ſays, its benevolent objects were ſet forth in the preamble, which alſo expressed its loyalty as follows: "Behaving ourſelves, at the ſame time, as true and faithful *citizens* of the Commonwealth in which we live, and that we take no one into the Society who ſhall commit any injuſtice or outrage againſt the laws of their country." He adds a liſt of the members of the "African Society." A compariſon of this liſt with that above ſhows that one fourth of the members were driven out of the Commonwealth in 1800.

[2] See "Africanus," in *The Independent Chronicle and the Universal Advertiſer*, Boſton, September 25, 1800.

of this ſtringent and ſweeping application of the ſtatute.

In the year 1800, the whole country was excited by the diſcovery of an alleged plot for a general inſurrection of negroes at the South. Gabriel, the negro-general, was the "hero," though not the only victim. The affair aſſumed at once a very ſerious aſpect, and the alarm was "awful" in Virginia and South Carolina. The party violence of the day was not ſlow to make uſe of it, and it was doubtleſs true, that the principles of Liberty and Equality had been in ſome degree infuſed into the minds of the negroes, and that the incautious and intemperate uſe of theſe words by the "fierce democracie" of that day in Virginia may have inſpired them with hopes of ſucceſs.

But the alarm was not confined to Virginia. Even in Boſton, fears were expreſſed and meaſures of prevention adopted. *N. Y. Advertiſer, Sept.* 26, 1800. The Gazette of the United States and Daily Advertiſer, by C. P. Wayne, Vol. XVIII., No. 2493, Philadelphia, September 23, 1800, copies the "Notice" with theſe remarks:

"The following notice has been publiſhed in the Boſton papers: It ſeems probable, from the nature of the notice, that ſome ſuſpicions of the deſign of the negroes are entertained, and we regret to ſay there is too much cauſe."

Such was the act, and ſuch was one of its applications. Additional acts were paſſed in 1798 and 1802, but this portion was neither modified nor repealed. It appears in the reviſed edition of 1807, without change. In 1821, the Legiſlature of Maſſachuſetts,

alarmed by "the increaſe of a ſpecies of population, which threatened to become both injurious and burdenſome," and, fully alive to "the neceſſity of checking" it, appointed a committee to report a bill concerning the admiſſion into the State of free Negroes and Mulattoes.

In the Houſe of Repreſentatives, June 7, 1821, it was "Ordered, that Meſſrs. Lyman of Boſton, Bridgeman of Belchertown, Chandler of Lexington, be a Committee to take into conſideration the expediency of making any alterations in the laws of this Commonwealth concerning the admiſſion into a reſidence in this State of Negroes and Mulattoes, with leave to report by bill or otherwiſe." *Journals*, *Vol.* XLII., 62. On the 14th of June, the journal notes a Report on the Free Negroes, detailing a ſtatement of facts, and authorizing the appointment of a committee to report a bill at the next ſeſſion. Read and accepted, and the ſame gentlemen were appointed. *Ibid.*, 121. On the next day, the Houſe refuſed to reconſider the vote for a committee, etc. *Ibid.*, 129.

At the next ſeſſion, on the 15th of January, 1822, a "report of the Committee appointed at the laſt ſeſſion concerning the admiſſion into this State of Free Negroes, praying to be diſcharged from that ſubject, was read, and the ſame was ordered to lie on the table. The ſame was afterwards accepted." *Ibid.*, 174.

This report, written by Theodore Lyman, Jr., chairman of the Committee, was printed. It juſtifies the motive which induced the appointment of the Committee by the following ſtatements: "that the

black convicts in the State Priſon, on the firſt of January, 1821, formed 146½ part of the black population of the State, while the white convicts, at the ſame time, formed but 2140 part of the white population. It is believed that a ſimilar proportion will be found to exiſt in all public eſtabliſhments of this State; as well Priſons as Poor-Houſes." The Committee, however, "found it impoſſible, after all the reſearch and deliberation in their power to beſtow on the ſubject, to accompliſh that duty which they undertook by the direction of the Houſe of Repreſentatives. They have not ſucceeded in preparing a bill, *the proviſions of which they could conſcientiouſly vindicate to this Houſe. They have already found in the Statute Books of this Commonwealth, a law paſſed in* 1788, *regulating the reſidence in this State of certain perſons of color—they believe that this law has never been enforced, and, ineffectual as it has proved, they would never have been the authors of placing among the Statutes, a law ſo arbitrary in its principles, and in its operation ſo little accordant with the inſtitutions, feelings, and practices of the people of this Commonwealth.* The Hiſtory of that law has well convinced the Committee that no meaſure (which they could deviſe) would be attended with the ſmalleſt good conſequence. That it would have been matter of ſatisfaction and congratulation to the Committee if they had ſucceeded in framing a law, which ſhould have received the approbation of this Legiſlature, and ſhould have promiſed to check and finally to overcome an evil upon which they have never been able to look with unconcern. But a law, which ſhould produce that effect, would entirely depart from

that love of humanity, that reſpect for hoſpitality and for the juſt rights of all claſſes of men, in the conſtant and ſucceſsful exerciſe of which, the inhabitants of Maſſachuſetts have been ſingularly conſpicuous."[1]

The committee, however, did not recommend a repeal of the act of 1788. Is it poſſible to avoid the inference that the true reaſon of their failure to report a new bill, ſuch as they were inſtructed to prepare, was that they conſidered the State amply protected by the old law?

It appears again in the reviſed laws of 1823. Another additional act was paſſed in 1825, but without alteration of the proviſion againſt negroes; and this ſtatute, "ſo arbitrary in its principle, and in its operation ſo little accordant with the inſtitutions, feelings and practices of the people of the Commonwealth," continued to diſgrace the Statute-Book of Maſſachuſetts until the firſt day of April, 1834, after which time

[1] Although this committee did not accompliſh their aſſigned taſk, they did achieve a further report, by way of addition, which deſerves notice. They agreed that "it does not comport with the dignity of this State, to withhold that brief ſtatement of facts, to be found in its annals, concerning the abolition of this trade in Maſſachuſetts—a ſtatement which will prove both highly honorable, and in perfect accordance with that remarkable ſpirit of wholeſome and rational liberty, by which this Commonwealth has been greatly diſtinguiſhed from the earlieſt period. But to the clear underſtanding and better elucidation of this ſubject, the committee think it uſeful to introduce the following ſhort account of the exiſtence of Slavery in Maſſachuſetts." In the elaborate ſtatement which follows, there are no important facts which are not already familiar to the reader of theſe notes; but there is one idea which has, at leaſt, the merit of novelty. After giving the general ſtatiſtics of the ſlave population, down to the time of the Revolution, they ſay, "Theſe ſlaves were procured in ſeveral ways—*either from the Dutch, in New York*, from the Southern provinces in North America . . . Few came by a direct trade," etc.

its undiſtinguiſhed repeal, (in the general repealing ſection of an act of March 29th, 1834, for the regulation of Gaols and Houſes of Correction,) no longer left "public opinion" to regulate its enforcement.

And here we reſt. With the exception of the repeal, already mentioned, *ante*, *p.* 59, of the law prohibiting the intermarriage of whites with Indians, Negroes, or Mulattoes, and the obſcure ſtatute of 1863, which terminated the long excluſion of the latter from the ranks of the State militia, and perhaps obliterated the laſt veſtige of the formal legiſlation of Maſſachuſetts againſt them, there is nothing in the ſubſequent hiſtory or politics of the State relating to the ſubject of theſe Notes. The anti-ſlavery agitations of the laſt thirty years, in which Maſſachuſetts has borne ſo conſpicuous a part, have little if any hiſtorical connection with the exiſtence of Slavery in that Commonwealth. As "agreed on all hands," it was undoubtedly "conſidered as aboliſhed;" and during theſe ſtormy and portentous conteſts which have changed the hiſtory of the nation, it has been "put aſide and covered," and "remembered only as forgotten."

The reader of theſe Notes cannot fail to notice the ſtrong reſemblance in the mode of the extinction of ſlavery in Maſſachuſetts and that of villenage in

England. Of the latter Lord Mansfield ſaid, in 1785, that "villains in groſs may in point of law ſubſiſt at this day. But the change of manners and customs has effectually aboliſhed them in point of fact." *Ante, p.* 115, *note.* If the parallel may be continued, it could be ſaid with equal juſtice that ſlavery, having never been formally prohibited by legiſlation in Maſſachuſetts, continued to "ſubſiſt in point of law" until the year 1866, when the grand Conſtitutional Amendment terminated it forever throughout the limits of the United States. It would be not the leaſt remarkable of the circumſtances connected with this ſtrange and eventful hiſtory, that, although *virtually* aboliſhed before, the actual prohibition of ſlavery in Maſſachuſetts as well as Kentucky, ſhould be accompliſhed by the votes of South Carolina and Georgia.

APPENDIX.

A. The Military Employment of Negroes in Massachusetts.

The neceſſities of the ſituation, for a few years after the firſt ſettlements, made everybody a ſoldier; indeed, put arms in the hands of women and children.

The General Court made an order on the 27th of May, 1652, "that all Scotſmen, Negeres and Indians inhabiting with or ſervants to the Engliſh from the age of ſixteen to ſixty years, ſhal be liſted, and are hereby enjoyned to attend traynings as well as the Engliſh." At the ſeſſion in May, 1656, however, this order was repealed, ſo far as it related to negroes and Indians, as follows:

"For the better ordering and ſettling of ſeverall caſes in the military companyes within this juriſdiction, which, upon experience, are found either wanting or inconvenient, it is ordered and declared by this Court and the authoritie thereof, that henceforth no negroes or Indians, although ſervants to the Engliſh, ſhal be armed or permitted to trayne, and y^t^ no other perſon ſhall be exempted from trayning but ſuch as ſome law doth priviledge, or ſome of the county courts or courts of aſſiſtants, after notice of the partyes deſires, to the officers of each company to which they belonge, upon juſt cauſe, ſhal diſmiſs."

The law, as printed in 1660, required "every perſon above the age of ſixteen years," to "duely attend all Military Exerciſe and ſervice," with certain exceptions. Neither Indians, Negroes, or Slaves are among thoſe exempted; but it is reaſonably certain that they were at no time permitted to bear arms during the period from 1656 down to the commencement of the Revolution. Gov. Bradſtreet, in May, 1680, expreſſly ſtates, in anſwer to an inquiry from the Committee for Trade and Plantations as to the number of men able to bear arms—

"We account all generally from ſixteen to ſixty that are healthfull

and ſtrong bodys, both Houſholders and Servants fit to bear Armes, *except Negros and Slaves, whom wee arme not.*" *M. H. S. Coll.*, III., viii., 336.

The next enactment on the ſubject was in the brief adminiſtration of Sir Edmund Andros. The Act for ſettling the militia, enacted by this very unpopular Governor and his Council for his Majeſty's territory and dominion of New England, March 24, 1687, provided "that no perſon whatſoever above ſixteen years of age remain unliſted by themſelves, maſters, miſtreſſes or employers." Negroes and Indians are not exempted by any proviſion of this act; but it is extremely doubtful whether it ever went into practical operation. One of the moſt obnoxious of his meaſures was his attempt to control the militia in New England. This is, however, not very important; for after the Engliſh Revolution and the eſtabliſhment of the new Province charter, among the earlieſt of the laws was the act for regulating the militia—1693—by which Indians and negroes were exempted from all trainings. In Sewall's tract againſt ſlavery in 1700 (*ante, p.* 84), he ſays, "As many Negro Men as there are among us, ſo many empty places are there in our Train Bands." A later publication in the Boſton News Letter, June 10th, 1706, ſhows that "Negroes do not carry Arms to defend the Country as Whites do," and further, that they could not be employed as ſubſtitutes for whites who were impreſſed or drafted, (*ante, p.* 107.)

A ſubſequent act for the regulating of free negroes, &c.,—1707—illuſtrates their exact poſition more clearly. The recital in the preamble is that

"Whereas, in the ſeveral towns and precincts within this province, there are ſeveral free negroes, and mulattoes able of body, and fit for labor; who are not charged with trainings, watches, and other ſervices required of her Majeſtie's ſubjects; whereof they have ſhare in the benefit," &c.

