

Additions to Thomas Hutchinson's "History of Massachusetts Bay"

AT OUR meeting of October, 1931, Lawrence Shaw Mayo read a paper on Thomas Hutchinson as an historian and on his own experiences in editing his reprint of the *History of Massachusetts Bay*, and at the meeting of the Colonial Society of Massachusetts in April, 1933, he supplemented it with an account of his further literary adventures in this field. Having finished his manuscript based on the printed editions of Hutchinson, he heard that "a gentleman in New Jersey . . . had bought what he supposed to be an original manuscript of a chapter of volume three," and in the pursuit of this he found at the Chapin Library Governor Hutchinson's own copies of volumes one and two and the manuscript of volume three. From the author's marginal corrections and extensive new manuscript material interleaved in the first two volumes he obtained much material which Hutchinson had added in preparing a final revision of these volumes, material which makes his edition of the *History* far more useful than the mere reprint he had intended. Unfortunately, he reported, the manuscript of the third volume, the most important because it deals with the events of Governor Hutchinson's own administration, added "almost nothing" to the printed version.

In my account of the libeling of Governor Hutchinson by Isaiah Thomas in my recent biography of our founder, I discredited the latter's account of the affair, pointing out that there is no record of such legal action. The day that the mailman brought to my desk the first copy of this biography,

he also brought a manuscript which Mr. Thompson R. Harlow of the Connecticut Historical Society, with his unflinching helpfulness, had loaned to me. This turned out to be a typescript of the first draft of the third chapter of volume three of Hutchinson, in which he not only describes the legal action taken against Thomas but even names the jurymen who let him off. A quick examination of the typescript showed that Hutchinson in preparing his history for press had radically edited the account of his own administration, changing a spirited defence to the brief and disappointing recital of non-controversial facts which appeared in print.

There was reason to think that this typescript, which the Connecticut Historical Society had acquired years before, was a copy of a Hutchinson manuscript which I had long been trying to trace, for another reason, through booksellers' catalogues. Mr. Mayo's mention of "a gentleman in New Jersey" provided a clue. Enlisting the aid of our Mr. Streeter, I traced the manuscript to Mr. Lloyd W. Smith of Madison, New Jersey. At this point I induced Mrs. Mayo to take over the work, and from here on it was all hers. Mr. Smith very kindly permitted her to borrow the original and gave her permission to publish the additional material which it contains. Among those who helped Mrs. Mayo in her labor of editing were Mr. Stephen T. Riley, librarian of the Massachusetts Historical Society, and Mrs. Donald E. Richmond, librarian of the Chapin Library.

The text which follows contains the more significant additional material, some seventeen percent of the total, in the Smith manuscript. The references in italics indicate the points in the Mayo edition of Hutchinson at which these additions occur. No attempt has been made to indicate minor changes of a purely literary character. Hutchinson's spelling and capitalization have been followed, as has his

punctuation, except in a few instances where commas have been added to set off marginal notes now in the text. All of Hutchinson's marginal notes have been inserted in the body of the text. Where the insertion is awkward, a preceding explanatory note in brackets has been added. Where text is lacking because of torn or missing manuscript, brackets, and in some cases inserted word or letters, have been added. Brackets have also been used for the identifying first names and dates which have been supplied. When Hutchinson inserted new material within a sentence, previous identical passages have not been repeated. C. K. S.

*From Governor Bernard's leaving the Province
until the arrival of General Gage, to take command,
and the departure of Governor Hutchinson*

EDITED BY CATHERINE BARTON MAYO

Page 184, line 16

At first, indeed, the authority of Parliament seemed to be admitted, except in the case of taxes; but it was denied, in that case, upon this principle, that the Colonists bein[g] intitled to the rights of English subje[cts] no act for imposing taxes can be obliga[t]ed upon them, until they are repr[esented] in Parliament by persons elected by them. Upon the same principle the exception may be made to all other acts; and it soon was made to such acts as extended the powers of the Admiralty Courts, as changed the place of trial in criminal cases, and such as made any alteration in the constitution of government, or in the interior police of any colony, and at last the authority was denied in all cases whatsoever.

Page 184, line 28

The major part of the council as well as of the house of representatives, were under the influence of the people, and could not be induced to originate any legislative acts for strengthening the executive powers of government, in suppressing the disorderly assemblies of the people, lest

such acts should be the means of a submission to those acts of Parliament which they wished never to take place; and the council, in their executive capacity, for the same reason, would not use the powers with which they were vested, in assisting or advising the Governor to remove any judicial or ministerial officers of government, who had neglected their duty, or who, perhaps, had promoted the disorders they ought to have endeavored to suppress.

Thus the Governor had been rendered incapable of doing any active service, but had been obliged to attempt it, and to call upon the Council to advise and assist him in it, and by such attempts he became obnoxious to the people.

Page 184, line 30

The Lieutenant Governor wished the constitution of the Province might continue as long as he lived, in [the] form it was in when he was born, and under the [] subordination to the supreme au[thority] [and Cour]ts of the Empire; and being [] of the King he was []

Page 185, line 7

About a fortnight after Governor Bernard sailed, a vessel arrived from London with many more copies of his letters, procured in like manner with the former. At the same time came copies of many letters, memorials, and other papers, which had been sent to England by the Commissioners of the Customs. These also were obtained in the same way with the former by Mr. Bollan, and sent to the Council, who received them as *His Majesty's Council*. They could make no use of them so much for *His Majesty's Service*, as the suppressing or concealing them, and it would have been best for the Province if they had been so disposed. Some of the letters and papers which had a tendency to increase discontent, and disaffection, were suffered to be printed; others were communicated to such persons, as the Council thought fit.

Mr. Otis was informed, that he had been reflected upon in some of the papers sent home by the Commissioners [Henry Hutton, Charles Paxton, William Burch, John Robinson], and desired a meeting with them. Such of them as he had opportunity of seeing, did not think proper to give any answer to his interrogatories, and to one of them he sent, immediately after by his servant, a most abusive billet which carried with it the marks of a sudden frenzy, and was very properly, treated with neglect: But a more deliberate abuse of the Commissioners, in the next newspaper with Mr. Otis's name to it, provoked another of them to attack him in the

publick room of a Coffee House, where they had both met, alike prepared with canes purchased that day at the same shop; but Mr. Otis being much hurt, his adherents were much enraged. A civil action was brought against the Commissioner [John Robinson] by Mr. Otis, who laid his damages at three thousand pounds, and a gentleman of Virginia who was accidentally present; and called for fair play, was taken by a Justice's warrant & recognized with sureties to appear & answer for his offence at the next assizes.

Page 185, line 10

Assurances had been given that all the duties in the last act should be taken off, except that upon tea. Fear, it was said, had caused this determination! If the merchants should exert themselves & suffer no imports the present year, that fear would be so increased, as to produce not only the repeal of the tea duty, but of all other taxes upon the colonies.

This was first suggested to them by their correspondents in England. . .

Page 185, line 13

The great design was to alarm & stir up the Merchants & Manufacturers in England. An open refusal of a number of Importers to join would tend to frustrate the design. This, therefore, was nowhere to be tolerated. A concealed breach of the agreement would not lessen the alarm & therefore was not so much regarded. Recriminations, however, from one Colony to another for such breaches produced a free importation again, sooner than was intended, without effect[ing] the repeal. The established pow[ers] of government in each colony in the meantime were tri[umphed] over by illegal associations formed in opposi[tion].

Page 185, line 28

In some instances, where there appeared a backwardness to comply, a resolution was taken in the meeting to go in a body, at a time appointed, and require a compliance. The terror caused by the expectation of such a visit, generally answered the purpose.

Page 186, line 15

[The names given by John Mein in his newspaper] to Mr. Cushing, the Speaker, and to Mr. Hancock were more ludicrous than the rest.

Page 186, line 28

Mr. [Captain Samuel] Dashwood, one of the subscribers to non importation, charged with importing. . . .

Page 186, line 34

[John Mein] having been slightly hurt by the first assault and afterwards put in imminent danger of losing his life by a stroke from an iron shod shovel which cut through his cloathes.

Page 187, line 1

. . . an unfortunate fellow who had been seized & punished upon meer suspicion, without grounds, of a fact which, if true, would have been lawful & justifiable.

Page 188, note, line 10

Two gentlemen came to Boston one from Virginia, Mr. Wormeley [possibly Ralph Wormeley], the other from Maryland, Mr. [possibly Benjamin] Ogle. They visited the Lt. Governor as private gentlemen, and said nothing to him of any special business which was the occasion of their journey, but they were more communicative to others, and General [Alexander] Mackay was informed that the gentleman from Virginia had met twice with the Boston members & other leaders, and had let them know, that he was authorized by the principal people in Virginia to signify that they would be satisfied with what Lord Hillsborough proposed, and that, if the Northern colonies went such lengths, Virginia & other Southern Colonies could not go with them.

General Mackay sailed [from] Boston the 19th of August convinced of the impracticability [of carrying the revenue acts into execution, of the urgency of repealing them, and of the necessity of [some] provision by Parliament for securing [com]mercial advantages from the Colonies to which [they] would acknowledge the Kingdom to be justly []

Page 188, note, line 16

The Boston gentlemen could not be content, unless not only the duty upon Tea, but that upon Molasses, & other articles where the money raised is for the purpose of a revenue, should also be repealed.

They should have remembered, that the reduction of the duty upon molasses to one penny a gallon, was made upon the special request of the merchants, and upon assurances given, that it would cheerfully be paid; that the act was carried through Parliament when some of those persons whom the Americans esteemed their best friends were in the minis[try] and that the whole duty then collected upon a hogshead of molasses, did not exceed the sum which for many years together had been paid in Massachusetts bay for admitting a like hogshead to be landed, not indeed as a duty but as a reward to the officers.

Page 188, note, line 18

Some of the Southern Colonies seemed to be in doubt whether they ought not to be content with the proposed repeal of the duties on paper, &c. Pensilvania & New York depended on importing tea from Holland. Unless it was meerly for the sake of carrying a point it was immaterial to them whether the duty was taken off or remained, seeing they did not wish to import any from England.

Page 193, line 12

By the Lieutenant Governor

To the People assembled at Fanueil Hall

I should be culpable if I should any longer omit to signify to you my sentiments upon your proceedings. Your assembling together for the purposes for which you profess to be assembled, cannot by [sic] justified by any authority, or colour, of Law. Your going from house to house, and making demands of the delivery of property, must strike the people with terror from your great numbers, even if it be admitted, that it is not done in a tumultuous manner, and is of very dangerous tendency.

Such of you as are persons of character, reputation, and property, expose yourselves to the consequences of the irregular actions of any of your numbers who have been assembled together, although you may not approve of them, and although it may be out of your power to restrain them.

Therefore, as the Representative of His Majesty, who is the father of his people, I must, from a tender regard to your interest, caution you; and, as cloathed with authority derived from his Majesty, I must enjoin & require you, without delay, to separate & disperse; and to forbear all such unlawful Assemblies for the future, as you would avoid those evils to which you may otherwise expose your selves and your country.

Boston 23d January 1770

T. Hutchinson

Page 193, line 17

Mr. Sheriff Greenleaf [Stephen, 1704-1795]

It is the unanimous desire of this body that you inform his Honour the Lieutenant Governor, that his Address to this body has been read, and attended to with all that deference and solemnity which the message and the times demand; and it is the unanimous opinion of this body, after serious consideration and debate that this meeting is warranted by law. And they desire you to inform his Honour, that they are determined to keep consciences void of offence towards God and towards man.

Page 194, line 30

Every instance of contention was carefully transmitted in form of a Journal to be printed in the News papers at New York, and the facts were generally exaggerated to the disadvantage of the soldiers, and many facts were published without foundation.

Page 195, line 16

There was a buzzing, about town, of a battle, which was to be in the evening, between some of the Inhabitants, and the Soldiers. . . . A servant maid to one of the Lt. Governor's sisters, had been the evening before in company with some of the people who had been engaged in the quarrel at the rope walk, and informed her mistress that there was to be a battle between the inhabitants & the soldiers, the next evening, & that the bells were to ring.

Page 196, line 23

A merchant of the town, Mr. William Molineux [1717-1774], with one of the Overseers of the poor, Mr. Samuel Whitwill, immediately applied to [Hutchinson regarding the withdrawal of the troops].

Page 199, line 17

The Selectmen of Boston applied to the Lieut. Governor, to appoint a military watch until the Troops removed from the town. He gave them an immediate answer, that he should justly incur the King's displeasure if he should appoint a watch of the Militia to keep the King's troops in order. One of them replied to him, that he was of opinion a military watch might, by law, be appointed without any special authority from the Commander in chief. The Lt. Governor asked What occasion had you then to apply? This they would have construed a concession. The next day, he sent for the Colonel of the Regiment, and forbid his appearing or authorizing any of his Regiment to appear. He appointed a watch, notwithstanding, which was kept up every night, and went their rounds; while the King's troops kept quiet in their Barracks.

Page 200, line 28

The Committee, the Justices, and most of the witnesses were well wishers to the American cause. The professed design of taking the depositions, was to prevent ill impressions against the town. The depositions were not generally in a form of words prepared by the deponents, but, when they had declared their knowledge of facts, the

form and words of the depositions were settled by the Committee or Justices—There was no cross examination & no body present to ask any questions to elucidate any parts of the depositions—no scrutiny was made into the credit, and characters of the deponents.

Page 201, line 16

Two witnesses, one an infamous french boy, who was at a great distance from the scene of action the whole evening; the other a person little better than an Idiot, swore, that Guns were fired out of the Custom house; and the first swore, that his master [Edward] Manwaring, an officer in the Custom house, fired one gun himself, & made the boy fire another. This evidence is mentioned in the Letter, but no notice is taken of the character, & other circumstances of the witnesses; though they were then notorious.

