Colonial Justice in Western Massachusetts

(1639 - 1702)

THE PYNCHON COURT RECORD
An Original Judges' Diary of the Administration of Justice in the Springfield Courts in the Massachusetts Bay Colony

EDITED WITH A
LEGAL AND HISTORICAL INTRODUCTION
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INTRODUCTION

[102] In any event, Pynchon did not hear his first case until September 12, 1692; presumably he had been commissioned a justice of the peace by that date. As was the case for the earlier period, no commission of the peace has been found for Hampshire for 1692-1701. However, the form of the commission of the peace for York County and the statutory jurisdiction conferred upon justices of the peace under the Second Charter have been referred to. A few *Record* entries relate to the jurisdiction of two justices of the peace, also referred to.

Whitmore indicates that Pynchon continued as justice of the peace until omitted from the June 29, 1702 commission of the peace issued by Governor Dudley. However, the Council minutes for June 29th reveal that Dudley appointed all members of the Council to be justices of the peace in each county and that Pynchon was also named a judge of the Inferior Court of Common Pleas for Hampshire. Further, the records of the Court of General Sessions of the Peace for Hampshire contain a July 21, 1702 entry of the reading of a commission empowering John Pynchon, among others, as a justice of the peace and of the justices being sworn according to law. Pynchon also sat at the September 1, 1702 Court of General Sessions of the Peace held at Springfield, but the last judicial entry in the *Record* was made January 9, 1701/2.

VII. Criminal Jurisdiction

Most of the laws of the various American colonies are readily available in printed form; most of the court records are still in manuscript form and difficult of access. As a consequence, some historians of the colonial period have tended to describe law enforcement solely or largely on the basis of an examination of printed laws and legislative records. The results are at times misleading. In the two preceding sections the jurisdiction conferred by the printed laws upon the various courts at Springfield was set forth. In this section the *Record is* examined against such statutory background to determine, compare, and evaluate the jurisdiction actually exercised

from time to time by the several courts at Springfield. This jurisdiction may be conveniently grouped into the following: sexual offenses, other moral offenses, offenses against the peace, offenses against property, contempts of authority, defamation, neglect of duties, offenses against licensing laws, offenses involving Indians, and violations of town orders. The latter were not in a strict sense criminal offenses, but are treated here for convenience of presentation.

SEXUAL OFFENSES

A 1642 law, embodied in the later printed laws, provided that if any man committed fornication with a single woman, they should be punished by enjoinment to marriage, fine, or corporal punishment or any or all of such punishments as the judges should appoint, most agreeable to the word of God. Under later commonwealth laws the measure of punishment was to be "as the judges of the Court that hath Cognizance of the Cause shall appoint."[1] A 1649 law provided that no person should, directly or indirectly, draw away the affections of any maid under pretense of marriage before he had obtained permission from her parents or governors, or, in their absence, from the nearest magistrate, under penalty of forfeiting five pounds **[104]** for the first offense, with more severe penalties for subsequent offenses. It was not until 1668 that the laws provided that a person found the father of a bastard should have the care and charge of maintaining such child.[2]

While the operation of these laws in a few instances may be observed in the *Record*, the first matter involving a sexual offense antedated the laws and was apparently decided by William Pynchon in his discretion, guided perhaps by the practice of the Court of Assistants. In one of the earliest cases in the *Record* Pynchon ordered that John Hobell be whipped by the constable for getting promises of marriage from Abigail Burt, despite her father's prohibition, and for offering and attempting fornication with her. Abigail was likewise ordered whipped.[3] What crime she was regarded as having committed is not clear, unless it was participation in unchaste or unclean behavior.

Only two other fornication cases appear in the *Record.* The March 1654/5 case involving Samuel Wright, Jr. is significant in that a jury of twelve was used to try a paternity charge, that Wright was ordered to make certain payments toward the maintenance of the child, and that Mary Burt, who made the charge, was ordered whipped twice-for fornication with Wright and with Joseph Bond.[4] In the February 1670/1 case, Richard Barnard was discharged from prison so he could marry Sarah Clark and then bound over to appear at the next County Court where the offenders were fined forty shillings apiece.[5] The supplemental material from the Registry of Probate records shows that the commissioners, in September 1661, concluded, from the date of birth of their child, that Samuel Terry and his wife "did abuse one another before marriage" and accepted a four-pound fine in lieu of punishment of ten lashes apiece.[6] This offense was frequently punished on the county level by the courts of the Bay.

While no entries appear in the *Record*, the records of the County Court for Hampshire show that John Pynchon, as magistrate, examined and bound over to the County Court a number of others charged with sexual offenses. In practice the severe punishments imposed placed fornication cases outside the ambit of a magistrate. At a September 26, 1671 County Court Joshua Barsham., lately of Hatfield, **[105]** having been sent down to Major Pynchon and bound over to answer Ruth Butler's accusation of forcing her, appeared but was allowed costs of court when no accuser appeared. A March 31, 1674 County Court entry reveals that in the previous

July Pynchon had examined Hannah Merick who was suspected of being with child by fornication, and, when she confessed that she feared it was so and on oath accused Jonathan Morgan of having knowledge of her body, had bound both over to the September 1673 court at Springfield.[7]

A few years later William Brooke of Springfield was bound by Pynchon in the sum of twenty pounds that his daughter Patience, being with child out of wedlock, appear at the September 1680 County Court and answer "to her Crime and guilt of that vile sin of fornication." The court, being "desirous to shew their detestation of such forbidden and dangerous carnal Lusts and if possible to prevent such like God provoking wayes," adjudged the offender to be whipped with fifteen lashes or else to pay a fine of four pounds to the county treasurer. Thomas Taylor, with two sureties, also gave bond to Pynchon in the sum of twenty pounds to appear at the same court and answer what Patience Brooke had to lay to his charge, as well as for his good behavior in the meantime.[8]

John Riley of Springfield was also bound by Pynchon in the sum of twenty pounds for his daughter Margarite's appearance at the same court "to answer to her foul Crime of Fornication." The court, "being desirous to beare due Testimony against this Growing and provoking sin of whoredom and to restrain the like abhorend practices," ordered the offender forthwith whipped with fifteen lashes and to receive a further fifteen stripes when Pynchon saw cause to have them inflicted or to pay a fine of four pounds to the county. Roco, a Negro, being examined by Major Pynchon, acknowledged to him and later to the court "that he had (upon the said Riley's tempting him) the carnal knowledge of her body" and was sentenced to fifteen lashes or to pay a fine of three pounds.[9]

At its March 25, 1684 sitting the County Court noted that Thomas Granger and his wife, as well as Esther Spencer, all of Southfield, had been presented for fornication, but that the women were in no condition to be brought to court. It therefore ordered the clerk to draw up what the court had considered as to these offences and to send it to Major Pynchon, desiring him to send for the offenders, examine them and bind them over to the next court at Springfield **[106]** or otherwise. However, no entry of such examination appears in the *Record.* At the September 1685 court John Webb of Northampton, having been bound over by John Pynchon to answer "to his notorious Crime in abusing the little maide Mary Bennet in a Shameful uncleane way," appeared, was convicted and sentenced to twenty lashes, the court being desirous to bear "testimony against such abominable fruits and issues of corrupt nature, and to restraine al other Persons (God affording his restraining Grace) that such or such like woful effects of original Sin in al Persons may not be Committed amongst us to the defiling the Land." At the March 1686 County Court Joseph Ashly, being bound over by John Pynchon "for that he was accused for Commiting fornication by Deborah Miller and with her; which Said Joseph and Deborah upon Examination by the Worshipfull Major John Pynchon Esq. was found guilty of said Sin by their own acknowledgment," was adjudged to pay a fine of six pounds to the county and provide maintenance for the child according to law. Deborah Miller was adjudged to pay a fine of four pounds and clerk's fees.[10]

Only two fornication cases have been found after the period of the First Charter in which Pynchon bound over offenders. At the September 1686 County Court Richard Waite of Springfield, being bound over by Pynchon to answer for his offense of fornication with the widow Sarah Barnard, appeared with the widow whom he had married in the interim. The court, being "Sensible of the growth and increase of this abominable Sin, and desirous to use all wayes to curb (as God shall Assist) the further breakings out of such provoking Sins," adjudged the

offenders to be well whipped or to pay a fine of five pounds. At the same court Gregory McGregory and Sarah Kent of Springfield, "being by their own confession upon their examination before the Worshipfull Major Pynchon Esq. (August 19th: 1686) found guilty of defileing one the other by the sin of fornication," appeared. McGregory was adjudged to be whipped with twenty lashes or to pay a three-pound fine, and to give security for the payment of forty pounds maintenance for the child to be born and for his good behavior or to be committed to prison. Sarah Kent was adjudged to be whipped with fifteen lashes or to pay a three-pound fine, but, being near her "time of travel" and this punishment dangerous of, execution, a surety was allowed to stand bound for a period of six weeks to see the fine paid or to deliver her up.[11]

A few cases concerned what might be termed lewd or lascivious conduct. In July 1650 William Pynchon gave an offender private **[107]** correction upon report by the watch of lascivious conduct on the Sabbath.[12] This is the only case in the *Record* in which correction was private. In September 1660, the commissioners, exercising the powers of a County Court, imposed a ten-pound fine for "gross Lascivious carriage and misdemeanor toward the wife of John Stebbins."[13] In February 1672/3, following examinations held on three separate days, several persons were fined in modest amounts by Pynchon for their "uncivill Immodest and beastly acting" in a play. In June 1678 a drunken soldier was fined thirty shillings for wicked, lascivious and unclean carriage toward Mary Crowfoot.[14] No laws have been found specifically dealing with offenses constituting lewd conduct; in most cases the entries do not spell out the details of the offense. Presumably the scope of thecrime and the punishment to be imposed resided within the discretion of the court. From the early years of settlement the Court of Assistants had assumed wide jurisdiction over such offenses.

OTHER MORAL OFFENSES

A 1646 law provided for a forfeiture of ten shillings "if any person within this jurisdiction shall swear rashly or vainly either by the holy Name of God, or any other oath." Later, profane and wicked cursing of any person or creature carried the same penalty.[15] However, even before 1646 the Court of Assistants had punished swearing and cursing. The offenses of profane swearing or cursing appear several times in the *Record.* In a February 1640/1 case William Pynchon obviously adopted the punishment provided by act of Parliament (2 1 Jac. 1, c. 20). In two cases in 1675-76 the offenders, accused of being in drink and swearing "by God," were fined the statutory ten shillings to the county.[16] In some instances swearing or cursing was merely one facet of conduct in breach of law and order.[17]

Under the First Charter willfully making or publishing any lie which was pernicious to the public weal, tended to the injury of any particular person, or was intended to deceive people with false news **[108]** or reports was made punishable with a ten-shilling fine for the first offense.[18] In only two instances under the First Charter was a fine imposed *secundum legum.* Apparently no action was taken upon a 1685 complaint of Springfield tithingmen against Mary Towsley for "Notorius lying.[19] Under the Second Charter fines for lying were also imposed in only two instances. The last entry in the *Record*, the sentencing of a Negress, to ten lashes, was based in part on the utterance of some lurid lies.[20]

In several cases not appearing in the *Record,* John Pynchon as magistrate bound over to the County Court persons accused of lying among,other offenses. An entry at the March 29, 1670 court held at Northampton notes that Robert Williams of Hadley, a former servant, was bound

over to the court by John Pynchon in ten-pounds bond and, for want of sureties for his appearance, committed to prison. The ground for this action was the offender's "notorious Lyinge," but he was also suspected of witchcraft. The evidence of witchcraft was not of sufficient force to keep Williams in prison or to warrant sending him to superior authority. However, for his lying, Williams was adjudged to pay a five-pound fine to the county, to be whipped with fifteen stripes, to pay all charges of his imprisonment, and to stand committed until the court's order was performed.[21] This punishment, harsher than that appointed by law, was undoubtedly influenced by the suspicion of witchcraft.

At the September 24, 1678 County Court, Jane Jacksorl, a Hadley servant, having been bound over the previous summer by John Pynchon to answer "as being guilty of most notorius evils," appeared and by the court's examination, and that of Pynchon, was found guilty of "wretched and vile Contradictions or Lyings" and "vilely guilty of filching or stealing" from her master. The court ordered that she be whipped with twenty lashes and serve her master an additional six months in recompense for his troubles and expenses about "his misdemeaning Servant."[22]

Under the First Charter the General Court in 1653 and 1658 made orders with respect to profaning the Sabbath.[23] Enforcement of these orders is reflected in the *Record* in cases during the period 1654-1685 which cover such diverse violations as not coming to ordinances, playing and sporting, laboring, engaging in an affray or disturbance, and driving cattle or a laden cart. In one case a charge of idleness against a servant was combined with charges of profaning the Sabbath. In most cases small fines were imposed or the offenders **[109]** admonished.[24] There is no case of a Sabbath violation in the *Record* .after 1685. However, at the March 1691 sitting of the County Court the case of Isaac Morgan of Enfield, presented by the grand jury for unnecessary travel on the Sabbath, was referred to Pynchon to give sentence as the law directed.[25] There is no entry in the *Record* of such sentencing.