The act, therefore, provided that they ſhould do ſervice equivalent to trainings, &c., each able-bodied free negro or mulatto ſo many days' work yearly in repairing of the highways, cleanſing the ſtreets, or other ſervice for the common benefit of the place. See *ante, pp.* 60, 61.

In common with all able to bear arms, they were required to make their appearance at parade in caſes of ſudden alarms, where they were to attend ſuch ſervice as the firſt commiſſioned officer of the military

company of their precinct ſhould direct, during the time the company continued in arms. This obviouſly points to menial ſervice, or, at any rate, a ſervice different from that of the enrolled militia.

This ſtate of things continued down to the commencement of the war of the Revolution, and the firſt contemporary act ſhows that negroes could not be legally enrolled at that time. The general militia act of 1775, in providing for the enrolment, excepts "Negroes, Indians, and mulattoes." The act of May, 1776, providing for a reinforcement to the American army, provides that "Indians, negroes, and mulattoes, ſhall not be held to take up arms or procure any perſon to do it in their room." The act of November 14, 1776, to provide reinforcements to the American army, excepts "Negroes, Indians, and mulattoes," and the explanatory reſolve paſſed on the 29th of the ſame month alſo excepts "Indians, negroes, mulattoes, &c." The reſolve in the ſame year for taking the number of all male inhabitants above ſixteen years of age excepts "Indians, negroes, and mulattoes." This cenſus was doubtleſs taken with a view to the approaching neceſſity for a draft, and even here they are excluded, although they were apparently included in the poll-liſts at the ſame time—being rateable polls, if not free citizens.

It was only when the preſſure of the terrible reverſes of the winter of 1776–7 came that they were included in the number of perſons liable to draft. The reſolve, January 6, 1777, was "for raiſing every ſeventh man to complete our quota," and "without any exceptions, ſave the people called Quakers"—one ſeventh of all male perſons of ſixteen years old and upwards. A reſolve in Auguſt of the ſame year was ſimilar in its object and character. But this proceeding was not allowed to paſs without remonſtrance, not by the negroes, but the white men. In the Maſſachuſetts Legiſlature, March 5, 1778, a petition of Benjamin Goddard in behalf of the ſelectmen, committee of ſafety, and militia officers of the town of Grafton, praying that they may be excuſed from raiſing a ſeventh part of the blacks in ſaid town, they being exempt from military duty and free occupants on their own eſtate, was read, and the petitioner had leave to withdraw his petition.

During the remainder of the war the law appears to have regarded as liable to military duty "any perſon living or reſiding in any town or plantation within this State the term of three months together;" but at the ſame time, although they had the benefit of the example of

Rhode Iſland in the organization of their famous regiment of negro ſlaves, an attempt in Maſſachuſetts to authorize the formation of a ſimilar corps "does not appear to have been deemed adviſable at the time."

The war came to an end, and, ſoon after, the very firſt general militia act, paſſed March 10, 1785, revived the old feature, and continued the exemption of "negroes, Indians, and mulattoes" from both train-band and alarm-liſt. In the time of the inſurrection in 1786, negroes offered their ſervices to Governor Bowdoin, to go againſt the inſurgents, to the number of ſeven hundred; but the Council did not adviſe ſending them.

The ſubſtance of the next law is the ſame, although they changed the "way of putting it" by adopting the language of the United States law, in which negroes do not appear among the exempts, but are excluded in the enrolment.

The militia law of June 22, 1793, authorizes the enrolment of "each and every free, able-bodied white male citizen of this, or any other of the United States, reſiding within this Commonwealth," between the ages of eighteen and forty-five years, ſave as excepted.

This excluſion from military employment, and the privilege of bearing arms, continued apparently without change until the year 1863, when, by Chapter 193 of the Acts of that year, approved April 27, 1863, the Maſſachuſetts laws were made to conform to thoſe of the United States, which had already recognized and accepted the negro as a ſoldier.

B. Additional Notes, Etc.

1. *Page* 21. On the 9th of November, 1716, P.M., was preſented to the Houſe of Repreſentatives of Maſſachuſetts "a Petition of *William Brown*, ſon of a Freeman, by a Servant Woman, and has been ſold as a ſlave, and is at preſent owned by Mr. *Andrew Boardman*, ſhowing that his ſaid Maſter will ſet him at liberty, and make him Free, if this Court will indemnify him from the Law relating to the Manumiſſion of Negroes, as to maintaining of him in caſe of Age, Diſability etc., Praying the Court to indemnify him."

On the following day, this Petition was "further conſidered, and the following Vote paſſed thereon, viz.: Inaſmuch as the Petitioner is a young able-bodied Man, and it cannot be ſuppoſed, that he is Manu-

mitted, by his Maſter, to avoid charge in ſupporting him, *Ordered*, that the Prayer of the Petitioner be Granted. And that the Petitioner be deemed Free, when ſet at liberty by his Maſter, although no ſecurity be given to indemnify the Town where he dwells from charge by him, and in caſe the Petitioner ſhall hereafter want Support, his ſaid Maſter ſhall not be obliged to be at the charge thereof, any Law, Uſage, or Cuſtom to the contrary notwithſtanding." This order was ſent up for concurrence, concurred in and conſented to by the Governor on the ſame day, November 10th, 1716. *Journal H. of R., p.* 36. *General Court Records*, x., *p.* 108.

2. *Page* 51. Maſſachuſetts has enjoyed the diſtinction of appearing in the firſt Cenſus of the United States without any ſlaves among her population.

"The following anecdote connected with this ſubject, it is believed, has never been made public. In 1790 a cenſus was ordered by the General Government then newly eſtabliſhed, and the Marſhal of the Maſſachuſetts diſtrict had the care of making the ſurvey. When he inquired for *ſlaves*, moſt people anſwered none: if any one ſaid that he had one, the marſhal would aſk him if he meant to be ſingular, and would tell him that no other perſon had given in any. The anſwer then was, "If none are given in, I will not be ſingular;" and thus the liſt was completed without any number in the column for ſlaves." *Life of Belknap, pp.* 164–5.

Dr. Belknap's own account of this cenſus, written and publiſhed in 1795, is as follows:

"In 1790, a cenſus of the United States was made by order of the federal government; the ſchedule ſent out on that occaſion contained three columns for free whites of ſeveral deſcriptions, which, in the State of Maſſachuſetts and diſtrict of Maine, amounted to 469,326; a fourth for "all other free perſons," and a fifth for "ſlaves." There being none put into the laſt column, it became neceſſary to put the *blacks*, with the *Indians*, into the fourth column, and the amount was 6001. Of this number, I ſuppoſe the blacks were upwards of 4000; and of the remaining 2000, many were a mixed breed, between Indians and blacks . . . . In the ſame cenſus, as hath been before obſerved, no ſlaves are ſet down to Maſſachuſetts. This return, made by the marſhal of the diſtrict, may be conſidered as the formal evidence of the *abolition of ſlavery* in Maſſachuſetts, eſpecially as no perſon has ap-

peared to conteſt the legality of the return." *M. H. S. Coll.*, I., iv., 199, 204.

3. *Page* 53. In 1718, a committee of both Houſes prepared a bill entitled "An Act for the Encouraging the Importation of White Male Servants, and the preventing the Clandeſtine bringing in of Negroes and Molattoes." It was read in Council a firſt time on the 16th of June, and "ſent down recommended" to the Houſe, where it was alſo read a firſt time on the ſame day. The next day it was read a ſecond time, and "on the queſtion for a third reading, decided in the negative." *Journal H. of R.*, 15, 16. *General Court Records*, x., 282.

4. *Pages* 54, 90. The Act of 1705, Chapter 6, underwent ſome changes in the Council, after it had paſſed in the Houſe. It was read in Council on Monday the 3d of December, 1705, a firſt time, "as paſſ'd in the Houſe of Repreſentatives." The next day it was read a ſecond and third time "with ſome Amendments and Additions agreed to." On the 5th it was "Read and Voted to be paſſed into an Act." *General Court Records*, VIII., 187, 188, 190.

5. *Page* 61. A draft of Governor Dudley's letter "concerning Indian Captives from Carolina," was preſented and approved in the Houſe of Repreſentatives on the 15th of June, 1715. *Journal*, 28.

6. *Page* 65. A recent examination of the collection of Tax-Acts in the poſſeſſion of Ellis Ames, Eſq., of Canton, Maſſachuſetts, enables us to add that Indian, Negro, and Mulatto ſervants were eſtimated proportionably as other perſonal eſtate, according to the ſound judgment and diſcretion of the Aſſeſſors in each and every year from 1727 to 1775, excepting 1730, 1731, 1749, 1750. The acts for theſe years we have not ſeen, but it is reaſonably certain that the proviſion was the ſame as in all the others. That of 1776 was probably ſimilar to that of 1777, in which the Poll-Tax is levied on Male Polls above 16 years of age, including Negroes and Mulattoes, and ſuch of them that are under the government of a Maſter or Miſtreſs, to be taxed to the ſaid Maſter or Miſtreſs reſpectively, in the ſame manner as Minors and Apprentices are taxed. This method continued to 1791. The act of 1793 omits the mention of Negroes and Mulattoes, taxing "minors, apprentices and ſervants" *as above*. In 1803, ſuch as are under "the *immediate* government" of a maſter, etc. In 1805, the ſervants are omitted, and there is a ſeparate ſection concerning minors.

f. Page 94, *and note.* With reference to the ſlave's "right to Religion," we ſhould have added a word reſpecting the peculiar "ſeparation" of the religious people of Maſſachuſetts and their well-known "fear of polluting the ordinances;" to which was aſcribed, in this very connection, that neglect of "proper means to make men godly," which became "the miſery of New England." *Stoddard's Anſwer to ſome Caſes of Conſcience, etc.*, 1722, *p.* 12. It was the opinion of this writer that "if they (ſervants) had proper Helps, they might be as forward in Religion, as the *Engliſh*." *Ibid.*

8. *Pages* 97, 101. Inſtructions ſimilar to thoſe given to Andros in 1688 (*ante, pp.* 51–2, 96) were repeated to ſubſequent governors of the various colonies. We have found no act paſſed in accordance with theſe inſtructions in Maſſachuſetts, or any other colony or province excepting New Hampſhire; where ſuch a law was enacted, in which the diſtinction noted in the text between the *Chriſtian* ſervants or ſlaves, and the *Indians and Negroes*, is emphatically illuſtrated. The Province Law of 1718, Chap. 70, is as follows (*Edit.* 1771, *p.* 101):

An Act for reſtraining Inhuman Severities.

§ 1. Be it Enacted *by His* Excellency *the* Governor, Council, *and* Representatives, *convened in* General Aſſembly, *and it is hereby* Enacted *by the* Authority *of the ſame*, That for the prevention and reſtraining inhuman ſeverities, which by evil maſters or overſeers may be uſed towards their Chriſtian ſervants, that from and after the publication hereof, if any man ſmite out the eye or tooth of his man-ſervant or maid-ſervant, or otherwiſe maim or disfigure them much, unleſs it be by meer caſualty, he ſhall let him or her go free from his ſervice, and ſhall allow ſuch further recompence as the court of quarter ſeſſions ſhall adjudge him.

§ 2. And it is *further* Enacted, *and* Ordained *by the* Authority *aforeſaid*, That if any perſon or perſons whatever within this province ſhall wilfully kill his *indian* or *negro* ſervant or ſervants, he ſhall be puniſhed with death.

It is true, that Chriſtian ſervants were protected in Maſſachuſetts by the earlieſt law reſpecting the "liberties of ſervants" from which the proviſions of the firſt ſection of the foregoing law were copied; but the relations of the Indian and Negro ſlaves and their maſters were ſtill

regulated in accordance with the contemporary ſtandards of opinion concerning what was morally required by "the law of God eſtabliſhed in Iſrael," or what may be deſcribed as the New-Engliſh-Hebrew-Chriſtian common or cuſtomary law. The familiar phraſe—"treated worſe than a negro"—is hiſtorical in Maſſachuſetts. *Sewall's Diary, October 20th*, 1701, quoted in *Quincy's Harv. Coll.*, I., 490.

