

**A CHRONOLOGICAL SKETCH OF THE
LEGISLATION FROM 1752 TO 1884
ON THE SUBJECT OF PRINTING THE
ACTS AND RESOLVES OF THE
PROVINCE OF MASSACHUSETTS BAY**

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A chronological sketch of the legislation from 1752 to 1884 on the subject of printing the Acts and resolves of the province of Massachusetts Bay by Various

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VARIOUS

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OF THE

PROVINCE OF MASSACHUSETTS BAY.

WITH A TABLE SHOWING THE PROGRESS OF THE WORK DONE BY
THE PRESENT COMMISSION, ETC.

6
Boston,
1889.

A SKETCH OF THE LEGISLATION RELATIVE TO
PRINTING THE PROVINCE LAWS.

1752.

INSTRUCTIONS FROM THE PRIVY COUNCIL RECEIVED BY LIEUT.-
GOVERNOR PHIPS.

(No. 20.) Whereas many of the Laws heretofore passed 1752. in our Colonies and Plantations in America respectively have from time to time been either entirely or in part repealed, and others of them are expired, altered, amended or explained by means whereof persons not well acquainted with the said Laws may be led into mistakes and great prejudice and inconvenience may arise to our service; and whereas nothing can more effectually tend to promote order and good Government secure the properties and possessions of our subjects and prevent litigious Controversies and Disputes than a clear and well digested body of Laws; It is therefore our Will and Pleasure and We do hereby require and direct you, jointly with the Council and Assembly of our Province of the Massachusetts Bay under your Government, forthwith to consider and revise all and every the Laws, Statutes and Ordinances which are in force within the said Province, excepting only such as relate to private property or are otherwise of a private nature and in lieu thereof to frame and pass a compleat and well digested body of new Laws for the said Province, taking especial care that in the passing of each Law, due regard be had to the Methods and Regulations prescribed by these our Instructions to you, and that no Law of any kind whatsoever, making a part of such new body of Laws, be passed without a Clause inserted therein, suspending and deferring the execution thereof until our Royal Will and Pleasure may be known thereupon. And it is Our further Will and Pleasure, that when the said new Body of Laws shall have been so framed and passed as aforesaid, You do forthwith transmit each law separately under the seal of our said Province together with very particular observations thereupon to Our Commissioners for Trade and Plantations, in order to be laid before us in our Privy Council for our approbation or disallowance. — *Public Record Office, London; Mass. Bay, B. T., vol. 84, p. 378. See p. 9, post.*

FIRST MESSAGE OF LIEUT.-GOV. PHIPS TO THE GENERAL
COURT ON THE SUBJECT OF REPRINTING THE PROVINCE
LAWS.

Dec. 6, 1752. *Gentlemen of the Council & House of Representatives:*

The Court being as full now as in all Probability it will be at any time during the present Session, I think it proper to communicate to you an Affair of great Importance & well worthy of your Consideration.

During your Recess, I have rec^d an additional Instruction from the Lords Justices to the Governor or Commander in Chief of this Province, directing him jointly with the Council and Assembly to consider and revise all and every the Laws Statutes & Ordinances, which are in force, except such as are of a private Nature; And in lieu thereof to frame and pass a compleat and well digested Body of new Laws under such regulatⁿ as the said Instruction directs; a Copy of which I shall order to be laid before you. You must be sensible that many of the Province Laws are Obsolete and useless & others by frequent Additions, Explanations, Ammendments & Alterations are rendered difficult to be Understood and are variously construed and practiced upon.

I am not to Confine you to any particular Form in your proceedings but I must recommend to you a Plan which has been executed by one of his Majestys other Governm^{ts} with very good Success; A Copy of which shall also be laid before you.

It is generally allowed that there is no juster way of forming a Judgment of the Wisdom of any People than by their Body of Laws: It behoves you therefore to give the greatest Attention to what I now propose to you: And as it is a Work that will require much Time & close Application you cannot too soon engage in it.

S. PHIPS.

1753

SECOND MESSAGE OF LIEUT.-GOV. PHIPS ON THE SAME SUB-
JECT.

Jan. 3, 1753. *Gentlemen of the Council and House of Representatives:*

Several Weeks have passed since I laid before you an Instruction from the Lords Justices, ordering me to recommend to you a Revisal of the Laws that are now in Force in the Province; but no one Step has yet been taken, as I know of,

by either House in Consequence of my Message: I cannot let the Court rise, without again putting you in mind of it and urging you to a Compliance therewith, as soon as may be.