One aspect of profanation of the Sabbath consisted of misconduct during sermon time. At one of the earliest courts held by William Pynchon, John Woodcock, the plantation troublemaker, was warned to answer at the next court for his laughing during sermon time and also for his misdemeanor of idleness. However, there is no entry in the *Record* that he was ever tried for these offenses. In a June 1661 case a five-shilling fine for misbehavior during sermon time was imposed according to law, the offender having been earlier admonished for the same offense.[26] At a court held in March 1671/2 a Northampton inhabitant, summoned before John Pynchon by order of the County Court, was fined ten shillings to the county for his "unseemly and prophane carriage" on the Sabbath at the Northampton meeting house during the time of public ordinances.[27] Whether such fine was for a third offense, as provided by the law, does not appear.

A case might concern profanation of the Sabbath, among other offenses. This is true of the February 1670/1 fine imposed on Thomas Stebbing, Jr. for posting the publication of the intended marriage of Richard Barnard and Sarah Clark, referred to above, without consent or knowledge of the parties or parents, accompanied "with a foolish and reproachful Rime casting reproch upon the Towne and the Maides in Towne."[28] In view of the "shotgun" circumstances of the marriage Pynchon's finding the offense "very greate" appears unduly sensitive.

Several laws of the commonwealth imposed punishments for allowing games at a house of common entertainment or for playing at such games.[29] The *Record* shows fines of from five to twenty shillings being imposed in two instances in 1661-62 for playing cards or commonly suffering the unlawful game to be played in one's house. One offender acknowledging that card

games took place at his house, said that he was willing to have recreation for his wife "to drive away melancholy," and would do anything when his wife was ill "to make her merry." However, his plea of recreational therapy was disregarded.[30]

Another instance of less innocent merriment is found in March **[110]** 1677/8 when some youths confessed to having played cards in the cellar of William King's house in Hatfield at an unseasonable time of night and to have defiled King's loom. One offender was fined for card playing, for being out playing at an unseasonable time of night, and "for being at so Nasty a busyness." He was also to answer for any damage to King's property. The evidence on file against the other offenders was transferred to the Northampton County Court where they were fined, whipped, and ordered to pay charges and to make good the damage suffered by King. One offender, in addition, received eighteen stripes for fornication.[31]

OFFENSES AGAINST THE PEACE

The most serious offenses against the peace involved riotous assemblies, although the commonwealth laws contained no specific provisions dealing with riots, routs, or unlawful assemblies. On February 16, 1675/6 John Pynchon, sitting at Hadley, imposed fines ranging from five to forty shillings on several persons who, the day previous, had participated in an unlawful and riotous assembly in an attempt to prevent the execution of a sentence upon a delinquent by order of the committee of the militia. Several participants in the riot, unnamed in the *Record*, were bound over to the County Court. An examination of the March 28, 1676 entries of the County Cgurt reveals that of those persons bound over by Pynchon, most received five-pound fines.[32]

At the March 30, 1686 County Court Samuel Kent of Suffield, apparently bound over by John Pynchon, appeared to answer "for raising or abetting a Mutinous and Riotous Behaviour at Suffield, and himselfe very much active in such Carriages, besides Several unworthy Speeches, as in an high and violent manner, saying, that All Persons might vote at the Town Meeting, in Choice of Townsmen and Constables, etc. That the Lawes of this Government Some of them were not worth a Chip, and being present when there was a Tumult and disorder in the Town Meeting, abettinge said non voters and saying they might vote." These offenses the court found "high abusive Carriages, tending to breakeing of Order, and in reallity a breach of Law, and greivous violation of his Religious Tye which is upon him" and adjudged that Kent pay a fine of five pounds to the county and witness and other charges.[33]

At the same sitting Peter Rhoe, another disturber of the peace of **[111]** Suffield, also bound over to the County Court by John Pynchon, was accused "of approbridus Speeches, and violent Carriages and voteing for Townsmen and Constables in a Publique Towne Meeting, when he hath no Liberty in Law so to doe, to the great disturbance of the Peace and Greife of the Moderator of said Meeting, in so much as he withdrew out of his Place, and said Rhoe was so bold as to Supply and Occupy in his Place, besides an Abettor of an evil Spirit against the Minister of the Place." The court, adjudging Rhoe's conduct "to be high handed Rebellion, and tending to confusion, and Every Evil thing," sentenced him to pay a fine of five pounds to the county and witness and other charges. David Winchel, bound over by Pynchon, was adjudged to pay a fine of four pounds and witness and other costs for scurrilous speeches reflecting upon the Suffield minister and for pressing at the town meeting for the choice of a constable contrary to the mind of the town. (Winchel figured in an earlier disorder at a Suffield town meeting which is referred to in a March 15, 1681/2entry in the *Record.)* Edward Burlison, also bound over, was

fined five pounds and court costs for his part in being a disturber and molestor of the peace at the Suffield town meeting.[34]

A later Suffield matter reflects the disturbed state of the western frontier. An entry at the March 14, 1693/4 sitting of the Court of General or Quarter Sessions of the Peace at Northampton reveals that during the previous winter the constable of Suffield had Complained to John Pynchon, as justice of the peace, that several peisons had "made an Alarum" in the town of Suffield to the great disturbance of the people. The constable by summons from Pynchon was authorized to bring these offenders before him or to take security in the amount of five pounds for the delinquents to appear before the next Court of General Sessions of the Peace at Northampton. Security was given and largely forfeited when the offenders failed to appear at the appointed court at which fines of twenty shillings apiece were imposed and, in addition, twenty-four shillings in charges.[35]

More numerous were breaches of the peace involving such aspects as assault and battery, drunkenness, use of abusive language, abusing the watch, and so on. These offenses tended to overlap and appear to have been segregated at times only for the purpose of building up the amount of the fine in aggravated cases. It is not until 1672, however, that the title "Breach of the Peace" is found in the laws. This title provided that any person beating, hurting, or striking any **[112]** other person might be compelled to pay the party struck, as well as a fine to the county at the discretion of the court. Since the circumstances surrounding each breach of the peace might vary widely, it was lef t to the court to impose such penalties as in their discretion might seem just, equal, and proportionate to the merit of the offense.[36]

However, even prior to this law there was manifest in case of breaches of the peace a tendency to award compensatory damages to an injured party, as well as to impose fines of five or ten shillings.[37] In an aggravated case the offender might be bound over to the County Court. For example, at the March 1675 County Court James Brown, having been bound over by John Pynchon to answer the complaint of John Graves of Hatfield for breach of the peace in falling upon and beating complainant, was adjudged to be whipped with ten stripes, to pay a three-pound fine to the county and twenty shillings as damages to Graves.[38]

In other cases Pynchon might find the complaint a "squobling business," but nevertheless impose a five-shilling fine for breach of the peace. In a May 1697 entry the offender, having compounded the damages, was fined six shillings and court costs, Pynchon seeing no reason to bind him over to the Sessions, "he being Penitent and very Ingenious also Ingaging watchfulness and good cariage for future."[39]

In one case, in July 1679, in which John Pope complained of being abused and struck by Philip Matoone, he tendered an oath that he stood in fear of his life, and craved the peace of Matoone. Pynchon ordered Matoone bound in the sum of *L*10 for his appearance at the next County Court and in the meantime to keep the peace. At the September 1679 County Court Matoone, confessing his fault and promising to carry himself better in the future, was discharged of his bond.[40] In another case in 1681 a runaway Negro who stole a knife from Anthony Dorchester and then attempted to draw a cutlass on him was committed to prison to remain there until discharged by authority. The County Court records show his imprisonment but not his discharge. When John Stewart was accused of stabbing John Bliss and endangering his life, the offender was "quickly after the fact done committed to prison" by Pynchon and not bound over to the County Court until Bliss was out of danger.[41]

Closely akin are cases involving use of abusive language. Although this was not a specified offense under the commonwealth laws, it had **[113]** been punished by the Court of

Assistants from the early years of settlement. In these cases covering the period from 1661 to 1678, punishment ranged from reproves to forty-shilling fines.

A few cases involved abuse of the watch, another offense not specifically treated in the commonwealth laws, but which was punished by the Court of Assistants and at the county court level. In May 1674 a five-shilling fine for abusing the watch was imposed, although apparently Pynchon considered the conduct of the watch provocative. In August 1674 John Crowfoot and John Buck, participants in a drunken brawl described in considerable detail in the *Record,* were sentenced to be whipped for abuse of the watch, among other offenses.[43]

Fines in the amount of ten shillings for drunkenness, as provided in the commonwealth laws are found scattered through the *Rec*ord.[44] Except for the bibulous misadventures of Sam Owen in the widow Barnard's house, none of the entries has the colorful detail of the Crowfoot and Buck incident. In one case a fine of three shillings, four pence for being in drink, rather than drunk, was imposed.[45] The term "disguised with drink" found frequently in the records of the County Court for Essex, for one, is not used in the *Record.*

The institution of the pound with the inevitable pound breaches and rescue of cattle or swine going to pound would seem a likely source for breaches of the peace.[46] Although the offenses were specifically covered in the commonwealth laws, only two "Instances involving pound rescues are found in the *Record*--one in 1679, the other in 1687.[47] In several cases, after the period of the First Charter, group offenders engaging in foolish or high-spirited actions were let off with admonitions by John Pynchon.[45]

The task of preservation of the peace encompassed the ordering of family relations. In May 1655, John Stebbins, being bound in the amount of forty pounds to appear and answer the charge of misbehaving toward his aged father was discharged when "there was not found full proofe of such evill carriage." Under the colony laws a disobedient and disorderly child might be punished by whipping, **[114]** not exceeding ten stripes, or bound over to the County Court.[49] In March 1655/6 Joane Miller, upon complaint by her husband of very evil behavior toward him, was adjudged to receive as many stripes as the commissioners saw cause to inflict. However, because of her earnest protestations of better carriage, the punishment was remitted in favor of a sentence that for the least miscarriage to her husband in the future she was to receive a good whipping well laid on. Actually, there was no express penalty for the offense in the commonwealth laws. Some ten years later, in August 1665, Miller and his wife were bound over to the County Court by Pynchon, "haveing had Sad bickeringe and Strife between themselves." Upon their appearance they owned they had not carried it well with each other formerly but asserted that, since being bound for their appearance, they had lived in peace and quietness. After being admonished by the court they were released of their bond upon promises of better carriage.[50]

On March 25, 1684 the County Court noted that John Hodge of Suffield, presented at the last Springfield court for beating his wife and wasting his time and estate in drinking, had not appeared, although summoned. The clerk was accordingly ordered to inform John Pynchon in writing how the case stood and to desire him to send for the offender, examine him and bind him over to the next court at Springfield or otherwise.[51] The *Record,* however, contains no entry as to any such action by Pynchon. In October 1673 Goodwife Hunter, accused of railing and scolding, was sentenced to be gagged or to be set in a ducking stool and dipped in the water as the law provided-a 1672 enactment providing the first express punishment for scolds. When she failed to elect her punishment, Pynchon ordered her gagged and to stand in the open street for a half hour.[52]

OFFENSES AGANIST PROPERTY

The *Record* reflects the fact that, although burglary and the more serious cases of theft were handled on the County Court or General Sessions of the Peace level, petty pilfering was handled by the courts at Springfield.

At the March 1672 sitting of the County Court, Philip Barsham. of Hatfield, having been sent down to John Pynchon upon a charge of theft and bound over, appeared and was fined forty shillings or to **[115]** be whipped with fifteen stripes. In addition, he was to pay Eleazir Frary three pounds and costs of court as treble damages for the wheat and flour stolen.53 However, there is no entry with respect to this case in the *Record.* In July 1674 Benjamin Allyn of Hatfield and James Brown were brought before John Pynchon, examined concerning their breaking into a house at night and stealing a barrel of liquor, and bound over to the next County Court where they received stiff sentences." In August 1686 Joseph Deane, brought before John Pynchon for stealing some clothes and money at Hadley, was ordered jailed unless he found two sureties in the sum of twenty pounds for his appearance at the next County Court.[55]

Among the chronic offenders found in the *Record* are Michael Towsley and his family. Several offenses by members of this family involving theft were handled by Pynchon but ultimately, in 1691 punishment was imposed on the County Court level.[56] A September 1694 incident involved a charge of theft arising out of property taken by way of distress by virtue of the accused's office of clerk of the band at Suffield for a fine taxed for defects in training." This case illustrates the remedy available where extra-judicial distress was resorted to.