9. *Pages* 126–28. On the 25th of June, 1766, a petition was preſented in the Houſe of Repreſentatives, from Ezekiel Wood, the repreſentative for the town of Uxbridge, ſetting forth that there were in ſaid town two aged and infirm negroes not belonging there, etc. On the 28th, this petition was diſmiſſed, and a Committee was appointed to bring in a bill at the next ſeſſion for preventing Fraud in the ſale of Negroes. On the 1ſt of November, in the ſame year, "a Bill intituled An Act to prevent Frauds in the ſale of Negroes" was "read a firſt time and ordered a ſecond reading on Tueſday next at Ten o'clock." On the 4th, it was read a ſecond time and recommitted for amendment.

The draft of the bill is preſerved, as well as the report of the committee. *Maſs. Archives, Domeſtic Relations*, 1643–1774, *Vol.* 9, 449, 450. It was intended to prevent fraudulent ſales made by the original purchaſers or owners to perſons of no reſponſibility. Under its proviſions, the towns were authorized to bring actions againſt the next vendor of ability, and each and every vendor from the original purchaſer or owner was made liable. In this way the maintenance of the pauper negroes was to be provided for without charge to the towns.

We find no further proceedings on the ſubject until the 4th of June, 1767, when the "Bill to prevent Fraud in the ſale of Negroes and to provide for their maintenance" was read, and the Secretary was ordered to "lay on the Table the Act for laying a duty of Impoſt on the Importation of Negro or other Slaves into this Province," which he accordingly did. The latter bill, as we have ſeen, had fallen between the two houſes in March previous. Whether it was propoſed, at this time, by bringing them together to deviſe ſome new movement on the ſubject of either or both, we cannot aſcertain, having found no trace of further action upon them.

C. Judge Saffin's Reply to Judge Sewall, 1701.

While theſe ſheets are paſſing through the preſs, we are kindly favored with the opportunity to make uſe of this extremely rare and valuable, if not unique tract, from which we copy below. We are indebted to the generous and liberal courteſy of George Brinley, Eſq., of Hartford, Connecticut, for this moſt intereſting and important addition to our work. Compare *ante, pp.* 83–88.

"A Brief and Candid Anſwer to a late Printed Sheet, *Entituled,* The Selling of Joſeph.

"THAT Honourable and Learned Gentleman, the Author of a Sheet, Entituled, *The Selling of Joſeph*, *A* Memorial, ſeems from thence to draw this concluſion, that becauſe the Sons of *Jacob* did very ill in ſelling their Brother *Joſeph* to the *Iſhmaelites*, who were Heathens, therefore it is utterly unlawful to Buy and Sell Negroes, though among Chriſtians; which Concluſion I preſume is not well drawn from the Premiſes, nor is the caſe parallel; for it was unlawful for the *Israelites* to Sell their Brethren upon any account, or pretence whatſoever during life. But it was not unlawful for the Seed of *Abraham* to have Bond men, and Bond women either born in their Houſe, or bought with their Money, as it is written of *Abraham*, *Gen.* 14. 14. *&* 21. 10. *&* *Exod.* 21. 16. *&* *Levit.* 25. 44. 45, 46 *v.* After the giving of the Law: And in *Joſh.* 9. 23. That famous Example of the *Gibeonites* is a ſufficient proof where there no other.

"To ſpeak a little to the Gentlemans firſt Aſſertion: *That none ought to part with their Liberty themſelves, or deprive others of it but upon mature conſideration;* a prudent exception, in which he grants, that upon ſome conſideration a man may be deprived of his Liberty. And then preſently in his next Poſition or Aſſertion he denies it, *viz.: It is moſt certain, that all men as they are the Sons of* Adam *are Coheirs, and have equal right to Liberty, and all other Comforts of Life,* which he would prove out of *Psal.* 115. 16. *The Earth hath he given to the Children of Men.* True, but what is all this to the purpoſe, to prove that all men have equal right to Liberty, and all outward comforts of this life; which Poſition ſeems

to invert the Order that God hath ſet in the World, who hath Ordained different degrees and orders of men, ſome to be High and Honourable, ſome to be Low and Deſpicable; ſome to be Monarchs, Kings, Princes and Governours, Maſters and Commanders, others to be Subjects, and to be Commanded; Servants of ſundry ſorts and degrees, bound to obey; yea, ſome to be born Slaves, and so to remain during their lives, as hath been proved. Otherwiſe there would be a meer parity among men, contrary to that of the Apoſtle, 1 *Cor.* 12 *from the* 13 *to the* 26 *verse*, where he ſets forth (by way of compariſon) the different ſorts and offices of the Members of the Body, indigitating that they are all of uſe, but not equal, and of like dignity. So God hath ſet different Orders and Degrees of Men in the World, both in Church and Common weal. Now, if this Poſition of parity ſhould be true, it would then follow that the ordinary Courſe of Divine Providence of God in the World ſhould be wrong, and unjuſt, (which we muſt not dare to think, much leſs to affirm) and all the ſacred Rules, Precepts and Commands of the Almighty which he hath given the Son of Men to obſerve and keep in their reſpective Places, Orders and Degrees, would be to no purpoſe; which unaccountably derogate from the Divine Wiſdom of the moſt High, who hath made nothing in vain, but hath Holy Ends in all his Diſpenſations to the Children of men.

"In the next place, this worthy Gentleman makes a large Diſcourſe concerning the Utility and Conveniency to keep the one, and inconveniency of the other; reſpecting white and black Servants, which conduceth moſt to the welfare and benefit of this Province: which he concludes to be white men, who are in many reſpects to be preferred before Blacks; who doubts that? doth it therefore follow, that it is altogether unlawful for Chriſtians to buy and keep Negro Servants (for this is the Theſis) but that thoſe that have them ought in Conſcience to ſet them free, and ſo loſe all the money they coſt (for we muſt not live in any known ſin) this ſeems to be his opinion; but it is a Queſtion whether it ever was the Gentleman's practice? But if he could perſwade the General Aſſembly to make an Act, That all that have Negroes, and do ſet them free, ſhall be Re imburſed out of the Publick Treaſury, and that there ſhall be no more Negroes brought into the Country; 'tis probable there would be more of his opinion; yet he would find it a hard taſk to bring the Country to conſent thereto; for

then the Negroes muſt be all ſent out of the Country, or elſe the remedy would be worſe than the Diſeaſe; and it is to be feared that thoſe Negroes that are free, if there be not ſome ſtrict courſe taken with them by Authority, they will be a plague to this Country.

" *Again*, If it ſhould be unlawful to deprive them that are lawful Captives, or Bondmen of their Liberty for Life being Heathens; it ſeems to be more unlawful to deprive our Brethren, of our own or other Chriſtian Nations of the Liberty, (though but for a time) by binding them to Serve ſome Seven, Ten, Fifteen, and ſome Twenty Years, which oft times proves for their whole Life, as many have been; which in effect is the ſame in Nature, though different in the time, yet this was allow'd among the *Jews* by the Law of God; and is the conſtant practice of our own and other Chriſtian Nations in the World: the which our Author by his Dogmatical Aſſertions doth condemn as Irreligious; which is Diametrically contrary to the Rules and Precepts which God hath given the diverſity of men to obſerve in their reſpective Stations, Callings, and Conditions of Life, as hath been obſerved.

" And to illuſtrate his Aſſertion our Author brings in by way of Compariſon the Law of God againſt man Stealing, on pain of Death: Intimating thereby, that Buying and Selling of Negro's is a breach of that Law, and ſo deſerves Death: A ſevere Sentence: But herein he begs the Queſtion with a *Caveat Emptor*. For, in that very Chapter there is a Diſpenſation to the People of *Israel*, to have Bond men, Women and Children, even of their own Nation in ſome caſe; and Rules given therein to be obſerved concerning them; Verſe the 4*th*. And in the before cited place, *Levit*. 25. 44, 45, 46. Though the *Israelites* were forbidden (ordinarily) to make Bond men and Women of their own Nation, but of Strangers they might: the words run thus, verse 44. *Both thy Bond men, and thy Bond maids which thou ſhalt have ſhall be of the Heathen, that are round about you: of them ſhall you Buy Bond men and Bond maids*, &c. See also, 1 *Cor*. 12. 13. Whether we be Bond or Free, which ſhows that in the times of the New Teſtament, there were Bond men alſo, *&c*.

" *In fine*, The ſum of this long Haurange, is no other, than to compare the Buying and Selling of Negro's unto the Stealing of Men, and the Selling of *Joſeph* by his Brethren, which bears no proportion therewith, nor is there any congruiety therein, as appears by the foregoing Texts.

"Our Author doth further proceed to anſwer ſome Objections of his own framing, which he ſuppoſes ſome might raiſe.

"Object. 1. *That theſe Blackamores are of the Poſterity of* Cham, *and therefore under the Curſe of Slavery. Gen.* 9. 25, 26, 27. The which the Gentleman ſeems to deny, ſaying, *they ware the Seed of Canaan that were Curſed, &c.*

"*Anſw.* Whether they were ſo or not, we ſhall not diſpute: this may ſuffice, that not only the ſeed of *Cham* or *Canaan*, but any lawful Captives of other Heathen Nations may be made Bond men as hath been proved.

"Obj. 2. *That the Negroes are brought out of Pagan Countreys into places where the Goſpel is Preached.* To which he Replies, *that we muſt not doe Evil that Good may come of it.*

"*Anſ.* To which we anſwer, That it is no Evil thing to bring them out of their own Heathenish Country, where they may have the Knowledge of the True God, be Converted and Eternally ſaved.

"Obj. 3. *The* Affricans *have Wars one with another;* our Ships bring lawful Captives taken in thoſe Wars.

"To which our Author anſwers Conjecturally, and Doubtfully, *for ought we know*, that which may or may not be; which is inſignificant, and proves nothing. He alſo compares the Negroes Wars, one Nation with another, with the Wars between *Joſeph* and his Brethren. But where doth he read of any ſuch War? We read indeed of a Domeſtick Quarrel they had with him, they envyed and hated *Joſeph;* but by what is Recorded, he was meerly paſſive and meek as a Lamb. This Gentleman farther adds, *That there is not any War but is unjuſt on one ſide, &c.* Be it ſo, what doth that ſignify: We read of lawful Captives taken in the Wars, and lawful to be Bought and Sold without contracting the guilt of the *Agreſſors;* for which we have the example of *Abraham* before quoted; but if we muſt ſtay while both parties Warring are in the right, there would be no lawful Captives at all to be Bought; which ſeems to be rediculous to imagine, and contrary to the tenour of Scripture, and all Humane Hiſtories on that ſubject.

"Obj. 4. *Abraham had Servants bought with his Money, and born in his Houſe. Gen.* 14. 14. To which our worthy Author anſwers, *until the Circumſtances of Abraham's purchaſe be recorded, no Argument can be drawn from it.*

"*Anſ.* To which we Reply, this is alſo Dogmatical, and proves nothing. He farther adds, *In the mean time Charity Obliges us to conclude, that he knew it was lawful and good.* Here the gentleman yields the caſe; for if we are in Charity bound to believe *Abrahams* practice, in buying and keeping *Slaves* in his houſe to be lawful and good: then it follows, that our Imitation of him in this his Moral Action, is as warrantable as that of his Faith; *who is the Father of all them that believe. Rom.* 4. 16.

"In the cloſe of all, Our Author Quotes two more places of Scripture, *viz.; Levit.* 25. 46, and *Jer.* 34, from the 8. to the 22. *v.* To prove that the people of Iſrael were ſtrictly forbidden the Buying and Selling one another for *Slaves:* who queſtions that? and what is that to the caſe in hand? What a ſtrange piece of Logick is this? Tis unlawful for Chriſtians to Buy and Sell one another for ſlaves. *Ergo,* It is unlawful to Buy and Sell Negroes that are lawful Captiv'd Heathens.

