THE PROVINCE LAWS.

By Hamilton B. Staples.

The four large volumes already published of the Acts and Resolves of the Province of the Massachusetts Bay, prepared under chapter 87 of the Resolves of the General Court for the year 1867 by the Commissioners, Mr. Ellis Ames and Mr. Abner C. Goodell, embrace three-quarters of a century, viz.: from 1692–93 to 1768. These volumes supply abundant material for the history of the State as well as of many of its municipalities. They enable us to trace the development almost from germ life of our present system of laws and of government. They show us what the political and social life of the province was and the perpetuity of that life under new forms and conditions.

I propose briefly to examine this period in the light of these old statutes. It would be a dull task to take them up in detail; I can only consider such as possess some special historic interest and serve as a guide to the policy of the State in important public affairs. We are much nearer to the Province under the present Constitution than we are apt to suppose. In the frame of government and the grant of powers to the legislature and the executive, the old charter has been closely copied in that time-honored instrument, while the Bill of Rights very nearly corresponds to the Provincial Act of 1692–93, "setting forth general priviledges." And in the first place the composition of the legislative body deserves a brief notice. The General Court consisted of the Governor, the Council and the House of Representatives. Legislative Acts, passed by the Council and the House in concurrence, required the

approval of the Governor. They were also subject to be disallowed by the Crown within three years after presentation to the Privy Council. The authority of the Legislature was limited by the Charter. The Governor was appointed by and during the pleasure of the Crown. The Council, twenty-eight in number, was chosen yearly by the General Court. The House of Representatives consisted of freeholders chosen to represent the respective towns according to a definite basis of apportionment. This was not popular, but municipal, representation. The Representatives were paid by the towns they respectively represented, the modest stipend at first of three shillings per day, a sure guarantee of short sessions. The Governor presided in the Council; the Speaker of the House was approved by the Governor. Such was the composition of the law-making power.

The next point is, the qualifications of electors. It was provided in the Charter that no one should vote in the election of Representatives who had not an estate of freehold in land within the province to the value of forty shillings per year, or other estate to the value of £40 sterling. The General Court provided in 1692–93, that no one should vote for town, precinct, or parish officers or for raising money by municipal taxation who had not ratable estate of the value of £20. And this became the settled policy of the Province.

The next point of inquiry naturally is, the organization of local governments. The first county organized was Dukes County in 1695. Nantucket was recognized as a County in 1726. Worcester County was established in 1731; Berkshire in 1760. Through the whole period Suffolk included nearly all of what is now Norfolk County. More than ninety Massachusetts towns owe their corporate existence to the legislation of this period. Each Act of Incorporation signifies a fresh portion of God's earth reclaimed from barbarism by heroic toil and suffering.

The natural order of municipal growth was, first, the plantation, then the district, then the town. It is curious to see how nearly the town organization of that day corresponds with what it is now.

Before proceeding farther with this review, it may be observed that scattered through these statutes are numerous temporary laws and acts "for reviving laws expired or near expiring." We also find that the Legislature was in the habit of placing in the same statute distinct subjects of legislation. To both of these practices the King objected. Quite early in the life of the Province the General Court was advised to enact laws without limitation of time — also to enact them singly, and under distinct titles. To neither of these suggestions did the Legislature pay the slightest heed. It was reserved for the statesmen of a much later day to appreciate their wisdom. The union of Church and State is a prominent feature of provincial legislation. As early as 1692–93, every town was required to support a minister. The minister must be "a person of good conversation, able, learned, and orthodox." He was chosen to his sacred office in town meeting. The town was empowered to contract with the minister and was then obliged to live up to the contract. The neglect of a town to make suitable provision for its minister was redressed by the Court, and measures were taken that no town should be destitute of a minister. In 1706–07, a town destitute of, or not supporting, its minister according to the contract was liable to indictment, and if the orders of the Court in that behalf were not obeyed the General Court enforced the same, adding to the town's proportion of the taxes the sum required to pay the settled minister his rightful salary or to supply a proper compensation for a minister sent by the General Court, if the town was then destitute.

The minister was exempt from taxation, watch and ward, and military duty. In 1728, Quakers and Anabaptists were exempted from taxation for the support of ministers, and

in 1742 the ministerial taxes of persons attending the Church of England were allowed to be paid to their own minister. The law not only enforced the payment of the minister's salary but also the attendance of his congregation. As late as 1760, absence from public worship for one month without sufficient cause, was fined ten shillings.