Another witness, having sworn that he saw a tall man in the Custom house or in the balcony; it was insinuated to the Lt. Governor in Council that this was one of the Commissioners, who soon after left the Provinces and went to England.—There is no judging, in such times, where the credulity of the People will stop.

The troops being removed and the Officer with the Soldiers immediate after, being committed to prison, there was a calm in the town for a short time.

Page 202, line 7

The members of the Massachusetts Assembly, received wages from their towns which would defray their expenses; and many of them being men whose business did not much require them at home in winter, liked very well to spend six or eight weeks in Boston at that season and this further prorogation was a disappointment to them. The leaders of the people expected to strengthen the cause in which they were engaged, by the aid of the Assembly, the friends of Government, who expected no aid from the Assembly, were the only persons who were content with this prorogation.

Page 205, line 18

The complaint of regular prosecutions in the Admiralty for breaches of the Acts of trade, as being rigorous and oppressive, & justly alarming to the people; and the refusal to discountenance riotous abuses of Custom house Officers because those abuses took their rise from such prosecutions; and the declaration, that whilst the Troops remained in the Province, it

must be expected the Laws should be in some degree silent were calculated to justify those tumultuous assemblies, which the Troops, under the direction of the civil magistrate, were intended to suppress; to increase the anarchy begun in the Province; to alarm the authority in England, and urge on forcible measures for the restoration of Government.

Page 205, line 32

Fortunately, however, for the Prisoners, when the time came, something prevented the Court from proceeding, and caused a further continuance, when one of the Judges in his journey from home to attend the trial at Boston, was disabled by a fall, and the causes went over to another term, as was at first intended.

Page 206, line 5

The Lt. Governor wished to go through the Session as peaceably as possible, but they very unnecessarily laid several matters before him to which they knew he must give his negative. It had been usual for the Clerk of the House to pose the Question and regulate these debates in the absence of the Speaker for a day or two, but now, upon a short indisposition of their Speaker, they chose Mr. Hancock, Speaker pro tempore. The Lt. Governor refused his consent. Mr. Hubbard [Thomas, 1702-1773], one of the Council of good estate & unblemished character had been many years the Officer for managing the trade with the Indians. They, without any reason for superceding Mr. Hubbard, chose their Speaker, Mr. Cushing, who they knew the Lt. Governor could not approve, and then Mr. [Samuel] Adams, who was still more exceptionable.

Page 206, line 38

At the same term, Edward Manwaring, an Officer in the Customs, and three other persons, were indicted by the Grand Jury for the murder of the persons killed in King Street, by firing upon them from the House of the Commissioners of the Customs, all upon the evidence of the french boy servant to Manwaring. Mr. Dana [Richard, 1700-1772], a Justice zealous for the cause of Liberty, had examined the boy and was so fully convinced of the falsity of his evidence that he would not issue a warrant for apprehending the persons charged. I know it is not usual for a Grand Jury to examine evidence on the part of a person against whom information is brought but they are judges of the credibility of evidence, whether from the general character of a witness, or other

circumstances which may be perfectly well known and when they are convinced the evidence is false they never ought upon their oaths to say that the bill is true. Among other reasons given for the refusal of the Justice to issue his warrant it was said that the facts to which the boy swore were of such a nature that it was impossible they should have escaped the observation of the great number of other persons present; but the narrative, sent to England, found these men guilty; and Mr. [James] Bowdoin, in letters which he wrote to many persons of the first rank and which accompanied the narrative, said there was no doubt to be made that guns were fired out of the Custom House, &c.

The four persons were apprehended and committed to close prison, where they lay about a fortnight, when upon a petition to the Court, they were admitted to bail, and their trials put off together with the trials of the Officer & Soldiers.

The Lieut. Governor caused writs to be issued for a new Assembly to be held at Cambridge on the last Wednesday of May, which afforded fresh matter for newspaper abuse.

The greatest part of the Members of the House would have been content with sitting at Cambridge, if they had not lost, by the concession, one subject for controversy with the Lt. Governor. To add to his difficulties, an attempt was made to influence the Overseers of the College to take exception to the use of the publick buildings, by the General Assembly, as an invasion upon the Rights of the Society. Twice in the year, a Committee of the Overseers specially appointed for that purpose, made enquiry into the state of the College. One of these Committees thought fit to report, among other things, that the Scholars had given good attendance upon the publick exercises, except in the time of the Session of the General Assembly. Upon reading this report at a Board of Overseers, it was moved by one of the Ministers of Boston, that proper steps might be taken to prevent the General Assembly from sitting within the walls of the College. The Gentleman who made the motion professed to doubt of the Right, not of the Governor only, but even of the whole Legislature, to appropriate to the use of the publick any of the College buildings. Another urged the danger of the Legislature's claiming, by prescription, a property in the College buildings, the Assembly having several times been adjourned, and prorogued to be held there, as if the buildings had been the Estate of the Province.

The Lt. Governor without any remarks upon the Limits which they set to the Supreme Authority, acquainted them, that if the Assembly

did not sit in the College, it would in the Town of Cambridge, until he had new Instructions from the King; the motion therefore could not avail to what he perceived was the intent of it, the removal of the Assembly to Boston; nor could it be of any benefit to the College, seeing the Scholars would be at Liberty to attend the debates in the town, as much as in the College, and they might as easily be restrained, if it should be thought fit, in one case as in the other.

The motion, however, was pressed with great warmth, but upon putting the previous question, the voices were equal, and the Lt. Governor who presides at the Board, and gives his voice only in such a case, gave it against the question. As the cause of Liberty was every day gaining ground in the Province it was probable this would be the last vote in which a majority of the Overseers of the College would give their voices on the side of Government, as generally they had been used to do in any party matters.

Endeavours were also used to engage as many towns as possible by publick acts & resolves to signify their attachment to the cause, and their approbation of the measures for promoting it. The maritime towns, Salem, Marblehead, Newbury, &c, followed the example of Boston in associations of Merchants not to import goods from Great Britain; many other towns assembled, & in their town meetings came to resolves not to purchase goods imported contrary to these associations, not to make use of any E. India tea, to wear no mourning upon the death of relations, &c. Such resolves are never long adhered to. Interest or other motive to depart from them, soon prevails.

An herb was substituted in the place of India Tea which had the name of Labrador. As a medicine it would have been thought rather nauseous than pleasant. It was notwithstanding drank, and given to visitors, in many families. The Ministers of Boston met weekly at one or other of their houses and Tea of this herb was sometimes drank, and India Tea was wholly laid aside. Considering their dependence upon their people prudence required a conformity in all lawful things. One of them had been habituated to Bohea tea, and could not resist it; but he escaped censure by declaring that though he did not keep to the letter, yet he kept to the spirit of the agreement. He took care to drink no tea unless he was sure it had been run, or smuggled, from Holland, or other foreign port, and so had not paid the duty. His zeal in the cause of liberty did not suffer him to consider that by professedly seeking for smuggled or unlawfully imported goods, he was encouraging the importa-

tion of them, & so encouraging perjury: for either the Officer of the Customs must have been corrupted and neglected the duty which he was under oath to perform, or the Importer of contraband goods must have sworn falsely in order to his vessel's being admitted to an entry.

Other towns thought fit to come into resolves, in imitation of those of the General Assembly, to shew their sense of their rights as men and as Englishmen. Abingdon, a small town about 20 miles from Boston, but within the bounds of the first colony in New England, New Plymouth, distinguished it self from all the rest and passed such Resolves as necessarily implied a complete independence. It was generally believed that they were drawn up in Boston and sent to Abingdon, where they passed in a town meeting, and soon after appeared in the News Papers in America and in England. It was said to be a bold stroke, and this was all the notice taken of it in Old England or New.

It was, however, in such ways, that Independence became familiar to the people of America, until their zeal for it, at last had rose in proportion to their dread of it, at first. The gradual increase of the favourers of it in the Legislature was in no colony more perceptible than in Massachusetts bay. This was owing to the different constitution of that Colony from the Royal Government's.

The Assembly being annually dissolved and formed anew, and the prejudices against the measures of Government in England prevailing, among the people of the Province;—the number of members of the House in favour of government from year to year, was lessened. The Council, being also annually elected by the Assembly, the like effect of the like cause, appeared in that branch. In the beginning of 1765, a great majority in both Houses were averse to every measure tending to Independence. Before the year 1770 so great a part of those members had been left out of the Council and Assembly, their places being filled by men differently principled, that a majority were then promoters of measures directly tending to Independence; though the most of them publicly disavowed the principle itself.

Great pains were taken before the election of 1770 to increase this majority.

In several of the country towns men of respectable characters lost their elections, because they were not sufficiently attached to the cause of Liberty. The town of Boston changed one of its members for a very different reason. Mr. Otis, for the seven last years, had been one of the Representatives of that town, and during that time was considered as

the leading man in the publick affairs, both of the town and province. From his natural temper, he had been always subject to strong fits of passion, and intemperate wrath; and he commenced his political life with a declaration that if his father should not be appointed a Judge of the Superior Court, he would set the Province in a flame, though he perished in the attempt. There was however, an ingenuity of temper in the intervals of this immoderate warmth, and when calm, or not ruffled, he could not offer violence to his reason, and would make concessions upon points, in which his party was manifestly wrong; and this not only in words, but in his writings published to the world. He could not often keep a calm mind in publick debates. This was the cause of the great incongruity between his publick actions, and private professions, which brought an imputation upon his general character.

In the course of the last year this warmth of natural temper had been frequently raised to a considerable degree of madness, and sometimes to outrages in the publick streets. At other times, in a black gloom, he would condemn his own actions, charge himself with doing irreparable injury to his country, & curse the day in which he was born. In his lucid intervals, he still attended the General Assembly and the Town meetings in Boston; but, before the new elections came on, his distraction rose to such a heighth, that his friends were obliged to take him under their care, and he was removed into the country. This the town, in a very pompous vote of thanks for his services, term a retirement for the recovery of his health.

[Vote of thanks:] The Honble James Otis, Esq., having by the advice of his Physicians retired into the country for the recovery of his health

Voted that the thanks of the town be given him for the great & important services which as a Representative in the General Assembly thro' a course of years he has rendered to this town and Province, particularly for his undaunted exertions in the common cause of the colonies from the beginning of the present glorious struggle for the Rights of the British Constitution.

At the same time the town cannot but express their ardent wishes for the recovery of his health and the continuance of those publick services that must long be remembered with gratitude and distinguish his name among the Patriots of America.

It was however such a withdraw as made it necessary to chuse other person in his stead, and Mr. Bowdoin, who had been negatived by Governor Bernard at the last election of Councillors, was chosen by a great

majority. The frowns of a Governor are generally, of themselves, sufficient to excite the favour of the people; but Mr. Bowdoin had recommended himself by an opposition to government of several years continuance, and had discovered singular talents for managing a controversy with the governor. Besides, by chusing him into the House, they expected to induce the Lt. Governor to consent to his election as a Councillor. From the general disposition of the Assembly, there was no room to doubt of his being elected.

Page 208, line 11

Upon some occasion in the course of Mr. Hutchinson's administration, he thought it necessary to observe to the Council, the peculiar obligation they were under to be assistants to him in preserving the King's prerogative. One of the gentlemen expressed his opinion that their election by the Representatives of the people rather laid them under obligation to be upon their guard to preserve entire the rights of the people.

Page 210, line 14

If all had been rejected which were rejected the last year, still the majority of those who remained would be devoted to the House, and nothing more was to be feared when an additional number should be joined. Such compliance would greatly disappoint the heads of the opposition, by taking from them one great pretense for raising a clamour against the Lieutenant Governor.

It might, perhaps, be difficult to excuse this measure to the powers in England, and Sir Francis Bernard, who still remained Governor might look upon it as contrasting the measures of his administration; but in the state of affairs at that time, it was apparently most advisable to soften the minds of the people, and the Lt. Governor must be content to run some risque in doing it.

Page 210, line 18

The Lt. Governor had good reason to believe, that the majority of the Council & House, if free to act their own judgments, would have proceeded to business, but the removal of the Assembly having been ordered in consequence of the tumultuous behaviour of the people of Boston in opposition to the authority of Parliament, the members were taught to believe, that conceding this point would be a tacit acknowledgement that the punishment was just, & consequently the opposition not to be justified. But this was not the reason publicly avowed.

Page 210, line 26

This was enough to engage the Council, who in an address to the Governor stated their objections to the removal of the Assembly, and earnestly urged him to hold it in Boston. They avoided all business, though they did not, like the House, in express terms, declare against it. In the House, Mr. Samuel Adams had the principal hand in the messages, &c. except the Reasons for the refusal of the House, which probably were the productions of Mr. [Joseph] Hawley, member for Northampton; Mr. Bowdoin it was generally agreed, prepared all the messages of the Council.

From this time, all the proceedings in Council were greatly influenced by Mr. Bowdoin, as those of the House were by Mr. Adams, and many affairs of importance were concerted in private between them before they were brought into the Council or House.

The greatest revolutions in Kingdoms & States have been effected by men who owed all their popularity, to the cause in which they were engaged.

Page 212, line 29

The most groundless calumnies were at this time published in the news papers against the supporters of government and it was an avowed principle with many that such calumnies against men of a tyrannical disposition, a character given to all who favoured the cause of government, were justifiable, and that however, simply considered, they may be deemed criminal, the nature of the deed is changed when the publick good, which is the consequence, is taken into consideration also. Mr. Adams seems to have carried this principle further. A clergyman who had been in a large company with him upon a Commencement day at Cambridge, and who heard him declare, that every man had good right to put an end to the life of a tyrant, expressed the horror he felt, upon considering that merely a difference in opinion upon the principles of government had caused many of the best men in the Province to be denominated tyrants. Balthazar the Burgundian who shot the Prince of Orange might be as fully satisfied that he was about to take away the life of a tyrant, as Cassius Gaius, when he determined to stab Caligula, and the principle may prove as destructive to men who take the lead in a commonwealth, as to absolute monarchs; for a persuasion that they are tyrants seems to be all that is necessary.

