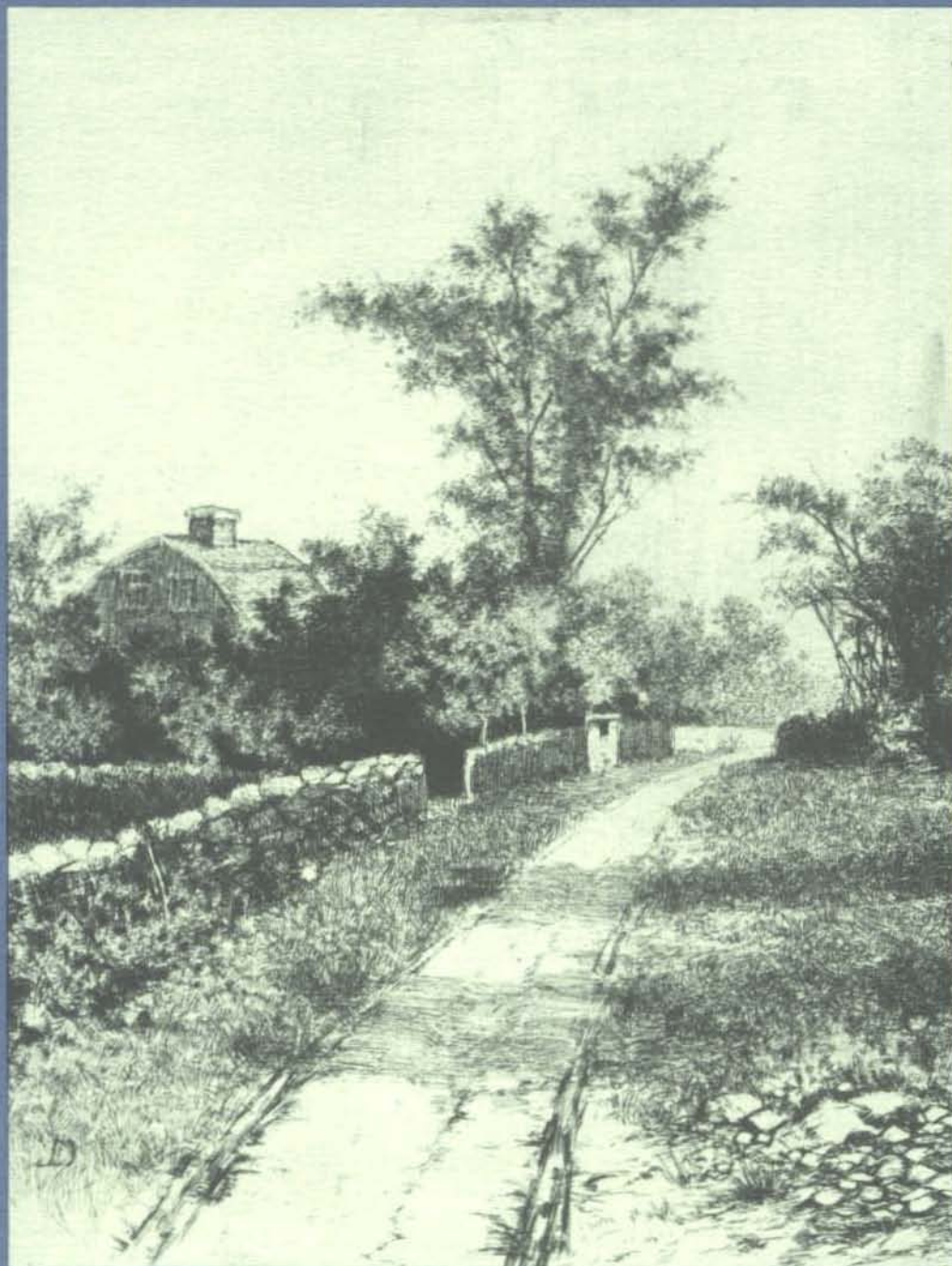




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Roger Williams and John Winthrop: The Rise and Fall of an Extraordinary Friendship

Glenn W. LaFantasie

Perhaps it was the fading colors of the last leaves that were about to fall from the trees in Providence that brought to mind his long lost friend. In November 1677, during the autumn of his own life, Roger Williams looked back over the events that had led to his banishment from Massachusetts during a cold winter forty-one years before. The founding of Providence, he said, was an afterthought. "It is not true," he wrote, "that I was employed by any, made covenant with any, was supplied by any, or desired any to come with me into these parts." He had fled alone to Narragansett Bay on the advice of his old friend John Winthrop, whose "favor and countenance" he had enjoyed. It was Winthrop who had chosen the place where Williams could live beyond the long arm of the Massachusetts magistrates. It was Winthrop, "that noble soul," who had saved him from certain deportation back to England.

Yet it was also Winthrop, Williams recalled, who had been "carried with the stream" of opinion and had actually voted for his banishment from the Bay Colony. Williams, however, held no grudge for Winthrop's public condemnation of him. Together they had transcended their differences and had forged a pure bond of friendship over the years. John Winthrop had remained a "true friend" until his dying day, said Williams, and for this Williams would forever honor Winthrop's memory.



The Banishment of Roger Williams. Oil painting by Peter Rothermel, circa 1850. RIHS Collection (RHi X3 3102).