"And after a Serious Exhortation to us all to Love one another according to the Command of Christ. *Math.* 5, 43, 44. This worthy Gentleman concludes with this Aſſertion, *That theſe Ethiopeans as Black as they are, ſeeing they are the Sons and Daughters of the firſt* Adam; *the Brethren and Siſters of the Second* Adam, *and the Offspring of God; we ought to treat them with a reſpect agreeable.*

"*Ans.* We grant it for a certain and undeniable verity, That all Mankind are the Sons and Daughters of *Adam*, and the Creatures of God: But it doth not therefore follow that we are bound to love and reſpect all men alike; this under favour we muſt take leave to deny; we ought in charity, if we ſee our Neighbour in want, to relieve them in a regular way, but we are not bound to give them ſo much of our Eſtates, as to make them equal with our ſelves, because they are our Brethren, the Sons of *Adam*, no, not our own natural Kinſmen: We are Exhorted *to do good unto all, but eſpecially to them who are of the Houſhold of Faith, Gal.* 6. 10. And we are to love, honour and reſpect all men according to the gift of God that is in them: I may love my Servant well, but my Son better; Charity begins at home, it would be a violation of common prudence, and a breach of good manners, to treat a Prince like a Peaſant. And this

worthy Gentleman would deem himſelf much neglected, if we ſhould ſhow him no more Defference than to an ordinary Porter: And therefore theſe florid expreſſions, the Sons and Daughters of the Firſt *Adam*, the Brethren and Siſters of the Second *Adam*, and the Offspring of God, ſeem to be miſapplied to import and inſinuate, that we ought to tender Pagan Negroes with all love, kindneſs, and equal reſpect as to the beſt of men.

"By all which it doth evidently appear both by Scripture and Reaſon, the practice of the People of God in all Ages, both before and after the giving of the Law, and in the times of the Goſpel, that there were Bond men, Women and Children commonly kept by holy and good men, and improved in Service; and therefore by the Command of God, *Lev.* 25, 44, and their venerable Example, we may keep Bond men, and uſe them in our Service ſtill; yet with all candour, moderation and Chriſtian prudence, according to their ſtate and condition conſonant to the Word of God.

"The Negroes Character.

"*Cowardly and cruel are thoſe* Blacks *Innate,*
Prone to Revenge, Imp of inveterate hate.
He that exaſperates them, ſoon eſpies
Miſchief and Murder in their very eyes.
Libidinous, Deceitful, Falſe and Rude,
The ſpume Iſſue of Ingratitude.
The Premiſes conſider'd, all may tell,
How near good Joſeph *they are parallel.*"

By the same Writer:

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[*PROSPECTUS.*]

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"*The laws of a nation form the most instructive portion of its history.*"

I propose to publish the STATUTES AT LARGE OF NEW YORK from 1664 to 1691. The first English Laws were established in the Province immediately after the reduction of the Dutch in New-Netherland, by the authority of Letters Patent granted by King Charles II. to his brother, James, Duke of York, March 12th, 1664. These laws, since known as "the Duke's Laws," were altered, explained, and amended by the same authority during the succeeding years until 1683, when the first Representative Assembly met in New-York. Laws were enacted by this Assembly in that and the following year, and a second Assembly met and enacted others in the year 1685, after the accession of James II. to the throne. This, however, was the only meeting of an Assembly in New-York during his reign—for in 1686 he abolished the Assembly, and made his Governor and Council the legislature of the Province. Several acts were passed by this body in the years 1687 and 1688; and these, with the acts of the Assembly summoned by Leisler during the troubles which attended the Revolution, complete the Body of Laws which it is now proposed to publish.

Of all these statutes, fragments only are accessible to the student either of Law or History. It is well known that no printing-press was established in New-York until after the era of the English Revolution of 1688; and the laws were published in manuscript, many being preserved only in the public records; and the Acts of the first Assemblies were so neglected, that the historian, also one of the principal lawyers of the time, declared more than a century ago, that they were "for the most part rotten, defaced, or lost."

In the first volume of the Collections of the New-York Historical Society there is a copy of the East Hampton Book of Laws, and in the Appendix to the Revised Laws of 1813 are imperfect copies of three of the Acts of the First Assembly, while in one instance (and but one, I believe), another Act of the same Assembly is recited in an enactment of a subsequent legislature. The printed laws of New-York begin with the year 1691, and, with the exceptions just mentioned, the whole body of laws of the first twenty-six years of the English government of New-York exists only in scattered, obscure, and fast perishing manuscripts.

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Various illustrative documents will be given, with a Historical Introduction and Notes, among which will be found biographical notices of the English Governors of New-York from 1664 to 1691. I propose to add fac-similes of various acts of approval, and the volume will be completed by a full and thorough analytical index.

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Librarian of the New-York Historical Society.

NEW-YORK, *October*, 1862.

☞ If sufficient encouragement is given to warrant the undertaking, the work will be continued through the remainder of the Colonial period—1691–1775. Of nearly two thousand statutes enacted during these years by thirty-two different Assemblies, not one-third have been printed in the various collected and revised editions, and all are long since out of print.

Hon. W. C. Alexander:

From GEO. H. MOORE,
NEW-YORK HISTORICAL SOCIETY,
New York City.

ADDITIONAL NOTES

ON THE

History of Slavery in Massachusetts.

[*From the Historical Magazine, December*, 1866.]

SLAVERY IN MASSACHUSETTS.

Mr. Moore's Reply to his Boston Critics.

"Pudet haec opprobria *vobis*
Et dici potuisse, et non potuisse refelli."

*To the Editor of the Daily Advertiser :**

When Aristeidês was requested by his ignorant and unknown fellow-citizen to write his own name on the shell, in order that he might receive the compliment of ostracism, we read that he did so, without a word, after hearing the reason for the request. If he had argued the point, the story would have lost its brightest feature. And if he had been himself the chief trumpeter of his own fame, making the States of Greece ring with the echoes of his own sonorous self-esteem, the whole tale might have had a different moral. As it is, I see no impropriety in the suggestions of Mr. Grote, that "the purity of the most hon-"ourable man will not bear to be so boastfully "talked of, as if he were the only honourable man "in the country; the less it is obtruded, the "more deeply and cordially will it be felt, and "the story just alluded to, whether true or false, "illustrates that natural reaction of feeling pro-"duced by absurd encomiasts, or perhaps by in-"sidious enemies under the mask of encomiasts, "who trumpeted forth Aristeidês as *The Just* "man of Athens, so as to wound the legitimate "dignity of every one else."—*History of Greece*, IV. 461.

The modern champions of Massachusetts, glittering in historic brass, have assiduously challenged comparisons with all her contemporaries in all periods of their respective history. I have furnished, in my volume on *Slavery in Massachusetts*, the materials for a comparison between the facts of her history and the pretensions which have been set up by her historians, on that topic alone.

Is it my fault if the sharp contrast of the truth with the false pretence strikes like satire? if the simple, straightforward statement of facts, amply sustained by due reference to unquestionable authorities, sounds like an indictment? The indictment if any must be found not against Massachusetts, but those who through ignorance or design have so utterly misrepresented this portion of her history hitherto. The just fame of Massachusetts cannot be diminished; in it her children have an inheritance, which is a possession forever. Its glory is only obscured by false lights. Massachusetts has no reason to shrink from the truth, whether her self-righteous historians can bear to face it or not. Her part in the earlier, as well as later history of American Slavery will no longer be obscure; and the efforts of the earliest champions of Human Freedom within her borders will no longer be concealed because they were unsuccessful. The faithful witness to the truth that is in history will not be intimidated by abuse, nor restrained from telling the whole truth, lest her enemies may be glad, or the multitude of the uncircumcised rejoice. She is far more likely to suffer from the cowardice of her friends than the courage of her enemies. But this is no new phase of historical sensitiveness in Massachusetts. When that pious Independent, Daniel Neal, wrote his famous history of New England, a century and a half ago, he disappointed the most godly by "taking merely the task of a historian upon "him" instead of writing the lives of the Puritan saints, and narrating the marvels of their Christian experience, in humble imitation of Cotton Mather's Magnalia. And "the freedom" he took "to expose the persecuting principles "and practices of the first planters, both in the "body of the history, and his abridgment of "their laws" was "displeasing" and "offensive" to some in England, and probably more in Massachusetts. The venerable Dr. Watts took upon himself the duty of remonstrance, and told the historian he "could wish he had more "mollified some of these relations, and had "rather left out those laws, or in the same page "had annexed something to prevent our enemies "from insulting" the brethren "on that subject." His answer was—says Dr. Watts himself, in a letter to Cotton Mather—"THAT THE FIDELITY "OF AN HISTORIAN REQUIRED HIM TO DO WHAT "HE HAD DONE," adding, "THAT IT IS A NOBLER "THING TO TELL THE WORLD THAT YOU HAVE "RECTIFIED THE ERRORS OF YOUR FATHERS, "THAN IF MERE EDUCATION HAD TAUGHT YOU "SO LARGE A CHARITY." The good Psalmist, in communicating Neal's manly reply, also ventured

* The Editor of the *Daily Advertiser* having declined the publication of this reply to his strictures in consequence of its length, it appears in the *Historical Magazine* as an original contribution.—Ed. Hist. Mag.

some practical advice to his Massachusetts friends which he thought would tend to promote "a "happy effect of that part of the history which "now makes us blush and ashamed."—*M. H. S. Coll.* I. v. 200.

It is a remarkable fact that the chief champions of the Puritans in these days are men who reverse the ordinary methods of demonstrating the integrity of their subject. They start with the conviction that the theories of religion and morals, if not of politics and society, of their ancestors were entirely wrong, but their lives and actions were almost invariably right. The modern Massachusetts Christian, whose entire intellectual being is nothing if not ultra-protestant and liberal, with no starting-point of protest but the last results of Puritan Orthodoxy, and no limit to his liberality short of spiritualism or absolute infidelity—builds his historic Valhalla out of the old walls of the New England Jerusalem, and fills it with images of the grim heroes of Puritanism.

And their stern lineaments show but shabbily in the straw-stuffed canvas, which the new school of Puritans bear about in their solemn processions, like the wax figures with which the Romans in the days of their degeneracy were wont to inflame the imaginations of the mob. It is the peculiar province of a just historical criticism to demonstrate the fallacy of those subjective processes in reasoning by which the theories of the present day are translated into the remote past, and the Fathers of New England are glorified for thoughts and feelings absolutely impossible to them, and justified for their actions by principles from which they would have shrunk in horror, as impious, blasphemous, and utterly wicked.

The *old* Puritans were the genuine—and their history is not wanting in examples of that magnanimity which submits to just reproof without resentment, and that higher grace which is at once the sign and the blessing of repentance—that real Christian courage which could humiliate itself by confession.

Samuel Sewall, whose fame is justly though imperfectly celebrated in my book, as the first Massachusetts abolitionist, was also a judge in that bloody Assize of Witches at Salem, and his voluntary confession before God and men of his sin in that thing, ought to be cherished as one of the most precious memorials of the history of Massachusetts. That solemn sad figure, handing the confession to his minister "as he passed by" in the meeting-house, "and standing up at the "reading of it, and bowing when finished in the "afternoon" of that winter's day, is to me personally more beautiful and glorious than all the heroes of the Magnalia. Yet Cotton Mather, and all the other trumpeters, whether trumpeters of silver or trumpeters of brass, are most seen and heard throughout all the generations of New England.

History will one day demonstrate that they were not the men who did the "generation-work" so near to the hearts of the Fathers, and not yet wholly forgotten by their true children. And History must now reject with scorn the "fables "agreed upon," for the question of which I have been denounced as "the Devil's advocate, oppos-"ing the canonization of Massachusetts!"