In respect to the diffusion of learning, two Acts were passed for the incorporation of Harvard College; one in 1692–93, the other in 1697, both of which were disallowed by the Privy Council on the ground that no power was reserved to the King to appoint Visitors. In 1692–93 every town of fifty householders was required to maintain a schoolmaster to teach reading and writing, and where there were one hundred families or householders, a grammar school. This was the foundation of the present school system.

I pass from the church and the school to the judicial system. Under the new Charter, the English practice was introduced of commissioning certain persons in each county as Justices of the Peace, to whom was presently given a civil jurisdiction as to sums less than forty shillings. The further organization of the courts was accomplished by a succession of statutes.

In 1692, the Court of Quarter Sessions was established in each county, consisting of the magistrates of the county with the same authority in criminal cases as the county courts of the colony had possessed, with a grand and petit jury, and having jurisdiction of appeals from a single magistrate.

In 1699, the Court of General Sessions was established in each county, held for more than a hundred years by the justices of the county. This court had jurisdiction of the lighter class of criminal offences, including appeals from a single magistrate, while the jurisdiction of pleas of the Crown of a higher grade was vested in the superior court of judicature, sitting as a court of assize and general jail delivery.

The civil jurisdiction was divided near the close of the seventeenth century between the inferior Court of Common Pleas, constituted in each county with four justices residing therein to hear and determine all civil actions triable at the common law, and the Superior Court of Judicature, a court of general jurisdiction consisting of one chief justice and four other justices, having jurisdiction of appeals from the Inferior Court of Common Pleas and original jurisdiction of all actions of the value of ten pounds and upwards, or where the freehold was concerned. To this court was assigned the same place in the system as was assigned in England to the Common Pleas, the King's Bench, and the Exchequer. The Court of General Sessions had the management of county affairs. Courts of Probate were established in each county for the settlement of the estates of deceased persons. Two Chancery Courts were successively instituted, one in 1692–93, to be held by the Governor or such other as he should appoint to be Chancellor with eight or more of the Council with full equity powers, and the other in 1693–94, to be held by three Commissioners with the same powers. But the acts establishing these courts were both disallowed by the King, and Massachusetts remained without any equity jurisdiction except a limited authority conferred upon the Superior Court to give equitable relief against bonds and the forfeiture of estates on condition, and also to enter up conditional judgments in actions upon mortgages.

In every civil action there might be two jury trials, the second either by review in the court where the case was first tried, or if it was first tried in the Inferior Court, then on appeal to the Superior Court. Great care was taken to have impartial juries, and a property qualification was required for a juror. In the Superior Court, three constituted a quorum, and all questions of law were thus settled at *nisi prius*. The compensation of the judges, clerks, sheriffs, criers and jailers, consisted of fees derived from the cases. Thus all concerned in the administration of jus-

tice were jointly interested to have as much litigation as possible, and to have the litigation indefinitely prolonged. As a gentle encouragement to judicial efficiency in 1692, a fee of six shillings was allowed the justices of the highest court "in all criminal cases where a fine is set."

A large number of these statutes are revenue statutes. The main sources of the revenue were taxation, duties on imports, and the excise. The scheme of taxation, based on polls and property, was much the same as it is now. The exempted persons for a long time after 1696, were the elders of churches, settled ministers, the President, Fellows and students of Harvard College, grammar school-masters and such others as through infirmity or poverty were unable to pay. To this list in 1767–68, the Governor, Lieutenant-Governor, and their families, the Professors and Hebrew instructor of Harvard College had been added, and from it the elders of churches omitted. The exemption not only covered the polls, but also the estates of the exempted persons. I do not find in these statutes any exemption of church property from taxation. In making assessments, houses and lands were estimated at six years' yearly rent. In the case of landlord and tenant, the landlord reimbursed the tenant one-half the tax. Slaves were estimated as personal property; oxen, cows, horses, swine, goats and sheep were assessed at fixed values.