Glenn LaFantasie is editor/director of the Papers of Albert Gallatin at Baruch College, City University of New York. This article, in slightly different form, was delivered as a lecture at

the Rhode Island Historical Society on 20 November 1988, when Mr. LaFantasie was inducted as a fellow of the Society.

Their friendship, though, had more than its share of ups and downs as it played itself out during the first two decades of New England's founding. "Friendship," wrote the Anglican minister Jeremy Taylor, "is the allay of our sorrows," but in the case of Roger Williams and John Winthrop, friendship seemed to be the very cause of their sorrows. There were times when mutual affection flowed straight from their hearts; there were other times when mutual animosity kept them hopelessly at odds. All in all, the friendship was a peculiar and often stormy alliance, a fragile relationship between two very dissimilar men who rarely saw things eye to eye.

No two men in early New England could have been in greater contrast. Born in 1588, John Winthrop was a moderately successful lawyer in London and a prominent member of the landed gentry in Suffolk, where he had been raised. He was a man who could easily show as much passion for his faith in God as he could for the love of his wife and children, though he maintained a cool distance between himself and most of his acquaintances. When the time came in 1629 to consider transplantation to New England, he did so by carefully and

logically weighing his choices. There was nothing impetuous about John Winthrop, and he decided to abandon England only after he had reached the inescapable conclusion that "the fountains of learning and religion" in his homeland had become so corrupted that all future generations would be permanently tainted "by the multitude of evil examples."

He reluctantly accepted his election as governor of the Massachusetts Bay Company, confessing secretly to his wife that he was not worthy, then concluding more confidently that "in all probability, the welfare of the plantation depends upon my assistance." The future of Massachusetts, he said, rested squarely on the shoulders of gentlemen who possessed "high quality, and eminent parts, both for wisdom and godliness," which he knew were traits of his own. As a leader, he strove constantly toward moderation, but his imperious manner—and his stern demeanor—often led him toward intolerance and self-righteousness. The piercing glare of his steely blue eyes was enough to let everyone know that he was a man who took power seriously. But more troubling to those around him was the obvious paradox of his character. John Winthrop seemed to run hot and cold, loving and compassionate one moment, reserved and aloof the next. No one could ever predict which way Winthrop's winds might blow.

The same could not be said of Roger Williams. His gusts always seemed remarkably steady and sure. The son of a merchant-tailor in London, Williams was born around 1603 and was only a few years older than Winthrop's eldest child. His family occupied a rung of the social ladder below that of Winthrop's influential gentry, but Williams overcame the disadvantages of class by acquiring a first-rate education at Pembroke College, Cambridge, and a respectable living as a chaplain to the Masham family of Essex, where he mingled freely among the Barringtons, Cromwells, Whalleys, and other well-connected Puritan clans. Essex was a hotbed of Puritan sentiment, and it was there that Williams began to sharpen his deep religious opinions and speak his mind openly and forthrightly, even when his ideas did not conform to



John Winthrop. Stipple engraving by Samuel Harris. RIHS Collection (RHi X3 1575).

prevailing doctrine or when silence might have proved the most prudent course.

In his youth, he had learned that the courage of one's convictions was a virtue that could not be compromised. His absolute faith in God, his anxious longings to discover God's truth through devoted worship, propelled him to declare his heartfelt beliefs and denounce error and injustice wherever he should find them. He believed his calling from God obliged him to make the poundings of his mind and heart plainly known to all. Throughout his career as a dissenter, he proudly acknowledged that he never "hid within my breast my soul's belief." Unlike Winthrop, he felt uncomfortable occupying the middle ground. He pursued the quest of truth in leaps and bounds, realizing that his search could easily take him beyond moderation into the extremes of unconventionality. "What I believe," he later explained with appropriate allusions to Scripture, "therefore (as David and Paul once spake) I freely speak." Yet he was mindful that such boldness and honesty might offend rather than persuade, so he tried to temper his outspokenness with a gentle touch of Christian kindness. As a result, Williams's fiercest enemies begrudgingly conceded that he was, despite his faults, a warm and likable man. He was, as one contemporary critic put it, "the sweetest soul I ever knew."

What drew Williams and Winthrop together, despite their striking differences, was their shared Puritan dream of finding a closer union with God in the unfettered wilderness of New England, far removed from the shackling dictums of persecuting kings and archbishops. In fact, they met for the first time in July 1629 at Sempringham, England, where plans were being laid by the Massachusetts Bay Company for a settlement in the New World. This first encounter, however, seems to have been uneventful; neither man recorded the meeting for posterity or referred to it in their later correspondence. At the time, they could not imagine the ways in which their lives would become so fatefully intertwined.

The friendship itself grew slowly, like vines on a trellis inching closer and closer together. For nearly

two years after the Sempringham meeting, they had no direct dealings with one another, though the Puritan network in Essex must have been buzzing with reports of their activities. In 1630 Winthrop set sail with other Puritans for New England, where they established the settlement of Boston as a community of saints bound together in Christian fellowship. Their new home in Massachusetts would be, said Winthrop, "as a city upon a hill," where the "eyes of all people are upon us." As Winthrop struggled to ensure the survival of the Boston settlement, Williams resisted the "New England call" by contenting himself with his duties as chaplain in the Mashams' manor. His religious views, however, began to harden, making him fear that his nonconformist beliefs would expose him to the persecutions that other Puritans had suffered under the Anglican yoke of Charles I and Archbishop William Laud. By the autumn of 1630 Williams had reconsidered emigration and formulated a plan to become a missionary among the Indians of New England. "My soul's desire," he admitted almost fifty years later, "was to do the Natives good," and with this hope he and his wife, Mary, took ship from Bristol in December, 1630.