The Assembly continued to sit from the 30th of May to the 25th of June, when, upon their request to the Lt. Governor to give them a recess, he prorogued them to the 25th of July; when he met them again in the same temper; and on the 3d of August he prorogued them further to the 5th and afterwards by a proclamation to the 26th of September.

By this time the people in many parts of the Province became dissatisfied with the conduct of the Assembly. The messages and answers which passed between the Lt. Governor and each of the two Houses in the several sessions, had been published and spread through the Province and, notwithstanding the disposition which generally prevails in the people to take part with their representatives, the exceptions taken, by the House, and by the council, in this instance were so frivolous that as far as could be judged by the voice of the people a great majority desired that the Assembly should proceed to business.

Page 218, line 23

The general tenor of their messages discovered a desire to provoke the King, and his servants, to a non compliance with their demand, rather than to dispose them to concessions in the use of those powers, which, by the constitution, they might use according to their discretion.

Past transactions are recalled, and, if it could be admitted they were real grievances, are exaggerated in language more rude and indecent than any to be met with in times of the highest Parliamentary dissensions in England.

Page 220, line 31

All these alleged matters of grievance were caused by Acts of Parliament except such as proceed from instructions, which they would make the measures of ministers and not of the King.

The grievances, said to be the machinations of wicked ministers, and encroachments upon the charter, were the measures of Parliament from whose authority the charter never intended to exempt them. Admiralty jurisdiction is reserved to the King. By this they understand cognizance of matters marine, and therefore, by compact, the King has confined himself to such matters. But Parliament had extended Admiralty jurisdiction to all breaches of the Acts of trade in the Plantations, soon after the date of the Charter, & this made the *numberless* important causes upon land. Civil officers, except those of the Courts of Justice, were to be elected by the General Assembly, which they say were confined to the governor & council. The civil Officers to which they have immediate

reference, are the Officers of the Customs, who derive their authority from Parliament. Besides, it is not to be supposed that the crown, by giving powers to elect or appoint civil officers, could intend any other than officers of the interior police of the colony. Officers for the general purposes of the dominion, the crown might still appoint, and order their residence where it was most fit. The revenue was torn from them, and the troops, tho' without their consent were raised by Acts of Parliament. The powers granted to raise monies, or to raise men for the service of the colony, could not be supposed to take away the powers of Parliament to raise monies, or men, for the general purposes of the dominion.

Although the Lt. Governor saw that this implied a denial of the authority of Parliament, and that, upon the same reason, its authority might be denied in all cases whatever, yet he thought it advisable to shun, as long as possible, a controversy with them upon this subject, and he acquainted the House, that he should make no reply to them.

Indeed, there had been no reign, from the first settlement of the plantations, in which royal instructions could be said, with less propriety, to be the mandates of ministers; for no prince had ever given the like attention to all matters relative to the colonies, nor had made himself so perfectly acquainted with their constitutions.

Their messages were generally passed by a considerable majority. A small proportion only had any share in the composition, and if the members had been left free to act their own judgments, and had discovered the design and tendency of them, a majority would still have disapproved of them; but in such assemblies a great proportion of the members give up their own judgments, and act upon the judgments of others in whom they confide. If the opinion of the people of the Province could have been taken at this time, a great majority would have given it against measures which must bring on independency.

Page 221, line 22

The strong marks of deep rooted disaffection to the King's servants in England, & to the King's representative in the Province, for expressing whereof occasions were industriously sought in the course of this controversy and hints of what the people might be driven, or rather brought to, gave him the greatest concern.

Page 224, line 21

After these altercations, there was no further attempt in the Assembly to shew an unjustifiable conduct in the Lt. Governor, but the King's

order to place a garrison of regular forces in the castle in the room and stead of a garrison of the inhabitants of the Province was considered as a curb upon natural liberty, of which the people felt no effect; but being frequently told that it was a mark of slavery, the first impressions upon their minds were not suffered to wear out.

Page 224, line 29

The frequent appointment of days for publick fasting and prayer in times of great and publick calamity is not to be condemned or censured provided such days be not made a stalking horse to promote, not an apparent but a covered design.

Page 227, line 20

In the proceedings of this session the weight which had been added to the House of representatives, and taken from the Council in the scale of legislative power, was very manifest. The council of this year gave the same reasons in general with the House against the removal of the Assembly from Boston and did no business, tho' they did not resolve in form to do none; and laid their messages to the Lt. Governor upon the subject, from time to time, upon the table of the House; whereas the council, in Mr. Burnet's day, had been a support to the Governor in the same controversy, declaring they were ready to join with the House in proceeding to business, and that they judged it improper and inconvenient to make any doubt of the governor's authority to convene the Assembly at any other place besides Boston.

Page 232, line 42

The Massachusetts councillors, it was said, had taken the popular side, in the question between the King and Parliament on the one part and the people of the colonies on the other. In most, if not all, the royal governments, the councillors appointed by the King were doing the same thing, so far at least as to be inactive & of no use. If a council could be established, like the House of Lords, independent of the crown and of the people, this was a change to be wished for; but this was impracticable.

Page 233, line 7

The design of a general independency would have been more apparent. The earlier it should be known the easier it would be to counteract it. The leaders in America strove to keep it out of sight. The governors

and other officers of the crown who were convinced of it were charged with misrepresentation for speaking and writing their opinions, as they were in duty bound to do; while government in England avoided the controverted points, the leaders in America improved the time, in bringing the people to favour these measures. There was great variety of sentiments upon the proper remedy for the increasing distemper. For Massachusetts bay in particular the leaders would not have been contented. They would have pronounced other acts of Parliament to be equally grievous, which, perhaps, would not have had the same effect upon the people.

When it was a matter of doubt whether the Tea Duty would be taken off letters arrived from some of the colonies advising that the repeal had passed in the H. of Commons. General credit was given to the news. Several of the Council & several of the Clergy of the Town of Boston dined together the day the news arrived. The gentleman at whose house they dined observed to the company that, by carrying this point, they might see that by firmness they might carry all other, and that it would not do to stop short of the 14th of Charles the second. One of the Clergy present expressed, to the Lt. Governor, his astonishment at such a publick declaration from a Gentleman who had always been thought a moderate man.

Page 234, line 11

The Writ of the Lord Chief Justice of England it was supposed would run through the whole dominion and it was imagined the persons to whom such writ might be directed would at that time have met with no forcible resistance in the execution of it; but if it had proved otherwise such acts of resistance would be undeniable acts of rebellion, and all aiding and abetting to such acts must be considered as rebels, as there could be no pretense that this was a forcible opposition to any particular unconstitutional law, but to the execution of law in general. In this way also, the exceptions would be avoided which had been taken to the Statute of Henry the eighth by persons of character in the law. To these exceptions, the non prosecution of persons in the colonies, pursuant to the addresses of the House of Lords and House of Commons, was generally supposed to be owing.

It was evident that unless by judicial process the opposers of law could be convicted of their offence, and, in this way, the body of the people be convinced of their obligation to continue subject to the supreme authority of Parliament under which they had always lived,

such opposers would not desist from their opposition, but, on the contrary, would be continually drawing the people to join in the opposition, until the majority should be prepared for an open publicly avowed revolt. The people agreed with their leaders in the means, and therefore a judicial process in the colonies was impracticable, but they did not agree in the end, and if they could have been left to act themselves, not one in fifty wished to be independent.

The favorable opinion, which the Lt. Governor expressed of the body of the people was afterwards made matter for reproach, as proceeding from partiality to his countrymen, by means whereof, their real designs were said to be concealed from the King and his servants in England, when, at the same time, he was with greater virulence reproached by the aiders & abettors of the American cause in England, as misrepresenting the designs of the promoters of that cause in America, and exciting government to such measures as tended to accelerate the revolt.

This being the state of the Colonies, the utmost which a Governor could hope would come within his compass, was the being able to check, or retard, the progress of this begun revolt, until by exertion of the powers of government in England a full stop should be put to it. —To return from this digression—

Page 235, line 33

The prejudication, also in the prayers & sermons of too many of the Clergy is not to be justified. Previous to the trials, the Lieut. Governor had received Instructions to reprieve any, who might be convicted, until the King's pleasure could be known, and to transmit a state of the facts, as they appeared upon evidence at the trial. This seemed to be sufficient to have saved them from an immediate execution of the sentence.

Page 235, line 41

The issue of Captain [Thomas] Preston's trial which came on next was more uncertain. By length of time, the flame which had been raised in the minds of the people in general was lowered, and there was a better chance for an unbiased jury; but the zeal of the prosecutors had not abated.

Page 236, line 3

They were faithful to their client unless the refusal of one to suffer evidence to be produced to shew that the expulsion of the Troops from the Town of Boston was a plan concerted among the inhabitants, can be urged to the contrary. Mr. [John] Adams one of the counsel declined

being further concerned if any further evidence of that sort was insisted upon probably having no doubt that the other evidence without it was sufficient for the acquittal of his client; while Mr. [Josiah] Quincy the other counsel was willing it should be produced. To settle an impartial jury was attended with difficulty.

Page 236, line 17

In general, in criminal trials, the Courts, in Massachusetts bay, had observed the rules of the Common Law. In trials for treason, a peremptory challenge of 35, and, in murder, of 20, had always been allowed, and a challenge of any number besides, for cause. The Juries were regulated by the Province Law, and the practice of the Courts had been, to order about 30 persons, sometimes a few more, to be returned to serve the whole term, and out of these two Juries were formed at the beginning of the Court, and the super numeraries were dismissed. In a case of treason, of which none ever hapned in my memory, a greater number than the whole might be challenged, and in murder, all but four in which cases, ordinarily, a new Venire must have gone to the Towns in the County, as the Court thought proper; but this has not often been urged, and, generally, talesmen had been called by the Sheriff.

There had been no instance of the Court's adjourning during a capital trial, but one of the Judges, being in an infirm state of health, prevailed with the rest to agree to it in this case, and having broke through the rule, they might as well make several adjournments as one only, by which means there was more time for examining the great number of witnesses which were produced. The Jury, however, were not suffered to separate, but were obliged to eat and drink and every night to sleep, in a room together, under sworn keepers.

Page 236, line 28

The employing counsel who were warmly engaged in popular measures caused some of the evidence to be kept back which would otherwise have been produced for the prisoners.

The counsel for the crown insisted upon producing evidence to prove the menaces of the soldiers preceding the action, and the counsel for the prisoners consented to it, provided they might have the like liberty with respect to the inhabitants. After the evidence had been given on the part of the crown, and divers witnesses had been examined to shew the premeditated plan of the inhabitants to drive out the soldiers, one of the counsel, Mr. John Adams, for the prisoners then declined proceeding

any further, and declared that he would leave the cause, if such witnesses must be produced as served only to set the town in a bad light. A stop therefore was put to any further examination of such witnesses, by which means many facts were not brought to light which the friends to government thought would have been of service in the cause, though it must be presumed the counsel did not think them necessary, for it was allowed, that they acted with great fidelity to their clients, when it was evident, that a verdict in their favour, must be of general disservice to the popular cause, in which counsel had been, and afterwards continued to be, warmly engaged.

Page 236, line 29

Application was made . . . to remit the punishment of burning . . . especially with respect to one of them, [Hugh] Montgomery who had been knocked down with a club, and provoked to fire, as appeared in the course of the evidence. . . . This Montgomery afterwards acknowledged to one of his counsel that he was the man who gave the word fire which was supposed by some of the witnesses to come from the Captain; that being knocked down & rising again, in the agony from the blow he said Damn you, fire and immediately he fired himself & the rest followed him.

Page 237, line 25

The Council advised to a proclamation with a reward for discovering the offender. The Court who at first shewed great resentment & talked of putting a stop to the business of the term, which remained unfinished, became more composed, and the affair was soon forgot.

The paper was copied from Otway's Venice preserved with two or three alterations to make it conform to the place and time for which it was now designed.

"To see the sufferings of my fellow *Townsmen* and own my self a man—to see the *Court* cheat the *injured* people with a shew of *Justice*, which yet we never can taste of—drive us like wrecks down the rough tide of power, while no hold is left to save us from destruction—All that bear this are slaves, and we are such, not to rise up at the great call of nature and free the world from such domestick TYRANTS.

Page 237, line 28

The trials of Capt. Preston and the soldiers were scarcely finished when a writer in a News paper, under the signature of Vindex [Samuel

Adams], undertook to try them again, and brought to support his arguments of their guilt, the authority of the Lt. Governor who, according to the evidence given upon the trial, had demanded of Captain Preston in the street, before the circumstances of the transaction were known, why he fired with out orders from a civil magistrate; from thence inferring the judgment of the Lt. Governor, that the soldiers could not justify themselves in firing upon the people without the order of the civil magistrate.

Notwithstanding the sophistry of such arguments and the unreasonableness of the supposition that a soldier by being in the service of his King had deprived himself of that right which he would otherwise have had of defending his life, though by the death of an assailant, when in imminent danger, yet by such artifices, a great part of the people were induced to think the acquittals to be unjust and illegal, and the action continued to be spoke of as a massacre, a bloody massacre, and the like.

And it is certain that at the close of the year, 1770, the people of the Province seemed to be tired of controversy, and in general, to wish to see an end to it.

Page 237, beginning of note

The publications in the News papers tended to excite the people to such a measure. An extract of a letter from London, dated May 9, 1770, & printed in Boston July 9, says "A pardon for Capt. Preston is gone over, but I hope it will be too late." The next week the following extract from a sermon preached by Dr. Chauncy [Charles, 1705-1787] upon the day of Election of Councillors appeared in the same Newspaper.