The provincial tariff of 1767 serves to indicate the fixed policy of the province in laying duties on imposts. It provided for both specific and *ad valorem* duties. The duty upon every pipe of wine was five shillings, upon every hogshead of rum, eight shillings; all other articles were taxed fourpence for every twenty shillings in value. From the operation of this tariff were excepted all articles, the product or manufacture of Great Britain, and all foreign articles imported from Great Britain, either directly or through the channel of his Majestys' colonies. It was further provided, that upon all goods and merchandise imported

by inhabitants of other provinces or colonies on this continent, or of the English West India islands, in vessels belonging to such inhabitants, a duty should be paid on every pipe of wine, ten shillings; every hogshead of rum, sixteen shillings; every hogshead of sugar, eightpence; every hogshead of molasses, eightpence; every hogshead of tobacco, twenty shillings; and on all other commodities, eightpence for every twenty shillings of value (all articles, the growth or product of said provinces or colonies being excepted, save tobacco). This tariff, a fine illustration of the moderation and forbearance of our fathers, accomplished three objects: First, it opened our ports free to British goods, and goods brought here in British vessels, whether directly or indirectly through the other colonies; second, it crippled the inter-colonial trade; third, it secured to British ships the carrying trade of the English West India islands. We are not to forget that all these advantages were secured to Great Britain by the province, at the price of increased taxation at home and the surrender of commercial prosperity.

The third means of revenue was the excise, which was principally laid upon distilled spirits, wine, and limes, lemons and oranges, "used and consumed in making punch or otherwise for sale by taverners and inn-holders only." This excise was a tax upon sales at retail, and required a report of the stock and of sales, and many other safeguards to render it effective. It was the law by which in that day, the sale of intoxicating liquor was in part regulated. There was another method of raising money, and that was by lotteries. In the early days of the province, laws were passed for the suppression of lotteries as common nuisances, but in the course of time the feeling against them appears to have changed. After 1750, they became a favored method of raising money. They were resorted to by legislative authority to raise money for paving the mill-dam, repairing Faneuil Hall, building a new hall for the

students at Harvard, clearing out obstructions in rivers, making bridges, and supplying the wants of the treasury.

I pass from economic legislation to a brief consideration of the criminal code. By two acts passed in 1692–93, idolatry, witchcraft, and dealing with evil and wicked spirits, conjuration, blasphemy, treason, murder, devilish practise, concealment of the death of a bastard child, sodomy, bestiality, incest, rape, burning and piracy were made capital offences. These acts by reason of their disallowance did not become a part of the criminal code. For that we must look to other statutes. It appears by a comparison of these statutes that a code grew up and expanded to meet the wants or reflect the opinions of the time. And first, in respect of capital offences, the legislation in its chronological order is worthy a place here. I give a list of the capital offences with the date of the enactment by which each became capital: —

1692–93. Breaking into a dwelling-house, ware-house, shop, mill, malt-house, barn, out-house, or any ship or vessel; a third conviction.

1692–93. Robbery in the field or highway; a third conviction.

1694. Polygamy.

1696. Treason, concealment of the death of a bastard child, piracy and robbing upon the sea.

1697. Murder, rape, and the sin against nature.

1700. Escape from prison of Romish priests adjudged to suffer perpetual imprisonment for coming into, or remaining in, the Province after September 10, 1700.

1705. Burning a dwelling-house, a public building, a barn having corn, hay or grain therein, a mill, malt-house, store-house, shop, or ship.

1706. Correspondence with the French or Indian enemy, removing to or residing in the enemy's territory, and sending supplies to the enemy.

1711. Robbery on the highway; a second conviction.

1714. Altering the bills of credit of the Province.

1715. Breaking into a dwelling-house in the night time with intent to commit felony.

1728. Killing a person in a duel.

1735. Counterfeiting the bills of credit of the Province.

1736. Larceny of property of the value of three pounds; a third offence; the second being larceny of property of the value of forty shillings.

It will be observed that the tendency of the age was to resort more and more to capital punishment.