John Winthrop celebrated Williams's arrival in Massachusetts by calling him "a godly minister." Though the colony was about to lose one of its prominent clergymen, John Wilson, who had decided to return temporarily to England, Winthrop could find divine comfort that the loss would be offset by Williams's unexpected appearance. Despite the colony's religious purpose, godly ministers were in especially short supply at a time when they were needed the most. The winter of 1631 had brought starvation and death to the Massachusetts settlers, and Winthrop realized that the Boston church could ill afford a deprivation in spiritual leadership. Now Williams had come in a ship loaded with supplies, which meant that neither souls nor mouths would go hungry. For Winthrop, it was a time of jubilation.

The rejoicing did not last long. Winthrop soon discovered that Williams was not the godsend he had hoped for; beneath Williams's exterior sweetness and godly demeanor was a fixity of purpose, a

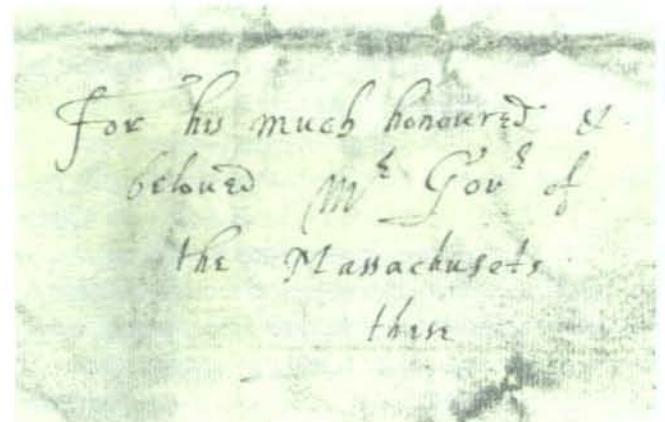
rigid commitment to principle, that caught Winthrop totally by surprise and raised a clamor among the members of the Boston church. The trouble began when the Boston congregation unanimously invited Williams to fill Wilson's vacated post as teacher in the church. To the amazement of the church members, Williams declined the offer because he could not, as he explained, "officiate to an unseparated people," by which he meant that the Boston Puritans were not as pure as he would have liked, for they had failed to separate themselves fully from the Church of England. To make matters worse, Williams also denied the authority of civil magistrates in Massachusetts to punish any violations of God's first four commandments.

Winthrop was appalled. It was bad enough that Williams had refused the church's invitation, but to do so on separatist grounds raised a specter of dissent that threatened to undermine Winthrop's own aspirations for a unified and harmonious community of saints in Massachusetts. In Winthrop's opinion, the dangers of separatism—of embracing religion so completely that one might easily lose touch with the world—were far worse than the supposed corruptions of the English church. In a sermon delivered in 1630 to his fellow Puritans aboard the ship *Arbella*, Winthrop had declared that their survival in the New World would depend on a "bond of love" among them. There could be no room for selfish interests: "The care of the public must oversway all private respects."

Although Williams's separatism could, if unleashed, splinter the community's religious and political cohesion, Winthrop did not respond to the preacher with the might of his legal authority. Instead, he chose to deal with Williams quietly and with restraint by writing a brief treatise on the sins of separatism, a treatise indirectly refuting all of Williams's arguments. Winthrop's paper was not a friendly disclaimer; it was a strong dose of paternalistic admonition. Apparently the device worked. Williams, realizing that his breach with the Boston church was irreparable, announced that he and his wife were moving north to Salem, the colony's oldest settlement.

If Winthrop thought a crisis had been averted, he was sadly mistaken. In April 1631 he heard disturbing news that reawakened his fears about Williams. The young clergyman had been asked again to serve as a church teacher, this time by the Salem congregation, and it seemed likely that he would accept the offer. To head off the appointment, Winthrop called on his fellow magistrates, the venerable lawmakers of the Bay Colony, who dashed off a letter informing the Salem churchgoers of Williams's unacceptable behavior in Boston. Intimidated by the General Court's intervention, the Salem church decided to play it safe and withdraw Williams's nomination. Williams, in turn, withdrew from Salem and headed south to Plymouth, where the Pilgrim separatists worshiped without interference from the Massachusetts Puritans. For a time Winthrop could breathe easy again.

At Plymouth, Williams spent his time planting crops, trading with the Indians, studying local Indian dialects, and steering clear of controversy. He served in the Plymouth church as an assistant to the pastor and, as Governor William Bradford reported, "exercised his gifts" in public preaching. For more



The superscription of a letter from Williams to Governor Winthrop, May 1639. RIHS Collection (RHi X3 6276).

than a year he appears to have had little contact with Winthrop, who was busy warding off political attacks in Massachusetts that were aimed at reducing his magisterial authority.

Absence seems to have made their hearts grow fonder. By the autumn of 1632 the two men were exchanging friendly correspondence in which they discussed uncontroversial religious matters and Williams's burning desire to convert the Indians to Christianity. They also worked out some polite business arrangements by which Winthrop agreed to purchase cattle for Williams on credit.