Page 237, note, line 11

The determining the act to be a *horrid wickedness* in the actors was pre-judging the cause. The actors were known the fact not denied, the point to be tried was whether it was a *wicked* act or not. Nor ought he, from the pulpit, to have determined the limits to which the King may extend his pardon. The whole was more observable as coming from a person who, though he had distinguished himself by his zeal out of the pulpit, had prudently avoided bringing his politicks into the pulpit.

Page 238, line 31

The controversy between the Lt. Governor and the two houses concerning the removal of the court, as well as the exchange of the garrison at Castle William, and the form of the Province laws which were all the

points about which there had been any controversy, had been so conducted that people in general were satisfied he could not have taken any other part than he did take, and the exceptions made to his conduct, when they appeared in print with his answer to them, did not produce that dissatisfaction among the people in general, which it was intended they should produce.

Page 238, beginning of note

The Lt. Governor had always considered such confederacies as an offence, which it behoved the supreme authority in all governments to guard against, as they have a direct tendency to the dissolution of the established powers of government.

Page 240, line 14

They were never more numerous, than upon the accession of Richard Cromwell to the Protectorate, who, in six months, was deposed with the general approbation of the Addressors; and, in about a year more, the same persons became Addressors to King Charles upon his restoration. Any designed omission, or neglect, upon such occasions, carries with it, however, the marks of disesteem, or disapprobation.

Page 240, line 16

It could not be expected the King would appoint a Governor, whose principles were agreeable to the leaders of the House of Representatives, and they thought it would weaken their cause to congratulate a governor upon his accession, who had opposed, and who they knew must continue to oppose, their measures.

Page 240, line 32

They let him know, that as His Majesty had been pleased to appoint him Governor of the Province, they took that opportunity to express their loyalty to the King, and their respect to his representative—that from his birth, education, & publick employments in the Province, they were encouraged to expect his natural & earnest care for its welfare; and that while he shewed his concern for the honour of the King's government, he would exert himself in securing their invaluable rights, and privileges, and in promoting the interests of religion & learning,—they trust that his acquaintance with the religious principles of his illustrious ancestors, will influence him to patronize the churches formed upon their generous & evangelical plan—and conclude with a prayer that he may be directed by unerring wisdom, throughout his administration to the

acceptance of the multitude of his brethren, & the approbation of the great & impartial governor of the Universe.

The governor was unwilling to give them any ground of offence; but, at the same time, thought it necessary to shew that he was not insensible of their cold address, and, in as cautious an answer, he let them know, that—every instance of their loyalty to the King, and respect to his representative would always give him great satisfaction—that, in his past administration, it had been his endeavour to discharge with fidelity the duties, which they had pointed out to him—that he had also endeavoured, to maintain and increase, in the people, an esteem and reverence for the clergy; which should encourage him to expect, that, by their influence, his hands might be strengthened in discharging his duty in the future part of his administration.

Page 241, line 13

Luke 13, ch. 1'-2'-3' verses. "There were present at that season some that told him of the Galileans whose blood Pilate mingled with their sacrifices, &c."

Page 242, line 12

He was obliged, early in the session, to exercise his power of negating. A faithful officer, Mr. Hubbard of the council, who had been many years annually elected Commissary general, was left out of that office, and Mr. Cushing Speaker of the House was chosen in his stead. The governor disapproved the choice. They then chose Mr. Hancock, and, after he had been disapproved, Mr. S. Adams, whom the governor thought fit to disapprove also. Mr. Edward Sheaffe [d. 1771] was then chosen & approved.

In this Session a grant was made to the Governor of Five hundred & six pounds as Lt. Governor, and of Thirteen hundred Pounds as Governor, and his assent not being given in the usual time, a Committee of the House was appointed to wait on him with a message, in which the House expressed their apprehensions, that he must be under some restraint, & that provision must have been made for his support in a new & unprecedented manner.

Page 242, line 27

—as he [Hutchinson] was the only sufferer by the delay, they would not blame him for declining to take the support they had granted & to burden their estates with it when there was a probability of its being provided in another way.

Page 243, line 10

A majority of the members, at the beginning of the controversy, consisted of moderate men, who wished to continue in that degree of submission to the authority of Parliament, to which they and their Predecessors had been accustomed; which, they conceived, would not extend to raising monies from them by internal taxes; at least, they considered this exemption as a *privilege* with which they had been indulged and, from the prevalence of this spirit of moderation, the assembly which was in being, when the Stamp Act came before the House of Commons, was induced, in their petition against that act, to avoid denying that authority of Parliament to impose taxes, and to pray for the continuance of the *privilege* with which they had been so long indulged. If it had been in the power of the governor, to continue an assembly of moderate men, as long as they judged it for the publick interest; or if the Assemblies might have been continued seven years like the Parliament of Great Britain, the revolt of the Province would have advanced with less rapidity, but the Assembly being annual, the promoters of the revolt were unwearied in their endeavours, every year, to prevail on the towns to leave out such men as were not for their purpose, and to chuse such as were, in their stead. In the course of seven years a great progress had been made. The Council, also, were annually elected, and the House being four fifths in number of the Electors, the like change was made there every year, until a great majority was disposed to concur with the House in all their measures.

The perfection of a popular government seems to consist in the benefits supposed to arise from the free unbiassed judgment, of delegates frequently elected by the unbiassed voice of the people upon measures for promoting the publick interest. So far as this free judgment is taken away, and men are induced, instead of acting according to their own judgment, to act according to the judgment of others, whether the motive be bribery and corruption, misrepresentation, or undue influence of a demagogue, so far there must be a departure from the perfection of this form of government. In times of civil dissension, when parties are formed, attempts to bias the judgment in favour of one side will ordinarily be counteracted by attempts to the like purpose in favour of the other.

In the province of Massachusetts bay the governor had little or nothing in his gift to attach men to government, for the sake of their private interest. Except the offices of the Judges of the Superior court & of the

Inferior courts in the several counties, the Judges and Registers of Probate, the Attorney & Solicitor General and the Sheriffs, the other offices civil and military were without emoluments, & meerly honorary, in lifting such as held them to rank & precedence, which having once obtained they continued to hold together with their titles of Colonel, Esquire &c after they were out of place. The appointment of persons to such offices, seemed in many instances rather to encourage them having obtained their end to appear openly against government, though whilst they were seeking promotion they professed to be strong in favour of it.

Page 243, line 30

The changes in the country towns, two or three instances excepted, were unfavourable to government.

Page 244, line 16

Mr. Adams had without reserve, declared that the colonies ought to be independent and he pursued measures, to be justified only upon that principle. It might be expected, therefore, that a perfect harmony could not subsist between them. Besides, it was evident, that Mr. Otis considered Mr. Adams as a rival, who was now openly assuming the guidance of all popular measures, which he had, for several years, covertly influenced more than Mr. Otis, though at the same time, the publick considered Mr. Otis as the chief.

Mr. Hawley seemed to have taken in the House a secondary part or a less ostensible part, compared with Mr. Adams, when he exerted himself but he really had much greater weight, and if he hapned not to fall in with any part of Mr. Adams's motion it could seldom be carried without him, but they did not often differ.

Page 245, line 38

Mr. Otis, then, very consistent with his own declaration, moved for a Committee to state the inconveniences which attended the sitting of the Assembly in any other place except in Boston. In what words this question was put does not appear, but it stands in the printed journal of the House in general terms, as a motion for a protest against the present convening & holding the General Assembly at Harvard College, and Mr. Adams as well as Mr. Otis, with others, were of the Committee.

Page 246, line 21

It is true, indeed, that by the charter the general assembly is authorized to do what they otherwise would have had no power to do, to raise

taxes from the people for the King's service in the necessary defence & support of the government of the province. But can it be supposed, that King William made a grant of these powers to the people, for the sake of, or with any view to, keeping his governor in a state of dependence upon them for his support, and to serve as a check upon him in the use of that full power, which he had granted to him of convening the Assembly at such time & place as he thought proper, or to the exclusion of that right which otherwise would have been in the crown of directing when and where the Assembly should be convened?

The governor, in the controversy upon this subject in former sessions, had plainly shewn that because by their practice under their former charter, the governor had only a vote with the assistants & deputies in convening, adjourning, & proroguing the Assembly, the crown, by the new charter, had provided, that the governor by himself should have *full* power, exclusive of any other parts of the Assembly to convene, &c. In another instance they can scarcely be supposed to be serious.

Page 246, line 26

Under the old charter the governor was elected by the people. This was really a grant in favour to the people. Under the new he was to be appointed by the crown, and full power was given him to perform the necessary acts of government, which implies his performing them as he shall judge necessary. This is said also to be a grant in favour to the people, in order to infer that a restraint by an instruction from the King, in the free use of this judgment, deprives the people of the benefit of the royal grant made to them in the charter. This is the language of another part of the protest. But, if instructing the governor, and restraining him from acting his own judgment, be a violation of the grant made to the people by charter, would not the removal of a governor, for acting his own judgment, directly contrary to the judgment of the crown, be a violation of the grant to the people also? To what purpose then has the crown reserved to itself the appointment of the governor? Besides, as has been heretofore observed, the first commission to a governor, which accompanied the charter, and also every succeeding commission, for seventy years past, authorized him to govern according to such instructions as he should from time to time receive from the crown and that these instructions were the rule for the governor, though not for the assembly, had always been allowed by the most zealous Patriots.

Page 246, line 28

This was one of the most complete pieces of State policy in the Massachusetts history. A motion made to heal the breach & which really had that tendency was artfully turned to a contrary purpose and actually increased the breach more than any proceeding before it. Nothing could more fully indicate a determined design to keep up a controversy in the government than this instrument.

Page 247, line 3

The governor had more than once declared that he considered himself bound to observe instructions in such cases only where if no instructions had been given, he would have been at liberty to act, or not to act, according to his discretion. Of this they take no notice. A collection of the messages and other instruments which have passed the House for several years preceding in controversial matters, between them and the governors would discover too many fallacies of this kind.

Page 248, lines 6-17

A more full declaration of independency could not have been made. Their saying they knew of no Commissioners of the customs in North America, was saying that Parliament which had appointed such Commissioners had not authority—the *sole* right to raise taxes certainly excludes all other authority for that purpose. This *sole* right they derive from their charter. Just the same right the charter gives to make *all manner* of wholesome and reasonable laws for the government and to order the people inhabiting, or who shall inhabit the Province. Upon just the same reason, therefore, all other authority, except the general assembly, must be excluded from making any kind of laws whatsoever.

Thus a grant from the crown enabling the people to elect a house of representatives; enabling that house of representatives to take a part in the election of a council; and enabling such council and house, together with the governor appointed by the crown, to make laws obligatory upon the people; is construed into an act absolving the people from the authority of Parliament; although it is an express condition of the grant, that these laws shall not be repugnant to the laws of Parliament; and although no act of the crown whatever can absolve the subjects from this authority. The reserve made by the crown to appoint a governor, is, also, construed into an exclusion of the right of the crown to instruct a governor, &, of consequence, to retain any share or part in the admin-

istration of the government for which purpose alone the reserve was made.

Absurd as this doctrine appears, it had its advocates, both in America and in England. By sophistical reasoning the people were deceived into it. A charter once granted by the crown, it was said, gives a right which cannot be taken away unless forfeited; and therefore, all the proceedings in the reigns of K. Charles the second, and James the second, against charters, have justly been condemned; but the people were not taught the difference between the act of the prince alone, who might be bound by the grant of a preceding prince, and the act of the Supreme Legislative authority, which cannot be limited nor controuled by any act of the Prince alone.

But this is not a new case, nor are the leaders of the people in Massachusetts bay to be reproached, as having distinguished them selves from the leaders of the people in other popular governments. Revolutions in states, have oftener proceeded from the ambitious aspiring views of a few persons, than from oppression, or any just cause of complaint from the people in general. No form of government is so perfect, and no administration so upright as to deprive such persons of plausible pretences to effect discontent in the minds of the people, and, sooner or later, dispose them to concur in effecting what nature leads them to desire, a change. It must be said in favour of the people of Massachusetts bay, that these arts had been used with them, for many years together, with very slow success, that they were brought almost insensibly to approve of measures tending to revolt, until they found themselves so far advanced as to be unable to recede; and it is some excuse for the leaders themselves that they had always a considerable party in that parliament whose authority they were opposing to justify their proceedings and to accuse governors and other servants of the crown with unnecessarily asserting that authority.

The governor in his messages to former houses had fully answered all which the house now offered, and therefore he only observed to them that there was a peculiar reason for an instruction to the governor not to consent to a tax act; because it was an act which might begin its operation immediately, and, if disallowed by the King before it was complete, great inconvenience, and perhaps injustice, would accrue to the people; it was, therefore, a kindness to them, to restrain the governor from passing what the King would certainly disallow, as soon as it should be laid before him.

Page 248, line 21

A very sensible writer under the signature of Chronus wrote several pieces with great ingenuity and candor on the side of government. The author, suspected by very few persons, was Dr. Caner [Henry, 1700-1792], rector of Kings Chapel, Boston.

Page 248, line 22

The House made a grant, as usual, for the governors salary which the council concurred; but the governor let it ly, and the subject of a salary caused no dispute this session.

Page 248, line 33

The progress of the revolt of the colonies from the first motions of it, has been accelerated, or retarded, in proportion as the hope of support from the favourers of the revolt in England increased, or diminished, in the minds of the actors in America.