In April 1697 William Pierce of Suffield was brought before John Pynchon and John Holyoke, sitting as justices of the yeace, and found guilty of entering a house and feloniously taking away certain goods. Since Pierce had confessed his crime and restored the goods and the owner had not prosecuted, he was let off with a light sentence. In August 1699, John Webb was fined ten shillings by Pynchon for theft of a gun, the owner being left to his remedy at law.[58]

In several cases involving property rights the circumstances were unusual. In November 1653 the commissioners ordered William Brookes "for defrauding sundry persons in withholding from them, and converting to his owne use the goods of severall persons" to make satisfaction in the sum of eighteen pounds, besides restoring the principal amounting to nine pounds. The entry is obscure but the order appears to rest upon the theory of an award of treble damages. In March 1686 a number of inhabitants of Windsor, Connecticut were brought before Pynchon for gathering candlewood within the town boundaries of Enfield and burning it into tar. After consulting with the committee for Enfield, Pynchon, "to Moderate the Busyness," **[116]** declared forfeit one-half the tar seized and returned the other half to the intruders. In January 1700/01, when Josiah Marshfield complained that Luke Hitchcock and Joseph Williston had "in a clandestine way tooke a Deed of Sale of Land" by complainant to them out of the hands of John Holyoke, Pynchon ordered the deed returned to Holyoke but not recorded until all parties were in agreement.[59]

Several cases involved the taking of or damage to animals. In one 1679 case Pynchon imposed the statutory ten-shilling penalty for taking another's horse without leave.[60] While not mentioned in the *Record*, a County Court entry for March 28, 1665 shows that Walter Lee was bound over by the Springfield commissioners on suspicion of killing a steer of one Cornish at Woronoco. The court, judging that the evidence was strong against him, ordered that he pay fifty shillings for the steer, plus costs of court.[61] At the March 30, 1675 session of the County Court

Joseph Selden was presented for cutting a horse and for uttering a falsehood. Selden not appearing, John Pynchon was directed to send for the offender, examine him, and deal with him accordingly. However, the *Record* contains no record of any action by Pynchon in this matter. In March 1673/4 when a dog killed a sheep, the owner agreed to hang his dog as required by law.[62]

Several miscellaneous cases involved injury or threat of injury to property rights. A September 27, 1681 County Court entry reveals that Peter Hendricks (Hennix) was bound over by John Pynchon in a bond of thirty pounds to answer with respect to burning a house in Northampton. Although Hendricks did not appear, the court discharged him of his bond, since he had been given some latitude as to his appearance and nothing further was chargeable against him.[63] Under the First Charter smoking outdoors was prohibited as a fire hazard. In May 1649, following the reading of the printed *Laws and Liberties* of 1648, several persons were fined ten shillings for taking tobacco out of doors. In March 1652/3, two persons were presented for the same offense.[61]

DEFAMATION

From the early years of the colony the Court of Assistants treated defamation or slander as a criminal offense, although not prohibited by any specific law or order. At least one Quarterly Court, that at Salem, followed suit. Perhaps the courts tacitly accepted the view of the **[117]** Star Chamber that such offences tended to breach of the peace (12 *Coke Rep.* 35). In 1641 the General Court ordered (the order appears as follows at the start of the 1672 laws) that "no mans person shall be arrested, restrained, banished, dismembered, nor any wayes punished; no man shall be deprived of his wife or children, no mans goods or estate shall be taken away from him, nor any wayes indamaged, under colour of Law, or countenance of Authority, unless it be by virtue or equity of some express Law of the Country warranting the same, established by a General Court, and sufficiently published; or in the case of the defect of a Law, in any particular case, by the word of God." On its face the 1641 order appears to exclude any implied reception in the colony of the laws of England establishing criminal offenses. However, after 1641, although no express law making defamation or slander a criminal offense is found, such conduct was still generally regarded as criminal (by the Court of Assistants and the County Courts of Hampshire, Suffolk, Essex, and Norfolk, among others) -whether regarded as such by reason of the word of God or of tendency to breach of the peace does not appear. (It is believed that slander offenses were not regarded as covered by the law against lying; the penalties imposed for slander are not consistent with those provided by law for lying.) As indicated above, this was not peculiar to the offense of defamation; it was also true of such offenses as lascivious conduct, abusive speeches, and certain contempts of authority.

How, as a practical matter, the inhabitants of western Massachusetts received notice of the specific laws and orders of the General Court, prior to receipt of a copy of the printed *Laws and Liberties* of 1648, is far from clear. There is no indication that any copy in manuscript form of the laws distributed earlier to some of the colony towns was made available to Springfield.

The first reference to defamation or slander as a crime in western Massachusetts, as previously noted, is found in a May 29-30, 1649 entry in the *Record* in which the widow Marshfield complained against Mary Parsons of Springfield for reporting her to be suspected for a witch. Pynchon found that the accused had defamed the good name of the widow Marshfield and sentenced her whipped with twenty lashes, unless she procured payment of three pounds to

the widow toward the reparation of her good name. The *Record* does not show the payment of the money, but, at William Pynchon's later examination of Hugh Parsons on suspicion of witchcraft, payment is revealed iri a statement by the widow Marshfield.[65] Since not an **[118]** express offense by law, the measure of punishment and the scope of the offense were matters of judicial discretion. Presumably the rationale for regarding defamatory statements as criminal offenses was that they tended to provoke breaches of the peace or perhaps that "Truth in Words, as well as in Actions is required of all men."[66]

In the next defamation case, in April 1655, John Stiles of Windsor complained against John Bennett for defaming his wife in saying she was a "light woman." When Bennett was unable to substantiate the accusation, it was ordered that he be whipped with eight lashes and pay a fine of forty shillings to the complainant. This is consistent with English practice, in criminal proceedings, which permitted a spoken, as opposed to a written, defamatory statement to be justified by proving that it was true. A September 1658 case in which John Elmer complained that Goodwile Hilton had accused him of theft was settled among the parties.[67]

The other defamation proceedings found in the *Record* are under the Second Charter. The March 1697/8 case involving Abraham Temple was transferred to the Court of General Sessions of the Peace. A week later, a ten-shilling fine was imposed for publishing a false report that Westwood Cooke had given false evidence under oath. An appeal taken to the next Court of General Sessions of the Peace was afterward withdrawn. In December 1698 an,.offender was discharged when he acknowledged his offense in imputing theft. In October 1701, an accused was convicted of spreading false "reports tending to the defamation of particular persons and fined five shillings. The sentence of ten lashes for a Negress in January 1701/2was based in large part upon defamatory statements about members of the Glover family.[68] Whether this jurisdiction was exercised under the law providing punishment for lying is not clear.

CONTEMPT OF AUTHORITY

Only one case in the *Record* involved contempt of the ministry. The punishment inflicted, a five-shilling fine, was far short of that provided in the laws for reviling the office or person of a minister.[69] An earlier case involving the same minister was handled at the County Court level. In March 1669 John Matthews of Springfield, having been bound over by John Pynchon to answer for his "exceedinge contemptuous behavior" toward the Reverend Pelatiah Glover, appeared at the County Court, and, the evidence being **[119]** produced and read, it appeared that his carriage was "very odious and Shamefull" toward Glover "much after the custome of the Quakers." Accordingly, Matthews was sentenced to fifteen stripes and ordered bound in the sum of ten pounds for his good behavior till the September court and to pay costs of court.[70] While the commonwealth laws extensively regulated the activities of Quakers, this sect did not constitute a law enforcement problem in western Massachusetts.

A September 27, 1692 entry of the Court of General Sessions of the Peace relates that Edward Burlison of Suffield had previously been presented to John Pynchon by the grand juryman for that town for "Scurrilous vile Speeches" against the town's late minister. When Burlison, having been summoned, failed to appear in court, the witnesses were sworn and tht clerk directed to issue out a special warrant to the Suffield constable to apprehend Burlison and bring him before Pynchon who was to proceed against him "according to Law for Contempt of Authority and for his Lying and Scandalous Speeches against said Mr. Philips," or to bind him

over for his appearance at the next court.[71] However, no entry appears with respect to Burlison in the *Record.*

The punishment imposed upon John Crowfoot was for contempt of the constable among other things. Another offense of this nature is found in December 1670 when Joseph Leonard and Sam Fellows were brought before John Pynchon for their contemptuous behavior toward the constable of Hatfield. Bound over to the County Court, they were fined in substantial amounts for contempt of judicial authority, as well as of the constable, and for unlawful trading with the Indians.[72] In January 1677/8, James Carver of Hatfield, venting his rage upon the constable for interfering with his attempt to "mischief" John Downing, was sentenced to pay fairly substantial fines and charges. Earlier, in 1659, John Matthews, presented for refusal to obey a summons sent by authority and for his "contemptuous and high carriage" toward the process server, who may have been a deputy constable, was fined five shillings.[73] In two other cases small fines were imposed for contempt of the constable. One, in 1673, involved refusal to go post with a letter to Quabaug; the other, in February 1675/6, refusal to go scouting on horse.[74]

In a related type of case Stephen Lee was presented by a Westfield tithingman at the Court of General Sessions of the Peace of September **[120]** 27, 1692, for refusing to listen when reproved for entertaining young persons in his house "to sing and make a rout at unseasonable time of Night, viz. after midnight." The justices agreed that John Pynchon should send for Lee and deal with him according to the merits of the case, but no entry appears in the *Record* respecting this matter.[75]

An entry in the County Court records in March 1665 reveals an instance of punishment for contempt of the.Springfield commissioners. Walter Lee, being presented for profaning the Sabbath at Woronoco by threshing corn, for calling Isaac Shelden "a member of old nick and a member of the Devill and for his contempt of the authority in Springfeild in Saying he thought he might as well beleeve h.is boy when he Said Springfeild Commissioners threatned him with the Stocks and promised him Some new clothes as the Said Commissioners in declaring what his boy Said against him," the court fined him twenty shillings to the county and four shillings, sixpence allowance to three witnesses. This was a mild sentence as the laws provided for punishment by "whipping, fine, imprisonment, disfranchisment or banishment, as the quality or measure of the offense shall deserve." The only case of contempt of court in the *Record is* found in December 1684 when Obadiah Abbee, strenuously arguing a point of law with John Pynchon, exceeded the proper bounds.[76]

NEGLECT OF DUTY

Several cases involved neglect of various duties imposed by law. In August 1698 two former constables of Springfield were found guilty of neglecting to collect the town rates committed to their care and fined forty shillings each as provided by law.[77] The laws under the First Charter imposed fines up to five shillings upon any person who upon lawful warning refused to watch or ward in person or by some other sufficient to the service. Two cases appearing in the *Record* involved this situation.[78]

When William Hunter harbored his daughter, who had unlawfully left service, instead of sending her back to her master, he was fined twenty shillings "due by Law to the Country" but sentence was **[121]** respited until another time.[79] However, it is not clear which law was intended by this Ireference. At the County Court of March 31, 1691, George Granger of Suffield,

being presented for neglecting the public worship of God, pleaded his sickness, weakness, and want of clothes. The court ordered that Pynchon send for and admonish him, but no such action appears in the *Record.*[80]

VIOLATION OF REGULATORY LAWS

As already noted, the sale of liquors was subject to extensive regulation in Massachusetts Bay in the seventeenth century. A County Court entry of September 26, 1682 records that Thomas Day, being warned, had appeared earlier before Pynchon as magistrate to answer for his breach of the law in selling liquors in small quantities without a license. The evidence being read, the Major informed Day that there were three witnesses to his having rum in his house and offering it for sale and three witnesses who had bought rum from him and that his breaking of the law was proved by this testimony. Pynchon therefore advised Day, a tithingman, to pay five pounds to the county treasurer rather than have the matter brought out further. However, Day replied that he would appeal to the County Court and there be tried by a jury. Pynchon accordingly referred the whole case to the County Court where a jury found Day guilty "if Testimonys to the same thing though not the same time be valid and Sufficient in Law." The court, judging "Such Testimonys valid and Sufficient" and "this course of Lodging and retailing Liquors without License . . . so Contrary to Laws and the good Intent and End of the Law forbidding such practises," fined Day five pounds and charges.[81]

In January 1700/1 Josiah Marshfield came before Pynchon and informed against himself for selling strong liquor without a license. At the same time he informed against Joseph Williston and/or his wife for the same offense. The *Record is* damaged at this point so that the exact disposition of these cases cannot be determined. However, the records of the Court of General Sessions of the Peace indicate that both cases were transferred to that court which fined Williston and Marshfield four pounds apiece.[82] A December 3, 1700 entry in the same records reveals that Pynchon and John Holyoke, sitting as two justices of the peace, had fined Jonathan Pease of Enfield four pounds for selling strong drink without a license but this fine is not entered in the *Record.*[83]

[120] Several cases involved unauthorized trading with or selling liquor to the Indians. The widow Horton's case in October 1640 involved the sale of her husband's gun to Indians.[84] In June 1655 Robert Munro was fined five pounds for selling liquor to the Indians without a license. In the same month the Springfield commissioners issued an "order of restraint" prohibiting Robert Ashley and his wife (who apparently kept the ordinary) from selling wine or strong waters to the Indians without a license. As far as the *Record* shows, this order was issued without the benefit of any trial or hearing. At the March 1662 sitting of the commissioners at Northampton, with the powers of a County Court, John Sackett was fined forty shillings for selling liquor to the Indians and one hundred pounds for violating the law against trading for furs with the Indians; however, the latter fine was remitted because of weakness of proof.[85]

While not referred to in the *Record,* entries in the County Court records for September 1670 show that John Pynchon, upon complaint of certain Indians, bound over to the County Court John Westcarr of Hadley and Benjamin Waite of Hatfield for selling liquor to the Indians without a license. Both were found guilty of selling large quantities of liquor to the Indians, Westcarr being fined forty pounds and Waite forty-four, and both appealed to the Court of Assistantsi At the appellate level the magistrates and jury disagreed; ultimately the fines were

remitted in part.[86] At the September 1671 County Court Samuel Greene, Joseph Butler, and Samuel Martin were fined for trading prohibited goods with the Indians at Pochasick, selling liquors, powder, shot, and lead and buying beaver skins. The entry notes that Butler and Martin had been bound over to the County Court by Major Pynchon in the previous May; however, no entry of such action appears in the *Record.*[87] The unlawful trading activities of Joseph Leonard and Sam Fellows of Hatfield have already been noted.