But there was more to their relationship than mere politeness. During the time of their separation from one another, their friendship actually thrived and prospered. There was, however, a peculiar quality to their friendly relations, an emotional distance that deprived them of true intimacy. Williams addressed Winthrop like a son addressing a father, but Winthrop hid behind his wall of aloofness as a father might do with an errant son. The wall, however, did not stop Williams from pouring forth his affection. Buoyant with his good feelings for Winthrop, Williams thanked the governor for his "care and love."

The buoyancy was fleeting, however. In October, 1632, Winthrop appeared in Plymouth leading a delegation of visitors from the Bay Colony, and suddenly he and Williams were again at odds. At a Sunday afternoon meeting, attended by the Plymouth church members and their Massachusetts guests, Williams argued that the word *goodman*, a popular title of courtesy used in place of *mister*, should be reserved only for regenerate Christian men—those whose faith had demonstrated that they were truly and literally good men. His remarks provoked a wild debate: Plymouth churchmen and Boston guests bellowed their theological opinions from bench to bench in the meetinghouse. Then, in the midst of this pandemonium, Winthrop rose and spoke. Going to the heart of the matter, he dismissed the argument as a tempest in a teapot and declared that the use of *goodman* amounted to nothing more than an innocent "civil custom." With this pronouncement the debate was ended, and the meeting was promptly adjourned.

Winthrop and his friends quietly retreated from Plymouth, but the dust from the debate did not settle quickly. Williams's outspokenness had made his Plymouth neighbors wary of his religious views. As Governor Bradford observed, Williams "this year began to fall into some strange opinions, and from opinion to practice, which caused some controversy between the church and him." When the Plymouth church members refused to support "his own singular opinions," Williams asked to be dismissed from the church. William Brewster convinced the congregation to let him go, and Williams was on the road again.

He followed his own footsteps back to Salem, arriving there between July and November of 1633. This time the church welcomed him without hesitation and appointed him an unofficial assistant to the pastor, Samuel Skelton. For a while he remained out of touch with Winthrop and used his new position in the church to spread his opinions among the Salem parishioners. When the Bay Colony magistrates heard of his teachings, they braced themselves for another confrontation with Salem and its newly chosen spiritual leader. For the time being, though, they were willing to excuse Williams's rantings.

Up to a point, that is. In December, 1633, Williams reopened communication with Winthrop by sending him a treatise, which he had written in Plymouth, challenging the validity of royal land patents and denouncing the two English kings, James I and Charles I, who had deprived Indians of their rightful territories by granting lands to corporations like the Massachusetts Bay Company. Winthrop, who read the treatise and brought it to public attention, was shocked by Williams's bold arguments. In a forceful letter to John Endicott, the chief magistrate at Salem, the governor asked for help in persuading Williams to retract his statements. When Williams appeared before the General Court to answer the charges against him, he was suitably contrite, explaining to the assembled magistrates that he had written the treatise only for "the private satisfaction" of the Plymouth settlers. After promising not to repeat his offensive arguments, he was dismissed by the Court without

receiving an official censure. As far as Winthrop and the other magistrates were concerned, the case against Williams was closed.

They were wrong. After Samuel Skelton died in August 1634, Williams took over the pulpit of the Salem church, and his popularity among the parishioners seems to have made him headstrong and cocky: not only did he preach separatist doctrine, but he launched a series of new attacks against the Massachusetts oligarchy—attacks that emphasized the importance of individual conscience over coerced conformity and the duty of God's true believers to resist the persecution of civil authority. Sustained by the enthusiasm of the Salem churchgoers, he assumed the role of a frontline commander in the assault on Puritan intolerance and injustice, always staying one step ahead of his troops as he beckoned them forward. By the summer of 1635 the magistrates had haled Williams before the General Court three more times: first for reviving his campaign against royal patents; then for opposing oaths of submission to the colony; and then for preaching that magistrates had no authority to punish breaches of God's first four commandments. Each time the magistrates tried to convince him of his errors; each time they failed. In the pages of his journal, Winthrop recorded Williams's court appearances with a solemn detachment. But he revealed in his emotionless prose that he shared the magistrates' worst fears: Williams was leading the Salem church "into heresy, apostasy, or tyranny."

Something had to be done about Williams, and quickly. So far the General Court had either let him walk away with mild scoldings or relied on John Cotton and the other Boston ministers to handle him "in a church way." Nothing had worked to silence him. The man kept preaching and preaching, and with every sermon he became a more dangerous threat to the political and religious authority of the Boston magistrates. They could not afford to let his open defiance continue.

As the confrontations with Williams multiplied, Winthrop was forced to stand on the sidelines, unable to influence the proceedings or control their outcome. In May 1634 he had lost reelection as governor of the colony; though he sat as an assis-

tant in the General Court, he no longer held the reins of power in the colony. Even if he had, it is doubtful that he could have saved Williams from the punishment to come, or that he would have wanted to. In the summer of 1635 Williams revealed the extremes to which he was willing to go in his individualistic pursuit of pure worship, and in so doing he left moderates like Winthrop—and most of his own parishioners—far behind. He declared that the Massachusetts churches were "full of antichristian pollution," and he demanded that the Salem church must renounce the other churches in the colony. If his brethren refused, he said, he would be forced to withdraw from his own parish.