It is certain, that the principal persons, in opposition to the ministry in England, have espoused the cause of the Americans, have justified them in their measures, and have, in this way, by their great authority, and the high veneration, and esteem, of the people for persons of their exalted rank, and character, contributed much to the revolt. Men, who were doubtful, in their own minds, whether by opposing the authority of Parliament they were not resisting the ordinance of God, and departing from the oaths they had so often taken to be true and faithful to the King, which fidelity they had been taught extended to his legislative, as well as executive capacity; when they heard that great men, who had very lately been at the head of the administration, and at the head of the Law, denied that the Americans were under obligation to submit to acts of Parliament imposing taxes upon them, and, in each of the Houses of Parliament, openly justified the resistance made to those, and to other, acts complained of as grievous, all doubts were removed.

The authority of other persons is more easily admitted, and comes with greater weight, when it coincides with our own interest & inclinations.

In the beginning of the year 1771, the advices from England were pleasing to the Sons of Liberty in America.

Page 248, line 34

Just at the time of the arrival of this news, an entertainment was made for the governor at the house of one of the council in Boston, to

which such councillors as were in town were invited. A gentleman, who for some years had taken the lead in council, being asked, after dinner, for his toast, gave the Lord Mayor of London. This however exceptionable in one of the council, upon such an occasion, the governor thought prudent to suffer to pass without any other mark of disapprobation, than passing the glass, and so declining the toast.

Page 248, line 41

The breach between Adams & Hancock was apparently about this time greater than ever. The latter in a town meeting, a few weeks before, had intimated his design to move for an inquiry into the state of the finances of the town, in which the former had occasioned a great deficiency, and also into the state of monies raised by lottery for the benefit of the town of which lottery Mr. Cushing, the speaker of the House and a kinsman and fast friend of Mr. Adams, was one of the Trustees, and reported to be deficient.

Mr. Hancock still professed to be attached to the general cause and as a testimony of it gave the black cloth for the desk, and which was to serve for a suit of cloathes for the orator, on the 5th of March. This attachment continuing, the breach between Mr. Adams & him, after it had continued some months, was gradually closed, and the wrath of friends, like that of lovers, issued in the renewal and strengthening of their affection & attachment until both of them had so far engaged in the cause, that all their personal, or private interest, lay in the success of it.

Page 249, line 31

Few men knew better the restraints which from the nature of government the subjects of it are under, few men notwithstanding had done More to excite the people to break through those restraints though he would often condemn them for going beyond what he intended or they could justify.

Page 249, line 39

The expression no doubt had respect to the continuance of the charter, which, at several periods, had been thought in danger; a bill, or bills, having been brought into Parliament for taking it away, and the loss of it, either by act of Parliament or judicial process, having been several times expected.

Page 250, lines 5-7

A Committee went to Mr. Bowen [Penuel, 1742-1788], who was minister of the church to which Mr. Adams belonged, and he readily promised not to read it; other persons applied to Dr. [Charles] Chauncy to the same purpose, who rather thought it an affront to be supposed capable of reading it. Mr. Bacon [John, 1738-1820], one of the ministers of the Old South Church, had read it before any application was made to him; so had Mr. Davis [John, 1737-1772] a Baptist minister. Mr. Mather [Samuel, 1706-1785], left out what related to privileges, and read the rest. Doctors Chauncy, Byles [Mather, 1706-1788], Eliot [Andrew, 1719-1778], & Cooper [Samuel, 1725-1783], with Mr. Bowen & Lathrop [John, 1739-1816] declined reading it, and Doctor Pemberton [Ebenezer, 1704-1777] was the only one of the associated ministers who withstood the popular prejudice, and read the proclamation, as usual, after the minds of the popular leaders had been signified to the contrary; not that this compliance was owing to the deference paid by the ministers to the judgment or opinions of such leaders, several of whom were men of weak judgment, and divers of the most active and influential were men who made no pretences to religion, Mr. Molineux, Doctor Young [Thomas, 1731-1777], &c., and had no intimacy with ministers of any profession; the compliance must rather be attributed to the ecclesiastical constitution of the province.

Dr. Pemberton had a sufficient estate to support him & received a very small salary from his church. No man discovered through life, more uniformly, a concern to please God rather than to please men. The ministers were dependent upon the people for their support, which, in Boston, was raised by a voluntary contribution, and though, generally, a certain sum was promised yet when there was a failure, as there was in several of the churches, there was no way of compelling to a performance; besides the future comfort of a minister's life and all his prospect of service depended upon his preserving the favour and esteem of his people, who at this time were governed by their leaders and disobliging the leaders would in its consequences be the same as disobliging the body of the people of the town. Some, indeed, [sixteen words in the margin:] particularly Doctors Chauncy & Cooper; Mr. Lothrop was active in exciting the people from the pulpit; among the ministers, might be considered as influencing the people, rather than being influenced by them; and they generally were supposed to be consulted by the lay leaders & to have a great share in their counsels.

Page 250, line 14

This little anecdote shews how easily the people were engaged by their leaders in opposition to government, for the most frivolous reasons, where there was the meer sound only of Liberties and Privileges; and how easily the clergy were engaged to countenance and encourage the people in their opposition.

A seisure having been made by the Custom house Officers at Falmouth in Casco Bay, about a dozen persons ship masters and others entered the house of Arthur Savage Esqr. Comptroller of the Customs at Falmouth about 9 o'clock in the evening of the 12th of November, and, being all disguised they took him out of his house by force carried him to a lone distant place and with pistols at his breast required him to discover the informer, threatning death if he refused. He declared to them he did not know the informer and to this they obliged him to swear, as also that if he knew any of them he would not discover them. He did not look upon an oath, enjoined, while he was in durance, by persons who had no authority, as obligatory, and, knowing two or three of them, he discovered them to the Commissioners of Customs, and, through them, to the Governor, who by advice of council, recommended to the Justices of the Superior court to cause them to be apprehended, &c, but they were not prosecuted, and soon after government became so feeble, that a prosecution would not have been practicable.

Page 250, line 20

[Dr. Warren] whose desire of popular favour seemed equal to that of Mr. Adams, and, as he discovered a great degree of martial as well as political courage, if he had lived, he bid as fair as any man to advance himself to the summit of political as well as military affairs and to become the Cromwell of North America. This he had sometimes owned to his intimates, was what he aimed at, and that nothing short of it would content him.

Page 250, line 25

The House had frequently passed votes without a Speaker in the chair, but the governor did not incline openly to acknowledge them as a House without a Speaker. He therefore varied from the common form, and, instead of directing the House, directed the Speaker, and the House, to attend him in the Council chamber. They had sent a message to acquaint the governor that a quorum of the house were met in the chapel.

Page 251, line 14

Nothing could be more delusory than this argument. It is true, that the Crown has made many grants by the charter, the reassuming whereof without forfeiture, would cause just ground of complaint. An assembly is to be held every last Wednesday of May. This assembly is to consist of persons elected by the towns, &c. If the governor should in consequence of instructions, refuse to convene the Assembly at the appointed time, or if he should refuse to issue the writs and precepts authorizing towns to elect such persons and cause them to be nominated in any other way, the charter would be violated. But although the establishing a legislative power of which the governor is a constituent part, was a grant of favour to the people, who could desire legislative power in no other way than from the King or Parliament, yet as has already been observed the reserve of the appointment of the governor to the crown was not in favour to the people, but a restraint from electing a governor themselves, which a former charter had authorized them to do. So the power of convening, adjourning, and proroguing the assembly granted to the governor, to be exercised as he should think fit, was not a grant to the people but designed to take all pretense from the people to any share in it by their representatives; for under the former charter no adjournment or prorogation of the Assembly was made by the Governor, but by the act of the whole court or assembly.

Page 251, line 23

A new weekly paper had been published in Boston, with the title of Massachusetts Spy. A person, Joseph Greenleaf, Esq., who, after long solicitations & frequent denials, Governor Bernard had been prevailed with to make a Justice of peace in the county of Plimouth, removed to Boston, and joined with the printer in publishing this paper. A most abusive piece having been published against the governor, the council advised to a summons for this Justice to appear before them. He bid defiance to the summons and the council did not think proper to risk the trial of their authority to apprehend him; but advised the governor to direct the Court of Sessions, to strike his name out of the list of Justices, and to direct the Attorney General to bring forward a prosecution against the printer of the paper at the next Superior Court in the County of Suffolk, where the offense was committed. The Court of Sessions complied with the directions given them. The Attorney General thought it so plain a case, that no Grand jury could, upon their oaths, refuse to find a bill; and less exception would be taken to an indictment, than to an

information. But care was taken to return Grand Jurors, Nathanael Appleton foreman, Nathanael Barber, Alexander Mackay, William Boardman, Henry Bass and Jonathan Brown, from the town of Boston who had been, all except one, most active persons in encouraging the opposition to government, and that one was an assessor, and of a pliable disposition, and diffident of his own judgment.

They declined examining any witnesses as to the publication, but agreed to return Ignoramus. The foreman, whether before or after the bill was returned is uncertain, asked the Solicitor general [Samuel Quincy] if it was not necessary the matter contained in a writing should be false in order to make it a Libel. Loose notions of government were now prevailing, and it began to be a favorite doctrine with some, that laws, which restrained the pursuit of that freedom and independency to which the people had a natural and unalienable right, were null and not to be regarded; though what this unalienable right was, had not yet been defined.

Page 256, line 10

In the room of Mr. Otis, William Phillips [1722-1804], Esq was chosen. He had been moderator of the irregular meetings of merchants or as they were sometimes termed, of the body, and active in promoting measures to terrify the people, & compel them to comply with the resolves made at such meetings; and was firmly attached to the cause, but not otherwise remarkable for talents to qualify him to represent the first town in the province.

Page 256, line 11

Jerathmeel Bowers, Esq.

Page 256, line 24

The reflections cast upon him, for hastily refusing to do what, upon more mature deliberation, he himself, as well as his counsel, thought advisable, were a lesson to him, not to give a sudden answer to a message which had given him offense.

Page 256, line 40

About this time, it was generally reported, that provision would very soon be made for paying adequate salaries to the Justices of the Superior Court, by warrants to the Commissioners of the Customs. The report was of service to the persons engaged in the cause of liberty and was improved to increase the jealousy of the people. This, it was said, must

bring the Court under a bias in favour of all the measures of the King, and his Ministers, in all causes in which they should be interested.

The governor was considered as the servant of the King, notwithstanding which, he ought to depend upon the people for his support.

Page 257, line 10

Mr. Otis, in a pamphlet which he published, had declared his opinion, that, if monies were raised from the colonies, they ought to be applied to the support of the Officers of government in the colonies, and of this book, the House of Representatives, of that day, expressed their approbation.

Page 257, line 19

Mr. Hawley, and Mr. Adams were the principal persons concerned in composing this report and carrying it through the House.

It discovers ingenuity in giving a sense and meaning to several parts of the charter, which had never been thought of before. Without special powers, the legislature could not compel the people to submit to that reasonable burden, the support and defence of government: the grant of these powers is said to be a grant of privilege, to exclude any other, even the supreme power from laying a tax upon the people, for those necessary purposes, and in this way to give to the people a check upon the governor, by withholding his support when they shall think fit. They make this check necessary to preserve that dependence, which each branch of the Legislature ought to have upon the others, whereas the constitution boasts of an independence or freedom, in each branch, directly inconsistent with this *restraint*, which they suppose to be essential to *freedom*; and all the *check* which any branch can properly have is by refusing to join with the others, and so preventing a compleat act of legislation; and the *freedom* essential to each branch is, that it cannot be restrained in the exercise of its own judgment, though it be contrary to the judgment of the others.

What can be more absurd than the making the grant of powers derived from the crown, by the charter, to be the effect of a power devolved upon the crown, from the people? To give some colour to this absurdity, a charter in which the King, as an act of grace and favour, grants certain powers to part of his subjects, upon such conditions as he thinks fit to annex, is considered as an instrument of the nature of a pact or covenant, after full litigation, settled and agreed between free & independent states. But, as this vote of the House is a specimen of that unfair repre-

sentation of facts and reasoning, which appears in a great number of other votes, and instruments, composed by the same hands; and as it was detected and answered, very largely by the governor, in his speech at the close of the session, both the vote and the speech shall have a place in the Appendix.

Page 259, line 18

These transactions may appear in an unfavourable light to posterity, but they answered a present purpose. They served to alarm the people, to prepare their minds for a more serious opposition, intended to be made, when the provision for the salaries of the Judges should be perfected, to gain proselytes to the cause, which is more frequently the purpose of political controversies, than to search out the truth. In the mean time, an affair hapned, in every respect inconsiderable, except as it is an evidence of the uniformity with which the plan, for keeping up disension in the government, was prosecuted.

The Province House, which was appropriated to the use of the governor and his family, had at all times, been kept in repair at the publick expense, and a committee of council used to take the care of such repairs as one of the contingent publick charges, for which an order of the whole court was not requisite, except when, upon the arrival of a new governor, any material alterations or additions were thought proper; and, in such case, it had been usual for the House to originate a vote for the expense.

When governor Hutchinson came to the chair, the House was much out of repair. He therefore by a message recommended the making provision for the repair of it, not meerly to make it habitable for him and his family, which could be accommodated more agreeably to him in his own house in the country, but as a measure of œconomy to prevent the house from ruin. In answer to this message, after a Committee had viewed the house, the question was put whether *convenient* repairs should be made, and it passed in the negative; but the committee having reported that, for the preservation of the building from ruin, it was necessary the roof and east end should speedily be repaired, and that the expense would be about thirty pounds. Such repairs the House of Represent. appointed a committee of their own members to cause to be made, without sending the vote to the council for concurrence, and so it had no effect. The reason given by many of the members for this refusal, was the removal of the Assembly from the Town of Boston.

After the Assembly was adjourned to Boston the governor again put the House of Represent. in mind of the decayed state of the Province house; and that he should not be able to keep his family there another winter.