Passing now to other offences, atheism and blasphemy were punished by imprisonment not exceeding six months and until sureties for good behavior were furnished, by the pillory, by whipping, boring through the tongue with a red hot iron or being set on the gallows with a rope round the neck, in the discretion of the court. Perjury was punished by a fine of twenty pounds and imprisonment for six months, and if the fine was not paid, by the pillory and the nailing of both ears. Forgery subjected the offender to pay double costs and damages to the injured party, to be set upon the pillory and there to have one of his ears cut off and to be imprisoned one year. The burglar was branded on the forehead with the letter B upon the first conviction, and upon the second was set upon the gallows with a rope about his neck for one hour, and severely whipped, not exceeding thirty-nine stripes, and in both cases was required to pay treble damages to the injured party. Adultery subjected the offender to be set on the gallows with a rope around the neck cast over the gallows and to be whipped on the way thither not more than forty stripes, and for ever afterwards to wear the capital letter A, two inches long and proportionally large, cut out in cloth of a color different from the clothing, sewed on the outside of the arm or on the back, and as often as found without the letter to receive fifteen stripes. Drunkenness and profanity were each punished by a fine of five shillings; if the

same was not paid, by the stocks. Theft was peculiarly dealt with. The offender was required to forfeit to the owners of the property stolen treble its value, and to be further punished by a fine or by whipping, and if he was unable to make restitution or pay such damages, he was enjoined to make satisfaction in service and was so disposed of for such time as might be ordered by the court. The compulsory payment of damages to the party injured by crimes affecting property has entirely disappeared from our criminal code, but the wisdom of the change is still open to question. I have not the space to refer to all the offences for the punishment of which provision is made in these statutes. I will, however, advert to a few laws characteristic of the time, such as the law requiring every person to apply himself to "the duties of religion and piety, publicly and privately" on the Lord's day, and forbidding on that day or the evening previous labor and sports, travelling, swimming, walking in the streets or fields, the entertainment at public houses of any except strangers and lodgers; the law forbidding "stage plays, interludes and other theatrical entertainments;" the law forbidding the giving at funerals of scarves, wine, rum, rings or gloves, except a limited number of the latter to the bearers and the minister; the law forbidding the removal of dead bodies for the purpose of sorcery; the law requiring single persons of either sex, being minors, to live "under some orderly family government"; and lastly, the law consigning to the house of correction, rogues and vagabonds, jugglers, persons "feigning themselves to have knowledge in physiognomy, palmistry, or pretending that they can tell destinies, fortunes, or discover where lost or stolen goods may be found," and other disorderly persons including common pipers and fiddlers, against whom legislative hostility has not yet been overcome. All these statutes reflect, as in a glass, the condition of the time, the evils, real or supposed, of which society sought to rid itself, and

the degree of intelligence applied to the solution of political and social questions.

A sketch of the provincial laws would be very incomplete without a somewhat extended reference to the financial policy, especially the paper money system. It will appear that our fathers tried an experiment from which a lesson was learned, never to be forgotten by Province or State. The public bills of credit of the Province were issued almost from the first, not only to enable the Province to pay the expenses of the government, but also to supply loans of money to the several towns. In the latter respect the State became a banking institution. The bills were distributed to each town, according to its proportion to a certain sum set in the valuation acts, and the towns by their Trustees were authorized to loan the same at interest on good real estate or personal security at six pounds per cent. per annum. Up to 1727 this system seems to have worked well. In the preamble of an act passed in that year for a further remission of bills of credit, it is recited, "whereas the public bills of credit on this province, which have for a great length of time happily served this government both in war and peace, and enabled the inhabitants thereof to pay their public dues, are now become very scarce by reason they are in a great measure already drawn in." But in 1738, only eleven years after, the preamble of an act for better securing the value of the bills of credit tells a different story: "whereas the emission of great quantities of bills of public credit without certain provision for their redemption by lawful money in convenient time, have already stripped us of all our money and brought them into contempt, to the great scandal of the government." It appears that, between these two dates, authority had been given for the issue of upwards of two hundred thousand pounds in bills of credit, a part of which may have consisted of a re-issue of bills once drawn in. In 1736, £18,000 were issued in the old form and nine