And withdraw he did, carrying with him only a handful of loyal followers but giving the General Court the excuse it needed to take decisive action. At the Court's October session, after hearing Williams debate his controversial ideas with the eminent Thomas Hooker, the magistrates decided that his presence in the colony threatened not only religious conformity but social stability as well. The governor, John Haynes, delivered a preface to the Court's punishment by invoking the words of St. Paul: "Mark them which cause divisions and offences, contrary to the doctrine which ye have learned, and avoid them." Then, with Winthrop peering down with his steely eyes from the magistrates' bench, where he and his colleagues had cast their ballots against Williams, the Court's sentence was proclaimed: banishment.

It was a harsh penalty, though the Court tempered it by granting Williams a grace period of six weeks before his final departure. The magistrates would soon regret their leniency. In January 1636 Winthrop heard that Williams, contrary to the Court's order, had been preaching in his home. There were also rumors, Winthrop said, that Williams was planning to escape from the magistrates' grasp by fleeing to Narragansett Bay. At once the General Court moved to arrest Williams and forcibly place him on a ship that was about to set sail for England.

Little did the Court know that it was Winthrop himself who had advised Williams to take refuge in



Roger Williams' Departure From Salem. Engraving by W. Measom. RIHS Collection (RHi X3 2223).

the wilderness and find a home at Narragansett Bay, where he would be safe from the jurisdictional reach of the Massachusetts Court. This time Winthrop's winds were blowing in two directions at once: publicly he voted with the other magistrates for Williams's banishment; privately he supplied the means for the preacher's escape. Like a father who knows his son must learn from the mistakes of youth, but who also tries to lessen the pain if he possibly can, Winthrop decided to deal with Williams in his own way and for his own purposes, carefully hiding his complicity from the eyes of his fellow magistrates. For Winthrop, it was a daring—and risky—gesture of affection. For Williams, it was an act of human kindness for which he would remain forever grateful.

Warned of the approaching sheriff, Williams quickly prepared for his flight. There was no time for elaborate planning, and just barely enough time to bid his wife and two infant daughters good-bye. Out into the night, through the shrouds of a howling winter storm, Williams slipped silently away from Salem and the clutches of the Boston magistrates. Cold, hungry, and tired, he managed to locate the Indian village of Massasoit, the Wampanoag chieftain, whom he had befriended during

his days at Plymouth; in this village, not far from the shores of Narragansett Bay, he spent the remaining weeks of the winter. When spring came, he was joined in exile by a small company of friends and their families. Together they organized a tiny, makeshift settlement on the eastern bank of the Seekonk River, though Williams soon learned that they had inadvertently chosen lands claimed by Plymouth Colony, which meant they must move on. In June 1636 Williams and his new neighbors crossed the Seekonk River, received a gift of land from the Narragansett Indians, and founded the town of Providence at the head of Narragansett Bay.

Having established a new home, Williams did not wait long to renew his correspondence with John Winthrop. In August he wrote asking Winthrop for "a word of private advice" about how he should handle newcomers to Providence who resented the fact that the original settlers were denying them a share of land and the right to vote. Ironically, Williams contemplated closing the town to any new settlers whom he deemed undesirable, apparently without realizing that such a policy would have resembled the requirement for conformity that he had left behind in Massachusetts. Unfortunately, Winthrop's reply has not survived, so there is no telling what advice he may have offered Williams, but it is certain that the exiled preacher did not close Providence to newcomers and that the town eventually decided, as Winthrop revealed in his journal, to ensure that "no man should be molested for his conscience."

Williams's letter to Winthrop in the summer of 1636 inaugurated a new phase of their friendship, a phase that would last for nearly a decade. Once again their lack of physical proximity seems to have improved their relations. Face-to-face contact between the two almost always had caused trouble in the past; now, with the space of fifty rough wilderness miles separating them, they enjoyed an era of good feelings in which their mutual respect and admiration were often gregariously expressed. In his frequent letters to Winthrop during the late 1630s, Williams assumed a deferential tone that smacked of a sugary obsequiousness. Occasionally such formalities created rhetorical thicket of



LANDING OF ROGER WILLIAMS

Landing of Roger Williams. Steel engraving by T. F. Hoppin in *The New Mirror* (New York), 27 January 1844. RIHS Collection (RHi X3 2036).

convolution that must have driven Winthrop to distraction. "I was also fearful," Williams wrote in one letter, "that mine own hand (having no commission from my heart, which is not mine but in the hand of its maker the Most High, to write you aught of my own return in spirituals), I say fearful that mine own hand might not be so grateful and pleasing to you: but being called upon by your message, and your love (your paper), I am emboldened."

There were, however, some pragmatic reasons for such excessive civilities. Realizing that Providence lacked political legitimacy because it had no charter, Williams looked to Winthrop to sustain vital lines of supply and communication with the outside world that Massachusetts could have otherwise cut off. Likewise, Winthrop needed Williams's friendship for practical purposes that were just as crucial for the Bay Colony's welfare. Though he had directed Williams toward Narragansett Bay in the first place, he did not particularly like the idea of so many religious dissenters living just over the border of his own colony, for like other Puritans he feared that radical doctrines promulgated in Providence might seep back toward Boston. He took comfort, however, in knowing that the

colonists at Narragansett Bay provided a useful buffer between Massachusetts and potentially hostile Indians—namely the Narragansetts and the Pequots—who occupied lands to the west. With Williams living at Providence, Winthrop felt that the Bay Colony's relations with Indians could be more effectively managed.

