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MOORE

**MEMORANDA CONCERNING
THE MASSACHUSETTS LAWS
OF 1648**

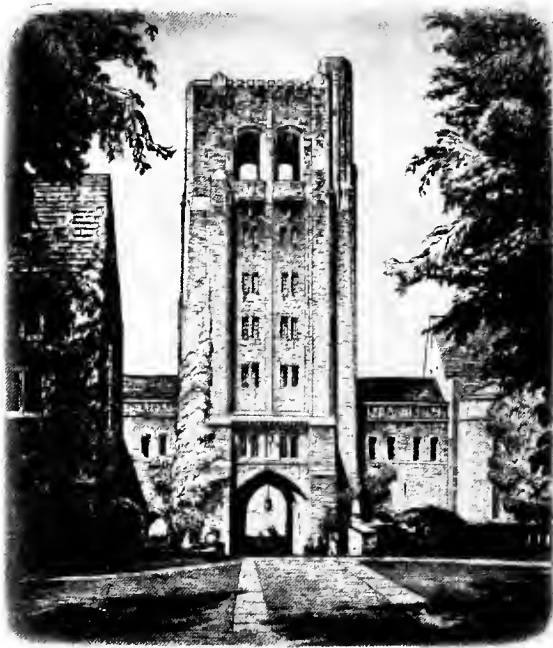
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Memoranda

CONCERNING

THE MASSACHUSETTS LAWS

OF

1648

BY

GEORGE H. MOORE, LL.D.

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NEW YORK

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THE MASSACHUSETTS LAWS OF 1648.



THE first printing-press set up in the new world of Christopher Columbus was in Mexico, and the earliest production of that press now known to be extant bears the date of 1539—exactly one century before the English Puritan Colonists of Massachusetts, with the encouragement of certain Dutchmen of Amsterdam, established their Cambridge press, and STEVEN DAY was “set on printing.” “The Freeman’s Oath” challenges “An Almanac for 1639, by Mr. William Pierce, Mariner,” for the first place among the *incunabula* of the territory now known as the United States of America. Both have been assigned to the year 1639, but no copy of either is known to exist. Three years later, it is recorded that “The Capital Laws of the Massachusetts Bay, with the Freeman’s Oath” were ordered to be printed, on the 18th of the 3d month, 1642: and there is nearly contemporary authority for the statement that they were printed accordingly, although, like the former publications, no copy remains to bear witness to the fact.

The earliest volume of laws printed in English America was the Massachusetts Code of 1648. No copy of this “Booke of Lawes of the First Impression” is known

to exist at the present day, and I have found no trace of its existence later than 1660. Whether there was a copy among those precious materials of history gathered by Thomas Hutchinson, which were scattered and destroyed by the rascally mob of vulgar Boston patriots (so called) who sacked his house in 1765, there is now no telling: if it finally perished then, the fact could only emphasize the maledictions with which those malefactors ought ever to be remembered by the historical student.

Few copies found their way across the sea—for the wise and prudent authorities of the colony did not wish at that time to challenge the attention of those in authority at home to their ambitious little *imperium in imperio*—a code of laws which established in fact a church without a bishop and a state without a King, and limited the exercise of the chief rights of citizenship to members of the churches allowed within their jurisdiction.

One of these copies, however, reached the hands of a pious clerical friend to the infant commonwealth, and through his use left in the literature of the day, a notable trace of its existence—at this time probably the most considerable that can be found, and hitherto apparently unknown to those who have busied themselves with the history of the book and the wonderful code contained in its pages.

THOMAS THOROWGOOD, of Massingham, B.D., one of the famous Assembly of Divines at Westminster, and Rector of Grimston in the County of Norfolk, published at London, in the year 1650, a work entitled, *Jewes in America, or, Probabilities that the Americans are of that Race*, a small quarto volume of nearly two hundred pages. In his third part, he illustrates his desires that the Americans may be Gospellized, and devotes two chapters to a generous recognition of “the Novangles

religious care to advance Piety and Learning," and special commemoration of "the successe of the Novangles in Gospellizing the Indians." I shall reproduce the greater part of the first of these chapters, as containing the earliest notice anywhere out of New England of the Laws of 1648, and other still earlier productions of its Colonial press. The extracts which follow are literal copies from the original, without addition or alteration.