This produced an answer in form, in which they observe that they are not unapprized that the Province house is out of repair, and that expense might be saved by making such repairs as are necessary as soon as may be—But, that building was procured for the residence of a governor, whose *whole* support was to be provided for by the grants and acts of the general assembly, in their opinion, it never was expected, by any assembly, that it would be appropriated for the residence of a governor, for whose support *adequate* provision should be made in another way—they therefore could not think it their duty to make any repairs at that time—he might, however, be assured, that they were far from being influenced by any personal disrespect, and should the time come, which they hoped for when he should think himself at liberty to accept of his *whole* support from the Province, according to ancient & invariable usage, they did not doubt he would then find the representatives of the people ready to provide for him a house, not barely tenantable but elegant—In the meantime, as he received a certain and *adequate* support from His Majesty, they could not have the least apprehension that he would reside in any town in the Province but where it should be most conducive to His Majesty's service, and the good and welfare of the Province.

The governor's inclination would have led him to reside wholly in the country, but it would have been inconvenient to many people to attend him there but it was most prudent to shew no resentment, to make what repairs were of immediate necessity at his own expense, and to say no more upon the subject.

The remainder of the summer after the prorogation of the assembly July 14. 1772, passed away in tranquility.

Page 259, line 24

This [the rumour of royal salaries for the judges] caused a fresh alarm in the town of Boston. The promoters of the cause of Liberty, in that town may be considered in several classes. The first consisting of two or three of the council, the representatives, and several of the selectmen, a number of the deacons, and divers other of the graver people, and of the most regular lives. With these some of the Congregational ministers

sometimes met, and measures and plans of the most general and extensive nature seem to have been the province of this class. There was another division consisting of a few merchants & masters of vessels who had left the sea, and become merchants or shopkeepers, and of the principal handicraft tradesmen, and others of active spirits, among the middle rank of the people. These had, generally, taken a more active part in encouraging the tumultuous and riotous assemblies of the People. A third class consisted of the inferior tradesmen, who upon occasion, could take a part in such tumultuous riotous assemblies, some of them professing they did it with a view to keep such assemblies within bounds &c. It was the middle of these classes, which made the first stir at this time.

Page 261, line 15

Mr. Otis had so far recovered from his insanity as to be free from confinement, and he again took for a short time an active part in publick affairs. At the beginning of this meeting, with banter & ridicule he answered a speech which Mr. Adams had made to shew the people the danger they were in from the plan laid by ministry, to tyrannize over them, and make them absolute slaves; but Otis was soon taken off by nominating him upon one committee after another, and, at length, making him the chairman of the grand committee for stating their rights, corresponding, &c., which gave him a prospect of a return to his former importance. He was no longer a clog to the progress of their measures, and their votes are entered as having passed without contradiction.

Page 266, line 29

It was with reluctance, however, that he came to a determination. The major part of his council, he knew, would advise him against it. He consulted with several of his most confidential friends, one only of whom doubted the expediency of his taking any notice at all, in his speech to the assembly, of the irregular proceedings of the towns, but he was clearly of opinion, that if the governor did take notice, it would be proper to shew to them, what their constitution was, and how far these proceedings departed from it.

Page 268, line 12

The distinction between acts for taxes, and other acts of legislation seems to be arbitrary, and occasionally asserted to serve the purpose of party. Are not our lives and our liberties of as great value as our estates? Why should it not be of as great concern to us, to avoid all restraint in

the former, as in the latter, unless it be by persons in whose election we have given our voice? How many hundred times, in the course of the American controversy, has Mr. Locke been cited as an irresistible authority to prove, that the supream power cannot take from any man any part of his property without his consent? But, without explaining Mr. Locke's treatise upon government, as he has explained the Epistles of St. Paul, by comparing one part with another, it may be asked; are not our lives and liberties as dear to us as our estates? Have we not a property in them, as well as in our estates? Shall the supream authority be restrained from taking the one, and yet at liberty to take the other, without our consent?

It is an undeniable principle of the English constitution, that *no laws* can oblige the subject except they are agreed on by King, Lords and Commons, in Parliament assembled. The same agreement, & *nothing more*, is necessary in laws for levying taxes. Bills of attainder, as well as bills which make imprisonment, or death, the penalty of offences, may originate in the House of Lords. By custom, bills for levying taxes originate in the commons, probably first introduced for this reason, because the commons have a more general knowledge of the state of the dominions, the ability of the several parts, and how they may be affected by a particular tax, but still tax acts, as much as any other, must have the consent of the whole, nor is any kind of representation, or any expression of *consent* from the people necessary, upon the principles of the English constitution, or in nature, in acts for taxes, which is not necessary in all other acts. An exception therefore to the authority of Parliament to impose taxes must work a total independency, for upon the same principle, exception may be taken to all other acts whatever. It does not, however, follow that Parliament may not forbear to use its authority in acts of a particular nature, over any part of the dominion, whenever it shall be judged expedient.

Page 268, line 29

. . . the governor passed over their answer with slight observation expressing his satisfaction at their declaring they had not independency in contemplation; and though some parts of their answer would not very well consist with this declaration, yet he hoped, that, after deliberating more maturely, they would, in order to be consistent with themselves, rather chuse to doubt the expediency of Parliament's exercising its authority in cases which may happen, than to deny the authority itself.

Page 269, line 25

Thus they, unwarrantably, extend the rule which confines those acts of Parliament to the Kingdom or territorial realm in which other parts of the dominions are not expressly mentioned, to such acts as expressly refer to other parts of the dominions.

Page 270, line 1

They say they can find nothing in their charter to shew they were to be subject to this authority for they will not allow, what the government had urged, that their being restrained from making laws repugnant to the laws of England must intend, at least, such laws of England as had an immediate reference to the colony; and they give this reason for not allowing it, because this would put it in the power of Parliament not only to limit but to render of no effect their legislating power, whereas, this power was the point the governor was contending for, as essential to the supreme legislative authority, which no grant from the King could take away.

In like manner, they urge the grant in their charter of the liberties of free and natural English subjects in all parts of the English dominions as an exemption from the authority of Parliament, because it is one of the liberties of English subjects to be governed only by laws to which they have given their consent, &c, although it is an undeniable principle of the English constitution, that neither the liberties, properties, nor lives of the subjects, throughout the dominions, can be exempt from the authority of Parliament.

To obviate this objection, they consider their charter, not as a grant of certain powers & privileges from a King of England to English subjects, for that, in the nature of it, must always remain subject to the controul of the supreme legislative authority of England; but as a *compact* between the King of England, and certain persons, who would cease to be his subjects upon their arrival in America, any farther than they should be held by the conditions of this compact on their part to be performed, and for any longer time than the King should perform the conditions on his part. This view of a charter from the crown, in the nature of a pact between two independent powers, was probably first formed in America, to serve the purposes of this controversy. But, unluckily, the words of the grant confine these liberties to the *English dominions*, which renders this construction of the charter impossible. The sense, or understanding, of grantor & grantee was the question.

They attempt in the next part of their answer, to shew, that it was not the sense of the first settlers of the Province that, after their arrival in America, they were to remain subject to the authority of Parliament, by bringing several passages from the History of the Province, published by the governor, which, they say, shew the sense of the people to be very different from what in his speech he apprehends it to be. They cite also an authority from Mr. Neales history to shew the sense of the Agents of the colony that the General Court, with the Kings approbation, has as much power in New England as the King & Parliament in England, & can be touched, by no law, and by no tax, but of their own making.

And, although what the governor had observed should be allowed, that the laws of the Province and the decisions of the Courts of Law have relation to acts of Parliament as being in force within the Province, yet, as this was contrary to the fundamentals of the constitution, such acts and decisions ought not to be taken as an acknowledgement of the people, that they were subject to the Supreme authority of Parliament, but should rather be imputed to inadvertence or error.

They further observe, that it appeared, from abundant evidence, to be the great design of their ancestors in their removal to America, to free themselves from spiritual laws, courts, &c. But, if it had been their sense, that they were to be subject to the authority of Parliament, they must have known, that their design might and probably would be frustrated, as Parliament might make what ecclesiastical laws they pleased expressly to refer to them. There is a passage in Captain Smith's history of Virginia which shews the sense he had of the authority of Parliament over the first settlers there. Speaking of the laws passed in the first assembly there about the year 1620 he says "and these are the contents of those fifteen acts applied as you may perceive which the lawes of England could not take notice of, because every climate hath somewhat in itself, in that kind in particular, for other *wise*, as it is conceived, it had been a high impudency & presumption to have meddled with them or indeed with any such of these lawes that had with such great judgement and justice provided for"—*Smith's Hist. of Virginia P. 194.*

To all this they add, what was incredible, that "if there have been in any late instances a submission to acts of Parliament, it has been, in our opinion, rather from inconsideration, or a reluctance at the idea of contending with the parent state, than from a conviction or acknowledgement of the supreme legislative authority of Parliament."

In the course of twenty years preceding the year 1760, during which term I had been concerned in the publick affairs of the Province, I do not recollect that I ever heard the constitutional Supreme authority of Parliament called in question, nor have I met with an instance of its being called in question at any time after the Charter of Wm. & Mary, or any limits set to its authority in the colonies, more than in the Kingdom.

The governor had observed that he knew "of no line between the Supreme authority of Parliament and the total independency of the colonies." They say it cannot be supposed to be the intention of the parties *to the compact*, that they should be reduced to a state of vassalage, it must therefore be their sense that they were independent.

The governor had said "it is impossible there should be two independent legislatures in one & the same state." In answer they put this question. May we not then conclude, that the Colonies are distinct states from the mother country? The governor had said, "although there may be but one head, the King, yet the two legislative bodies will make two governments, as distinct as the Kingdoms of England, and Scotland, before the Union."

Very true, they say, and if they interfere not with each other, what hinders but that being united, in one head, & common sovereign, they may live happily in that connection, and mutually support and protect each other?

They then, further, observe, that though the governor had pictured to them, the terrible effects of a total independency, they were not so much to be dreaded, as the absolute, uncontroled power of a *nation*, or a monarch.

He thought it would be their misfortune "to know by experience the difference between the liberties of an English colonist, and those of the Spanish, French, or Dutch." Since the *British* Parliament had passed the late revenue act, which was executed against their wills with rigor, and had claimed a power of making such laws as they please, they desire to be excused for asking, whether the governor does not think they already experience too much of such a difference; and have reason to fear they shall soon be reduced to a worse situation, than the colonies of France, Spain or Holland.

Page 270, line 9

These profound questions, they say, America has been driven to contemplate, by the ill policy of a late injudicious administration.

Page 270, line 14

—the charter reserves great powers to the crown, in its representative which the governor, they say, knows *full* well, and whoever considers these powers, will be far from thinking the *Commons* of the Province too independent.

This answer of the House is said to have passed unanimously, when ninety-seven members were present.

Page 270, line 18

The governor knew very well, that it was the language of the Sons of Liberty, in their common conversation, that if parliament had no right to tax them they had no right to make any other laws which had reference to them; but he supposed that the leaders in the House, for the sake of the countenance and support they expected from their friends in England, who had always denied that the Americans had anything more in contemplation than freedom from tax acts, would still have kept on the mask. But, instead of acknowledging in general their dependence on Parliament, here was the plainest intimation given, that they should be held to their dependance *on the King*, no longer than he performed his part of the *compact* made with them in their charter. It behooved the governor, therefore, to set in the strongest light, the insufficiency of their arguments to support their claim.

Page 271, line 21

. . . and both those Princes [James I and Charles I], by their respective charters, had held the subjects in America to a submission to Acts of Parliament; that Parliament, in 1642, had exempted Massachusetts bay from duties to which, by their charter, they would otherwise have been liable, and that the Assembly of that colony expressed their humble thankfulness for that favour; that the original patentees of New England shewed their sense of their subjection to Parliament, and submitted the disposal of their patent as should be thought fit; that Parliament by a continual succession of acts, from that day to this, have been exercising this authority, and had, by one act, changed the succession to the crown both in the Kingdom and colonies, so that, by denying the authority of Parliament, they might be in danger of denying the authority of their sovereign, which he was sure none of them could have in their thoughts.

Page 271, line 38

Many of these acts he enumerated, and, among the rest, an application made by their agents, praying for an act of Parliament to restore their

charter, which had been vacated by a judicial process in the reign of King Charles the second. These, he observed, were such acts as could not proceed *from inconsideration or meerly from reluctance at contending with the parent state.*

Page 272, line 20

—that these two powers are not incompatible, and do in fact subsist together each restraining its acts to their constitutional objects—may we not from hence see how the supreme power may supervise, regulate, and make general laws for the kingdom, without interfering with the privileges of the subordinate powers?—and how it may extend its care & protection to the colonies without injuring their constitutional rights?

Page 272, line 24

It appears also, they say, from the authority of those statutes, “that no tax shall be laid without the good will and assent of *the Freemen of the Commonalty of the Realm*” and as from the time of Magna charta, at least, the Subjects of the Realm cannot be taxed without the assent of *the Freemen of the commonalty of the realm*; so the subjects within the Massachusetts Province, being intitled by Charter & Common law to the Rights & Liberties of Subjects within the realm, ought not to be taxed but by the assent of the Freemen &c. of the Province.

Page 272, line 26

Upon this reply from the Council the governor to avoid a repetition of his former messages, only observed, that it is essential to the being of government, that a power should always exist, which no other power within such government can have right to withstand, or controul—that a *subordinate* power, so far as it comes to be without controul, ceases to be *subordinate* and becomes *supreme*—that no sensible writer upon government, ever denied what he had asserted, and if the council could not agree with him, but would hold that two supreme powers were compatible, it would be to no purpose to reason upon the other parts of their message to him, or to deny what they deduced from so absurd a principle.