Indeed, Williams became Winthrop's eyes and ears in the Narragansett Country. Soon after the founding of Providence, when Massachusetts was readying itself for war against the Pequot Indians of Connecticut, Williams learned that the Pequots were tempting the Narragansetts into an alliance against the English settlers. With lightning speed, he traveled south from Providence by canoe to the main village of Canonicus and Miantonomi, the two chief sachems of the Narragansetts, and arrived there while negotiations with the Pequots were still going on. It was these Narragansett chieftains who had given Williams the lands at Providence for his settlement, and he used his personal influence to persuade them to reject the Pequot alliance and join forces with the Massachusetts Puritans. Then he spent a sleepless night in an Indian wigwam worrying that the Pequot ambassadors might try to

assassinate him. Unharméd, he returned safely home to relay news of his diplomatic victory to Winthrop.

During the Pequot War and the years that followed, Williams filled his letters to Winthrop, who had been reelected governor of the Bay Colony in 1637, with various reports of Indian comings and goings. Nothing seemed to escape his attention, and no piece of intelligence seemed too trivial to pass along to the governor and his council in Boston. Often apologizing to Winthrop for his prolixity, Williams kept him informed of Indian marriages, deaths, social customs, petty squabbles, suspected plots, and religious ceremonies. The activities of the Narragansetts were his primary concern, especially since Winthrop and the Boston magistrates believed that their Indian allies were breaking the league that Williams had so masterfully wrought between them. Over and over again, Williams defended the Narragansetts whenever the Puritan authorities doubted their sincerity and fidelity. When he took the Indians' side, however, he tried to reassure Winthrop that he had learned to deal with them "wisely as with wolves endued with men's brains."

Winthrop wasn't so sure. Convinced that Williams was being duped by the Narragansett sachers, and that his reports on their activities could not be trusted, Winthrop told him so. Williams was furious, and he shot back a sharp reply: "I am not yet turned Indian." He continued to supply Winthrop with valuable information about the Indians that no one else could have possibly gathered, but the governor read his reports with a growing suspicion that they amounted to nothing more than "shadows and fables."

It was not the only rift that divided them. Old differences over religion kept cropping up, straining the friendship as they had done in the past. A year after the banishment order, Winthrop wrote Williams a stern letter of admonition that was meant to awaken him to the errors of his ways. Having won reelection as governor of Massachusetts, Winthrop once again had donned the cloak of the austere authoritarian and sounded the refrains of a disapproving father. Williams, ever steady and true



Attack on the Pequot Fort. Woodcut by J. W. Barber. RIHS Collection (RHi X3 2035).

to his beliefs, was put off by Winthrop's officious tone. He minced no words in his reply and presented Winthrop with a long catalog of the Bay Colony's own errors, not the least of which was its unrelenting persecution of religious nonconformists. Although he assured Winthrop that "what is past, I desire to forget and to press forward," on several occasions he dredged up their numerous religious differences by sending the governor drafts of theological treatises he had written or by voicing impassioned objections to the Bay Colony's treatment of individual dissenters. For his part, Winthrop tried to cope with Williams's heretical beliefs and opinions, though he was certain that "at Providence . . . the devil was not idle."

Williams liked to think, however, that they had succeeded in putting aside their "differences concerning the worship of God and the ordinances ministered by Antichrist's power," and mostly he was right. When it came to personal matters, the two men were all that true friends should be: considerate, caring, and attentive. When Williams asked Winthrop to collect some debts for him in Boston, the governor was more than willing to

oblige. When Winthrop asked Williams to locate some Indian slaves who had fled into the wilderness, the preacher diligently used his Narragansett friends to track the elusive runaways down. In 1637 the two men even became partners in a business venture, jointly purchasing Prudence Island in Narragansett Bay in order to raise livestock there.

During the early 1640s, however, political events drove a deep wedge between the colonies of Massachusetts and Rhode Island, and Williams and Winthrop could not protect their friendship from the clash that ensued. By 1642 it was clear to Williams and a fair number of other settlers in the fledgling communities around Narragansett Bay that Massachusetts was determined to extend its jurisdiction over them, robbing them of their separate existence and their precious liberties. Winthrop himself admitted in his private journal that his colony's intent was to establish a protectorate over the Narragansett Country by drawing in "the rest of those parts, either under ourselves or Plymouth." To answer this threat, Williams set sail in 1643 for England, where he obtained a patent from Parliament that ensured the sovereignty of the Narragansett Bay communities.

While he was there, he wrote and published the first installments in what would become a protracted pamphlet war with John Cotton, the Boston minister, over the issues of religious toleration, separation of church and state, and the causes of Williams's own banishment. His most famous tract, *The Bloody Tenent of Persecution for Cause of Conscience* (1644), was a sweeping condemnation of the Massachusetts oligarchy and a dramatic account of his own particular search for spiritual purity; it was also a manifesto defending the right of each individual to decide, according to his own conscience, how best to worship God without interference from any civil authority. He declared: "There is a civil sword, called the sword of civil justice, which . . . cannot extend to spiritual and soul causes, spiritual and soul punishment, which belongs to that spiritual sword with two edges, the soul-piercing (in soul-saving or soul-killing), the Word of God."

