

**THE SENATE OF
MASSACHUSETTS: AN
HISTORICAL SKETCH**

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The Senate of Massachusetts: an historical sketch by Robert R. Bishop

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ROBERT R. BISHOP

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BY
Roberts
ROBERT R. BISHOP.

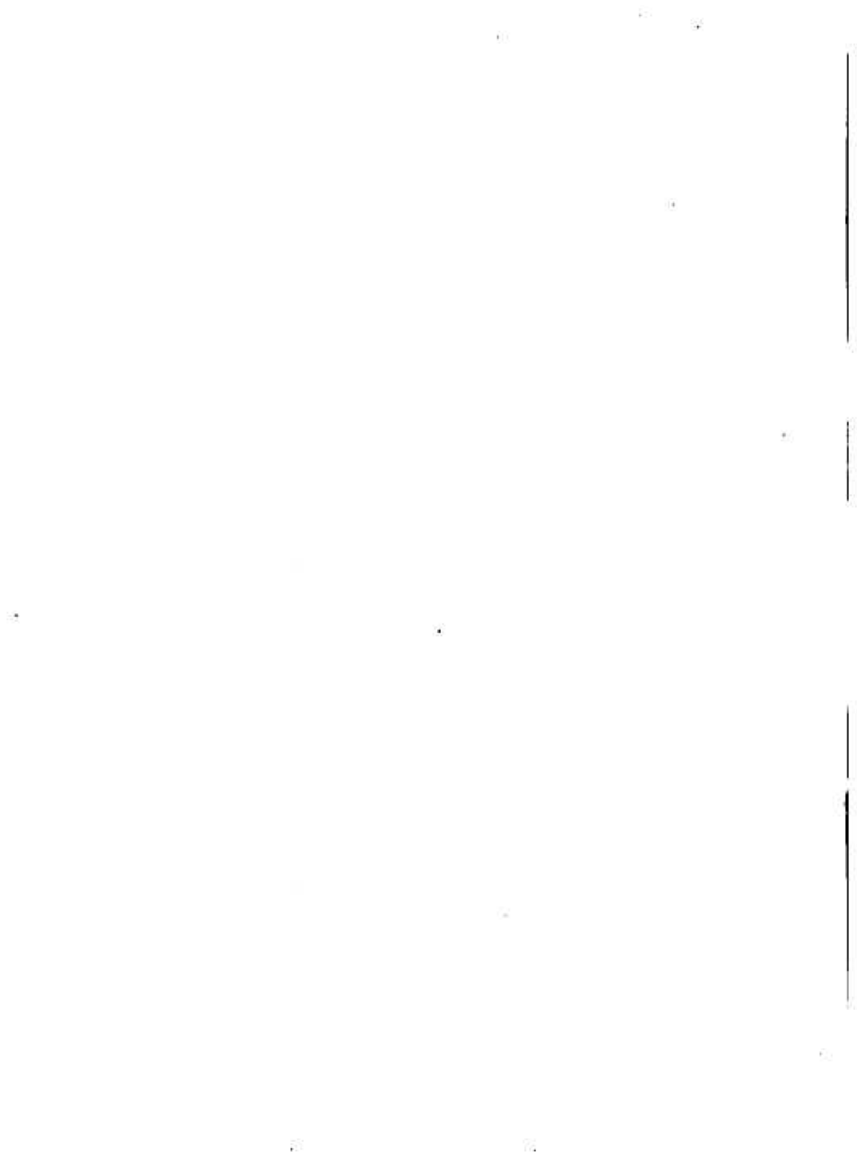
[REPRINTED FROM MEMORIAL VOLUMES UPON THE MASSACHUSETTS STATE GOVERNMENT.]

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1882.

THE following sketch was written in fulfilment of a promise made to the Clerk of the House of Representatives, for insertion in memorial volumes concerning the State Institutions and Government, prepared under his editorship. It is only entitled to separate publication as containing in connection facts brought out from many separate hiding-places in old sources of information. It is a sketch without pretension to completeness.

R. R. B.

May, 1822.



THE SENATE.

CHAPTER I

Provisions of the First Charter.—Court of Assistants.—General Court.—Governor, Deputy Governor, Assistants, and other Officers, how chosen.—All Legislative and Judicial and Many Executive Functions reposed in the General Court.—Other Powers gradually eliminated and Legislative retained.—Separation of the Departments of Government.—Whole People participated in Legislative and Judicial Power in the Beginning.—Our Government the Growth and Perfection of a Principle existing from the Beginning.—Powers given to Towns to send Deputies.—Attendance by Deputy or Whole Body of Freemen optional at first.—General Court sat as One Body.—Deputies retired for Consultation.—Controversy between Mrs. Sherman and Captain Keayne.—The Question whether the General Court constituted One Body to act by Majority, or whether Assistants and Deputies had a Negative Vote upon Each Other.—Winthrop's Views and Arguments.—Reference of the Question to the Elders; their Decision.—Two Branches in Fact.—The Next Step inevitable; Separation and Two Branches in Form.