thousand of a new form. And in the tax granted for drawing the same in, a distinction was made between the two kinds of bills which continued for some time in all the grants of taxes, viz.: that the tax might be paid in bills of the new tenor at their face value, or in bills of the old tenor in the proportion of three to one. This indicates that the old bills had sunk below one-third the value of coined silver, and the discredit thus put upon them by the Legislature caused them to depreciate still more. In 1737–38, an act was passed for the issue of £20,000 of the new tenor, and it was provided that all public and private debts which might be discharged by bills of the old tenor, should be discharged by bills of the new tenor in proportion as one for three. In the progress of the new tenor issue, thirty thousand pounds in bills of fractional currency were issued, viz.: £2625 to each of the small denominations. Even after this legislation, the issue of £80,000 in bills of credit of the old tenor was authorized and it was provided that twenty shillings in those bills should be equal to £6 8d. in bills of the new tenor. In 1741, bills of a still newer form were issued, upon which it was expressed that they shall be "accepted in all payments and in the treasury." It was further provided by law that one shilling of these bills should answer to four in bills of the old tenor. To keep these bills from depreciating it was made penal to purchase silver at any higher rate than was provided in the act as the value in silver coin of the bills themselves. In the tax levies after this time, payments might be made in bills of the old tenor in the proportion of four to one as compared with bills of the new tenor. Then followed for the next ten years the rapid issue of bills of the new tenor, amounting in all to upwards of half a million pounds. The taxes granted for drawing them in allowed payment to be made in the new tenor bills or in the old tenor bills, the latter as four to one of the former. Misery and distress followed in the wake of this flood of paper money. It

simply went back and forth between the people and the public treasury, the depreciation of its value constantly necessitating the increase of its volume. The loans to the towns were not paid, and the security given, in a majority of cases, proved insufficient. Coin being put in competition with paper as a commodity rapidly rose in value. The taxes granted for drawing in the bills were not promptly paid and a resort was had to new issues to meet the emergency. In the language of Mr. Hildreth, "this great and rapid fall had contributed to open people's eyes to the true character of the paper money. All debts, rents, salaries, and fixed sums payable at a future period, had experienced an enormous and most unjust curtailment. The paper bills, a legal tender at their nominal amount, had been made the instruments of cruel frauds upon widows, orphans, and all the more helpless members of society." After violent contests between the creditor and the debtor classes, sounder financial views prevailed, and the destruction of the paper money system was soon accomplished. The paper money of the province now amounted to two million two hundred thousand pounds sterling. The scheme for its redemption, adopted in 1748–49, was as follows: One hundred and eighty-three thousand and six hundred and forty-nine pounds sterling, money granted by Parliament to reimburse this province for its outlay in taking and securing Cape Breton, was used for the redemption of the paper money. For every forty-five shillings of the old tenor, and for every eleven shillings threepence of the new tenor, eight shillings in silver was given. The privilege of redemption was to cease on and after March 31, 1750, and it was provided as a further means of redemption that a tax of £75,000 should be imposed, payable in bills of the new tenor or the middle tenor, according to their face, or in bills of the old tenor counting four to one, or in Spanish milled dollars at the rate of 3s. 11d. each. After the application of these measures, on

account of the delay in the payment of taxes and other accidents, there was still a larger sum in bills of credit outstanding than there was silver in the treasury to redeem. And in 1750–51, the General Court provided that one-eighth of the remaining bills should be immediately redeemed in silver, and for the remaining seven-eighths an order should be given to each holder upon the Treasurer to pay the amount in lawful silver money at six shillings eightpence per ounce, or in Spanish milled dollars at six shillings a piece, by December 31, 1751, with a premium of one per cent. and lawful interest from March 31 till paid. It is a curious fact, so great had become the fears of the people of the paper money, that even these orders suffered a serious depreciation. But the great work was successfully done, and upon a coin basis the finances of the province were thereafter strictly conducted. It may be added that silver was at first the sole standard, at six shillings eightpence per ounce, while the value of silver bullion was five shillings sevenpence per ounce.

Closely allied to the question of financial policy is that of private credit. As early as 1692 an Act was passed making lands and tenements liable to the payment of debts, and making void conveyances in fraud of creditors. The preamble was, "whereas the estates of persons within this province, do chiefly consist of houses and lands which give them credit, some being remiss in paying of their just debts, others happening to dye before they have discharged the same." This Act was at first disallowed by the King, but became a law in 1696. According to Chalmers's unpublished MS. the continuation of his Polit. Annals, much of the populousness and of the commerce of the province was owing to this statute. I know of no two laws which mark so well the spirit of the people or produced such lasting consequences as this law, the source of private credit, and the law for the redemption of the province bills by which the public credit was re-established.