Meanwhile, Winthrop was issuing a declaration of his own. In 1645 he delivered a "little speech on liberty" to the General Court in which he argued that magistrates should be allowed to exercise their authority without restriction or public criticism. There were, he told the people of Massachusetts, two kinds of liberty: natural liberty was an "enemy of truth and peace, that wild beast, which all the ordinances of God are bent against, to restrain and subdue it"; civil liberty, on the other hand, was "good, just, and honest," the very sort of liberty "wherewith Christ hath made us free." It was the banner of civil liberty that he raised high, and he warned the citizens of Massachusetts to follow no other flag: "If you will be satisfied to enjoy such civil and lawful liberties, such as Christ allows you, then will you quietly and cheerfully submit unto that authority which is set over you, in all administrations of it, for your good."

After returning from England with Rhode Island's new patent in hand, Williams sensed that something had changed in Winthrop's feelings toward him. Without completely understanding what had gone wrong, he extended a blanket apology to Winthrop for any offense he might have unwittingly committed: "Though I should fear that all the sparks of former love are now extinct, etc., yet I am confident that your large talents of wisdom and experience of the affairs of men will not lightly condemn my endeavor to give information and satisfaction as now I have done in this poor apology." Winthrop broke off all contact, but Williams could only guess the cause. "Sir, excepting the matters of my soul and conscience to God the Father of Spirits," Williams wrote in despair, "you have not a truer friend and servant to your worthy person and yours, nor to the peace and welfare of the whole country, than the most despised and most unworthy, Roger Williams."

But the sparks, as he had suspected, were truly doused. Receiving no reply to his apology, Williams stopped writing to the governor; Winthrop attempted no communication and made no reference to Williams in the remaining entries of his journal. No longer could Winthrop tolerate the zeal with

which Williams expressed his religious beliefs; no longer could he condone the political threat that Williams and his colony of outcasts posed for Massachusetts. He would abandon for good this wayward son, cast him adrift with no good-byes and with no apparent remorse.

Their silence persisted over the next four years and was made irrevocably permanent when Winthrop died on 26 March 1649. When he heard the news, Williams cried no public tears, spoke no words of grief. The mourning would come later.

It came, in fact, many long years later, when Williams was old and facing his own inevitable demise. To Winthrop's eldest son, he lamented the loss of his friend, whom, he said, "I did ever from my soul honor and love." In other letters he proudly recalled the close friendship that he and Winthrop had shared. Winthrop, he claimed, had felt a special affection for him and had overlooked their many differences of opinion, even admitting to him on one occasion that the New England Puritans had "often tried your patience, but could never conquer it." It was a friendship that, for better and for worse,

had altered their lives in ways they could not have anticipated and that had shaped crucial events in the early development of New England. Through it all, Williams held dear to his heart the belief that Winthrop had "personally and tenderly loved me to his last breath."

In the end, Roger Williams could not admit to others—or to himself—that the friendship had ended suddenly and tragically for reasons that were never made plain. Though the sparks of their friendship had certainly faded four years before Winthrop's death, Williams's devotion to the man who had directed his steps toward Narragansett Bay remained strong and true until his own last breath in 1683. His adoration was like the love of a son for a departed father—heartfelt, worshipful, beatifying. Williams could not let go of the man who had befriended him and, without warning, had abandoned him. While he clung to the memory of Winthrop's kindnesses, pushing out of his mind the many storms that had rocked their relationship and had made it founder, he recalled their friendship not as it had been but as he had always wanted it to be.