I. The first division of the exceptions taken by my critic is somewhat miscellaneous, but I follow his discourse. He thinks it does not appear that the negroes who formed a part of the return cargo of the "Desire" in 1638, were imported by "the authorities"—nor that the Indian captives were disposed of according to "previous practice." It is clear, from all the documents, that "the authorities" controlled the disposition of these captives "whom the Lord "had delivered into their hands" in that bloody war against the Pequods,* and Winthrop himself invariably says, "*We* sent them to Bermuda," etc. Is the inference improbable that the same authorities who shipped them out for sale or exchange were interested in the proceeds, whether "cotton, tobacco, negroes," or "etcetera?" The sales made by Pierce must have been like those in 1675, "on the country's behalf." "*We*" sent them, and "*we*" undoubtedly received the returns.† It was at a much later period of the history of Massachusetts that the laws were passed to encourage private as well as public enterprises against the "Indian Enemy and Rebels." In these acts, a strong discrimination was made in favor of volunteers, although the soldiers in regular pay were amply provided for. In 1694, volunteers were to have for every Indian, great or small, which they should kill, or take and bring in prisoner, 50 pounds, as well as all plunder. Soldiers under pay were to receive, over and above pay, 10*l* pounds. In 1695, "the reward for "any Indian woman or young person judged to "be under the age of 14 years that shall be killed "or taken and brought in prisoner, shall be hence-"forth 25 pounds and no more." In 1697, fifty

* Wood refers to these in 1633. "The Pequants be a stately warlike people of whom I never heard any misdemeanor; "but that they were just and equal in their dealings; not "treacherous either to their countrymen or English, requiters "of courtesies, affable towards the English." *N. E. Prospect, Ed.* 1764, *p.* 72. Four years afterwards they were exterminated by the Puritans! Those who escaped the sword, were sold into slavery, in foreign parts! Yet Winthrop himself said (in 1643) that "they had done us no injury."

† In the war against the Narragansetts, etc., Captain Mason's Commission (July, 1645) concludes thus, "What booty "you take or prisoners, whether men, women or children you "may send them to Seabrook fort to be kept and *improved* "*for the advantage of the Colonies*, in several proporcons "answering their charge," etc. *Plymouth Records: IX.* 35 *Hazard: II.* 31.

pounds were to be paid for the scalps of adult Indians, and "*for every Child of the said Enemy, "under the age of Ten years, that shall be by them "slain, the sum of Ten Pounds*, and that such "Party or Parties *shall also have and keep unto "their own use all Plunder and prisoners* by them "taken of the enemy." This appears to have been the earliest resignation by the Provincial Government of their sovereign right to prisoners and captives. In the later laws, liberal premiums continued to be offered for the *scalps of male Indians above the age of* 12 *years*, as well as "*the "benefit of all Indian Prisoners, being Women and "Children under the age above said*," subject only to the condition that they should be "*Transported "out of the Country*." *Mass. Laws:* 1694–1722.

But to return—as to the doubt concerning Lieut. Davenport's charge, the reader must take his choice of the probabilities suggested. Whether there had been more or less "previous prac-"tice" is not very material. I do not know that it would better their case, if it could be shown whether John Winthrop and his associates were the first to commence it or not, or that they did not begin until 1637. The fact is indisputable that they did so then; and that this was not an isolated, solitary instance—the law of 1646, providing for the export for trade of Indians for negroes, bears emphatic testimony—as well as to the further fact denied by my critic—that the trade was followed up. To support this denial, he cites Bradstreet's report to the Lords of Trade in 1680—that there were but 100 or 120 slaves in Massachusetts, of whom 40 or 50 had been imported two years before. To say nothing of the obvious imperfections of this report, does my critic suppose that the "Desire" brought 60 or 70 negroes from Providence Island in 1637–8, who all lived to be counted in this enumeration of 1680–2, or does he acknowledge that the losses by death were more than made good by the increase of these chattels—by such as were "born in the house?"

Admitting the facts which I demonstrated that slavery existed as a social fact in Massachusetts almost from the beginning of the Colony,* and that its legislative history dates from the Statute of 1641—my critic indulges in a little fault-finding with my use of the word "established." He confesses his ignorance how that which had previously existed as unwritten law could "in any "sense" be established by a statute. I claim no credit for superior wisdom, when I declare my belief that the formal enactment into a statute or declaration of fundamentals in the form of liberties by the competent legislative authority must be regarded as "establishing" the doctrine thus promulgated. I never referred the *origin* of negro slavery in Massachusetts to this or any other legislative enactment. Probably there is not an instance to be found in all history of its being originated by statute. But it is equally true that all history may be challenged to produce a nearer approach to a statutory introduction of slavery than the Massachusetts law of 1641, by which it was established. My statement, therefore, is strictly correct. It was "the first statute es-"tablishing slavery in America."

In view, however, of the admissions of my critic, I cannot resist the temptation to inquire what has become of the theory so long, so steadily and so recently maintained in Massachusetts, that slavery is "so odious that nothing but posi-"tive law will support it?"

II. But however doubtful of the effect of the Act of 1641 in establishing slavery, my critic finds great satisfaction in contemplating its authority as a "provision explicitly in favor of "liberty," and expressly "limiting the original "law of slavery." Now, what were the limits to which the prophetic wisdom of the framers of this law restricted this ancient evil? Establishing the institution under a convenient and comprehensive exception, they admitted the slavery of three specified classes, viz.:

1. Lawful captives taken in just wars,
2. Such strangers as willingly sell themselves,*
3. Such strangers as are sold to us:

and added the significant proviso, after promising all the liberties and *christian* usages which the *Jewish* law seemed to them to enjoin, that all this should exempt none from servitude who were judged thereto by authority. This law was subsequently amended. Whether the motive suggested for the omission of the word "strangers" be correct or not, the fact is beyond dispute. It cannot easily be determined what was the intention or practical effect of the omission; but whether by "strangers" they meant to distinguish those not born in the land, or those who were "strangers" by race, as has been suggested by my friend Mr. John C. Hurd (whose authority I am glad to see recognized in Boston), it is not necessary to decide at present.†

* There are traces of the presence of negro slaves in Massachusetts as early as 1633. See *Wood's N. E. Prospect, Ed.* 1764, *p.* 91, with reference to the fright of certain Indians, "worse "scared than hurt, who seeing a blackamore in the top of a "tree looking out for his way which he had lost, surmised he "was *Abamacho* or the devil: deeming all devils that are "blacker than themselves; and being near to the plantation, "they posted to the English, and intreated their aid to conjure "this devil to his own place. who *finding him to be a poor "wandering blackamore, conducted him to his master*."

* It is not improbable that in some instances this consent was like that of the Gibeonites—if not willingly, then by compulsion as the alternative.

† Cotton Mather (*Magnalia, Book VI., Chap. vi., Section* 1) furnishes an illustration of the status of "Foreigners and "Strangers." In his sketch or account of the Indians, he mentions an inferior class, whom he calls a sort of Villains." who had been for many generations "known to be *Strangers* or "*Foreigners, who were not priviledged with common right*, "*but in some measure subject*," etc.

All the effect of limitation now claimed for this famous "provision explicitly in favor of liberty" is that it did not provide for slavery by birth—only this and nothing more—that the law "does "not cover hereditary slavery, either by express "terms, or necessary implication." And I am challenged with an air of triumph, to point out the *words* extending slavery to the children of slaves.* Now, the fact is undisputed that by the recognized common law of nations, as well as the civil law, and what is more to the purpose here, by the Jewish law—the natural increase of slave property belonged to the owner, whose right to it was never questioned any more than his right to his calf or his colt. Nobody supposed that the child of a slave was born free, or that the young of domestic animals were *ferœ naturæ*. The issue of slaves were unquestionably at that time among "such as were sold" commonly and constantly, and if their condition had been at any time brought to the test of judicial decision, there is no room whatever for a doubt what it must have been "adjudged" to be "by "authority." But there is not a particle of evidence to show that the matter was ever thought of as questionable. I have quoted in my book the statement of Salstonstall of Connecticut in 1704, in which he declares that "according to "the laws and constant practice of this colony "and all other plantations (as well as by the "civil law) such persons as are born of negro "bond-women are themselves in like condition, "that is, born in servitude, nor can there be any "precedent in this government, or any of her "Majesty's plantations, produced to the contrary." I have given a more signal illustration in the semi-judicial action of the legislature of Massachusetts in 1716, in the case of William Brown, the son of a Freeman by a Servant Woman, who had been sold as a slave. His master offered to give him his freedom—if the Court would indemnify him from the law relating to the manumission of negroes—the law of 1703, in restraint of emancipation. None of the learned lawyers of that day in the legislature ventured the suggestion that he was "by law free." Neither lawyers nor judges, of whom there were several in the House of Representatives and Council, could see any mode of relief but the act of indemnity prayed for, which was duly passed. The facts present the same phase through the entire colonial and provincial era down to the time immediately preceding the Revolution, when slavery was first formally challenged in Massachusetts. And among the most prominent and wisest suggestions then made was that of providing by legislation for the emancipation of the children of slaves—whose condition under the existing laws was thus undeniably admitted to be that of slavery; and in 1777, in the most emphatic, if, indeed, it was not the only, direct attack on that institution in all the legislation of Massachusetts—the recognized doctrine of hereditary slavery was included in the denunciations of the law which was proposed.

But "the question as to the legality of hered-"itary slavery has been the subject of judicial "consideration"—and it is in this part of the subject, that I am treated with specific charges of "suppressing inconvenient authorities," "pre-"ferring convenience to honesty," "violating the "record," and what is perhaps regarded as equally discreditable if not criminal, I am given to understand that my presumption in questioning standard authorities in Massachusetts is painfully conspicuous. It is my present purpose to show that the accusations of suppression, misrepresentation and dishonesty are utterly without foundation—and at the same time to vindicate the justice of my previous criticism of the authorities in question. And here I must be permitted to say that I am unable to find in my book any "degree of acerbity" towards the distinguished gentlemen from whose views I have been obliged to differ. If they have done me the honor to read the work, I am quite certain they must be as much astonished as I am to learn from my critic that I have transgressed the limits of a proper courtesy and due respect. If I have anywhere deviated into a way "foreign to the "spirit of historical investigation," I am ignorant of the fact as well as the intention. If my critic had been as cautious as I was, his high tone on this point would be more in harmony with his own performance.

There is no pretence that the legality of hereditary slavery was ever formally questioned, much less denied by any contemporary authority, private or public, legislative, judicial or executive, during the period in which the institution flourished in Massachusetts. If among the earlier cases (between 1766 and 1774) in which the general subject of slavery was involved, there was one in which the modern doctrine was declared by anybody, on or off the bench, it has escaped all my research. The case of *Newport*.

* There was yet another description of slaves for which I omitted before to challenge a lawful place in my classification. Perhaps my critic will thank me for calling attention to it. Fugitive slaves sometimes preferred freedom among the savages to servitude among the Christians. This of course led to demands upon the children of the forest, by which they were required to send back the runaways. Failing to obtain a prompt compliance in all cases, the General Court, on the 2d of June, 1641, passed an order by which, "It is declared to bee "the mind of the Co^rt. that if the Indians send not back o^r run "awayes then, by commission from the Gov'no^r and any 3 of "the magistrates to send and take so many as to satisfy for the "want of them, & for the charge of sending for them," *Mass. Records: I.* 329. Thus they might "give commission to any "master to *right himself upon the Indians*, for his fugitive "servant." *Winthrop's Answer, &c in Hutchinson's Collection: p.* 124, also, in *Hazard: I.* 509. Should such be considered as "lawful captives taken in just wars," or simply as "judged to Slavery by authority"?

vs. Billing in 1768, presents the most positive and emphatic record as to the legal condition of the negro who attempted to obtain his freedom by process of law, and if it could be ascertained that he was a native of Massachusetts, would be decidedly "a case in point." I have only been able to learn that he was a young Negro Boy on the 15th of March, 1728–9, when he was purchased by Billing for £50. It was found by the highest court in Massachusetts, on appeal from a similar decision in the inferior court "that the "said Amos [Newport] was not a freeman, as he "alledged, but the proper slave of the said Joseph "[Billing.]" *Records:* 1768, *Fol.* 284.

But the judicial oracles to which we are to go for instruction with authority on this topic belong to a much later period. The first in the series of these modern cases, which are claimed to have settled what the ancient law of slavery was, is that of *Littleton vs. Tuttle*, in 1796. It is reported "in part" (as Dane says) in a note to C. J. Parsons' decision of the case of *Winchendon vs. Hatfield*, 4 *Mass.*, 128. The decision in the latter case was made at the March Term, in Suffolk, in 1808, and it was published in 1809. The subject of the former suit was a pauper negro, born of slave parents, in 1773, sold in 1779 by the owner of his mother, to the defendant in the suit, who retained him in his service until he became lame and unable to labor, at the age of 21 years, January 18th, 1794, when he carried him and left him with the overseers of the poor for support. The record of the case shows simply that the town brought an action of assumpsit against the master, which resulted in the recovery of costs by the defendant. *Records*, 1796, 302.