A September 1681 County Court entry reveals that, complaint having been made to Pynchon that Samuel Ely of Springfield had sold forbidden drink to the Indians, Ely was examined and confessed that he had let the Indians have some cider. The court, taking notice of his "Ingenuity" in confessing his offense and desiring to encourage others to such conduct, let Ely off with an admonishment and advised him "to beware of Such dangerous practices in time to **[123]** Come, that he do no more So offend, and become an occasion of bringing down Gods Judgmente upon the Land, as is most Certaine the Custome and trade of Selling Strong drinkes thus in this manner to them doth demerit, in as much, as such their Cravings of such drinkes are not to Satisfy needy Nature, but beastlike to fil a Sensual appetite."[88]

OFFENSES INVOLVING INDIANS

Considering the frontier position of Springfield, relatively few other cases involving Indians are found in the *Record.* The most serious offense occurred in May 1660 when Thomas Miller and his wife were beaten by some Indians from the Nipmuck country. An Indian who broke into Rowland Thomas' house in June 1650 and stole some goods was not brought to.justice but a sachem at Woronoco finally gave some wampum to William Pynchon in satisfaction.[89] This incident reveals that in the case of Indian offenders justice might have to yield to expediency. In May 1671 an Indian was found guilty of breaking into Samuel Bliss's house on the Sabbath and stealing some wampum. Two months later two Indians were punished for stealing some wampum and other goods from Obadiah Cooley's house. In the last two cases corporal punishment was imposed.[90]

Two Indians, charged in December 1674 with stealing a trap eighteen months earlier, were discharged when other kidians en. gaged that the offenders would return the trap and pay some.. wampum toward the charges. A runaway Indian from New York was apprehended by hue and cry in November 1694 after stealing a horse and other goods. Following examination by John Pynchon, although none offered to prosecute, he was committed to prison by mittimus and later returned to his New York master-an example of informal extradition.[91] At a March 1664/5 sitting of the Springfield commissioners an Indian who owned to breaking the windows of Captain Pynchon's farm house some years ago and to other misdemeanors was ordered to pay treble damages.[92] Despite the legendary aboriginal thirst for strong waters, only two cases of Indian drunkenness are found in the *Record*, one in 1662and one in 1674; in both cases ten-shilling fines were imposed.[93]

A few cases concerned damage to the person or property of Indians. In May 1648, for striking an Indian squaw, Francis Ball was **[124]** Ordered by William Pynchon to pay the injured Indian two hands of wampum, but Ball refused to make payment. Two years later, Wiliam Pynchon, with the advice of the Reverend Moxon and others who were present, adjudged that Thomas Miller receive fifteen ashes for breach of the peace in striking an Indian with the butt end of his gun. However, Miller avoided the whipping by paying down four fathom of

wampum.[94] In August 1659, when some Indians complained of damage done by cattle to their cornfields on the western side of the Connecticut River, the damage was viewed and judged at eight shillings. The Springfield commissioners accordingly ordered the constable to raise this amount from the inhabitants on the west side of the River. In June 1664 the commissioners, finding that some youths had damaged a canoe left by an Indian, ordered the constable to gather up for the Indian two-pence apiece from each person implicated.[95] At the March 1665 County Court an Indian sought help in respect of a sentence of the Springfield commissioners taking two guns from him for Thomas Miller. The court ordered the commissioners to review the case, but no entry appears in the *Record*.[96]

VIOLATION OF TOWN ORDERS

In outlining the Massachusetts judicial system note was taken of the power of the town freemen or selectmen to make orders of a "prudential nature." Although Agawam had not been recognized as a town by the General Court, on February 14, 1638/9, the same day that they commissioned William Pynchon with judicial powers, the inhabitants issued the first of many "town" orders. One provided a five-shilling fine for anyone selling or transferring out of the plantation a canoe under five years old; the other provided for payment for damage done by cattle put over the River to graze in violation of a restrictive order.[97] In the next few years a number of town orders covered a wide variety of subjects such as attendance at training exercises, trading, selling or giving powder to Indians (a forty-shilling penalty), fixing laborers' wages, keeping highways clean and in repair, felling "canoe trees," failure to possess certain arms and ammunition, failure to possess ladders (as protection against fires on roofs) , carrying fire in the open without covering, making and maintaining ditches, allowing strangers to live on one's land without the consent of the inhabitants, and fixing prices of sawed wood?[98]

[125] The first election of selectmen was held on September 26, 1644, when by general vote of the town it was agreed that Henry Smith, Thomas Cooper, Samuel Chapin, Richard Sikes, and Henry Burt:

> . . . shall have power to order in all the prudential affaires of the Towne, to prevent anythinge they shall judge to be to the dammage of the Towne or to ordr any thing they shall judge to be for the good of the Towne: and in these affaires they shall have power for a yeere space and that they, 5, or any three of them shall also be given full power and virtue, alsoe to here complaints, to Arbitrate controversies, to lay out High ways, to make Bridges, to repayr High wais ... to see to the Scouring of Ditches, and to the killing of wolves, and to training up of children in some good caling, or any other thing they shall judge to be to the profitt of the Towne.[99]

The September 1646 appointment of selectmen specifically authorized them to impose five-shilling fines upon those neglecting to keep their chimneys clean or carrying fire uncovered in the open. In the event of refusal to pay such fines the selectmen were "to complaine to the magistrate who will grant his warrant to distraine for the said fine" Their authority was also "to reach to reconsile disgrements and disputes between neighbor and neighbor."[100]

Later town orders, most of which were issued by 1653, covered such subjects as sweeping of chimneys, taking canoes without leave, absence from town meetings, restrictions on grazing of cattle, work on highways, removal of wood and timber, attendance at town meetings, the burning of tar, the keeping of swine, clearing of highways, transporting building lumber outside the town limits, watering hemp or flax in streams near habitations, gathering of hops, recording of land grants, maintenance of fences, the location of houses, entertaining and selling lands to strangers, regulation of wages, refusal to accept town offices, leaving gates open, laying out land boundaries, children playing near the meetinghouse, riding of horses in town, regulation of seating in the meetinghouse, misbehavior of children in the meetinghouse, misbehavior at town meetings, and the gathering of turpentine.[101]

Considering the wide range of subject matters covered by town orders, there are relatively few instances of violations of town orders to be found in the *Record.* On November 17, 1648 John Clark was presented by Griffith Jones, presumably one of the recently elected "presenters" for the town, for leaving an offensive carrion by the **[126]** brookside. Whether this was regarded as a violation of a town order or came within the category of "any other misdemeanor" which the presenter had authority to present is not clear. The next May a number of inhabitants were presented for leaving their oxen over the Connecticut River in violation of a town order. In March 1652/3 the wife of Griffith Jones was presented for carrying uncovered fire in the open and fined five shillings. During the following November seven persons were presented for unspecified breaches of town orders and ordered to pay sums ranging from sixpence to ten shillings.[102] At the March27, 1660 court three selectmen of Springfield presented a complaint against John Wood for staying in the town contrary to a legal warning to depart. (Wood in May 1659 had been fined forty shillings for taking up residence in the town without consent of the inhabitants, contrary to town order.)[102] In July 1685 several inhabitants complained against the appointed fence viewers for neglect of their duties in violation of the colony laws and of a town order. In February 1687/8 suit was brought for penalties for taking some swine out of pound in violation of both a town order and a "Publike act of the Council."[104]

THE ROLE OF THE CHURCH

The role of the church in the administration of justice in western Massachusetts in the seventeenth century is difficult to assess since the only church records remaining for the period are those for Northampton and Westfield. A recent study based largely upon unpublished manuscript records makes reference to only four instances of church intervention in western Massachusetts during the seventeenth century. In 1682 John Maundesly, charged by the church at Westfield with violation of the Eighth, Ninth, and Tenth Commandments in presenting a petition to the General Court, confessed his errors, and was restored. In 1685 Joseph Pomeroy, constable at Westfield, publicly confessed in church his embezzlement of county funds. In 1697 Abigail Bush, apparently suspended, was restored with an admonition to be "very tender of Parentall honour." In 1698 the church at Northampton excommunicated John Taylor who, upon release from the Springfield jail to attend church, profaned the Sabbath by absenting himself from public worship to elude authority.[105] **[127]** The *Record* itself shows the Reverend Moxon present on several occasions in a role other than litigant but there is no indication of any close relation between church and commonwealth in the administration of justice on the local level.

Certain generalizations can be made concerning the criminal jurisdiction appearing in the *Record.* The various jurisdictions exercised ranged widely in taking cognizance of different offenses, but there was at no time any substantial volume of any one class of offenses. While jurisdiction was exercised in various capacities, there was no great contrast in the nature of the offenses handled from time to time, except perhaps for the earliest years and the years under the Second Charter. In terms of volume and variety, the period during which John Pynchon acted as magistrate is foremost. Another outstanding feature is the flexibility of administration, both in taking jurisdiction without seeking support in the letter of the laws and in awarding punishment. Lastly, the significance of the magistrate or justice of the peace in examining and binding over offenders to courts on the county level and in dealing with cases referred back from such level can be seen. From the first volume of County Court records for Hampshire it appears that Pynchon was responsible for almost one-half of the offenders bound over to that court; most of the remainder were bound over by the commissioners for Northampton, Hadley, and Hatfield.

In evaluating the jurisdiction exercised in the *Record* from a statistical standpoint it must be kept in mind that the County Court of Hampshire exercised concurrent jurisdiction in minor offenses for about twenty-three years. Of the almost two hundred offenses handled in the first volume of the County Court records (to 1675), many were minor offenses such as breach of the peace, drunkenness, swearing, lying, abusive speeches, neglect of duty, theft, lascivious carriage, profanation of the Sabbath, and offenses by Indians. The use by the County Court of grand jury presentments served to account for a substantial volume of the jurisdiction exercised.

A comparison of the jurisdiction in criminal matters appearing in the *Record* with that exercised on comparable judicial levels in the Bay during the period of the First Charter (county court level until 1665, magistrate or commissioners level from 1665 to 1686) shows a much greater volume of cases handled in the Bay, covering, particularly on the county level, a wider variety of offenses in a more settled, but less homogeneous, society, with a better defined and, to some extent, hardened criminal class. However, it is obvious that in both areas law enforcement was primarily based upon the laws and **[128]** orders of the General Court. As to offenses not specifically covered by such laws and orders, there was no cleavage in treatment between the two geographic areas. It seems likely that both found guidance in this respect in the activities of the Court of Assistants, or perhaps in the word of God. If there was any significant reliance upon substantive laws supposedly received from England, it is not patent in the *Record* or in any of the printed and manuscript material examined for comparative purposes. This conclusion is not intended to derogate in any way from the importance of the laws of England as precedents or models in founding the laws and orders of the General Court and in furnishing standards in procedural matters not covered by colony laws and orders.

VIII. Criminal Procedure

The Massachusetts laws of the seventeenth century devoted much space to the enumeration and description of criminal offenses and to granting jurisdiction to various courts over such offenses. However, little space was devoted to the procedures to be employed in the exercise of the jurisdiction thus conferred. Perhaps such neglect was beneficial in that it

permitted each court to shape its procedure, to some degree, in accordance with its own circumstances.

ACCUSATORY DEVICES

The cases appearing in the *Record* and related County Court records reveal that flexibility was the principal characteristic of the initial step in setting in motion the judicial process in criminal matters. Thus, such step might be found to take any one of the following forms:

(a) Complaint or presentment by a private person;
(b) Complaint or presentment by a constable or the watch, including those cases in which an offender was taken without warrant by the constable or watch and brought before the court for examination;
(c) Complaint or presentment by the selectmen of Springfield or another town;
(d) Presentment by the elected town presenters of Springfield;
(e) Presentment by tithingmen;
(f) Presentment by a grand juror;
(g) Qui tam action by an informer;
(h) Reference from the County Court or the Court of General Sessions of the Peace;
(i) The court's own view of the offense.
(It should not be assumed that all these devices were in use for the entire period.)