The next topic in the natural order, is the state of the law in regard to the transmission of property. I shall only notice in this connection the law for the distribution of intestate estates. As early as 1692–93, one-third part of the personal estate was given to the widow besides her dower in the houses and lands, and all the rest of the real and personal estate by equal portions to the children, except that the eldest son had two shares or a double portion. This state of the law continued for the whole seventy-five years. It was a radical departure from the law of primogeniture, and yet it shows the influence which that law still retained in the province. The preamble of the statute on this point shows that the division of the land among the children did not arise from a sense of natural justice, but from very practical considerations; "whereas estates in these plantations do consist chiefly of lands which have been subdued and brought to improvement by the industry and labors of the proprietors with the assistance of their children, the younger children generally having been longest and most serviceable unto their parents in that behalf, who have not personal estates to give out unto them in portions or otherwise to recompense their labors."

The statutes respecting trade and manufactures possess great historical interest. In 1736–37, it was provided that the taxes might be paid in certain commodities, "being of the produce or manufactures of this province." The articles enumerated are: hemp, flax, winter and Isle of Sable codfish, refined bar iron, bloomery iron, hollow iron ware, Indian corn, rye, wheat, barley, pork, beef, duck or canvas, whalebone, cordage, train oil, beeswax, bayberry wax, tallow, peas, sheep's wool, and tanned sole-leather. This list clearly marks the extent of manufactures at that time. The statutes indicate how strong an effort was made to introduce them, and how futile that effort was as opposed to the policy of England. Monopolies were granted for the manufacture of paper, linseed oil, and other articles.

In 1730, a bounty was offered upon hemp. Upon the increase of that bounty and the offer of a bounty for flax in 1734–35, the Lords of Trade entered the following order, December 5, 1735: "With regard to that giving bounties upon hemp and flax, ordered that Gov^{r}. Belcher, Col. Dunbar and the surveyor of the customs be wrote to, to know how that premium upon flax operates, whether they have any view of setting up linnen manufactures there, and whether it was given with that view, whether they have any prospect of Irish people going there to instruct them in that manufacture."

In 1753, an Act was passed, granting a tax on coaches, chariots, and certain other carriages, to encourage the manufacture of linen. With reference to this Act, the Lords of Trade wrote to Gov. Shirley, April 13, 1756: "The passage of laws in the Plantations for encouraging manufactures which anyways interfere with the manufactures of this kingdom has always been thought improper and has ever been discouraged * * *. And altho, the great importation of foreign linnens does in some sort take off the objection to a linnen manufacture in the colonys, yet as Parliament has lately and particularly this year given great encouragement to this manufacture here, we desire you will be cautious of assenting to laws of this kind for the future."

The various laws for the assessment of taxes enable us to see what was the relative progress of the several counties in taxable wealth during this period. I have compared an assessment in 1694 to raise £9559, one of 1736 to raise £29,953, and one of 1767 to raise £40,000. It will appear that the relative tax of Suffolk constantly diminished, while that of the other counties increased. Of the whole tax in 1694, Boston paid a little over one-sixth, of the whole tax in 1767 a little over one-ninth. The increase of Suffolk, Essex and Middlesex in taxable property did not materially differ. Hampshire, lowest in

the scale in 1694, was, seventy-five years later, higher than Barnstable, Bristol or Plymouth. In the seventy-five years the increase of Plymouth and Bristol was more than double that of Barnstable. Worcester in thirty years, from being taxed one-third the amount of Middlesex, came to be taxed nearly the same. The relative growth of the agricultural counties in taxable wealth was greater than that of the counties on the seaboard. During the period discussed, the wealth of the province had slowly increased by the extension of the area of cultivated land, but had not consolidated in the centres of population so as to allow the free use of capital or the diffusion of a spirit of enterprise. This is indicated by the fact that wages, interest and the cost of living remained nearly the same. In 1692, the witness fee in the higher courts was substantially the same as it was seventy years later. In 1727 the jury fee was 1s. 6d. in each case; forty years later it was but 2s. In 1692–93, the sum allowed per week for the diet of a prisoner was 2s. 6d.; seventy years later it was but four shillings. There was no change in the fixed rate for the assessment of oxen, cows, horses and swine between 1696 and 1767. In the assize of bread, the weight of the penny loaf, the Penny Wheaten and the Penny Household was not different in 1720 from what it had been twenty-five years before, having regard to the same grades of wheat, and in 1748, good winter wheat was received for taxes at a price showing no advance since 1720.