S. PHIPS.

[The council passed an order for a joint committee to prepare the draught of an answer to the foregoing messages; but nothing further appears of record.]

1754

FIRST MESSAGE OF GOV. SHIRLEY ON REPRINTING THE PROVINCE LAWS.

Gentlemen of the Council and House of Representatives. Jan. 18, 1754.

In December 1752, The Lieutenant Governor (then Commander in Chief of the Province) laid before both Houses an Additional Instruction, which he had received from the Right Hon^{ble} the Lords Justices of Great Britain, directing him jointly with the Council & Assembly, to consider and revise all and every the Laws, Statutes and Ordinances which are in force within this Province, Except such as relate to private Property, or are any wise of a private Nature, and in lieu thereof, to frame a compleat and well digested Body of New Laws, under the Regulation set forth in the Instruction, and upon the Plan recommended in the Message and to transmit it to the Right Hon^{ble} the Lords Commission^{rs} for trade and Plantations in Order to be laid before his Majesty in his Privy Council for his Royal Approbation or Disallowance It appears, Gentlemen, from the Books of the General Court, in the Secretary's Office, That on the 4th of January following Nothing having been Acted upon this Matter in the Assembly, the Lieutenant Governor sent a second Message to both Houses, Moving them to take it under Consideration; And the Council, on the same day, appointed three of their Members to be together with such of the House of Representatives as they should join with them a Committee to prepare the Draught of an Answer to the Lieut. Governors two Messages which Vote was sent down to the House of Represent^{rs}, for Concurrence & lodged there: But Nothing being further done in the Affair by either of the Houses.

The Lieutenant Governor by his Letter to the Lords Commissioners of Trade acquainted them with his Proceedings upon the aforesaid Instruction, and the Result of them Whereupon their Lordships, after laying this Account before the Right Hon^{ble} the Lords of the Committee of his Majestys most Hon^{ble} Privy Council for plantation Affairs, directed

me to press you upon my Return to my Government in the most Earnest Manner, to a compliance with his Majestys Pleasure in this Matter

To induce you to this, Gentlemen, Nothing can be wanting but a due Consideration on your part of the beneficial Consequences which will probably accrue to the Province from it

Nothing as is set forth in his Majestys Instruction can more effectually tend to promote Order and good Government, secure the Properties & Possessions of his Majestys Subjects, and prevent litigious Controversies and Disputes than a clear and well digested Body of Laws. On the other Hand the Perplexity which must arise in a Body of Laws where many of them have from time to time been either entirely or in part repealed, are expired altered, amended or explained hath a direct Tendency to produce the contrary Effects

That such is the present State of the Laws of this Province, whoever will cast their Eyes over the Province Law Book and examine into the Number of Acts made for repealing altering, amending explaining or revising not only single Acts, Paragraphs or Clauses of Single Acts, but for the Explanation and Alteration of some Clauses or even Sentences and the Repealing of others contained in several Acts of different Natures, all promiscuously blended together in the same Explanatory Act; and particularly, the Number of Acts made in further Addition to and Explanation of sundry Acts, all made in Addition to the same original Act, and some of them in Addition to each other, must soon be Convinced, as he will also be of the expediency of Collecting the several Scattered Acts, Paragraphs and Sentences of Acts relating to the same Matter into a Clear well digested Body of Laws, in order to render them more plain & Useful to the Community in general, for whose Benefit they are made; and prevent litigious Disputes which may arise from Mistakes occasioned from their present indigested State

As one Instance, Gentlemen, in particular, of the present confused State of the Province Laws, I would observe to you that no less than eleven Acts have been made in Addition to or Explanation of the Act passed in the fourth Year of King William and Queen Mary for the Settlement of the Estates of Intestates, besides several Acts relative to it, which contain other Matters likewise, blended together, Insomuch that it requires a critical knowledge in the Law rightly to comprehend the whole Effect of these several Acts which are rendered so obscure by the Multiplicity and the inconnected Order they at present ly in that several of the Judges of Probate within the Province seem to practice variously upon them in their respective Counties.