Conspicuously absent from this list is presentment or indictment by a grand jury. No use was made of the grand jury by any of the **[130]** courts whose acts are recorded in the *Record;* the evidence in the supplemental Registry of Probate material is equivocal. Largely because of the sparse population, the grand jury did not thrive as an institution in western Massachusetts. Although it was employed by the County Court, petty jurors were compelled to double as grand jurors. Formal informations were not used as there were no commonwealth or Crown attorneys or clerks of the peace. A few instances appear in the *Record* and the supplemental Registry of Probate material of the use of a jury of inquest in case of "any suddain, untimely or unnatural death."[1]

While it received little recognition in the laws, the most widely used device for initiating judicial action in criminal offenses during the period covered was the complaint made to the court by a private person. This was in effect what Lambard stated was most aptly termed a "suit of the party"-whether in the form of a bill, plaint, complaint, or information.[2] Normally the complainant was the person injured or aggrieved, as in the case of offenses such as assault and battery, defamation, and theft.[3] In a few cases the complaint might stem from the relation of master and servant, husband and wife, or parent and child. A 1668 law provided that any person, whether or not twenty-one years of age, might "inform and present any misdemeanor to any magistrate, Grand-juryman or court." However, little use of "presentments" by private persons appears in the records examined, with the exception, perhaps, of those made to grand jurymen on the county level. No requirement appears that such complaints be made in writing or in any particular form and most complaints probably were made orally. However, a notation of August 1681 shows Jonathan Winchel "Presenting his suspition" of Robert Old taking away a bushel of complainant's wheat meal from Westfield. Old being sent for, what Winchel had presented in

writing was read to him. No requirement that complaints or presentments be made under oath was found, nor any evidence that complainants were bound or summoned to prosecute, the practice in some instances by the county courts.[4]

[131] Next in importance to complaint by a private person was the complaint or presentment by a town constable. While the role of the constable in criminal law enforcement was of greater importance prior to 1692, the *Record* does not reflect its decline as sharply as does a reading of the laws passed under the Second Charter with their emphasis, derived from English practice, upon the role of the sheriff. By laws under the First Charter every constable was given full power where no magistrate was near, to make, sign, and put forth pursuits or hues and cries after murderers, manslayers, peace-breakers, thieves, robbers, burglars, and other capital offenders. He also had power to apprehend without warrant Such as were overtaken with drink, those swearing, Sabbath-breaking, or lying, vagrant persons, and night-walkers. The constable was to act upon his own view bf the offenses or upon present information from others. He was directed to make search for all such persons, either on the Sabbath or any other day when there was occasion, in all houses licensed to sell beer or wine, or in any other suspected or disorderly places, and to apprehend offenders and keep them in custody until they could be brought before a magistrate for further examination.[5]

Under the law regulating inns the constable was given power, in the case of persons found drunk or in their drunkenness abusing the constable or others, to commit such persons to safekeeping or imprisonment or to take bond for their appearance, as he saw cause, and to inform the next magistrate thereof. If there was no magistrate in town, he was to convent such person before one or more commissioners for ending small causes. Several acts gave constables power to apprehend without warrant persons found at Quaker meetings. A 1662 act provided that constables might apprehend vagabonds, with or without further warrant, and bring them before the next magistrate for examination. The law regulating Indians provided that any person finding any Indian with strong liquors, obtained without authority, was empowered to seize such liquors and deliver them to the constable of the town where the Indians were found, together with the persons of the Indians, to be conveyed before a magistrate or commissioner with power to deal with such cases.[6]

Various laws regarding the watch gave power to the constable or **[132]** the watch to apprehend certain offenders without warrant. The laws of 1672, for instance, provided that:

> And the Constables in every Town from time to time, are hereby enjoyned to give in their charge to Watch-men, that they duely examine all Night-Walkers after ten of the dock at night (unless they be known peaceable Inhabitants) to inquire whether they are going, and what there business is; and in case they give not reasonable satisfaction to the Watch-men or Constable, then the Constable shall forthwith secure them till the morning, and shall carry such person or persons before the next Magistrate or Commissioner, to give satisfaction for their being abroad at that time of night. And if the Watch-men shall finde any Inhabitant or Stranger, after ten of the clock at night, behaving themselves any wayes debauchedly, or shall be in drink, the Constable shall secure them, by commitment or otherwise, till the Law be satisfied.[7]

In those cases in which the constable, or perhaps the watch, apprehended offenders without warrant the initial step appearing in the *Record* was the examination of the offender by

the court. Presumably this examination would be preceded by the constable's explanation of the circumstances of the apprehension, which in effect served as a complaint or presentment. However, the number of cases found in the *Record* in which constables apprehended offenders without warrant are relatively few, but certain brief entries merely recording imposition of fines may also be cases of apprehension without a warrant. By law a constable was required to carry a five-foot black staff tipped with brass when executing his office Oater modified where the constable was acting under warrant from authority)[8] Such badge of office seems somewhat incongruous for western Massachusetts but cases in the Essex County Court records show that importance attached to the requirement.

In addition to those cases in which constables were authorized to arrest without warrant, several acts under the First Charter especially enjoined them to search out all offenses against such laws, presumably with a view to presenting the offenders. Such acts included that regulating inns and an act prohibiting the entertainment of young people in ordinaries. A 1677 act provided that constables were to present to the magistrate the names of all persons transgressing a law prohibiting horse racing for money. Under the law regulating "Idle Persons" constables were to use special care to take notice of persons spending their time idly or unprofitably, especially of "common Coasters, unprofitable Fowlers, and Tobacco takers" and present them to the next magistrate.[9]

[133] Presumably a more general duty to present offenders against the laws of the commonwealth was comprehended within the constable's oath of office which, in the laws of 1672, read as follows:

> Whereas you [E.G.] are chosen Constable within the Town of [C.] for one year now following, and until other be sworn in the place: You do here Swear by the Name of Almighty God, that you will carefully intend the preservation of the Peace, the discovery and preventing all attempts against the same: You shall duely execute all Warrants which shall be sent unto you from lawful Authority here Established, and shall faithfully execute all such Orders of Court as are committed to your care: And in all these things you shall deal seriously and faithfully while you shall be in Office, without any sinistre respects of favour or displeasure: So help you God, etc.[10]

Substantially the same language was retained and supplemented in the constable's oath provided under the Second Charter.[11] However, the laws enacted between 1692 and 1702 appear to contemplate that the principal duties of constables would be in enforcing observance of the Sabbath, assisting officers of the excise or impost in searches, and informing of breaches of the licensing laws. A 1701 act authorized presentment of violations of a licensing law by grand jurors, sheriffs, undersheriffs, constables, tithingmen, and such other persons as should be appointed by the respective Courts of General Sessions of the Peace for that service.[12]

Several complaints or presentments by the selectmen of Springfield and one by the selectmen of Hatfield are contained in the *Record*. The subject matter of these complaints covered a stranger remaining in Springfield contrary to town order, unseasonable playing at cards and other misdemeanors, and neglect by constables to collect town rates committed to them.[13] No authority has been found in the laws for this type of proceeding but it may be an extension of the device of complaints or presentments by private persons.

Grand juries probably were not employed in western Massachusetts until the establishment of the County Court for Hampshire. With an awareness of this deficiency the town of Springfield, commencing with the year 1648, provided for the election of "presenters." The town order of November 6, 1648 establishing this office, which appears to have been *sui generis*, reads as follows:

It is alsoe ordered that on the first Tuesday of Novembre there shall be yearly chosen by the Inhabitants two men in their stead of Grand jury men who shall by virtue of an oath imposed upon them by the magistrate **[134]** for that purpose, faithfully Present on such Court days [those established by an order of the same date] all such breaches of Towne orders or Court orders, or any other misdemeaners as shal come to theyr knowledge either by theyr owne observation or by credible information of others, and shall take out process for the appearance of such as are delinquents, or witnesses to appeare the said day, when all such Presentments by the said partys shall be judicially heard and examined by the magistrate and warrants for distresses granted for the Levying of such fines or penaltys as are anexed to the orders violated, or which shall seeme meete or reasonable to the magistrate to impose or indict accordinge to the nature of the offence. These two men to stand in the office for a yeare or till others be chosen in theyr roome.[14]

How long the office of presenter was continued by virtue of this town order we do not know. Presumably the need disappeared in large part with the establishment of the County Court and a system of grand jurors. The town records show one or two presenters chosen in 1651, 1654, 1655, 1656, and 1657.[15] The only presentments in the *Record* which are definitely attributable to the town presenters are found at four sittings from November 1648 to November 1653 and cover about a dozen violations.[16] An entry for November 30, 1659 shows "John Matthews beinge presented for refusinge to obey a summons sent from Authority," but there is no indication as to the identity of the presenter.[17] There is some evidence in the *Record* that an informal system of presenters existed as early as 1640 when Goody Gregory was "accused by oath of John Woodcoke and Richard Williams" of swearing.[18]

By a May 1677 law the selectmen of each town were ordered to see to it that tithingmen were appointed in their towns, each to inspect the families of ten neighbors with power, in the absence of the constable, to apprehend all Sabbath-breakers, disorderly tipplers, or such as kept licensed houses (later extended to public licensed houses as well as private and unlicensed houses of entertainment), or others that suffered any disorder in their houses on the Sabbath day or evening after, or at any other time, and to carry them before a magistrate or other authority, or commit to prison, as any constable might do, to be proceeded with according to law.[19] An October 1679 law provided that the selectmen should take care that tithingmen be annually chosen from the most prudent and discreet inhabitants and granted them powers of inspection of licensed and unlicensed houses **[135]** of seizure of strong liquors on such premises, an account of which seizure was to be made to the next magistrate or commissioner vested with magistratical powers to be proceeded against according to law.[20] The same law also provided that:

Also the Tything-men are required diligently to inspect the manner of all disorderly persons, and where by more private admonitions they will not be reclaimed, they are from time to time to present their names to the next Magistrate, or Commissioner invested with Magistratical power, who shall proceed against them as the Law direct, as also they are in like manner to present the names of all single persons that'live from under Family Government,

stubborn and disorderly Children and Servants, night-walkers, Typlers, Sabbath breakers, by night or by day, and such as absent themselves fr6m the publick Worship of God on the Lords dayes, or whatever else course or practice of any person or persons whatsoever tending to debauchery, Irreligion, prophaness, and Atheism amongst us, whether by omission of Family Government, nurture, and religious dutyes, and instruction of Children or Servants, or idle, profligate, uncivil or rude practices of any sort, the names of all which persons with the fact whereof they are accused, and witness thereof, they shall present to the next Magistrate, or Commissioner, where any are in the said Town invested with Magistratical power who shall proceed against and punish all such misdemeanours by Fine, Imprisonmelit, or binding over to the County Court as the Law directs.

An oath provided read as follows:

Whereas you A. B. are chosen a Tything-man within the Town of D. for one year, until others be chosen and sworn in your room and stead, you do here swear by the living God that you will diligently endeavour, and to the utmost of your Ability perform and intend the duty of your place according to the particulars specified in the Laws peculiar to your Office, So help you God.[21]

Some evidence of the effect given to the earlier laws is found in the County Court records. At the March26, 1678 County Court for Hampshire, at which six tithingmen for Springfield, six for Northampton, and four for Hadley were presented by the respective selectmen and approved by the court, the following entry appears in the records:

Al which persons abovenamed being authorized the titheing men for the Several Towns as aforesaid, are hereby required faithfully to act in their Inspecting of their Neighbors, so as that Sin and Disorder may be prevented and Suppressed in their Several precincts, and as occasion may be to Assist one the others, and act in one and others precincts, discharging **[136]** the office of titheing men, according to the Laws made November 1675, May, 1677, and October 1677, they having reference thereunto.

And further this Court doth now commend to these titheing men, and require them diligently to take care that the Sabbath be not profaned by youth or Elder persons sitting or standing abroad out of their meeting houses in the time of Gods publique worship whereby they are exposed to many temptations and Diversions. And that they doe Check al such persons, and so Deal with them as thereby to enforce them to go in within their meeting houses, where they may attend better, and be in sight, or otherwise to present their Names in Case Such do not reforme, to the magistrates Comissioners or other Authoritie in the Several Townes to proceed against such as shal remayne refactory, according as they shal see Cause, as also to have a vigilant eye upon al persons that shal with out just and necessary Cause be unseasonably abroad in the Evenings from their parents or masters houses or familyes; Al persons being to repaire to their lodgings and homes by nine of the Clocke at night, or rather before; And what persons soever they find faultie herein, in being abroad unseasonably, or other waies faulty, they are to admonish and hasten to their own proper places of abode, whither they are to repaire when it draws toward nine of the Clocke at night, and in Case of their neglect hereof, or non attendance thereto, then to complain of Such to authoritie, that So they may be brought to better order, or proceeded against according to their demerit.[22]

With this elaborate background it is surprising that only two presentments by tithingmen are found in the *Record.* One, made in July 1685, was for "wicked and horrid desperate words of a Develish nature and Notorious lying"; the other, in September of the same year, for coming through the streets with a laden cart after sunset on a Saturday night.[23] No adequate explanation has been found for this paucity. It is doubtful that all the inhabitants of Springfield and neighboring towns were paragons of virtue. Nor is it probable that entries of presentments by tithingmen were omitted from the *Record* on a wholesale scale. The sentiments of the County Court expressed In cases involving sexual offenses at that time certainly indicate sympathy on the part of Pynchon with the legislative objectives. One can only surmise that the tithingmen adopted a live-and-let-live attitude to the neglect of their sworn duties, or perhaps, concentrated their presentments on the County Court level.