It is stated in the partial report above referred to, that "the Court stopped the defendant's coun-"sel from replying, and the Chief Justice charged "the jury, as the unanimous opinion of the "Court, that Cato [the pauper] being born in "this country was born free; and that the defend-"ant was not chargeable for his support after he "was 21 years of age. And the jury found a ver-"dict accordingly, without going off the stand."

There is an earlier report of this case furnished by James Sullivan, Attorney-General, who was of counsel in the case, for publication in 1798. It is a noticeable fact that he does not state that the judges declared the negro to have been born free. His statement is that "the judges were of "opinion that, as he was born in the town, he "was a proper inhabitant, and that the town was "obliged to maintain him, as it would have been "if he was a white man." *M. H. S. Coll., I. v.* 47.

Nathan Dane, too, in his statement of this case, speaks of it as reported "*in part*" only, in 4 *Mass.*, 128, and adds the remark that "the idea "in this case, of the defendant, was that Jacob "was the slave of his *mother's* master, not the "*father's* master; and the same idea is stated by "Parsons, C. J., in *Winchendon vs. Hatfield.*" *Abridgment, II.*, 413. Both parties to the suit must have been equally astonished at the opinion of the Court.

The next case in the order of time is that of *Perkins vs. Emerson*, tried in Essex in 1799. My critic does not take this in order, although he "affects" disappointment with my notice of it. His language is worthy of examination here. Beginning with the expression, "Mr. Moore's brief "note of it," he soon regards it as "Mr. Moore's "broad statement," which is presently converted into "Mr. Dane's loose statement," and this at last into "Mr. Dane's broad statement." Now the statement is true, and Mr. Dane's summary, which I followed, is not (as my critic alleges) "incorrect"! and the charges of ignorance on the part of Mr. Dane, and dishonesty in the use of the MS. Record by myself, are equally groundless. That Nathan Dane, who was of counsel, and was defeated, should not have known or could have forgotten what was decided in the case, is preposterous; and he not only gives the summary as I quoted it, "correctly," but he expressly contrasts it with the decision in *Littleton vs. Tuttle. Abridgment, II.*, 412. Again, in another place, he refers to it, where he says of the Act of 1736, "This Act extended not to *slaves*," citing *Perkins vs. Emerson. Abridgment, II.*, 417. And yet again, after he had seen the new light of the decision by Chief Justice Parker, in *Lanesborough vs. Westfield*—in his continuation of chapter 53, Art. I., Section 21, giving a summary of that case from 16 *Mass.*, 74, he adds: "*See* S. "23–25, *the case of Perkins, Treasurer, vs. Emer-"son*, was three years after the case of *Littleton vs.* "*Tuttle. Abridgment, Vol. IX., Supplement, p.* "190."

James Sullivan also was of counsel with Nathan Dane, for the appellant. He had been counsel for the plaintiff in the previous case of *Littleton vs. Tuttle.* As for Chief Justice Parsons, whether he remembered the case or not, he declared the doctrine of it most distinctly, not only in the "desperate suggestion" that "the issue of "the female slave (according to the maxim of the "civil law) was the property of her master," but in the express statement that *slaves* were not within the statute of 10 Geo. II., c. 3 (the Act of 1736). 4 *Mass.*, 129. That he does not refer to the decision of 1799, in support of either point, does not weaken his opinion—of which I have more to say hereafter.

But all my critic's reasoning from probabilities is utterly futile and worthless; as I now propose to show from the record itself, independently, without reference to Dane or Parsons, whose evidence he discredits.

The court declared that the pauper in question in this suit was "not within the meaning of the "act." The act made any inhabitant responsible for *any person* not an inhabitant whom he should admit or entertain in his house for more than twenty days without the prescribed notice, etc.: and the description of persons among whom she was denied a place by the Court is not limited, as my critic represents, by the words inmate, boarder or tenant, but includes all non-inhabitant persons whatever "under any other qualifi- "cations." She was certainly not an inhabitant, and the decision of the Court therefore in terms excluded the pauper in question from recognition as a person under any qualification whatever! And, so far from having been misunderstood, misrepresented, exaggerated, garbled, or otherwise maltreated by Nathan Dane or myself citing his authority, it fully sustains the doctrine of hereditary slavery in Massachusetts. How far short is it of a declaration that, instead of having been free-born because born in Massachusetts, this child of slaves was not a "person" in the eye of the law? An absolute formal denial of that character of personality which would distinguish her from a *thing?* Attributing to her that peculiar legal incapacity for *rights* which belongs to the nature of a *thing?* so that she could be the object of the rights of persons, but not the subject of rights? She was not a person *sui juris!* She was a chattel-slave! She could not be separated from her owner, and removed by the selectmen of the town, any more than his horse, or his cow, or his hog!

In all the judicial history of America, perhaps of the world, it may well be doubted whether a parallel can be found for this decision of the Supreme Judicial Court of Massachusetts in the last year of the eighteenth century. Is it strange that it has been studiously kept out of sight by the historico-legal champions of the Old Bay State?

The remarks of Chief Justice Parker, in deciding the case of *Andover vs. Canton*, in 1816, state so clearly the recognized doctrine of the slave's incapacity for civil rights in Massachusetts, that I quote them at this point, although I have to refer to the case again in its order. He said with reference to a slave in Massachusetts during the period in which slavery existed there: "*The slave was the property of his master as* "*much as his ox or his horse; he had no civil* "*rights but that of protection from cruelty;* he* "*could acquire no property nor dispose of any* "*without the consent of his master. His settle-* "*ment in the town with his master was not for his* "*benefit, but to ascertain what corporation should* "*be charged with his maintenance, in case his mas-* "*ter should become unable to support him, or* "*should die, leaving him a charge to the commu-* "*nity. We think he had not the capacity to com-* "*municate a civil relation to his children, which* "*he did not enjoy himself, except as the property* "*of his master.*" 13 *Mass.*, 550. This is not Chief Justice Taney who is speaking, neither is this the language of the Dred Scott decision, but it is the language of the Chief Justice of the State of Massachusetts, declaring the opinion of the Supreme Judicial Court, sitting in bank, forty years before!

The next case in the order of time is that of *Winchendon vs. Hatfield*, 4 *Mass.*, 123, which is so little to the taste of my critic, that he not only denies it place as a leading case, but disposes very summarily of Chief Justice Parsons, whose *dicta* are not to be regarded on this topic, excepting as "desperate suggestions" or "loose statements." I am happy to differ from this opinion. No man was more thoroughly versed in the early history, laws, institutions, manners and local usages of the early settlers of Massachusetts than this honored and conspicuous "Giant of the "Law." No man knew better than he did what was the law of slavery in his native State. And when he declared in this case, that "the "issue of the female slave, according to the "maxim of the civil law, was the property of her "master," he was careful to introduce the unanimous opinion of the Court in 1796, and to brand it as spurious—"certainly in opposition "to the general practice and common usage." He spoke the truth, candidly and sincerely, for he loved it. He belonged to the old school of lawyers and judges, and never learned the dialect of the later Euphemists, or the ritual of the modern Brahmins of Massachusetts.

The next case is that of *Andover vs. Canton*, 13 *Mass.*, 547, in which Chief Justice Parker confirmed the doctrine of hereditary slavery in Massachusetts. His caution (to which I referred in noticing this case in my book) was due to the doubt, not whether the children of slaves were slaves but whether they were the property of the owner of father or mother. The manner in which this case is treated by my critic "seems" vastly like "dissembling." I did not quote or refer to the *semble* as authoritative, but to the Chief Justice's unqualified declaration, after the very emphatic statement before quoted of the slave's incapacity for civil rights in Massachusetts, that "his children, if the issue of a marriage with a "slave would immediately on their birth, become "the property of his master, or of the master of "the female slave." *Ibid:* 551.

I cannot wonder at my critic's alacrity in getting over this dangerous footing, to what he re-

* This was a "civil right" which the slave enjoyed in common with "any brute creatures, which are usually kept for the "use of man," the latter being protected by a special statute against cruelty. *Laws* 1672, p. 39.

garded as "firmer ground;" but I must say, with due deference, that, as he could not have been misled by my caution or my reference to that of the Chief Justice, I am surprised at his eagerness to charge me with tripping, or something worse, so soon after his own fall over this *semble*. But he will find it difficult to make anybody else take up his hue and cry in this instance, or fix on me as the proper object of pursuit. I bear with me neither the consciousness nor evidence of guilt.

It is in the case of *Lanesborough vs. Westfield*, 16 *Mass.*, 74, that my critic finds "firmer ground." In fact, he "seems" to rest and breathe more freely. But his first blow is foul! as he renews the attack. His principal charge of suppression is with regard to this case, which I do "refer to" and "cite by page" as one of the principal authorities relied on by Mr. Sumner, Mr. Palfrey and Mr. Gray, in their statements on this subject. If I had given no reference whatever, I could not recognize the justice of the charge so offensively made; and I sincerely regret that my critic could invent no better motive for me than sheer dishonesty. If I was guilty of any error in this part of the subject, it was in failing to show that the new interpretation of the law of 1641 first dawned upon the historico-legal mind of Massachusetts in 1819, in this very case!

It was the case of a certain pauper negro woman and her child, which was made to depend on the condition of her mother. She was born in 1778, continued in the family of her mother's owner till the formation and adoption of the Constitution of the Commonwealth. How much longer does not clearly appear, but she remained in the same town (Westfield) until 1803, without acquiring any legal residence. She removed to Lanesborough in 1803, was married in June, 1804, and dwelt in the latter place until the time the action was brought which was to determine *the main question* in this as in all these suits—who was to support these negro paupers? On this state of facts, Chief Justice Parker declared the opinion of the Court, as follows:

"By the colonial law of 1646, no bond slave-
"ry could exist except in the case of lawful captives
"taken in just war, or such as willingly sold
"themselves, or were sold to the inhabitants (*Vide*
"*Ancient Charters*, &c., 52). Of course, the child-
"ren of those who in fact were, or who were
"reputed to be slaves, not coming within the de-
"scription, could not be held as slaves. And in
"the year 1796, it was solemnly and unanimously
"decided by the Court, that the issue of slaves,
"although born before the adoption of the Con-
"stitution, were born free. 4 *Mass., Rep.* 128,
"*note, Littleton vs. Tuttle.*"

It will be observed that in this decision the Chief Justice has changed his base, and occupies a position considerably in advance of that which he occupied at the termination of the action in Essex, November Term, 1816—*Andover vs. Canton*.

An examination of his authorities gives us a clue to the motive as well as support of his advance. The "Ancient Charters, &c.," edited by a commission of whom "the venerable legal an-
"tiquary," Nathan Dane, was the Chief, was published under the authority of the legislature in 1814. In its pages was reproduced for the first time in a century and a half the Massachusetts statute of Slavery. This law was sandwiched in one and the same separate chapter between an act respecting the assignment of bills, and the famous order of the General Court in 1646, for the restoration to his native country of a kidnapped African. It is proper to add here that this special order was never printed among the Colony Laws by those who made it, or at anytime afterwards, until in this collection as above stated. The language of the Chief Justice, however, shows conclusively that he was influenced by this new combination, for he refers the law of 1641 to the year 1646, and evidently gravitates towards the mild views of interpretation adopted by the index-maker of that volume, whose summary of the whole law, as given in the Index, is "Slavery forbidden."*

This is the only new light indicated in the opinion, for the decision of 1796 was before him, when in *Andover vs. Canton*, he not only acquiesced in the law of his predecessor, but his open disregard, if not undisguised contempt, of that decision. Both were undoubtedly well aware that it had been authoritatively and unquestionably reversed by the same judges who made it, in their careful settlement of the law in the decision of 1799, which I am still obliged to regard (notwithstanding the sneer of my critic) as "a
"notable instance of judicial retractation."