"I shall transcribe some things out of their owne late printed BOOKE OF THE LAWES AND LIBERTIES CONCERNING THE INHABITANTS OF MASSACHUSETS, by which their love to truth, godliness, peace, and learning will be evident, together with their liberall and enlarged care to propagate the eternall Gospell of our Lord among the Natives.

"At the title of hæresie (*c*) this is the pface. Although no humane power be Lord over the Faith ^{c p. 24.} and consciences of men, and therefore may not constraine them to believe or professe against their consciences, yet because such as bring in damnable heresies, tending to the subversion of the christian Faith, and the destruction of the soules of men, ought duly to be restrained from such notorious impiety, it is therefore ordered and decreed by this Court :

"That if any christian within this jurisdiction shall goe about to subvert and destroy the Christian Faith and Religion, by broaching or maintaining any damnable heresie, as denying the immortality of the soule, or the resurrection of the body, or any sinne to be repented of in the regenerate, or any evill done by the outward man to be accounted sinne, or denying that Christ gave himselfe a ransome for our sinnes, or shall affirme that wee are not justified by his death and righteousnesse, but by the perfection of their owne workes, or shall deny the morality of the fourth Commandement, or shall endeavour to seduce others to any the heresies aforementioned, every such person continuing obstinate therein after due meanes of conviction shall be sentenced to banishment. 1646. And

before (d) having said, that the open contempt of Gods word, and the messengers thereof is the desolating sinne of civill States, &c. It is therefore ordered, and decreed, That if any christian, so called, within this jurisdiction, shall contemptuously behave himself towards the word preached, or the messengers thereof—either by interrupting him in his preaching, or by charging him falsely with any error, which he hath not taught, or like a son of Korah cast upon his true doctrine, or himselve any reproach—every such person or persons (whatsoever censure the church may passe) shall for the first scandall be convented and reprov'd openly by the Magistrate at some Lecture, and bound to their good behaviour, and if a second time they breake forth into the like contemptuous carriages, they shall either pay five pounds to the publique treasury, or stand two houres openly upon a blocke or stoole foure foot high on a Lecture day with a paper fixed on his breast, written in capitall letters, AN OPEN AND OBSTINATE CONTEMNER OF GODS HOLY ORDINANCES, that others may feare and be ashamed of breaking out into the like wickednesse. 1646.

“There be some in this *England* that account it piety and Religion to speake evill of Christs Ministers, and cast off his Ordinances; now blessed of God from heaven and earth be our Novangles, Magistrates, Ministers, and people that have so seasonably witnessed against these abominations.

“They are great lovers of peace and government, these therefore be their words in another place; (e) For as much as experience hath plentifully and often proved that since the first rising of the Anabaptists about an hundred yeeres past they have bin the Incendiaries of Commonwealths, and the infectors of persons in maine matters of Religion, and the troublers of churches in most places where they have been, and that they who have held the baptizing of infants unlawfull—have usually held other errors or heresies together therewith (though as heretiques use to doe they have concealed the same untill they espied a fit advantage and opportunity to vent them by way of question or scruple) and whereas divers of this kinde have since our comming into New-England appeared

^d Tit. Ecclesiastical, p. 19, 20.

^e Tit. Anabaptists, p. 1.

amongst our selves, some whereof, as others before them, have denyed the Ordinance of Magistracy, and the lawfulnessse of making warre, others the lawfulnessse of Magistrates and their inspection into any breach of the first Table, which opinions, if connived at by us, are like to be increased among us, and so necessarily bring guilt upon us, infection and trouble to the Churches, and hazard to the whole Common-wealth: It is therefore ordered by this Court and authority thereof, that if any person or persons shall either openly condemne or oppose the baptizing of infants, or goe about secretly to seduce others from the approbation, or use thereof, or shall purposely depart the Congregation at the administration of that Ordinance, or shall deny the Ordinance of Magistracy, or their lawfull right, or authority to make warre, or to punish the outward breaches of the first Table, and shall appeare to the Court willfully and obstinately to continue therein, after due meanes of conviction, every such person or persons shall be sentenced to banishment. 1644.

“ And that wee may discerne how worthy they are that wee should doe all the good wee can for them, for they love the nation where they inhabite, and are very serious in *preparing them for one husband, to present them a pure virgin unto Christ,* 2 Cor. II. 2. Severall therefore are their decrees in order to their conversion.