Many Instances of this kind may be pointed out in the Prov-

ince Law Book ; but every Gentlemans own observation will readily suggest them to him so that I believe it will be easily allowed that the Reducing of the Province Laws now in force, from the perplexed obscure state in which the Multitude of Additional or Explanatory Acts, and others made for the Alteration Amendm't. or Revival of them hath involved them, into a regular well digested clear Body of Laws would be greatly Serviceable to his Majesty's Subjects within this Province in particular & is a very desireable Work. And what reasonable Objection can be made, Gentlemen, to your entering upon the Execution of it, I cant after the most mature Consideration I am able to give this Matter, apprehend. You will be under no Obligation in Executing it to make any Alteration in the Substance of your present Laws : all that is proposed is that the three Branches of the Legislature should consider and revise such of them as are not of a private Nature and in Lieu of them frame & pass a compleat and well digested Body of new Laws. In doing this, you will exercise the same Liberty and Freedom of Judgment, which former Assemblies at first used in the Enacting of the present Laws : Such of them as you shall judge it Advisable to continue in their present Form, you will re-enact in the same Words in which they were at first passed : And as to the new Framing of such as you shall think it best to have altered by collecting the several additional or explanatory Laws, Clauses or Sentences of Laws relative to the same Matter, which is at present scattered in a confused manner in the Law Book, into one or more well digested Act or Acts in order to make them more clear and easier of Construction to the Inhabitants in general and consequently of greater Utility to the Community, You will use your own Discretion, by which you are to be regulated solely in compiling the new Body of Laws.

And after passing them, I am ordered by his Majesty to transmit each of them separately under the Seal of the Province together with very particular Observations thereupon to the Lords Commissioners for Trade and Plantations in order to be laid before his Majesty in his Privy Council for his Royal Approbation or Disallowance which is the Condition prescribed in your Charter with regard to every Law that is passed in the Province in order to its receiving his Majesty's final Sanction or Disallowance.

It is therefore most evident, Gentlemen, that your Compliance with his Majesty's Royal Pleasure in this Case will not have the least Tendency to infringe upon your Charter Privilege, granted for the framing and passing of Laws for the Government and Welfare of his Majesty's Subjects within this Province Neither can I foresee any Inconvenience which can

attend it. As to what some Gentlemen have thought that in Case any part of the new Body of Laws shall be disallowed by his Majesty the whole will be void I don't apprehend there is any danger of that; for the Body is to be composed of several single Acts, which are to be transmitted separately, each under the Seal of the Province, for his Majesty's Approbation or disallowance: So that th'o his Majesty should disallow of some, that could not affect the others which he should approve of; but they would finally have their intended Force and Effect. If indeed, as I have heard many imagine, the present Laws w^{ch} may be repealed by any of the new Ones should be absolutely vacated by the repealing Clauses in those Acts, so that in case of his Majesty's disallowance of those new Laws, the old Laws repealed by them should not be revived upon such disallowance, And the Consequence w^d be that the Province will loose the Benefit of its old Laws as well as of the new ones: That would indeed be a very considerable Objection against venturing to compile a new Body of Laws: But that will appear upon Consideration to be a manifest Mistake for it is well known that in the common case of Passing any new Law for the alteration or repealing of a former Law, If his Majesty disallows the new one, the alteration or repeal of the former Law thereon contained is disallowed too, and that the Effects of such disallowance is to restore the old Law to its former Force and Vigour.

It is true indeed, that, notwithstanding this, that if any of the new Laws should immediately take Effect upon their being passed here and be acted upon for two or three years, and be finally disallowed by his Majesty, Inconveniences might arise from the Operation of them during the time which shall intervene between the Passing of them by the Legislature of the Province and his Majesty's disallowance of them: But such Inconveniences are effectually guarded against by the Provision made in his Majesty's Instruction which directs that a Clause shall be inserted in every one of the new Laws to prevent their taking Effect untill they shall receive his Majesty's Royal Approbation or Disallowance: So that the Laws now in being will remain in their present Force until his Royal Pleasure shall be known: And not the least Risque will be run of any Inconvenience in the Case.

As to any Jealousies, Gentlemen, That an Attempt may be made, upon this Occasion, to introduce Alteration into any of the new Laws; It is expressly declared in his Majesty's Instructions, that they are to be transmitted only to receive his Majesty's Royal Approbation or Disallowance, and there is no more foundation for such a Jealousy, than there is in the ordinary Case of transmitting Home any single Law what-