The office of tithingman apparently lingered on, surviving the loss of the Charter. In March 1693/4 it was rejuvenated by an act which provided that tithingmen be chosen annually in each town and that they have the power and duty to inspect all licensed houses and those selling at retail without license and to inform of all disorders **[137]** and misdemeanors committed in such houses to a justice of the peace or to quarter sessions. They were also to present or inform of all idle and disorderly persons, profane cursers and swearers, Sabbath-breakers, and the like offenders. Where they informed, they were to have the informer's share.[24] There is, however, no entry in the *Record* of any presentment or informing by a tithingman pursuant to this act.

Under the First Charter a few laws, as a means of stimulating enforcement, included provisions that a portion of the penalty should go. to the informer-in effect *qui tam* actions. Those laws designed primarily for informing at the magistrate's level included such matters as sale of defective casks, unlawful entertainment of young people, gaming for money, sale of adulterated beer, failure of a taverner or vintner to report purchases of wine, sale by a maltster of unclean malt, and unlawful taking of tobacco.[25]

An examination of the *Record* leads to the conclusion that use of *qui tam* actions by informers was not an important means of initiating prosecution in western Massachusetts under the First Charter. Only two cases, presentments in 1652/3 by the town presenter for unlawful taking of tobacco, refer to an informer; in both cases the presenter released his share of the fines imposed.[26] The *Record* does not disclose the accusatory process in several card-playing cases in 1661-62; the offenders may have been informed against.[27] The word "informing" had no precise procedural meaning in the laws; one law concerning the offense of lying, which made no provision for an informer's share in the penalty imposed, spoke of the "party complaining or informing."[28] It has already been pointed out that "presenting" was regarded as synonymous with "informing" in the 1668 law and in the case of the town presenter. Probably for procedural purposes there was little distinction made between a complaint, a presentment, and informing.

Under the Second Charter, while *qui tam* actions or suits by informers were provided for in many of the laws, in most cases they were required to be brought in a court of record. Apparently, a justice of the peace was not regarded as a court of record, contrary to the practice in England.[29] However, in January 1700/1 Josiah Marshfield informed against himself for selling strong liquors without **[138]** license and against Joseph Williston for the same offense. Botli matters were transferred by Pynchon to the Court of General Sessions of the Peace.[30]

While grand juries were not utilized by any of the lower level Springfield courts, mention has been made of one instance in which a Suffield grand juryman presented to Pynchon an inhabitant of that town for scurrilous speeches against the late minister. Pynchon took no action

on the presentment but brought it to the attention of the Court of General Sessions of the Peace. However, when the offender failed to appear, the matter was referred back to Pynchon to proceed thereon.[31] Such a presentment made to Pynchon seems irregular in that the oath of a grand juryman appeared to contemplate presentment to the Court of General Sessions of the Peace. In any event, this device does not appear to have been widely employed, being expressly authorized only in connection with breaches of the licensing laws.[32]

In several cases the accusatory process operated on the County Court level and, after coming to the notice of the County Court, examination into the offense or sentencing was referred to John Pyn. chon as magistrate.[33] In the case of several persons presented for fornication the County Court ordered that Pynchon send for and examine them and bind them over to the next court or otherwise. Similar action was taken in the case of a Suffield inhabitant presented for beating his wife and wasting his estate in drink. Two cases of the same type are found in September 1692 when the Court of General Sessions of the Peace ordered Pynchon, as justice of the peace, to deal with a Westfield offender who entertained youths in a riotous manner after midnight and with a Suffield offender for lying and scandalous speeches against the late minister.[34] In each of these cases it appears that the offender was not before the higher court and the reference was apparently designed to accelerate law enforcement. Of course, if the offender, having been summoned, failed to appear before the higher court, Pynchon might be ordered to proceed against the offender for contempt of authority. The reference might order Pynchon to send for the offender or a special warrant might issue from the higher court to a constable to bring the offender before Pynchon. An examination of the Essex County Court records reveals that this court from time to time delegated to a magistrate (William **[139]** Hathorne) power to hear and determine all presentments undisposed of at the end of a session.[35] No such delegation has been found in the case of John Pynchon. However, the practice in other counties of referring certain cases to a magistrate to handle appears consistent with that of Hampshire.

The entries do not always reveal the accusatory device used; in some cases, only the examination and sentence is referred to and, in a few, only the sentence. In some cases at least, it seems likely that the court acted upon its own view or common knowledge of the offense. Certainly pregnancy attendant upon fornication in time ' must have become common knowledge. In several cases in 1655 the entries refer to offenses “being taken notice of by the commissioners.[36] It may be that such entry denotes action upon the basis of common knowledge or report.

Apart from the several accusatory devices, merely coming into court might entail dangers for an offender. An Indian coming before the commissioners to acknowledge a debt confessed his misdemeanor several years earlier in breaking some windows of John Pynchon’s farmhouse “and other miscariage” and was ordered to pay treble damages.[37] In several instances after a complainant’s witnesses were heard, he himself ended up with a fine.[38] A person accused of one offense might be punished for another uncovered in the course of the hearing.[39]

INITIAL PROCESS

Once a complaint or presentment had been made to the court, process issued by the court to the constable to bring the alleged offender before it. (This would not be true, of course, if the offender had already been brought before the court without issuance of process, a possibility adverted to above.) Process might consist of either a warrant or a summons. In general, a warrant

would require the constable to arrest the body of the person named in the writ and **[140]** bring him before the issuing authority to answer or be examined touching the offense charged; a summons would merely require such officer to notify the person named in the writ of the charge and require his appearance before the issuing authority on a day named to answer thereto.

In the period of the First Charter several laws contemplated the use generally of a warrant, without further specificity, as initial process in criminal matters.[40] Other laws dealing with specific offenses conferred upon the court the power to send for offenders or call them before it by warrant.[41] However, there are several laws which indicate that, in some criminal cases at least, it was contemplated that a summons would be used as initial process. The laws dealing with a few offenses provided that offenders were to be "summoned" by the courts having jurisdiction.[42] Several laws refer to offenders being "convented" before authority; there is some indication that consistent with statements in Dalton and Lambard, a warrant was used in cases in which offenders were "convented." In one case against a third offender, process provided was in the nature of a mittimus.[43]

The "Presidents and Formes" in the several volumes of printed laws of the commonwealth contain no form of "warrant." The form of summons provided for civil causes, while addressed to the defendant directly and not to the constable or any other officer, could by reason of the inclusive scope of its language be readily adapted to certain criminal offenses such as slander or assault and battery. Despite the form of the summons provided in the laws, it,.was customary under the commonwealth to have the summons in civil cases addressed to and served by a constable or his deputy. In only a few cases is there evidence that service was made by a party.

Since apparently no file papers have survived, process has to be reconstructed from the entries in the *Record.* With one exception, there is no reference to initial process in criminal causes until after 1660. In this case a warrant issued by William Pynchon to the constable of Springfield in July 1650 to take the body of an Indian who had broken into a house or the stolen goods, if the Indian should escape.[44] In the earlier years covered by the *Record* the term "warrant" was generally applied to initial process in civil causes. When the same term was used in connection with criminal causes it is not clear whether the instrument called for the constable to arrest or attach the body of the accused. Hugh Parsons was "attached" upon suspicion of witchcraft and presumably the same process was used **[141]** in the case of Mary Parsons. An examination of the period from 166o to 1692 indicateo that in most cases, in which the method of initial process is determinable, a summons was used.[45] However, some caution must be used in this semantic inquiry for an entry that an alleged offender was "summoned" may mean "summoned by warrant," as in one 1679 entry.[46] Those cases in which the entry notes that the accused "appeared" were probably cases in which a summons was used.[47] A few entries record that the alleged offender "was sent for"[48] Only one reference *in haec verba* to such process appears in the laws which leads one to suspect that an inept draftsman intended the use of a summons. In one case several persons were "convented" before the commissioners.[49] In only two other cases in the *Record* does it appear that a warrant of arrest may have been used as initial process. One involved theft by an Indian, the other a riotous assembly at Hadley.[50]

The practice revealed by the *Record is* consistent with that in the Bay where the printed records of courts on the county level indicate that a summons (or a warrant to cause to appear) was used for minor offenses and a warrant of arrest or attachment (sometimes referred to as a "special warrant"), for more serious crimes. The records of the County Court for Hampshire show that a summons was normally used as initial process; if the summoned offender failed to

appear, he might be fined for contempt of authority or ordered to be warned a second time or referred to a lower judicial level to be proceeded against for contempt, if he had "legall warning." Of course, on the county level many of the serious offenders had been bound over by a magistrate or commissioners for their appearance so that choice of initial process offered no problem.

To some extent the use of warrants by magistrates in criminal causes may have been a reflection of English practice by justices of the peace. This practice made a distinction between process and warrant or precept. The term process was limited to the use of venire facias and further process *ad respondendum* to bring in an offender at quarter sessions or the assizes after indictment found or other conviction. The warrant or precept of a justice of the peace was used only to attach and convent the accused before any indictment or conviction. During the seventeenth century the jurisdiction of a justice of the peace to hear and determine offenses was limited, and text writers such as Lambard, Dalton, and Keble questioned whether process in the sense used above could in any event issue by a single justice **[142]** without a prior indictment, except where the power of process upon information proceeded from a special statute. In such cases perhaps either a warrant or process could be granted.

When in Massachusetts Bay judicial powers were conferred by the General Court upon a single magistrate the analogy to a justice of the peace must have been obvious. Reliance upon the use of warrants in exercising these poiiers was perhaps natural. The fact that the jurisdiction of a single magistrate to hear and determine extended to a wide variety of offenses, in contrast to the limited jurisdiction of a single justice of the peace in England, may have been obscured. Perhaps the choice was deliberate in order to achieve greater flexibility in process and yet to retain apparent consistency with English practice in this one particular. In any event the availability to mag. istrates of a warrant of arrest made for more efficient administration of justice on the lower jurisdictional levels.

The law entitled "Burglary and Theft" (1652) provided that when any goods were stolen the constable "by warrant from Authority" was to search any suspected places or houses and if he found the goods or any part thereof or had any ground of suspicion, he was to bring the delinquent or the suspected party to a magistrate to be proceeded against according to law. Several entries in 16gi disclose the use of search warrants.[51]

By implication from the law entitled "Constables" a magistrate had the authority to put forth hues and cries against certain capital offenders. Perhaps magistrates were regarded as having the power of a justice of the peace in this respect. In May 1660 some Indians who had beaten Thomas Miller and his wife were pursued by hue and cry and three Indians who were taken were brought before the commissioners.[52] Since there was no magistrate at Springfield at that time, the hue and cry may have been put forth by the constable.

An obvious weakness in the use of a summons was that the summoned offender might not appear at the appointed court, as in the case of Samuel Harmon, complained of for misbehavior on the Sabbath in June 1661.[53] However, this was corrected by a 1672 law which provided that if any person presented by a grand jury for any offense, or summoned by a magistrate to answer any crime, did not upon summons appear at the time appointed, after having been three times called in the court by name, after the first forenoon of the court, such person was to be proceeded against by contempt, unless restrained or prevented from appearing by the hand of God.[54] Even **[143]** without this law it would appear that attachment of property might be resorted to in order to secure appearance in criminal cases. It was used at times by the County Court for Essex.[55] In one case in July 1690 in which the offender, being summoned, had

withdrawn himself, John Pynchon issued a "special warrant" to the constable to apprehend the offender and bring him before the Court.[56] The *Record* affords no information as to the form of return used by the constable in connection with a summons, attachment, or warrant in criminal cases.

Under the Second Charter no specific provision was made for the form of initial process by justices of the peace in criminal matters. A table of justice's fees appears to contemplate the use of warrants in criminal matters.[57] However, in most cases appearing in the *Record* initial process seemingly consisted of a summons, although again procedural terminology tended to be loose.[58] However, warrants were used in a few cases involving disorderly conduct by youths, theft by an Indian, lying and cursing, and defamation.[59] In one case a constable of Springfield was "convented" upon presentment for failure to collect town rates; the term was apparently used as synonymous with "summoned."[60] Several laws referred to offenders being "convented" before a justice of the peace, but it is not clear whether a warrant or summons was intended.[61] In several theft cases search warrants issued. The constable remained the principal arm of the justice of the peace, but in one case a search warrant was addressed to "the Marshal and Sherifs Deputy."[62]

The *Record* affords no clue as to the form of summons or warrant used in criminal causes after 1692 or as to the form of return employed by constables in connection with such process. No instance of attachment in a criminal case is found for this period. The alteration in the statutory form of summons in civil actions obviously made more difficult adaptation for use in criminal causes.

HEARING OR EXAMINATION

Most of the laws or orders which gave jurisdiction in criminal matters to magistrates, commissioners, or justices of the peace in no **[144]** way specified the manner in which the jurisdiction conferred was to be exercised. A few laws under the First Charter provided that a magistrate "hear and determine" certain offenses. Under a 1662 law magistrates were to examine and proceed against vagabonds.[63] Probably the most articulate provision was in the laws of 1672, entitled "Inkeepers, Ordinaries, Tipling, Drunkenness," which ordered:

> That al offences against this Law, may be heard and determined by any one Magistrate, who shall hereby have power by warrant to send for, and examine parties and witnesses concerning any of these offences: and upon due conviction either by view of the said Magistrate, or Affirmation of the Constable, and one sufficient witness with circumstances concurring, or two witnesses, or confession of the party; to leavy the said several fines, by warrant to the Constable to that end.[64]

No greater explicitness is found under the Second Charter, the term "hear and determine" being most commonly used. The commissions of the peace under the Second Charter also employed the "hear and determine" language, consistent with English usage.'