(f) “ 1. Every Towne shall have power to re-^{f Tit. Indians.} straine all Indians from prophaning the Lord's day. ^{p. 28, 29.} 1633, 1639, 1641.

“ 2. The English shall not destroy the Indians corne, but shall help them to fence in their grounds.

“ 3. Considering one end in planting these parts was to propagate the true Religion unto the Indians, and that divers of them are become subjects to the English, and have engaged themselves to be willing and ready to understand the Law of God; it is therefore ordered and decreed, that such necessary and wholesome Lawes which are in force, and may be made from time to time, to reduce them to civility of life, shall be once in the year (if the times be safe) made knowne to them, by such fit persons as the generall Court shall nominate, having the helpe of some able Interpreter.

“4. Considering also that interpretation of tongues is appointed of God for propagating the truth ; It is therefore decreed that two Ministers shall be chosen every yeer, and sent with the consent of their churches (with whomsoever will freely offer themselves to accompany them in that service) to make knowne the heavenly counsell of God among the Indians whom they shall perceiv most willing and ready to be instructed by them.

“ 5. They decree further that no Indian shall at any time Powaw, or performe outward worship to their false gods, or to the devill, and if any shall transgresse this law, the Powawer shall pay 5l. the pꝛocurer 5l. etc. 1646.

“ Their love to learning also is meet to be remembered and encouraged, wherein they have (*g*) observed a chief project of that old deluder Satan to keepe men from the knowledge of the Scriptures, as in former times keeping them in an unknowne tongue, so in these latter times by persuading from the use of tongues, that so at least the true sense and meaning of the originall might be clouded with false glosses of saint-seeming deceivers, and that learning may not be buried in the graves of our forefathers in church and common-wealth, the Lord assisting our endeavours, It is therefore ordered by this Court and authority thereof, That every Township encreasing to the number of fifty households, shall appoint one within their Towne to teach all such children as shall resort to him, to write and read, whose wages shall be paid either by the Parents or Masters of such children, or by the Inhabitants in generall by way of supply, as the major part of those that order the Prudentialls of the Towne shall appoint, and where any town shall encrease to an hundred families or householders, they shall set up a Grammer school, the Masters thereof being able to instruct youth so far, as they may be fitted for the University, and if any town neglect this above a yeere, every such Towne shall pay five pound per ann. to the next such Schoole, till they shall performe this order. 1647.

“ And an Academy or University is not onely in their aime, but a good while since they had more than begun well, and therefore wee read these words in another (*h*) part of their lawes, Whereas through the good hand of

^g Tit. Schools, P. 47.

^h Tit. Col-lege, P. 12.

God upon us there is a College founded in Cambridge in the County of Middlesex, called Harvard College, for the encouragement whereof this Court hath given the sum of four hundred pounds, and also the revenue of the Ferry between Charles Towne and Boston, and that the well ordering and manning of the said College is of great concernment; It is therefore ordered by this Court, &c. Then follow directions for the President and Commissioners to establish orders and dispose gifts, etc. 1636, 1640, 1642.

“Our Brethren of New England . . . are not onely furnished themselves with necessaries of all sorts, and have made large steps in an Academicall way, having Acts, Degrees, and Commencements according to the commendable fashion of *England*, as their own words are; The *theses* at their Commencements disputed upon have been printed severall yeeres at *Cambridge* in New England, and thence dispersed here; but they have also industriously furthered by their godliness, gentleness, and good orders, the conversion of a miserable people that have lien so long in darknesse.”

These extracts cannot fail to commend themselves to the student of Massachusetts legal history. They furnish some texts of comparison with the original records and subsequent editions of the laws; and the remark of the learned divine respecting the Cambridge *theses* is a material addition to our knowledge of their publication and the beginnings of the Cambridge press.

One or two other contemporary references to the lost volume, may properly be mentioned here.

In a paper of instructions to the Selectmen of the town of Boston—“24, 1 mo. 1651,” among the orders in force to regulate their proceedings they were enjoined to observe “several lawes of the country to be found in “the book of printed lawes, under these titles, *Town-ships, Ecclesiastick, Freemen, High-ways, Small Causes, Indians, Corn Fields, Masters and Servants,*

“*Pipe Staves, Swyne, Weights, Measures.*” Snow’s *History of Boston*: 139. There is a second reference to the “title of *Townshipes.*”

In Thomas Cobbet’s Answer to John Clark in 1653, he says: “Indeed, our Printed Law Book Alphabetically expressing the Titles or Heads of the Matters about which the Laws are made, reckoneth them thus, for an example, *Dowries, Drovers, Ecclesiastical* (the very thing abused by this Author) *Elections, Escheats,*” etc. *Civil Magistrates Power*, etc., pp. 34, 35.