But my critic adds still another Ossa upon Pelion to the vast "weight of legal authority" on this point. In the case of *Edgartown vs. Tisbury*: 10 *Cushing*, 408, Mr. Justice Metcalf has "followed his leader"—in Bristol, Plymouth, &c., October Term, 1852. The facts in this case were entirely clear, and embarrassed by no doubt. The daughter of an unmarried female slave,

* As my critic derives some comfort from such little helps, and refers to the marginal note in the Edition of 1672, "No Bond-slavery" as an "epitome" of the law of slavery in Massachusetts, I will add to his collection of "epitomes" by the information that, although the Edition of 1660 gives no marginal note whatever and the Index reference is simply the title itself and number of pages where found—in that of 1672, not only the words "No Bond-slavery" appear in the margin, but the Index reference is the title, with an addition, as follows: "Bond-slavery, not allowed, but servitude declared." Perhaps a judicial determination may yet be obtained that slavery had no legal existence in Massachusetts after the publication of that Index!

born in 1772, upon the death of her mother's master, in 1778, was included in the inventory, and appraised and sold at auction, as a part of his property. She was taken away by the purchaser on the day of the auction and continued with him several years. With these facts before him, Mr. Justice Metcalf said:

"As she was born in Massachusetts, she was "freeborn, although her mother was a slave, "and she could not be held as a slave by Allen "[the purchaser at the auction, as above] under "the sale made to him. The relation of master "and slave never existed between Allen and the "pauper." The authorities are *Littleton vs. Tuttle*, 4 *Mass.*, 128, *note. Lanesborough vs. Westfield*, 16 *Mass.*, 74. 2 *Dane's Abridgment*, 211-13. 2 *Kent Com.* (*6th Ed.*) 252. The last is the only new one. In the passage referred to, Chancellor Kent quotes the decision in *Littleton vs. Tuttle*, and adds—"But, though this be the case, yet "the effect of the former legal distinctions is still "perceived, for by statute [not repealed until "1843] a marriage in Massachusetts between a "white person and a negro, Indian or mulatto, is "absolutely void."

Such are the records—such are the authentic reports. In the face of such facts, what are the later decisions and opinions worth? To what extent can such authorities be held to govern either law or history? Is a question of history the same thing as a question of law, and exclusively a matter of judicial determination? The conspicuous jurists of the Boston school ought to know that on a matter of history the opinion of a Judge, even on the bench, is of no authority, but at best is only evidence to be weighed as such. If it be presumption in me to remind them of this fact, I must take the consequences. If I should be crushed under the weight of such legal authorities, it certainly will be "in "spite of my conviction of the unreasonable-"ness of their conclusions." There may be force in my critic's suggestion of something more than indifference among the Puritans to the principles of the laws of heathen Rome. But the more recent magnates of the profession as well as some of the "Apprentices to the Bench" in Massachusetts appear to have extended their inquiries into the Civil Law far enough to learn one important maxim said to be derived from it—"boni "judicis est ampliare suam auctoritatem"—it is the business of a good judge to enlarge his authority. But are we to receive our history as well as law from the Bench? Jeremy Bentham thought it more than enough that the Judges should make law as well as declare it. What would he say to the "conspicuous judicial "instincts" of Massachusetts, whose opinions are to be not only law but history? "Instinct is a "great matter." And no man who is familiar with "the way of putting it" in Massachusetts can doubt for a moment that the champions of her historic fame are subjected, not less than inferior tribes, to the influence of certain fixed impulses or active tendencies, which, like the instincts of animals, are constant and invariable. It does not by any means follow that their results are as infallible as the processes of nature. It is only in men's fables that the instincts of animals are portrayed like the human passions which color every line of human history. Men may be hypocrites and Pharisees—animals never.

It is hardly necessary for me to dwell upon the contrast and opposition between the facts before the Court, and the decisions in these later cases which are held to have settled the law. The decisions absolutely contradict the facts, and rest upon very doubtful grounds, to say the least. They are specimens of "legal construc-"tion," interesting chiefly as individual opinions of the judges concerning what might, could, would or should have been the "intention of the "founders of the Commonwealth," but as my critic says of this question of legal construction, "not bearing upon the subsequent course of the "history of slavery" in Massachusetts. If he had frankly admitted that the hidden virtue of the law of 1641 was never manifested to the world either in theory or practice, until the time arrived in which it had no possible bearing on the character and conditions of slavery in Massachusetts, I could return his slur on my discernment by a sincere tribute to his candor on one point, at least.

But these decisions are "confirmed by the "opinions of jurists"! making the round and top of this legal sovereignty—which it is to be high treason to question or deny. Mr. Sumner has said that "in all her annals, no person was ever born "a slave on the soil of Massachusetts." Mr. Gray has said, "all children of slaves were by "law free." And the historian of New England has said "in fact no person was ever born into "legal slavery in Massachusetts." "The child of "slaves was as free as any other child. No per-"son was ever legally held to servitude in Massa-"chusetts, as being the offspring of a slave "mother."

I should be very unwilling to believe that either of these distinguished jurists and scholars would repeat their statements now, or would fail to correct them upon a proper occasion or opportunity, with cheerful alacrity and due acknowledgment of the new light thrown upon the subject.

To sum up, I may apply the precise argument of my critic in his own language. We have then as a matter of law on this subject an organic act by the people, contemporaneous interpretation of it, and uninterrupted acquiescence in that

interpretation by the legislature, the courts and the people for nearly a century and a half. If the effect of any legal provision can be more conclusively ascertained, I should be glad to know the process.

But the argument from the continued practice of hereditary slavery is declared to be "not even "worthy of a layman's law," and the further assertion is ventured that it "does not touch "either the historical or legal question whether "slavery was hereditary by law in Massachu- "setts." It strikes me that if this means anything, it is a very unworthy quibble. Let us test the doctrine. If the law of 1641 did not cover hereditary slavery, it must have excluded it. If this is the true construction, how is it that not a single example can be produced, not one solitary contemporary fact or instance, to sustain the doctrine, from the entire history of Massachusetts, before the Revolution. If we are to accept this construction, where is the apology to be found for the conscious, wilful, systematic violation of so humane a provision from beginning to end of the history. But in view of the facts, this hypothesis is absurd. It admits that the children of slaves were held as slaves by birth, but denies that they could legally be so held! In a juristical view, it is a contradiction in terms. Acts which are done, and conditions which exist without a challenge for generations, are *law*, by the very definitions of law.

There is no attempt to deny that in point of fact from the beginning to the end of the institution, the children of slaves were actually held and taken to be slaves. My critic recognizes "the foothold which hereditary slavery obtained" and favors us with an "explanation easily found." It were indeed a pity if so rare a specimen of historical philosophy should be lost. Such keen insight into the remote past, and such critical sagacity in solving all the difficulties of the problem presented can belong only to a critic of "conspicuous [historical if not] judicial instincts." I quote "the facts" which constitute "the ex- "planation," in his own language.

1. "For fifty years the number of slaves was so "insignificant as not to attract attention to "questions of this sort."

Then we are to understand that the fathers of New England in 1641, making a statute "explicitly "in favor of liberty," recognized the institution of slavery, and had their attention sufficiently attracted to limit it by providing carefully against its hereditary quality! And straightway not only forgot all about it themselves, but forgot it so earnestly that none of their descendants ever discovered it until in the year 1796, in the excitement of the question how the wretched scattered remnants of the slave races should be provided for as paupers, a Court was found eager to pronounce judgment, without hearing an argument, that a negro, who had been in fact held as a slave from the hour of his birth until he became useless through disability, and his owner rejected the burthen of his support, was born free! That this judgment had to be reversed three years later by the same judges, to meet another phase of responsibility connected with the pauperism of the Massachusetts freedmen, and it was not until there was no longer any danger of their rising from their unhonored graves to claim maintenance and support from those who had exhausted their bodies and souls, that the judges and Courts of Massachusetts could confidently declare that hereditary slavery never was legal in the Old Bay State!

2. "In a thinly settled colony, with scanty "means of communication and almost no regular "channels of general intelligence, the chances of "such a point being brought to the attention of "those most concerned must have been extremely "small."

Slave-owners have never been forward to suggest doubts of their own authority, or to question their own titles to such property before "those "who are most concerned"—the slaves themselves; but I am unable to see how a greater density of population, or an increased service of mail and passenger coaches, with a weekly or even daily newspaper, would improve their "chances" in this respect. It certainly did not work in that way farther South than Massachusetts.

3. "The acquaintance of the public with their "own laws and institutes bore no comparison "with what is seen at the present day."

It is hard to reconcile the standard authorities on the subject hitherto received in Massachusetts, with this suggestion of the comparative ignorance of the people of that State in any period of its history. It has the merit of novelty, whether true or not. The reader will give it due weight in this discussion.

4. "In that state of society an erroneous con- "struction of the law might easily be acquiesced "in for generations, which in the present condition "of things could not pass unchallenged for a sin- "gle year."

Was this the Colony and Province of Massachusetts Bay, during the first century and a half of its existence? Can the people of Massachusetts be brought to believe and acknowledge that the state of society among the Puritans and their immediate descendants during several generations was such that although they had carefully framed and solemnly enacted a public law expressly to exclude hereditary slavery—not a single child of slaves was born in freedom under its provisions, but they continued to buy and sell, to hold and treat as slaves the children and children's children whom they had thus pretended to

emancipate, for nearly a century and a half, without challenge or compunction? Truly "a slander "of the Puritan Fathers and their children more "unfounded, or more discreditable to the moral "sense of the utterer was never heard from the "enemies of Massachusetts!" It is "an erro-"neous construction of" the morals and manners of that people "from generation to generation," which cannot "easily be acquiesced in," or pass unchallenged for a moment anywhere.

III. As I have nowhere suggested any "diffi-"culty in understanding the legal effect of the "Massachusetts Declaration of Rights, *as applied* "*by the Courts*," or declared "the doctrine of the "*practical* insignificance of the clause"—and as my critic is unable to cite or refer to any account of the process by which the Declaration of Rights was made to extend to enslaved Indians and negroes more complete or more thoroughly faithful to the record than my own—the main question between us in this last division of his labors concerns the history of the first clause of the first article of the Bill of Rights. He appears to maintain what I stated as the received opinion in Massachusetts, for which I am still, even with his help, unable to find the slightest trace of positive contemporary evidence. He challenges my view of "the family traditions which have desig-"nated the elder John Lowell as the author of the "Declaration, and assigned the intention to "abolish slavery as the express motive for its ori-"gin." Regarding it as "unfortunate that I did "not undertake an historical criticism of those "traditions," he proceeds to "establish" them himself in his own way. First, he brings in Dr. Belknap, then the traditions, and then the announcement that "several facts in the life of "Judge Lowell make the statement intrinsically "probable." Of the latter he mentions but one —the "freedom suit" in 1773, of which a particular account is given in my book.

1. "Dr. Belknap's positive statement made "from his own knowledge only fifteen years af-"terwards." What his *whole* statement was will appear below, *unabridged*.

Probably Belknap's statement in 1795 is the earliest. In 1784, he does not appear to have been aware of the new view of the Declaration of 1780. Referring to this subject of slavery, and the return of the *stolen* negroes to Africa in 1646, he adds, "if the same resolute justice had al-"ways been observed, it would have been much "for the credit and interest of the country; and "our own struggles for liberty would not have "carried so flagrant an appearance of inconsist-"ency." *Hist. of N. H., Vol.* 1, *p.* 75. His letter to Moses Brown, July 15, 1786, concerning slavery, does not intimate any knowledge of the new views, but he did acquire the light before June 14th, 1790, when he wrote to David Howell, who had urged upon him the establishment of an abolition society: "I am of opinion that such an "association is entirely needless here, as we have "no slavery to abolish; all persons who can "claim the privilege of being descendants of "Adam being declared free by our constitution." He adds also, "I sincerely wish that the multi-"tudes of blacks among us might enjoy the same "blessings which other people enjoy, as the fruit "of their liberty: but, alas! many of them are in "a far worse condition than when they were "slaves, being incapable of providing for them-"selves the means of subsistence."

In 1792, he wrote in his history as follows: "In Massachusetts, they [negroes] are all ac-"counted free by the first article in the declara-"tion of rights;" and he is evidently unable to see why a similar clause in the Constitution of New Hampshire should fail to produce a similar result. But that people were the descendants of men who did not pretend to have come over to worship God, but to catch fish!