The laws to which reference has now been made imply a condition of peace. There was, however, during this period, legislation of a sterner character, suited to a state of war and commotion. In 1697, Haverhill and Andover were attacked by the Indians, and in 1708, Boston was itself in danger. The province was engaged in almost perpetual Indian war from 1692 to 1710. In 1757, after the fall of Fort Oswego and Fort William Henry, Mr. Hildreth says, "Indian scalping parties penetrated into

the very centre of Massachusetts." In 1760, the scourge of Indian warfare had visited New England six times in eighty-five years. In civilized warfare, the soldiers of Massachusetts had fought in the battles of Lake George under Williams and Pomeroy in 1755, in the disastrous assault upon Ticonderoga, and the brilliant capture of Louisburg in 1758, and in the final capture of Quebec in 1759. The statute book bristles with Acts for raising and equipping troops, for the definition and punishment of military offences and for securing concerted military operations.

The laws with regard to the Indians clearly indicate the perils of the time. As it regards the subject Indians, the idea of civil guardianship pervades the legislation, but in respect to the hostile Indians the law is animated with the spirit of merciless extermination. Instructed by the fable of the Wolf and the Lamb, the General Court called them "Indian rebels." They were forbidden to approach within a defined distance of the frontiers. They were hunted with savage dogs, for the training of which for the purpose a bounty was paid. The captives in war, including the women and children above the age of twelve years, were sold into slavery and transported. A premium was offered for the scalp of any male Indian of the age of twelve or upwards, "bonâ fide slain," one instance, surely, of the *bona fide* treatment of Indians.

The expulsion of the French Neutrals of Acadie, a war measure in which the government of this province participated, and by which seven thousand inoffensive persons who had taken no part in the war, men, women and children, were torn from their homes and lands and the graves of their kindred, one thousand dispersed in the towns of this province and the rest sent to the southern colonies or the West India islands, the saddest story of exile since the Jewish captivity, appears on the statute book in the form of an Act providing for the support of

these exiles in the towns to which they had been assigned. Dr. Metcalf, in his "Annals of Mendon," states that "as late as 1764, five of them were still living in Mendon."

There are no enactments in this long array of statutes that indicate more clearly the dangers and the necessities of the time, and the courage with which these dangers and necessities were met, than those designed to prevent the desertion of the frontiers. In 1694–95, the frontier towns were declared to be Amesbury, Haverhill, Dunstable, Chelmsford, Groton, Lancaster, Marlborough and Deerfield. By a statute passed in 1699–1700, Brookfield, Mendon and Woodstock were added to the list, and Salisbury, Andover, Billerica, Hatfield, Hadley, Westfield and Northampton, though not frontier towns, were recognized as exposed to the same danger. The desertion of these towns without leave of the Governor or Commander-in-Chief and the Council was forbidden. Any inhabitant having a freehold estate therein at the time of an insurrection or the breaking out of a war, removing therefrom without leave, forfeited his estate, and any person so removing who had no estate in lands incurred a forfeiture of at least ten pounds. The last statute especially directed to the safety of the frontiers was passed in 1722–23.

Near the close of the fourth volume occurs the statute granting compensation to Thomas Hutchinson, Andrew Oliver, Benjamin Hallowell, jr., and William Story for their losses in the Stamp Act Riot; also, granting indemnity to the offenders. In this Act emerges into view the shadow of the Revolution.

All through these volumes there is an atmosphere of repression. The province was allowed to manufacture nothing that could come into competition with the manufactures of England. Although our people yielded to this claim they never believed in its justice, and as time passed on it proved more and more detrimental to the prosperity of the State. The necessity of a change was one under-

lying cause of the Revolution. When the interests of a weaker people are systematically sacrificed to those of a stronger, a separation is but a question of ability and time. In looking over these statutes the folly of English statesmen is more and more apparent. It is strange that it could have been believed that a province whose own Legislature had for seventy-five years granted the taxes, levied duties and excises, established and enforced a criminal code, regulated the descent and conveyance of property, issued bills of credit, raised armies and directed campaigns, in short, exercised all the essential functions of sovereignty, would ever allow the right of the Home Parliament, in which they were not represented, to impose taxes on them without their assent.

I trust that this excursion into the border land of our civic history, may not be foreign to the purpose of a society whose organization dates back almost to the province, and whose library hall, to-day, occupies a spot where in the early days the sentinel nightly kept his post upon the menaced frontier.