Some writers on the subject, disregarding all the earlier authorities, which agree that the laws were first printed in 1648, have assigned May, 1649, as the proper date of the volume, which has been variously described as the first Collection of Laws in 1649, the Revision of 1649, the Code of 1649, the Laws of 1649, and the Edition of 1649. The principal reason for change of the date generally accepted before, seems to have been the statement in the title of the Edition of 1660, that *it* was published by the authority of the General Court holden at Boston, in May, 1649. This obvious typographical error, of 1649 instead of 1659, has led to the double blunder, which is still more remarkable from the fact that the half title at the top of the leaf following the title declares that the General Court had ordered the revision and publication in October, 1658—orders which duly appear in the records as of the 19th of that month. Moreover, the final sanction to that publication was given in proceedings of the General Court in May, 1659, which appear to have escaped the attention of the writers to whom I have referred. Those proceedings consist of the formal approval by both houses of “the preface to the old law book with such alterations as *had been* judged meet by the Governor [Endecott]

and Major-General [Denison].” The original manuscript is preserved among the Massachusetts Archives. It is endorsed “*Preface to the Lawes p^r Curiam, 1659,*” and is duly authenticated, by and with the autographs of the proper officers, as follows :

“The magis^{ts} haue past this with refference to the Consent of their brethren the depu^{ts} hereto.

EDWARD RAWSON, *Secret’y.*

14 May, 1659.

“The depts. Consent hearunto

THO. SAVAGE, *Speaker.*”¹

The alterations made to fit the old preface to the new book were probably not considerable, and the document remains one of the most characteristic records of those wise old Puritan law-givers who warned their “beloved brethren and neighbours” that “when laws may be read in men’s lives, they appear more beautifull than in the fairest Print, and promise a longer duration, than engraven in Marble.”

I have referred to the earlier authorities, as agreeing that the laws were first printed in 1648. I had occasion more than twenty years ago, to publish a paper on “*The Massachusetts Laws of 1648, and Joseph Hills,*” to which was added a critical postscript to vindicate the claim of “that venerable servant of the Commonwealth in her heroic age” to have been principally “active in that worke” till it was accomplished. This was the character assigned to him by the author of the *Wonder-Working Providence*, Capt. Edward Johnson, who fur-

¹ A comparison of the original manuscript text with the printed copy warrants the correction of the Latin maxim quoted, so as to read *ex malis moribus bonæ leges*; and in another line the word *Sacrosancto* should be *Sacrosanct.*

nishes in that work, published in London in 1654, very important contemporary evidence concerning the history of the laws. He commemorates the service of the chief workman in their preparation and publication, in his brief character of Mr. Hills as "a man active for to bring the Lawes of the Country into order," and declares that "in the year 1648, they were printed, and now are to be seen of all men." *Wonder-Working Providence*: 110, 206.

Joseph Hills's "seuerall seruices to y^e counciye" received more than one substantial acknowledgment from his contemporaries, who were familiar with his merits. The action of the public authorities was duly set forth in my former publication referred to above, and in his last appeal (when old and blind) to the General Court for further consideration of those services, printed there in full, he gives the date 1648 in a way which might justify the opinion that the work was known and recognized in 1682 as the Laws of 1648.

Josselyn, in his *Chronological Observations of America*, published in 1674, refers twice to the Laws as having been published in 1648; and at a much later period, Thomas Hutchinson, who was unquestionably more familiar than any other man ever has been with all the sources of Massachusetts history during the entire Colonial and Provincial period, assigns them to the same year.

An order of the General Court, 27th October, 1648, fixed the price of the volume and authorized its distribution, neither of which would be likely to be done except on the eve of actual publication.

We know positively that the work was not only ready for the press more than six months before, but that the printing was begun and that the title *Appeals* had been already printed, before the 13th May, 1648, when the au-

ditor general was directed to see a word entered in every book, in order to supply an omission.