Page 272, line 33

By the principles of this tenure, the King claimed a right to all the Lands within his dominions—. This they say is mysterious to them, and that Judge Blackstone calls it—a meer fiction &c.—The right to Lands of heathen princes in America arising from discovery is equally mysteri-

ous—It was however the universal doctrine—but as the people of England, according to the feudal doctrine, held all their lands from the King, and, as he had never granted *to them* the lands of America, they could no have sort of claim—upon feudal principles all power is in the King—they afford no idea of a *Parliament*, and they cannot conceive why the King has not the same right to alienate & dispose of countries acquired by the discovery of his subjects as he has to restore upon a treaty of peace countries which have been acquired in war;—or to sell & deliver up any part of his dominions to a foreign Prince or state against the general sense of the nation.

Page 273, line 31

There would have been no end to the controversy, if points of meer speculation had been suffered to be brought into it. It was immaterial whether there was, or was not, at that time any government in the world, with such known established fundamentals as could not be altered by the Supreme Legislative Power. Their pretense to unalterable fundamentals, by *compact*, or stipulation between them and the crown of England, he treated as a meer chimera, seeing not only grants made by the crown, but the crown itself, upon the principles of the English constitution, were liable to be controuled & regulated by the Supreme legislative power.

Page 273, line 36

The intention of the leaders in this controversy, in repeating their complaint against the governor for forcing them to declare their minds, could not be to exculpate themselves, seeing they had for years before sought pretences for the like declarations; but they imagined they should make the governor obnoxious, and it afterwards appeared, that the Speaker of the House in a private letter to the Secretary of State, had expressed his personal concern at the governor's having forced this controversy upon the assembly and made it a matter of merit, that although the House had been in a manner driven to it, yet they had avoided an express declaration of independency.

Page 274, line 36

A right in the crown to dispose of America, could not be inferred from its prerogative of restoring countries acquired in war upon a treaty of peace, the prerogative of making war and peace being in the crown, this power of restoring countries acquired was incidental and necessary—

and it discovered a want of candour, to suppose when he spoke of an act, or a meer act, of *power* in selling any part of the dominions to a foreign prince, that he intended the crown had a *just prerogative* to make such sale.

Page 275, line 11

—and to shew them that their allegiance is due to the *crown* of England he refers them to the conditions of both charters, which say expressly, the King his heirs and *successors*. He asserts, that Parliament, in the reign of K. James I., had in view jurisdiction over the *Land* in America, as well as the preventing a monopoly of fishing in the sea, to which they say it was confined, but passes over their remarks upon the acts of the Province, which he had adduced to shew the sense the people had of their subjection to Parliament, because they are facts of such a nature, that a small deviation from the true state of them may perpetuate a dispute. And he relies upon it; that, at the time of the Revolution, the people had universally returned to a just sense of their dependance upon Parliament, which had been in a great measure lost in the times of anarchy & confusion in England: and thinks he may safely say, that the oldest person then in the Province, some then living remembered the Revolution, had never heard the supremacy of Parliament called in question until within a few years.

Page 277, line 7

No consequence could then be known in England, except the publick avowal of doctrines, which necessarily implied the independency of the colonies; and it must be acknowledged, that it would have been a more agreeable consequence, if the House had disavowed these doctrines.

Page 277, line 37

In a message they sent to the Governor they conceived no judge, who had regard to justice, or to his character, would chuse to be under such an undue bias, as he must be by depending upon the crown for his salary—that, had not His Majesty been misinformed by those who advised to the measure, he would not have passed such an order, after he had declared that “he looked upon the independence and uprightness of the judges as essential to the impartial administration of justice, as one of the best securities of the rights & liberties of his subjects, and as most conducive to the honour of the crown”—

Page 280, line 18

Some of them, however, were soon after among the most active in their opposition to government, and in open revolt from it.

Page 281, note, line 3

The two last [Hawley and Hancock] deeply engaged in the opposition, but lived very politely with the governor in a family way all the time he was at Hartford & Mr. Hancock professed his obligations & his desire & intention to live in personal friendship, but was notwithstanding deeply concerned in a plot to distress him & immediately upon his return to Boston joined in the prosecution of it.

Page 282, line 36

Several of the Commissioners, and Col. Leslie [Alexander, d. 1794], the Commanding Officer of the King's troops, attending at dinner, the Selectmen of the town withdrew, the minister, who preached, and twenty or thirty other ministers, who were on their way to the publick room were stopped and carried to private houses, and upon the governor's coming into the street after dinner to walk in procession to the Council chamber, Mr. Molineux, Young, and divers more of the same class, stood round the door, and several hundred of the rabble were assembled, who with shouts, and opprobrious language, insulted and menaced the Commissioners, and there probably would have been a more general tumult, if the commanding officer of the cadet company, which attended the governor had not shewn, that though in general, he favoured the same cause which had occasioned this tumultuous collection of the people, yet he would do his duty, while employed for that purpose, in maintaining order. Mr. Hancock commanded this company & behaved with great propriety—two or three of the company who left their arms & joined in insulting the Commissioners were dismissed a few days after by a vote of the company.

Page 282, line 39

Before he left the town, he had heard of a rumour that discovery had been made of a correspondence carried on against the country, which would raise the resentment of the people against the persons concerned, but it made no impression, nor had he any suspicion of the rumour's having respect to him.

Page 283, line 8

The governor knew that the Lt. Governor [Andrew Oliver] had wrote to Mr. Whately [Thomas, d. 1772], but never saw any of his letters, nor

was ever acquainted with the contents of them, nor did he remember any other of Mr. Whately's correspondents, nor did he remember anything he had ever wrote himself, to which any exception could be taken. He therefore treated the report, whenever it was mentioned, with contempt. This did not satisfy the people, who were impatient until the election of the council was over, when the whole was to be disclosed.

Page 287, line 22

It is necessary to give a brief history of these letters, and of the manner of their being procured and sent to the province. A friendly correspondence, by letters, had been carried on for three or four years between Mr. Whately, a member of the House of Commons, and Mr. Hutchinson, then Lt. Governor of the Province, but as a Lt. Governor, unless the governor is out of the Province, has no more concern with the administration than a private person, he laid himself under no restraint, in any part of his private correspondence. The spirit of party running high, and it being scarce possible to relate occurrences without giving offense to the persons concerned in them, if the letters should be made publick Mr. Hutchinson, in several of them had desired Mr. Whately to consider them as confidential. They were, however, generally meer narratives of facts, and articles of news, with now & then, an occasional reflection. Mr. Whately being all the time out of office, and in the opposition, it was absurd to suppose the design of them was to convey intelligence to administration. The Secretary, Mr. Oliver, it seems, corresponded with Mr. Whately at the same time, but Mr. Hutchinson had never seen one of his letters, nor knew the subject of them. Mr. Whately had, besides, other correspondence with American gentlemen, of which Mr. Hutchinson had never heard.

Notwithstanding the uninterrupted controversy between the governor & the assembly, from the beginning of his administration, it was acknowledged, that it had been conducted on his part with moderation; it was universally known, that he wished and endeavoured to prevent the Stamp act from passing, and, after it had passed, to obtain the repeal of it, and, although he opposed such principles of government, under the name of Natural or English unalienable liberties, as must work a separation of the colonies from the Kingdom, yet he always professed himself a supporter of the claim of the colonies to all the liberties, of one kind or the other, which were consistent with the ends of government, and the continuance of the colonies as parts of the British dominions;

and his private character had been such, as not to give an unfavorable opinion of him to the people in general.

Such use had been made of Governor Bernard's publick letters, as to cause caution in communicating the correspondence of American governors, where there might be an opportunity of procuring copies. By some means or other, Dr. Franklin came to the knowledge and possession of a number, there were seventeen in the whole, of private letters, which had been received by Mr. Whately in his life time. Among the rest, there were six from Mr. Hutchinson, all, but one, wrote while Mr. Bernard was in administration.

The first artifice, and the foundation for all the fraudulent reports, insinuations, and resolves which followed, was the collecting together the letters of persons, none of whom had any knowledge of the correspondence of the rest, and making the whole correspondence a conspiracy; and the act of any one of the letter writers, the act of the whole. Some of the letters speak, with great freedom, of the necessity of alteration in the constitution of Massachusetts bay, others of vacating the charter of Rhode Island, others of sending troops to Boston, but there is not a word, upon either of those subjects, in any one of Mr. Hutchinson's letters.

Doctor Franklin kept a regular correspondence with the Speaker of the House of Representatives, but these letters were sent, in confidence of their being communicated to six persons only, Mr. Bowdoin, the Speaker, Samuel Adams, John Adams, Doctor Chauncey & Doctor Cooper, and that they should be returned, and no copies taken. They arrived in Boston in the autumn of 1772. Upon application to Doctor Franklin, for leave to increase the number of confidential persons, he consented to their being shewn to such other persons as should be judged proper. The name of Mr. Whately, which was at the bottom of the first page of all, or most, of the letters was erased, and it did not appear to whom any of them were directed.

Page 288, line 5

A Committee of nine members were then chosen by ballot, a method of chusing practiced only in cases of the greatest importance, to consider what was proper to be done further. This would give an opportunity of a few days for the resolve of the House to have its designed effect upon the people.

Thus far the plan had been prosecuted successfully and, if the resolves of the House and council could have been perfected, and the letters

returned to England without being copied, the plan would have been completely executed.

Page 289, line 28

This was confirmed by Mr. Adams himself. Mr. Adams was one of the six who had the joint custody of the letters from Doctor Franklin upon express condition, that no copies should be taken.

Page 290, line 17

There not being the least mention in any of the governor's letters of sending a military force to the Province, of passing acts for raising a revenue, or of applying a revenue to the salaries of the governor, judges, or other officers, the other letters are declared to contain these matters, and, in general terms, the writers are charged with them, in order to bring an odium upon the governor, against whom the resolves were principally levelled.

Page 292, line 12

They say it was erroneous to affirm, that no endeavours were used by any but the governor to discover & punish rioters—that it was unjust to charge the council with evasion and with declining to assist the governor with their advice.

Governor Bernard was of opinion, that the council rather endeavoured, by declaring that the riot was caused by an irregular proceeding of the Officers, to vindicate the rioters, and therefore declined acting with the council; the charge of not assisting the governor referred to the protection he wished to afford to the Commissioners of the customs, who they declared had unnecessarily left the town. The council would have given him their advice, but would not have assisted him with it for the protection of the Commissioners.

Page 294, line 2

"I wish the good of the colony when I wish to see some further restraint of liberty rather than the connexion with the parent state should be broken; for I am sure such a breach must prove the ruin of the colony."

Page 294, line 9

The same sentiment he had openly declared in his speech to the assembly, the last year, which probably was the reason that the House took no notice of it in their resolves.

[Quoted from speech:] "They who claim exemption from acts of parliament by virtue of their rights as Englishmen should consider, that it is im-

possible the rights of English subjects should be the same, in every respect, in all parts of the dominions. It is one of the rights of English subjects to be governed by laws made by persons in whose election they have from time to time a voice—they remove from the kingdom, where, perhaps, they were in the full exercise of this right, to the plantations where it cannot be exercised, or where the exercise of it would be of no benefit to them—Does it follow that the government by their removal from one part of the dominions to another, loses it authority over that part to which they remove, and that they are freed from the subjection they were under before; or do they expect that government should relinquish its authority, because they cannot enjoy this particular right? Will it not rather be said, that by this their voluntary removal, they have relinquished, for a time at least, one of the rights of English subjects, which they might if they pleased have continued to enjoy, and may again enjoy whenever they will return to the place where it can be exercised?

Page 294, line 17

An accusation more compleatly, in every part of it, cooked up, without any support except from assertions altogether arbitrary, and forced and unnatural constructions, is no where to be met with. An address for the removal of the governor, and lieutenant governor being the result of it, the people of the province in general, were nevertheless as much enraged against them as if they had been concerned in a plot for selling the country to a foreign power. This answered the principal purpose of those who procured the letters and sent them from England, as well as of the persons to whom they were sent in the Province. It was not expected, that government in England could be imposed upon by false premises, or false conclusions.

Page 295, line 19

It has been already repeatedly observed that bodies of men collectively are capable of acts which no one of them would do separately, but such a glaring instance of injustice, as well as of inconsistency, is rarely to be met with . . .

The whole transaction was peculiarly disingenuous and injurious so far as it respected the governor. The charge consisted of an endeavour to make a change in the constitution of the council, & to introduce a military force in support of the civil authority. The governor would not have been culpable in recommending these measures, if he had been of opinion that the publick good required them. But he was in doubt of

the expedience of either, and had avoided recommending them. The reason of his conduct as to the first, has already been mentioned. The other he had found, by experience, was made a pretence for raising and justifying riots, but could be of no use in suppressing them, as no civil magistrate dared, against the determined sense of the people, to make use of them. While the authority was in so feeble a state, he saw no use which could be made of troops, except in case of open rebellion, to which, though he believed there were individuals thoroughly inclined, yet he thought the body of the people could not be prevailed on to join with them. The aid and support he wished for, was from the civil authority in England, and, if necessary, from Parliament, for punishing those who were stirring up the people to oppose that supreme authority, without which the several parts of the Empire could not be kept together, and he looked upon this as absolutely necessary without delay and however inconsiderable the offenders he thought the offense was great enough to be brought before the House of Lords by an impeachment from the Commons. In this way of proceeding, the controverted point of the authority of Parliament over any part of the dominion, which had not members specially elected as its representatives, after being fully discussed by the greatest lawyers would have had the decision of the greatest Judicatory in the Empire, the exceptions to extending the statute of Henry the eighth, and a trial by a jury of the vicinage, unless the subjects in the colonies are intitled to Liberties beyond the subjects in the Kingdom, would have been avoided.

Page 295, line 30

If the people of the Province had been left to a calm deliberate consideration of the resolves of the council, and house, when compared with the letters, the impressions first made would have been in a short time effaced; but the leaders had no sooner left this affair, than they begin with another, which they would connect with the former, and which was suggested to be of the governors planning also—the salaries granted to the Justices of the Superior Court.