HE Charter granted by King Charles the First, by which the Governor and Company of the Massachusetts Bay, in New England, were established as a "body corporate and politique," provided that there should be "one Governor, one Deputy Governor, and eightene

Assistants of the same company," to be elected yearly by the freemen of the company. It further provided,—

"That the said Governor, Deputie Governor, and Assistants of the saide Company, for the tyme being, shall or maie once every moneth or oftener at their pleasures, assemble, and houlde, and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their affaires. And that any seaven or more persons of the Assistants, together with the Governor or Deputie Governor, soe assembled, shalbe saide, taken, held, and reputed to be, and shalbe, a full and sufficient Courte or Assemblie of the saide Gompany for the handling, ordering, and dispatching of all such buysinneses and occurrents as shall, from tyme to tyme, happen, touching or concerning the said Company or plantacon."]

Further,—

"And that there shall or maie be held and kept by the Governor or Deputie Governor of the said Company, and seaven or more of the said Assistants, for the tyme being, vpon every last Wednesday in Hillary, Easter, Trinity, and Michas termes respectivelie for ever, one greate, generall, and solempe Assemblie, which four Generall Assemblies shalbe stiled and called the Foure Greate and Generall Courts of the saide Company: In all and every or any of which saide Greate and Generall Courts soe assembled. Wee Doe, for vs, our heires and successors, give and graunte to the said Governor and Company, and their successors, That the Governor, or, in his absence, the Deputie Governor, of the saide Company for the tyme being, and such of the Assistants and freemen of the saide Company as shalbe present, or the greater number of them soe assembled, whereof the Governor or Deputie Governor and six of the Assistants, at the least to be seaven, shall have full power and authoritie to choose, nominate and appointe such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into the same to admit, and to elect and constitute such officers as they shall thinke fitt and requisite for the ordering, mannaging, and dispatching of the affaires of the saide Governor and Company and their successors, And to make lawes and ordinnces for the good and welfare of the saide Company, and for the government and ordering of the saide landes

and plantacon, and the people inhabiting and to inhabite the same, as to them from tyme to tyme shallbe thought meete. Soe as such lawes and ordinances be not contrarie or repugnant to the lawes and statuts of this our realme of England."

The Charter further provided that the Governor, Deputy Governor, Assistants, and all other officers of the Company, should be chosen on the last Wednesday of the Easter term, in every year in the General Court, "by such greater parte of the said Company for the tyme being then and there present as is aforesaide." This was strictly an election by the whole body of the freemen.*

Under these provisions of the Charter, all legislative and judicial functions, and many also of an executive character, were reposed in the General Court; while the Governor was created a member of it, and, in the working of the government under the Charter, his power and influence, which were great, were largely exerted through it. The General Court established by this instrument was thus more than the foundation of our Legislature; one after another the powers and duties not legislative have been eliminated, until the General Court, which has succeeded and grown out of the original, retains those of a legislative nature only.

The General Court, comprising at the beginning the entire body of the people, possessed at that time, upon principle, the power of elimination, and after it ceased to comprise the entire body it exercised the same power; so that in process of time it worked itself free to a considerable extent toward

* The General Court comprising the entire body of the freemen, a vote by majority of those assembled is a vote of the freemen. When afterwards (May 14th, 1634) provision was made for sending deputies to the General Court, the election of magistrates and other officers, "wherein," as the record says, "euy freeman is to gyve his owne voyce," was excepted from the business over which the deputies had power, and the election remained as before with the freemen.

one department of government, and established other provision for the other departments. In other words, it began and partly completed the process of resolution, which, by shorter and more violent methods, has now resulted in the separation of the several departments, so familiar, and, as we believe, so perfect.

For it must not be forgotten that our freedom and the frame of civil society, which gives it, as we believe, protection and prosperity, are the growth and perfection of principles transmitted from one century to another through many generations, but containing, even from the beginning, the seed of its present fulfilment. To trace the present through the past into the remoter past, is a grateful study to every lover of our institutions. From this also promise may be gained and clear hope of the future.

The whole body of the people thus participated in the exercise of all legislative and judicial power in the beginning,* and undoubtedly the General Court sat in one body. Whether it constituted a single body in legal effect, so as to act by a majority of the whole number of members present (otherwise than in the elections provided for by the Charter), will be considered hereafter. The sessions of the General Court provided for in the Charter were four in number, at Hilary, Easter, Trinity, and Michaelmas.

Besides the General Court, provision was made in the Charter for a Court or Assembly of the Governor, Deputy Governor, and Assistants, monthly or oftener. This assembly was termed the Court of Assistants, its action was given the same force as if taken by the General Court, and its object was to afford provision for the transaction of affairs *ad interim* the sessions of that Court. The idea was two-

* See Ch. J. Parker's observations in *Commonwealth v. Holmes*, 17 Mass. 339.