Due weight must also be given to the fact that not a single act passed after the May session of 1648 appears to have been included in the volume—so far as can be determined from the marginal references in the subsequent editions, to that volume and its various supplements. Moreover, an amendment made on the 16th May, 1649, to a *printed* act, appears to have been printed on the fifth page of the first of these supplements—"L. 2, p. 5."

On the 10th of May, 1648, it was deemed necessary that the laws then in the press should be re-examined to see if any material law had not been put into the volume or mentioned in the table or index as being in force. It would seem that a considerable number of the laws then existing appeared only as "mentioned in the table" in that volume. These were included in a subsequent order to print, being described as "those laws referred to in the end of the printed laws." A curious instance of similar reference appears "in the end" of the second edition, the Laws of 1660, where an act of the 18th October, 1648, is noticed on the last page in the table or index as *unprinted*. If, as is not improbable, the table or index of the first edition was mainly transferred to that of the second edition, this might be an additional indication that the text of the former had been printed before the October session of 1648. The careful determinations of the Court at that session on the subject of its records, also tend to the same conclusion.

The only notices of legislation concerning the work which appear in the records of the May session, 1649, are those which specify the amendment of the *printed* law concerning Dowries, 16th May, 1649, and the gratuity

of ten pounds to Joseph Hill "for his paines about [the *printed lawes*," 11th May, 1649; but an incidental reference to the volume in the report of a committee for searching the papers left by Governor Winthrop is full of interest. Governor Winthrop died on the 26th March, 1649, and on the 15th May, 1649, Mr. Bellingham, Mr. Nowell, Mr. Joseph Hill and Edward Rawson were appointed "a committee to examine the publicke writings received from the former Goũno^r, & put them in order fittingly; and they are to do it within five weekes." The Court adjourned on the following day to the 17th of October, and the committee made their report on the 19th of the same month.

"The comittees retourne of wt they did in pvsing honored Mr. Winthrop's writings," gave a list of his papers, etc. "all which, as marked, are deliuered, in a pillowby, sealed vp, to the sec^ty, wth a *copy of the printed lawes*, testimonyes, and orders of Courte," etc. The "retourne" was accepted, with thanks.

What would we not give for the contents of that "pillowby"—the books and papers "left in honored Mr. Winthrop's study" thus sealed up by the authorities of Massachusetts almost two centuries and a half ago? Some of them may perhaps be identified as having reappeared in history or yet to be found in public repositories and private collections—but as remarked before I have discovered no trace of the existence of any "copy of the printed lawes" of 1648, or either of the supplements to that volume, later than the year 1660, when the second edition was published, and "the old bookes" were ordered "to stand good" until the middle of November in that year—after which they must have been little cared for, and so gradually disappeared.

Recent researches by Mr. Andrew McFarland Davis

among the extant memorials of the Cambridge Press furnish conclusive evidence that the book was a thin folio of sixty-eight pages, and that the edition consisted of six hundred copies. *Proc. A. A. S.*, 1888, v., 299.

On the 27th October, 1648, it was "ordered by the full Court, that the bookes of laws, now at the press, may be sold in quires, at three shillings the book; provided that every member of this Court shall have one without price, and the Auditor Generall and Mr. Joseph Hill; for which there shall be fifty in all taken up, to be disposed of by the appointment of this Court."

Various conjectures have been made respecting the rapid destruction and so far apparently final disappearance of all the copies; but a clue to the mystery has been found among the Massachusetts Archives, in the following petition of the Colony Treasurer, who was rash enough to make an investment in the remainder of the edition of this "first folio" of the Cambridge Press.

*" To y^e Honored General Court consisting of
Magistrats & deputies.*

"Humbly Showg Wheras by ye Court's Incoradgment I purchased ye last printed Law Bookes and By reason of y^e Court's Alteration of sune things In those Bookes made them unvendible Insomuch that your petitioner Lost above Tenn pounds a great pt. Turned to wastpap'r and many of them Burnt your petitioner desires this Court would Tenderly Consider ye same And accordingly releve your petitioner heerin, soe hee shall thankfully remayne

" Your servant RICHARD RUSSELL."

" 22. 3. 51."

The General Court came to the rescue of this public-spirited officer, and promptly passed the following order: "In answer to the petition of Mr. Richard Russell for his allowance in the late law bookes which was occasioned by the Court's alteration of some things therein etc., it is ordered that in consideration of those losses mentioned in the petition and other that he hath lately sustained, he shall have allowed him twenty pounds out of the next rate."