Page 296, line 7

The governor, before he would give a warrant upon the Treasury for the Salaries granted to those Justices by the general assembly, required of each of them an engagement to receive no more than one half the sum granted, one half the year, being included in the grants for their Salaries made by the crown.

Page 297, line 2

. . . but the publication of the resolves alarmed the people of the Province, and produced the uneasiness upon which the resolves were said to be grounded, and which would never have existed without them.

Page 302, line 22

. . . and a prejudice was raised against that court itself, as consisting of officers of the crown, although it used to be looked upon as the most respectable Judicatory in the Colonies. It then consisted of the Governor, Lt. Gov., Council Secretary & Ch. Justice of Mass. bay & New Hampshire, Governor of Rhode Island, Commanders of the King's Ships, Collectors of the Customs & Judges of Admiralty. In the last commission the Council of Mass. bay was left out. This was considered as a slight. Both Gov. Bernard & Hutchinson had advised to a new commission including the Mass. council but the part they took in opposition [operated] to prevent the success of such advice.

Page 304, line 27

The governor, when he heard of the notification for the people to meet, expected a tumult, and ordered a meeting of the council at the same time. Six only of the council appeared, seven being a quorum, there could therefore be no act of council: but, as one of the six present was an acting Justice of the peace through the province, and the tumult of the people and the forcible entry into the warehouse were seen from the council chamber, the governor called upon the Justice to go down and suppress the riot. He lived in another county, and, though his commission extended to all the counties, yet he thought it more proper for the Justices who lived within the County to exert themselves on this occasion, and he proposed sending for those Justices &c.

Page 305, line 3

Mr. Bowdoin, one of the councillors present, who till then had not discovered any opinion, desired to be heard, and observed, that the ministry obliged the East Indian company to ship great quantities of tea to America, in order to increase the revenue—that the body of the people of America were determined not to submit to the tax—that if governor, council, & house of representatives should all agree to enforce the tax, it would have no effect against the mind of the body of the people—that he had no hand in promoting the measures which the people were now taking, but he could not help being of opinion, that instead of making any attempt to suppress them, it would be advisable for the governor

to use his influence with the consignees to ship the tea, without landing, directly back to London. This, he added, he knew to be intended in the other colonies. One of the councillors, Mr. [Samuel] Danforth of Cambridge said he did not believe one person in twenty in the province, except the inhabitants of Boston, was of that mind. Another, Mr. [John] Winthrop of Cambridge, made answer that the people in the country did not yet know anything about it, but he had no doubt when they came to be acquainted with it, they would all be of that mind.

Page 305, line 17

. . . and, as it had been always said that there was no occasion for the King's troops, & that the military companies of the province were always ready to aid the civil magistrate, the governor issued an order to Col. Hancock, who had the command of a company of cadets, to notify each of them to hold himself in readiness to be aiding to the civil magistrate in preserving the peace.

Page 306, line 15

Mr. [John] Erving.

Page 306, line 20

. . . he did not desire any opposition to landing the tea, but he wished the consignees would agree not to sell it while the duty remained upon it, and that they would acquaint the E. India company that it could not be sold until the act imposing the duty should be repealed. .

Page 306, line 21

Another gentleman observed, that nature revolted against oppression & unconstitutional acts of governments—the people would not bear to have the Stamp act enforced—the consequences, terrible enough, of attempting it were well known—

Page 306, line 38

One of them expressed his wish that the governor would give orders for its security, by which he meant the taking it into the castle; but he would not give his advice as a councillor to the measure. It was known, that this would make them obnoxious to the people. The governor intimated to them, that, with advice of council, he should have no difficulty in giving orders to receive it in the castle; that he had no apprehensions that he or any of the council could be liable to any

damage which might happen to the tea by the opposition of the people, or by any accident whatever.

Page 306, line 39

Nothing definitive was determined upon at the adjournment. Objections were made to giving any opinion. The governor urged it upon them from their oath, which they had taken as councillors. That, one of them said, obliged them to give their advice to the governor in managing the affairs of government, but this was a petition, to direct merchants how to manage their private affairs—It was not an affair of government.

It was a complaint, the governor observed, of being deprived of that protection to their persons and property to which by law they were intitled; and he demanded their advice to enable him to support the laws, and to maintain the rights of the subject, & to preserve the publick peace.

Page 307, line 7

Among other arguments to induce the Council to afford their advice and assistance, the governor had acquainted them that he had reason to expect the tea sent to New York, would be landed. This was founded upon the intelligence he had received of the advice of council to Governor Tryon, to cause it to be landed in the Barracks &c., and letters received from him, that he was determined to protect the property of the King's subjects there. The people at New York rose in opposition to this advice of council & determination of the governor and the ship was not suffered to unload. The next day, what the governor had thus mentioned in council appeared in one of the news papers, with inflammatory remarks. As he had matters to lay before them not proper to be made publick, upon the oath which they had taken as councillors, he enjoined secrecy. Mr. Bowdoin said, that he took the sense of their oath to be, that they were to keep secret such matters as they should agree ought to be secret, otherwise the governor might oblige them to conceal what it would be the ruin of the country not to discover. The governor observed, that the words of their oath are that they "will freely give their advice to the governor, and will not reveal such matters as shall be debated in council and" committed to their secrecy, "but will in all things, be true & faithful councillors when thereunto required." The governor, from the charter, had been in the practice of enjoining secrecy, which was "committing matters to their secrecy"—this gentle-

man, after fourscore years practice, had made a new construction, and they were to "commit matters to their own secrecy" when they thought fit. With as much reason, they might insist on giving advice only in cases where it should be required by themselves. After much debate, Mr. Bowdoin declared, that altho' the majority of the council should agree to keep secret matters enjoined by the governor, yet as this did not appear to him to be the sense of his oath, he should not think himself bound to conform to it. This declaration from one member was as effectual to defeat the design of secrecy as if they had all joined, but it was not a time to take any notice of the declaration.

Page 307, line 20

Mr. Bowdoin, Mr. Dexter [Samuel, 1726-1810] & Mr. Winthrop.

Page 308, line 15

When this was over, the governor represented to them what their eyes and ears were witnesses of, the confused state of the town, the people having taken the government, passing votes and orders, which none but the constitutional powers of government ought to do; and required their further advice, and assistance in support of government.

Page 308, line 36

The master was obliged to make report of the vessel and goods to the collector of the customs, the collector could not clear out the tea until the duty upon it was paid, and the governor could not grant a pass without a clearance from the custom house. The governor's refusal, though a compliance would have been a violation of his trust and of his oath, he knew would be improved to enrage the people against him; but there was no help for it.

Every plantation governor swears to do his utmost endeavour that all the laws of trade shall be carried into execution & the Stat. of William the third, which declares the powers of the custom house, is particularly referred to in this oath.

The consignees, for several days before the tea arrived, had been menaced, and once, upon a sudden apprehension of danger, applied to the Admiral to receive them on board his ship, but in this application they did not succeed.

Page 309, line 6

. . . a moderator was chosen. Jonathan Williams, Esq who had married Dr. Franklin's niece. Mr. Hancock, who had been moderator of the

late meetings of the town of Boston, it was thought best to pass by not from disrespect; other reasons were assigned. The Select men & town Clerk of Boston attended in the same places, they would have done at a legal town meeting.

Page 310, line 3

A person nearly related to some of the consignees, apprehending the people might commiserate their case if they had an opportunity of representing to the town the danger of making themselves chargeable for whatever damages the E India company might sustain by sending back the tea, moved for an assurance of safety if they came to the meeting, which was voted, and two hours were allowed for him to go to them & return.

Page 310, line 34

. . . and fair copies should be prepared and sent by a Committee, Samuel Adams, John Hancock, William Phillips, John Rowe [1715-1787] & Jonathan Williams Esq., to New York and Philadelphia;

Page 310, line 36

. . . and that their brethren in the country be desired to afford their assistance upon the first notice given; and that thanks should be given for their junction at this time—

Page 311, line 12

. . . and to see to the execution of the engagement made by the master, and owner of the Ship to carry back the teas. It soon appeared, that they had engaged more than was in their power to perform.

Page 312, line 6

As soon as the two Vessels, last arrived, were so far unladen, that the whole quantity of the tea could be come at;

Page 312, line 8

Great pains were taken, to bring in as many of the people of the country as possible. The Representatives of Roxbury, Dorchester, Brookline, Cambridge, and Newtown were present, and very active.

Page 313, line 12

Dr. Young observed, that the Owner . . .

Page 315, line 2

William Brattle [1706-1776], Esq.

Page 315, line 5

James Bowdoin, Esq.

Page 317, line 14

Which resolve declared that if he did not make such declaration he should be impeached &c.

Page 317, line 35

Mr. [Nathaniel] Ropes, Mr. Cushing [William, 1732-1810] and Mr. [Foster] Hutchinson.

Page 318, line 23

The Governor not coming to Council that, nor the next day, the House sent for the Secretary [Thomas Flucker], and directed him to deliver the remonstrance forthwith to the governor;

Page 319, line 23

In all the disputes with the House, from his first coming to the chair, he had studied to avoid such charges as would irritate and tend to widen the breach between him and them;

Page 319, line 40

Before they had received the governor's answer to their petition, they Resolved, as the firm opinion of the House, that it is highly improper, and contrary to usage and precedent, that the Chief Justice should sit in the Superior Court, although the order for his removal, is not yet actually passed by the Governor & Council. And they sent the Messenger of the House to notify him of this opinion. It is difficult to determine what they mean by contrary to usage & precedent. There never had been a precedent in the Province.

Page 322, line 8

The Council directed the Secretary to lay these articles also before the governor, and, in another message they pray they may be informed of his determination with regard to them also.

I do not find any answer to this last message, and, it is probable, he relied upon his former messages as sufficient.

Page 324, line 8

The governor knew, that, for fourscore years which had passed from the date of the charter, the way of removing persons from office who had been appointed by the governor with advice of council, had been by nominating to the council other persons in their stead; he was also sensible, that there had been instances of complaints against persons in publick office for male conduct, which, by the consent of governors, had been enquired into by the council, in order to their being able the better to give their advice & assistance to the removal of such persons, and appointing others in their stead; but he knew of no instance in which a governor had suffered an enquiry into a complaint, in which he was convinced that, if everything alledged to support it was admitted to be true, he could not be justified in removing or passing any censure upon the person against whom the complaint was brought; and, if such an instance could have been produced, he would not have considered it as a precedent to be followed.

The ground of the complaint against the Chief Justice, was his taking a salary from the King, paid out of a revenue raised in the colonies by authority of an Act of Parliament: The other matters alledged in the impeachments, as a reflection upon the legislature for not paying him a sum equivalent to his support, did not deserve any answer, being, evidently, alledged meerly to draw on the consideration of the principal charge.

The council had declared, that the governor, with the council, constituted a court of judicature; and, though by the charter the power of assembling the council is expressly granted to the governor alone, yet they had desired that he, *with them*, would appoint a time for assembling to hear this cause. The House, when they presented their articles to the council, in the absence of the governor, had, by their committee, declared that *the governor was presumed to be present*; and the Council, after such declaration, had received the articles; and the committee had made report to the House, that they had impeached the Chief Justice *before the governor and Council*; he considered that, when the Council had received his answer to their last message refusing to act with them, they might with as much reason, and he thought it probable they would, proceed to consider, and determine the articles, as they received a message to the governor, and council in the absence of the governor; and, in like manner, *presume* that he was present. He had no reason to doubt, that they would consider the charter, when it impowers the legislature to

tax the inhabitants for the support of government, as giving *an exclusive right*, both of supporting the government, and of taxing the inhabitants; and, having once a property in such a right, and, being intitled to English liberties, no power upon earth in which they were not represented could deprive them of this property. This had been their reasoning in similar cases.

Their sentiments upon these points may be collected from their publick proceedings; and, upon such principles, it might be expected, they would declare the articles against the Chief Justice to be maintained; as the fact of receiving a salary from the King had been confessed in his answer.

Page 326, note, line 6

And they conclude their last message to him with observing, that they fear one innovation after another will be forced upon them, till there will be not only "*an abridgement* of what are called English liberties," but a total subversion of the constitution—that if they must still be exposed to the continual false representations of persons, who by such means get themselves advanced to places of honour and profit; and cannot even be heard when they complain, they nevertheless have the pleasure of contemplating, that posterity, for whom they are struggling, will do them justice by abhorring the memory of those men, who owe their greatness to their countrys ruin.

Page 327, line 7

He was, at some times, tempted to flatter himself, that, when the Council should take the administration upon them, their duty to the King would appear to them in a new light. He had been himself, when of the Council, what the people used to call the twenty eighth part of a governor, and he remembered, that some, who had the character of patriotick councillors, when they came to be governors, were as zealous as any of their brethren for observing royal instructions, and maintaining the prerogative in every respect; but there was no room to hope for the like from the present council. They had been so explicit in their votes, in the case of the tea, in that of the chief justice, in that of the Kings instructions; and there had been such approbation shewn of the measures of the House in general, that, if they should see their duty in a new light, a conformity to it would make them more obnoxious than the governor, whose principles were known to have been the same before, as after, he came to the chair; and such conformity was not to be expected from them.

Page 328, line 8

The news from England of a duel between Mr. Temple [John, 1732-1798] & Mr. Whately, and of Dr. Franklin's publication in the News papers;

Page 329, line 10

The governor had never, in publick [o]r private manner, by letter nor in any other way, suggested these, or any other severe measures. He flattered himself, that there was a possibility, that, by taking off the three penny duty from tea, and by granting the Judges their commissions during good behaviour, the province might be kept in such a degree of quiet, as would be preferable to a compulsory submission by military power; and those were the last measures he had proposed.

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