In 1795, he published the following statement, *partly* quoted by my critic, *who omitted the clause which I have italicized.* The first article of the Declaration of Rights "was inserted not merely "as a moral or political truth, but with a par-"ticular view to establish the liberation of the "negroes on a general principle, and so it was "understood by the people at large; *but some* "*doubted whether this were sufficient.*" This doubt is significant. It impairs, if it does not destroy, the whole theory which the passage is held to support. But this is not all. The uncertainty which prevailed is further illustrated by the reply which Belknap gives in the same document to the direct query of his correspondent—"At what period was slavery abolished?" He says "by comparing what is said in answer "to queries 4th and 5th, it appears that *the com-*"*plete abolition of slavery may be fixed at the* "*year* 1783." *Ibid, p.* 206. His correspondent also asked in query 5th, "The mode by which "slavery hath been abolished? Whether by a "general and simultaneous emancipation, or at "different periods? Or whether by declaring all "persons born after a particular period, free? "The general answer is, that slavery hath been "abolished here by *publick opinion*, which began "to be established about thirty years ago." [1765] *Ibid, p.* 201. And yet again, referring to the census, and the fact that no slaves were *set down* to Massachusetts, he says, "This return [in "1790] made by the marshal of the district, may "be considered as the formal evidence of the "*abolition of slavery* in Massachusetts, *especially* "*as no person has appeared to contest the legal-*"*ity of the return.*" *Ibid. p.* 204. A good thing for Massachusetts! The curious reader may find

in my book an explanation of the way in which this census was made to bear testimony to the abolition of slavery in that State. It will also enable him to appreciate the satisfaction of Dr. Belknap, that no person had appeared to "contest "the legality of the return." *Notes*, *p.* 247. It would have been melancholy, indeed, if the Constitution of Massachusetts, an organic act by the people, "backed by a contemporaneous judicial "interpretation of it, and uninterrupted acquies- "cence in that interpretation by the Legislature, "the courts and the people," for even ten years, had been made void and of none effect by a single slaveholder's challenge of the marshal's false though flattering return!

Secondly, come "the traditions," or more properly the tradition of the Lowell family. It is already obvious that this tradition is to be tried on its own merits, for Dr. Belknap says nothing whatever about Judge Lowell's agency in the matter. This omission in his history of the subject is more significant in view of the circumstance that they were contemporaries in Boston and probably familiar acquaintances at the time when Dr. Belknap wrote his account of slavery in Massachusetts, for which he collected the materials by circulating printed queries among such gentlemen as were supposed to be well informed or likely to be interested. There is another historian of Massachusetts, who may properly be referred to here. Alden Bradford, born in 1765, graduated at Harvard in 1786, was one of the earliest if not an original member of the Massachusetts Historical Society, whose historical researches and publications justly make his statements and corrections highly important. In his *History of Massachusetts*, (Vol. II., p. 227,) published in 1825, he says of the first article in the Declaration of Rights: "This was inserted, no doubt, as a general "axiom. But it was also said, at the time, that "there was a reference to the condition of the "Africans, which had been held in slavery in "Massachusetts," &c. In his revised edition, published in 1835, he gives the following account: "In 1783, the involuntary slavery of the "people of color in Massachusetts was in effect "condemned and prohibited, by a decision of the "highest judicial tribunal in the State. * * * "The case appears to have been decided on great "constitutional principles recognized in the dec- "laration of the bill of rights 'that all men are "'born free and equal.'" *p.* 305.

Judge Lowell died in 1802. The late Rev. Dr. Charles Lowell was the third son, born in 1782. His elder brothers, John, born in 1769, died in 1840; Francis Cabot, born in 1775, died in 1817.

The earliest public notice of Judge Lowell's alleged authorship of the freedom clause in the Bill of Rights may be found in a communication to the Editor of the *Boston Courier*, from Dr. Charles Lowell, dated May 17, 1847. It appears to have been elicited by some previous discussion of the question of intention in the framers of the Constitution of 1780, in the introduction of the clause referred to. Dr. Lowell says: "I have the "authority of my late brother, John Lowell, for "saying that he knew that his father, the late "Judge Lowell, who was on the committee, intro- "duced this clause for the express purpose of set- "tling the question about slavery in the State, "and that, as soon as the Constitution was adopt- "ed, he declared that every black in the State was "free, and offered his services gratuitously, to any "such person whose right to his freedom was con- "tested. My brother further told me that he be- "lieved my father wrote that article himself. "* * * I well remember myself, when I "was a boy at Andover Academy, being often "told by an intelligent old black man who sold "buns, that my father was the friend of the "blacks, and the cause of their being freed, or "something to that effect, and that I often had a "bun or two extra on this account."

In 1852, Dr. Lowell communicated the notice to the Massachusetts Historical Society, which is printed in the *Collections*, IV. i. 90. The statement of Dr. Belknap in 1795 is quoted *in part* and is followed by these words: "I feel an hon- "est pride in saying, as I have authority to say, "that this clause was introduced by my father, "the late Judge Lowell, for the purpose above "stated, and that, on its adoption by the conven- "tion, he offered his services as a lawyer, gra- "tuitously, to any slave in the Commonwealth "who might wish to substantiate his claim to "freedom."

In the following year, 1853, Dr. Lowell addressed Mr. Bancroft, the historian, on the subject, referring to his "brief statement" published by the Massachusetts Historical Society as being "founded on the authority of my [his] father "himself." He adds: "At any rate, he inserted "y^e^ preamble from y^e^ Declaration of Independ- "ence for y^e^ express purpose of abolishing "slavery. As a lawyer, and an eminent one, "he knew y effect & gained the first cause tried "in Essex Co., on y^e^ subject, on the ground "which he himself had placed y^e^ subject by his "clause in the Bill of Rights."*

In 1856, Dr. Lowell addressed a note to the author of "Anthony Burns a History," in which he said, "My father introduced into the Bill of "Rights the clause, by which slavery was abol- "ished in Massachusetts. You will find, by re- "ferring to the Proceedings of the Convention "for framing the Constitution of our State, and

* The "freedom suit" in Essex here referred to was tried in 1773, seven years before the adoption of the Bill of Rights.

"to Eliot's N. E. Biographical Dictionary, that "he was a member of the Convention, and of the "Committee for drafting the plan, &c., *and that "he suggested and urged on the Committee the "introduction of the clause taken from the Dec-"laration of Independence a little varied*,* which "virtually put an end to slavery here, as our "courts decided, as the one from which it was "taken ought to have put an end to slavery in "the United States. This he repeatedly and "fully stated to his family and friends. * * * "In regard to the clause in the Bill of Rights, my "father advocated its adoption in the Convention, "and, when it was adopted, exclaimed: 'Now, "'there is no longer slavery in Massachusetts; it "'is abolished, and I will render my services as "'a lawyer gratis, to any slave suing for his free-"'dom, if it is withheld from him,' or words to "that effect."

A later statement of this tradition is to be found in the biography of the elder John Lowell, understood to be furnished by the family for the New American Cyclopædia in 1860. It is as follows: "He inserted in the bill of rights the "clause declaring that 'all men are born free and "'equal' for the purpose, as he avowed at the "time, of abolishing slavery in Massachusetts; "and after the adoption of the Constitution he "offered *through the newspapers* his services as a "lawyer to any person held as a slave, who de-"sired to establish a right to freedom under that "clause. The position maintained by him on "this question was decided to be constitutional "by the Supreme Court of the State in 1783, "since which time slavery has had no legal ex-"istence in Massachusetts."

A comparison of the preceding series of statements, which illustrate fully the birth, growth and progress of "the tradition," with the facts and authorities set forth in my "*notes*," etc., will enable all who are interested to decide for themselves whether it will "stand the test of historical criticism." One feature appears throughout the series, which is of itself a refutation of the intentional theory. It is the recognized necessity for a suit in the Courts to establish the rights of slaves to freedom. This would probably appear with greater distinctness and force *if the newspapers in which Judge Lowell offered his legal services should be brought to light.* The elder John Lowell was undoubtedly among the friends of the black man in Massachusetts at a time when it was less fashionable to be so than it is now. The most conclusive evidence of the fact may be derived from my book, though not to be found in any of the biographical sketches previously published. It is probable that the dramatic story of his action concerning the origin and adoption, etc., of the Bill of Rights, grew out of this general fact, and particularly the illustration of it in 1773, in the Essex "free-"dom suit."

I do not think it is necessary for me to point out the particulars of inconsistency and conflict with established facts, in all this testimony of the late Dr. Lowell, which rests entirely on his remote recollections of what he had been told by his brother. The statement of my critic, that Dr. Lowell "derived it himself from his father," is not sustained by any evidence whatever which I have been able to discover—certainly, not by the authority referred to. It is not necessary to infer the presence of any intention to violate the truth of history in any of the statements of Dr. Lowell. It is neither difficult nor improper to account for his mistakes, when we remember how imperfect are the recollections of age, and how apt such errors are to become identified with truth among the cherished remembrances of filial piety. Suggestions not intrinsically improbable, uncorrected by judicious historical criticism, readily come to be regarded and firmly held as "credible state-"ments of history," especially when, as in this instance, they suit the prejudices of the time, and fall in with the current of popular opinion. But, when once questioned and exposed, the writer who repeats them cannot plead, for his excuse, the same want of intention to deceive.

I have thus re-examined the leading points of animadversion presented by my critic in lieu of that general review of my book which he thinks that it invites from the hand of the careful and candid investigator. The reader who has had the patience to accompany me through the details which I have given, will doubtless indulge me a little further. He must judge whether I have effectually disposed of the specific charges of suppression, dishonesty and misrepresentation, or not. He will also be able to estimate the value of those general accusations with which the former are repeated at the close of the review, as well as the opinion that "in no part of the work is it safe to "follow the author upon trust." This opinion would be stronger in everything but expression if my critic had pointed out a single statement of fact which is not sustained by a formal reference to the authorities on which it is based, or any passages in my work which justify his wholesale denunciation.

But, after all, he tells us that there is nothing new in my book, nothing which was not already well known in Massachusetts! "NOBODY HAS

* This does not appear either in the proceedings of the Convention, or in Dr. Eliot's Biographical Dictionary. Yet Dr. Eliot was a contemporary and deeply interested in biographical and historical researches. He co-operated with his friend Dr. Belknap in establishing the Massachusetts Historical Society. He published his Biographical Dictionary in 1809. In his life, he notices very particularly the services of Judge Lowell in the constitutional convention, which renders his silence on the main point more remarkable.—*Biog. Dict.*, 301.

"DENIED THAT SLAVERY WAS A MARKED FEATURE "IN THE PROVINCIAL HISTORY OF MASSACHUSETTS, "AND TOO MUCH HAS BEEN SEEN OF THE SPIRIT OF "SLAVERY IN OUR OWN DAYS FOR ANY ONE TO SUP- "POSE THAT IT COULD EXIST ANYWHERE WITHOUT "SUBSIDIARY EVILS OF THE MOST REPULSIVE NA- "TURE." No Massachusetts writer ever made such a confession before. Her historians have never recognized or acknowledged this "marked "feature," or indulged its exhibition anywhere; and if I have added nothing to their knowledge of the subject, those who may study it hereafter will not fail to admire the art with which the champions of Massachusetts have hitherto contrived to conceal the truths with which they have always been so familiar.

As for the imputation of local or political prejudice against Massachusetts, I have neither; nor do I know what there is in my work to justify the suggestion that I have written "to please the "personal resentments of literary friends." Neither do I believe it possible "so to write the "history of the best of mankind that they shall "seem to have been the worst." The true history of every community must present its lessons of humiliation as well as pride—that of Massachusetts must acknowledge among her generations, some of the best and some of the worst—

"Non omnes cœlicolas, nec supera alta tenentes."

I cannot accept the views of my critic as to the motto of my book. Fidelity to the truth of history, and manly confidence in its results, are far more honorable than any cowardly sensitiveness to that sort of criticism whose chief weapon is the "*suspicio gratiæ, aut simultatis*"—the insinuation of favor or the imputation of bad motives. Cicero did not counsel cowardice in the face of such hostility. And he who conscientiously obeys the laws of Truth may bid defiance to an enemy who can only insinuate a groundless suspicion of his motives.

GEORGE H. MOORE.

New York, November 10, 1866.

BRADSTREET PRESS