An early law (1641) provided that in all "Actions of Law" the plaintiff and defendant were to be at liberty by mutual consent to determine whether they would be tried by the bench, or by the bench and jury, unless otherwise provided by law, and that "the like liberty shall be

granted to all persons in any Criminal case." It was also provided that both plaintiff and defendant in actions of law, and likewise "every Delinquent to be judged by a jury," were to be at liberty to challenge any of the jurors, and if the challenge was found just and reasonable by the bench or the rest of the jury, as the challenger should choose, and allowed, *tales de circumstantibus,* that is, other persons present in court, were to be impaneled in room of those challenged.[65]

However, only one jury trial of a criminal matter appears in the *Record* and in the supplemental material from the Registry of Probate records. In March 1654/5 Samuel Wright, Jr., charged with fathering an illegitimate child, desired to be tried by a jury of twelve and "tryall was made accordingly."[66] The bare entry affords no insight into how the jury was summoned or how the trial was conducted. This practice is consistent with that of the County Court for Hampshire where relatively few criminal cases were tried by juries. The same is true for those records of the County Courts of Suffolk, Middlesex, Essex, Norfolk, and York which have been examined and for some fragmentary records of courts on the lower jurisdictional levels in Essex, Norfolk, and York.

[145] Under the Second Charter, despite some sweeping statutory statements concerning the right to jury trial, there is no indication that this right was regarded as extending to criminal matters within the jurisdiction of a justice of the peace.[67] The *Record* shows no offender seeking jury trial.

In the *Record* the procedural step following the appearance of the accused before the court was usually referred to as an "examination." This examination appears to have been judicial, rather than inquisitorial in nature; it would appear that witnesses, for example, were examined in the presence of the accused. In principle, English justice of the peace practice was followed in that before conviction it was necessary, as allowed by God's law, to give the accused an opportunity to make a sufficient defense or excuse aganist the charge. Although not specifically required by any law or order, the examination probably commenced with an informal arraignment by means of which the accused was informed of the offense with which he was charged. If complaint was made in writing, it was presumably read to the accused; an oral complaint or presentment was probably summarized. In one case the "arraignment" took the form of the constable "making his declaration" against the offenders.[68] In a late defamation case the offender was required to answer to the evidence which was read to him. This was basically the procedure followed in the attachment of Hugh Parsons for witchcraft.[69] In the event an offender had been taken without warrant or had been summoned, such an "arraignment" may have served only to determine whether the accused would own or acknowledge the offense or whether, guilt being denied, the court would have to proceed to an examination of the offender and of witnesses. (No traverse of a presentment appears.) In a substantial number of cases the accused owned or acknowledged the offense charged, but sometimes this confession only followed an examination of the accused or of witnesses or both. In a few cases the acknowledgment was made in writing, presumably subscribed, and filed by the court. (Whether made under oath as found occasionally in other courts is not clear.) There is no evidence of a plea, answer or defense made in writing or of any reply by a complainant. In only one case did an accused stand mute.[70]

[146] Apparently the accused was not examined under oath. Whether this was due to acceptance of the common law maxim given currency by Dalton, Nullus *tenetur seipsum Prodere, is* not clear. There is some suspicion that John Pynchon and other magistrates upon

occasion engaged in judicial browbeating of alleged offenders. Whether defendants were ever required to purge themselves on oath does not appear. (Such procedure was given statutory form in several acts prohibiting selling strong drink to Indians.) In no case did the accused claim privilege against self-incrimination. Some witnesses, consistent with English practice, testified under oath; others apparently did not; in most cases it is not clear from the entries whether or not testimony was given under oath. In the face of testimony under oath, the denials of the accused were probably accorded little weight. In seventeenth-century English practice, witnesses for the accused were not sworn on the theory that it was improper to have witnesses against the King. No specific law with respect to administration of oaths to witnesses in criminal causes has been found, but in other parts of the colony cases appear in which witnesses for the accused were sworn.[71] The form of oath to be taken by a witness, presumably in both criminal and civil causes, appears in the laws of 1672 as follows:

> You swear by the Living God, that the Evidence you shall give to this Court concerning the Cause now in question, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God, etc.[72]

The measure of proof required for conviction of various offenses was usually expressed in the laws of the period, if at all, in general terms. Under the First Charter, for instance, the laws referred to such standards as "due proof . . . good testimony," "due conviction by **[147]** testimony or confession . . . confession or other manifest proof," "sufficient testimony" brought against the delinquent, proof by oath of a public officer or "other sufficient witness," and "upon sufficient proof."[73] The law regulating ordinaries plovided for conviction of offenders by view of the magistrate, or affirmation of the constable and one sufficient witness with circumstances concurring, or two witnesses, or confession of the party. The last standards probably stemmed from acts of Parliament regulating ordinaries in England or practice manuals commenting thereon.[74] However, in general, it should be noted that a May 1657 law stated in civil cases it behooved both court and jury "to see that the affirmation be prooved by sufficijent evidence, els the case must be found for the defendant and so it is also in a criminall case for in the eye of the lawe, every man is honest and innocent, unless it be proved legally to the contrary."[75]

Under the Second Charter most of the acts conferring jurisdiction upon justices of the peace made no reference to standards of proof. A few specified the view of a justice of the peace, confession of the party, or the oaths of two witnesses; confession or sufficient witness; the justice's own view, confession, or other legal conviction; due proof; the justice's own view or other legal conviction. An act relating to breaches of excise regulations permitted two witnesses to testify to different violations, if committed within a month.[76]

An examination of the *Record* indicates as implicit requirement that conviction, in the absence of confession or the court's own view of the offense, rest on the testimony of at least two "sufficient" witnesses to the same unlawful act or acts, unless otherwise specifically provided. No statutory basis for the requirement has been found, although commentators such as Dalton lend support to the rule in summary proceedings as in accordance with God's word.[77] File papers **[148]** found in Essex and Suffolk make occasional reference to the prevailing judicial view of the inadequacy of one witness.

Although the large number of witnesses examined in connection with the Hugh Parsons witchcraft accusation has been noted, the *Record* fails to disclose any explicit evidentiary standards employed in cases in which offenders were examined and then bound over or

committed to await trial iii a higher court. In several cases the evidence in part was documentary in nature. In a battery complaint the commissioners took notice of the fact complainant's nose "was much bruised and bloody."[78] In relatively few cases was the evidence found insufficient to support the complaint or presentment, sufficiency being tested by such vague standards as "any proofe of justice" and "full proofe." When some young people at Westfield, complained against for breaking down fences, "put al upon profe" and "desyred to know their accusers and se the Proofe," Pynchon, although suspicious of their guilt, dismissed them with admonitions. This is consistent with cases in the County Courts of Essex and Suffolk of admonishing the accused where there was a failure of proof.[79]

In a number of instances appearing in the *Record* witnesses appeared before the court and gave evidence and, in some cases, were examined viva voce. In other cases it appears likely that testimony had been taken down in writing earlier and sworn to before a magistrate or commissioner authorized thereunto and then read at the examination or hearing. Such procedure was authorized under the First Charter "in any Case, Civill or Criminal," provided that, in the case of a witness who lived within ten miles of the court and was not disabled by sickness or other infirmity, such testimony taken out of court was not to be received or made use of unless the witness was present to be further examined about it. A 1650 law which in effect required all testimony to be in writing (experience having shown the inconvenience of taking oral testimony in court), may not have been applicable to criminal proceedings but, undoubtedly, testimony taken down in writing by a complainant or presenter out of court could be sworn to in court.[80]

Under the Second Charter it appears by implication in a 1695 act that in both civil and criminal causes a witness was required to testify in person unless bound for sea before the time of trial. If so bound, the justice was authorized to take his deposition, the adverse **[149]** party being present or having received notification of the taking. In some cases *Record* entries refer to "testymonys" of witnesses being on file. It seems probable that such a notation usually indicated that the testimony was taken down out of court and read at the trial. However, in the Hugh Parsons case and various cases transferred to the County Court examinations were taken down in writing and sworn to in court; therefore a reference to "testymonys on file" may not always mean that testimony was taken out of court. A 1652 act, which required the keeping of "all the Evidences (which are to be given in, in writing, in fair and large papers)," was on its face limited to civil actions.[81]

A magistrate or commissioner taking the testimony of a witness out of court would seem to be performing a merely ministerial act. However, in one case in December 1684 "testimonys" were brought to John Pynchon who was desired to swear the witnesses thereto, prior to the making of a complaint. Pynchon, perusing the papers proffered, declared that he "did not find them to reach to a ly in the sence or words of the Law." The violent reaction this declaration evoked resulted in the would be complainant being committed for contempt.[82] The importance of such a "screening" process in the administration of justice is not evident from the *Record.*

Little appears in the *Record* concerning the mechanics of securing the appearance of witnesses. The laws of 1672 designated the use of a warrant by a magistrate to send for witnesses in case of infractions of the law regulating innkeepers and ordinaries. A June 1690 entry in connection with a complaint refers to witnesses being summoned.[83] Although no general provision regarding process in the case of witnesses in criminal causes can be found, from the practice in the courts of the Bay it appears that a summons was normally used to secure the appearance of witnesses in criminal causes. Perhaps, in some cases, a summons or warrant to

summon, addressed to the constable, might require the appearance of witnesses as well as of defendant.

In some cases the accused, instead of denying or owning the offense, interposed an affirmative defense or excuse. The reception accorded bona fide defenses or excuses attests to the pragmatic approach employed in the law enforcement appearing in the *Record.*[84]

SENTENCE

Following the examination and, in some cases, a more extended hearing, the court in most cases adjudged the offender guilty of one **[150]** or more offenses and usually sentenced him to pay a fine or to be whipped a specified number of stripes. In some cases, as already indicated, the offender was given the alternative of paying a fine (damages to the person injured in one case) or of receiving a whipping. In view of the small amounts of most fines imposed it was not the practice to demand sureties or to order the prisoner to stand committed until the sentence was performed. As debits in his account books show, Pynchon in his capacity of moneylender sometimes paid to the county the fines he imposed in a judicial capacity. Imprisonment was rarely resorted to, nor was the practice of some of the county courts followed of having the offender stand in a public place wearing a placard setting forth his offense in capital letters. The laws passed after 1692 show a preference for setting in the cage or stocks, rather than whipping in case of corporal punishment, with greater resort to imprisonment for more serious offenses. Some provided that an habitual offender might be bound with sureties for his good behavior. A thief, unable to make restitution or pay threefold damages, might be disposed of in service. In a scattering of cases only an admonition was restorted to. In the case of violations of town orders, not true criminal offenses, only fines were imposed. This pattern of punishment in general reflects the methods of punishment adopted by the colony or province laws.

In only a few cases were other punishments imposed. A person adjudged father of a bastard was ordered to make payments toward maintenance of the child. An offender who confessed to swearing was to pay a fine of twelve pence to the poor or sit in the stocks three hours. Some persons “in drink” at an unseasonable hour were to pay a fine of five shillings or sit in the stocks one hour.[85] Goods stolen were ordered returned to their owners; in one case an Indian offender posted security for such return. The fruits of trespass upon town lands were ordered forfeited in part. A scold was sentenced to be gagged or to be set in a ducking stool and dipped in the water.[86] In one defamation case, quasi-criminal in nature, the offender was ordered to make open and public acknowledgment of his faults.[87] The owner of a sheep-killing dog had to hang the animal. An “order of restraint” prohibited selling wine or strong waters to Indians without a license. A runaway servant was ordered returned to his master.[88] Treble damages were adjudged in cases of theft.[89] In a few cases fines which had been imposed were abated or abatement, being sought, **[151]** was referred to the County Court.[90] In one instance sentence was in effect suspended. In a few cases offenders were discharged or dismissed by the court. However, no use was made of discharge by proclamation, although recognized by order of the General Court and used in other courts of the colony.[91]

An October 1668 law provided that warrants for execution in both civil and criminal causes were to be signed by the clerk of the court. This was one of several enactments which somewhat vaguely assumed the existence of a clerk of the court in the case of a magistrate. Perhaps the clerk of the writs of the magistrate's town could be regarded as a clerk of his court

but the *Record is* unrevealing. An October 1678 law indicates that the clerk of the writs signed warrants in the form of "AB, per curia, for the towne of C." This practice is confirmed by the calendared file papers of the County Court for Essex.[92]

Little use of recognizances appears in the *Record* except in those cases in which offenders were bound over to appear at the County Court or the Court of General Sessions of the Peace. However, such an offender would also, presumably, be required to give bond, with two sureties perhaps, for his good behavior in the meantime.[93] Such bonds might specify good behavior toward particular persons, such as the complainant, and perhaps, as found in some cases in Essex County involving sexual offenses, enjoin frequenting the company of a co-offender. Binding to good behavior, which imposed stricter limitations upon an offender or suspected offender than binding to the peace, was not usually granted by a single justice of the peace in England.