The record of the Deputies furnishes another version of the Court's action, and fixes the date of their order: "1651, 22d May. Whereas, by the Courts encouragement, the Treasurer purchased the last printed law bookes, and by reason of the Courts alteration of some thinges in these bookes made them vnvendible, inso-much as he lost aboue ten pounds, besides what was burned, in consideration of which losses, its ordred, that he should haue allowed him twenty pounds out of the next country rate."

There seems to be little probability of a discovery of the missing volume, since more than two centuries have passed without any note of any copy. If there be among the favorites of fortune, in this generation, one collector who is hugging such a treasure in secret, I trust he may find grace to make it known in my fast-shortening day, for verily, I would give more to see its quaint and homely pages, than the same number of the long scattered leaves of the Sibyl, the lost books of Livy, or all the buried treasures of the Troad.

GEORGE H. MOORE.

NOTE.

So little is known about the first Cambridge printer, that I hardly need to apologize for reproducing the only document I have ever met with bearing his autograph, in a note to these memoranda concerning one of the most important issues of his press. The less as it is itself his own vindication in a critical situation which involved his good name.

[MASSACHUSETTS ARCHIVES, vol. $\frac{38}{B}$ page 253]

“[Th]eise are to Certify this honored Court of Assistance how hardly m^r Daueson hath delt with your poore petitioner & prisoner for m^r Daueson : he demaunded of me to haue my land Bownd in for Sekurity for money. as he vniustly made it vpon his account my answer to him was. that my land was bownd over to such a man alreedy. And for his further satisfaction. I haue brought the wryghting with me. wherin the land is bownd vnto another man when he had the wryghting. he read the wryghting & found I had 3 yeares liberty. for the payment of this man. therfor said he yow shall make me. ouer the proffitt. of these. 3. yeares looke what proffitt shall rise with the land. my reply to him was this I remember that I haue heard what Insperson is vpon m^r Mayhewe : for making ouer somthing twyse. with many sollem prodestations. his Answer was to me. that he wold be as tender in doinge me wronge. as he would be in doinge wronge to himselfe. soe I yelded he should haue what right in the land I had. & in these 3. pertickulers spessially he hath delt thus iniuriously with me ffirst in his account makeing me. 60^l Debter & there is not soe much as Coller for it ffor I am able to giue account of euery pertikuler of goods that I receaued of him & how I haue disposed of them.

“2.ly. he Sould me. 11. head of Cattell. which he had of m^r Robert Saltison : soe mensoned in a couenant betwixt him & I : and when he had thus Sould them me. he sould. 3. head of those

Cattell from me to one of: lyn: And. 3ly. he making the wryting quite contrary to my allowance: & what he read to me as he was wrighting of it as I shall further proue to your Worships & as for my Impisonment I Doe acknowledg the Just hand of god to humbelle me therby waighting for deliuerance as he shall moue yow' harts: therto:

& soe I euer Rest you'
ffaithfull subiekt STEVEN DAY."

Isaiah Thomas, eighty years ago, in his account of Day, quoted the following extracts from "the first book of records kept in the colony: "

"Steven Day of Cambridge grannted vnto John Whyte twenty Seaven Acres of land laying in the Bounds of Cambridg for the payment of a cowe and a calf and a two yeares old heifer." Dated the 25th of the 5th month, 1642.

"Steeven Day of Cambridge grannted vnto Nicholaus Davidson of Meadford, all his lands on the south side of Charles River, being aboute one hundred Acres in Cambridg bounds, for surety of payment of sixty pounds, with sundry provisions." Dated the 25th of the 5 month, 1642.

"Steeven Day of Cambridg, bound over to Thomas Crosby, five lots of land in the new field beyond the water in Cambridg, number 24, 25, 26, 27 and 29th, in all sixty Acres, for the payment of fifty seaven pounds, with liberty to take off all wood and timber," etc. Dated 16th of 2d month, 1643." *History of Printing*: i. 228.

The unlucky printer's "Insperson for making ouer somthing twyse" or more, seems to have landed him in prison; from which he was released by the following order of the General Court, September 7th, 1643:

"It is ord'ed that Stephen Day shalbee released, giving 100 band for his appearance when hee is called for." *Records*; ii. 47.