The justices' manuals in England devoted much space to binding offenders to the peace. Little use is found of this device in Hampshire or elsewhere in Massachusetts Bay. However, the *Record* shows that one culprit in 1686 chose to pay a five-shilling fine for breaking the peace rather than be bound to the peace.[94] At the 1658 examination of Thomas Miller and John Henryson the commissioners noted that both deserved to be bound to the peace, but bond was not required since the quarrel was not recent and the participants had become reconciled. [95] In only one instance, in 1679, did a complainant "swear the peace" against an offender; Pynchon ordered the offender bound in the sum of ten pounds for his appearance at the County Court **[152]** and in the meantime to keep the peace.[96] This action was apparently based upon English practice as it was not specifically provided for in the commonwealth laws. The form of bond employed is not known but it may have been adapted from the statutory form in civil cases.

While most of the entries in criminal causes appearing in the *Record* make no mention of any imposition of costs of court or charges upon the offender; there are scattered cases in which such imposition appears. Several offenders were ordered to pay witnesses either one or two shillings apiece; in a case in which witnesses assisted the constable in the detention of a prisoner they were allowed five shillings each in charges. Presumably this was pursuant to a provision in the laws that in all criminal cases charges of witnesses were to be borne by the delinquent party.[97] In others, offenders were ordered to pay the constable's charges or "the charge of their apprehending."[98] In a 1690 entry a fine of five shillings was to include costs of court, that is, twelve pence to the constable. In 1697 one offender had to pay all charges occasioned by his crime; another was to pay "the charges summons serving it and attendance al being about $_4$s."[99] In two later cases defendants were ordered to pay all charges of prosecution. In a 1701/2 defamation case, where defendant was convicted, "though somewhat Barely," complainant and defendant were ordered "each to beare their owne Charges in the Case."[100] In the case of an unjust complaint the person complained of probably would be allowed costs. In those instances in which criminal and, civil matters were intermingled costs of court were usually awarded in connection with the civil action.[101]

In most cases in which a complaint combined civil and criminal aspects the judgment in the civil cause was segregated from the criminal sentence. In other cases criminal sentences specifically left complainants to their remedies at law for damages suffered as a result of the offender's misconduct. However, in one case in which the offender was sentenced to answer for whatever damage was done to complainant's property, it is uncertain whether this policy of segregation was maintained.[102]

In two instances the court sought assistance in sentencing. In a 1650 case William Pynchon noted that the Reverend Moxon and four others were present at his hearing of a case between Thomas Miller and an Indian and "with their advise" he sentenced Miller to **[153]** fifteen lashes. In 1686 when some Windsor inhabitants were brought in for gathering candlewood within the bounds of Enfield, John Pynchon advised with the committee for Enfield before sentence.[103]

BINDING OVER

A 1641 order of the General Court provided that "no Mans Person shall be Restrained or Imprisoned by any Authority whatsoever, before the Law hath Sentenced him thereto, if he can put in sufficient Security, Baile or Mainprize, for his appearance and good Behaviour in the mean time."[104] It was presumably pursuant to this law that, in a number of cases involving more serious crimes, the accused, following examination, was, bound over for his appearance at the County Court. Included in this category were cases Involving fornication and other sexual offenses, "notorious" lying, theft, burglary, breach of the peace, contempt of authority, illegal trading with the Indians, strained marital relations, riotous behavior, causing a disturbance at a town meeting, killing another's steer, and arson. The amount of the recognizance or surety demanded varied; bonds in the amount of ten or twenty pounds were commonly used. In one case involving a charge of arson the amount was thirty pounds. Failure to provide bond in the requisite amount would probably result in commitment of the accused. Under the Second Charter there were only three cases in which offenders were bound over to the Court of General Sessions of the Peace. One involved defamatory statements; the others, sale of strong liquor without a license.

In cases where the accused was examined and then bound over to appear and answer at the County Court or quarter sessions, the examination was usually taken down in writing, and, probably along, with depositions under oath of complainant and other witnesses, laid before such court. Such procedure, in some cases at least, left little scope for trial at the higher level-particularly if the examination included a confession by the accused. Some flexibility in binding over is indicated in a 1697 case in which Pynchon saw no need to bind the offender over to the quarter sessions since he had compounded with the injured party and engaged good carriage for the future.[105] Similarly, in the case of an offender presented at the County Court, where trial was referred to Pynchon, the witnesses might give their testimony under oath at such court to be transmitted to Pynchon.

In several instances in which offenders were bound over to the **[154]** County Court or to the Court of General Sessions of the Peace, the complainant was required to give bond to prosecute at the next such court. Whether it was the practice to bind witnesses, other than the complainant, to appear at the County Court or quarter sessions to give evidence against the offender is not clear. Evidence of such practice has been found in Essex County. In general the practice followed that of an English justice of the peace in certifying examinations, informations, recognizances, and bailment to quarter sessions or the next general gaol delivery. However, as distinguished from English practice, the material certified was not used to secure a presentment by the grand jury. The court, in most cases, arrived at sentence without a grand or petty jury.[106]

Dalton stated that it seemed "just and right" that a justice of the peace upon examination should take and certify such information, proof, and evidence as went to acquitting or clearing

the prisoner, as well as such as was against the prisoner. However, he doubted whether such proof against the King should be taken on oath. What practice generally prevailed in this respect in Hampshire and in Massachusetts Bay is not clear.

APPEAL

The 1641 commission to William Pynchon and several succeeding commissions made provision for appeals to the Court of Assistants. The May 1658 commission for Springfield and Ntrthampton provided for an appeal to the County Court at Boston. After the establishment of a County Court for Hampshire, presumably this court constituted the appellate body for the commissioners for Springfield. From the court established in May 1659 with the powers of a "County Court," appeal was presumably to the Court of Assistants, as provided in the law entitled "Appeal" in the 1648 and 1660 printed laws.

The *Laws and Liberties* of 1648 and subsequent commonwealth laws provided for an appeal from the sentence of one magistrate or "other persons deputed to hear and determine small causes" to the County Court of the jurisdiction in which the cause was determined.[107] Appellant was required to tender his appeal and to put in security to prosecute it to effect, to satisfy all damages and for his good behavior and appearance at the County Court. The provision **[155]** that execution should not be granted until twelve hours after judgment, unless by specol order of the court, presumably was concerned with civil causes. Undoubtedly execution of sentence in criminal causes was respited pending the outcome of the appeal, although not specifically provided by law.

Such laws also provided that all appeals with the security as aforesaid were to be recorded at the charge of the party appealing and certified to the court to which made. The further provision, added in 1651, and later modified, that the party appealing should briefly in writing "without reflecting on Court or Parties, by provoking Language" give in to the clerk of the court from which he appealed the grounds and reasons of appeal six days before the beginning of the court to which the appeal was made, was seemingly designed for civil causes, since defendant,. if desired, was to be allowed a copy of the grounds and reasons filed. The right of the court to impose charges and fines upon appellant contained in the laws of 1648, apparently intended for civil causes, was omitted in later laws.[108] The 1651 provision that whoever should appeal from the sentence of any court and not prosecute the same to effect, according to law, should, besides his bond to the party, forfeit forty shillings to the county may also have been designed primarily for civil causes.[109]

An early law which gave magistrates jurisdiction over small thefts and other offenses of a criminal nature where the damage or fine did not exceed forty shillings specifically provided that it might be lawful for either party to appeal to the next court held in the jurisdiction, giving sufficient caution to prosecute the same to effect at such court.[110] Whether this provision was designed to carve an exception from the above general, more stringent, procedural requirements is not clear.

Under the Second Charter a June 1696 act made it lawful for any person sentenced for any criminal offense by one or more justices of the peace out of sessions to appeal from such scntence to the next Court of General Sessions of the Peace held in the county. Appellant was required to enter into a recognizance, not exceeding five pounds, with two sufficient sureties for his appearance at the appellate court, for his prosecution with effect of his appeal, and to abide

the sentence of the court appealed to, which was to be final, and in the meantime to be of good behavior. No appeal was to be granted unless claimed at the time of the declaring of sentence and security given as directed within the space of two hours thereafter, the appellant **[156]** remaining in the custody of an officer until such security was entered. Every such appellant was to file reasons of appeal in the clerk's office of the court appealed to seven days before the court sat and, at his own cost, to take out and present to the court an attested copy of the sentence and copies of all evidences upon which it was grounded. The fee for entering the appeal was the same as for entry of an action in civil causes, ten shillings. Although this act was disallowed by the King in Council on November 24, 1698, no law was passed in place of the disallowed act during the period covered by the *Record.*[111]

An examination of the *Record* discloses that the only appeals in criminal causes during the period were taken in 1698 to the Court of General Sessions of the Peace. However, in each case the appeal was later withdrawn and not prosecuted. One appeal was taken from a fine of ten shillings, plus fourteen shillings costs of prosecution, in a defamation case. In the other cases, former constables of Springfield, appealed from forfeitures of forty shillings apiece for neglect to collect certain town rates.[112]

FINAL PROCEEDINGS

The laws under the First Charter provided that every offender fined for breach of any penal law was to pay his fine or penalty forthwith, or give security speedily to do it, or be imprisoned or kept to work until it be paid-unless the court or judge imposing the fine saw cause to respite the same. It was also provided that, when any magistrate or commissioner assessed a fine, he was to send a transcript or note of the fine within fourteen days to the treasurer of the colony or the county to whom it belonged who was forthwith to give warrant to the marshal to collect and levy the same. If no goods could be found to satisfy the fine, the marshal was to attach the body of such person and imprison him until satisfaction was made, provided that the Court of Assistants or any County Court might discharge from imprisonment any such person who was unable to make satisfaction.[113]

Under the Second Charter some laws specifically empowered a justice to retain or commit an offender until the fine imposed was satisfied (and perhaps sureties for good behavior found) or to cause the fine to be levied by distress and sale of the offender's goods by warrant directed to the constable. In other cases, only warrant by distress on the delinquent's goods was authorized. An offender unable **[157]** to make restitution or pay threefold damages in theft cases might be disposed in service.[114]

To the question as to whether or not procedure in criminal causes, as revealed in the *Record,* differed substantially from procedure in such causes in the more settled portions of Massachusetts Bay, the answer, based on the available evidence, is that it did not. This conclusion has been arrived at with an awareness that no file papers for the courts covered by the *Record* have survived (excluding the proceedings in the Hugh Parsons witchcraft case) , that only fragmentary records of comparable courts on the lower jurisdictional levels in the Bay have been found, and that, in part, this conclusion rests upon indirect evidence from the records of county courts for Hampshire, Suffolk, Essex, Norfolk, Middlesex, and York. In large part the procedure clearly stemmed from the laws of the commonwealth. While no models of statutory

draftsmanship, these laws provided a frame of reference that was not substantially warped by either the stresses of a "frontier" society or the vagaries of judicial personnel.

There is no reflection in the *Record* of the "individualistic and democratic tendencies" or the "innovating" tendency noted by Turner in his well-known essay on the Massachusetts Bay frontier in the late seventeenth century.[115] It is very doubtful that a curbing of such tendencies in the field of law enforcement coluld be ascribed solely to the dominant position in the judicial establishment of a conservative, wealthy trader and landowner such as John Pynchon with his many political, cultural, and economic ties with the Bay, with neighboring colonies, and with England. The conditions which shaped and influenced law enforcement were not sufficiently different in western Massachusetts during the seventeenth century to vary in a substantial manner the development of criminal procedure on the lower jurisdictional levels or, for that matter, on the county level.

What does the *Record* disclose of the influence of the laws of England on law enforcement in western Massachusetts? William Pynchon had some familiarity with Fortescue's work, *On the Laws of England,* and Dalton's *The Country Justice.* There is some ground for belief that John Pynchon also had available some English law books. In the'inventory of John Pynchon, Jr.'s estate, taken in May 1721,[116] the following works are listed:

[158] Fortaques on the Laws	Finches laws
law Dictionary	Magna Charta
A New England Law Book	Daltons Statutes
Cook upon Littleton	Dalton on the Laws of England

Some of these books probably belonged originally to John Pynchon or even to William Pynchon-the presence of Fortescue is convincing evidence. However, there is no reference to any of these volumes in the *Record* or, for that matter, to any English authority, either text or case, to any Biblical authority, or to any case decided by the General Court, the Court of Assistants, or any other court of Massachusetts Bay. However, in view of the general paucity of citation of authority in seven teenth-century Massachusetts judicial records, the state of the *Record* comes as no surprise.[117] File papers, if preserved, would probably have shown, as in other parts of the colony, greater recourse to Biblical authority by offenders and litigants. If any of the above books belonged to John Pynchon, they were owned in the capacity of judge, legislator, administrator, soldier, and merchant, not that of a bibliophile. Unfortunately, the uses to which they were put and the degree of influence exerted upon the administration of justice in western Massachusetts is beyond present reconstruction. In conclusion, in those areas not specifically colvered by the laws of the colony, the procedure found in the *Record* was probably as consistent with the laws of England as that found in the more settled parts of the colony.