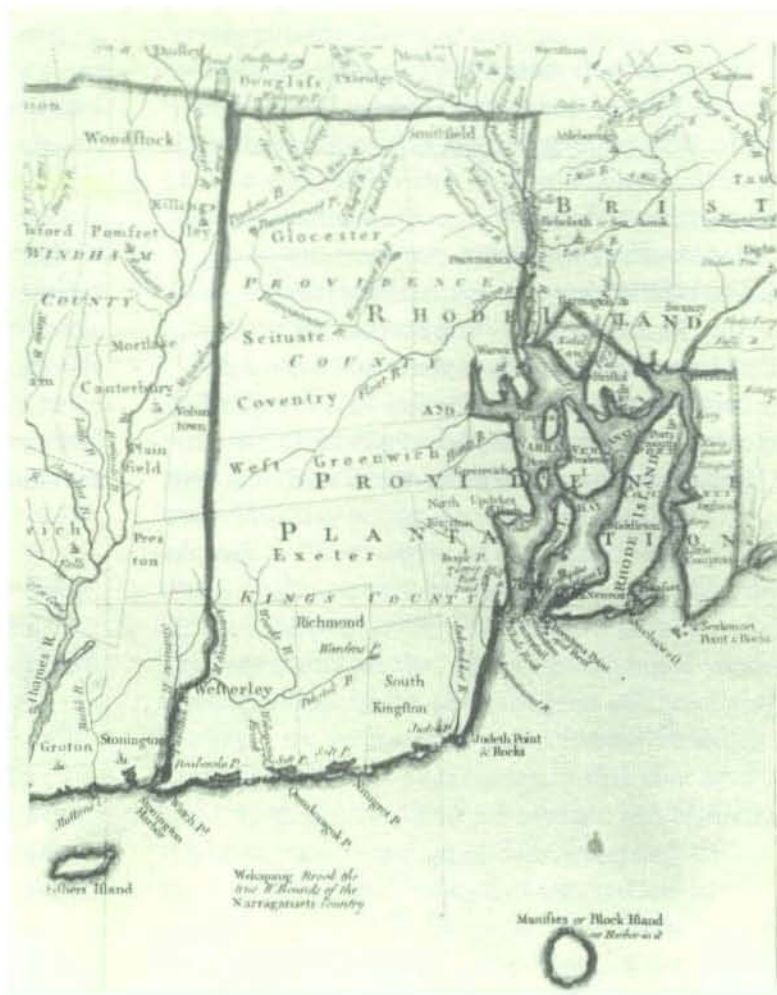
Roger Williams

Why Is There a Kent County?

Sydney V. James

Kent County lies there on the map, a wide belt across Rhode Island, maybe with a star in a circle, like a rhinestone in an off-center navel, to mark the location of its courthouse in East Greenwich. Signs along the highways direct anxious drivers to the county hospital. Kent County is a fact, and as such usually goes unquestioned.

Yet alone among the counties of Rhode Island, it has no obvious historical reason to be. Newport and Providence counties recognized the two original centers of settlement and their rise to centers of population and trade. Washington County, better known under its nickname of South County, used to be King's County. Under that name it commemorated the decision by a royal commission in 1665—futile, as it turned out—to end the jurisdictional conflict between Rhode Island and Connecticut by making the Narragansett Country the King's Province under Rhode Island's administration. Bristol County politely saved the pride of Bristol as a county seat after that town was severed from Bristol County, Massachusetts, in 1747.¹ Rhode Island gave the town a little county of its own, consisting of part of the territory taken



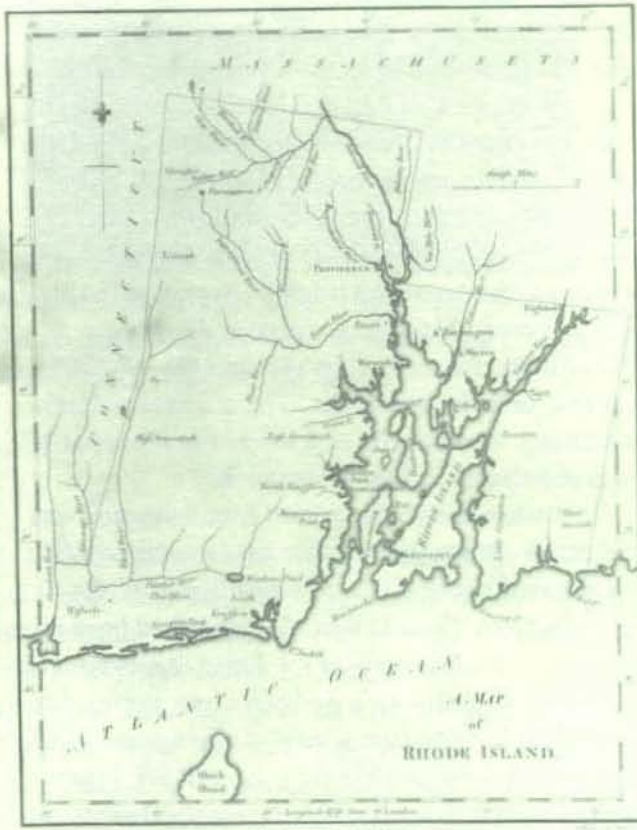
Although set off by the General Assembly in 1750, Kent County is not shown in this detail from an English map drawn by Thomas Jeffreys in 1755. RIHS Collection (RHi X3 6271).

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1. Historiographical objectivity requires acknowledgement that the motivation is conjectural.

from Massachusetts in that year. Kent, however, had no such foundation.

Neither was it a result of abstract calculations of usefulness. Much of the thinking and passion behind the creation of Kent County is lost. Some can be guessed. The politics and litigation surrounding the birth contain valuable clues. If the surviving information does not make a watertight



"A Map of Rhode Island," in J. Morse's *The American Geography* (London, 1794), is the earliest printed map of the state. Kent County does not appear on a map until Caleb Harris's "Map of the State of Rhode Island" in 1795. RIHS Collection (RHi X3 6272).

2. Henry David Thoreau, *Journal*, ed. Bradford Torrey, in *The Writings of Henry David Thoreau*, 20 vols. (Boston and New York, 1906), 8:94.

3. The colony in 1703 decided on division into two counties, mainland and island. See John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England*, 10 vols. (Providence, 1856-63; hereafter abbreviated to *Recs. of R.I.*), 3:477-79. The decision at that time had vague

case, still, as Thoreau put it, "Some circumstantial evidence is very strong, as when you find a trout in the milk."²

The county got its place on the map as a product of the ambitions of the extraordinary town of East Greenwich and the feistiness of a leading citizen. The story began in the usual somber way of historical processes but led to a tumult of litigation in which grim tenacity turned the courtroom drama into a burlesque. That culmination was a long way off when Rhode Island started to deliberate on counties in a serious way in 1728.³ Then, the plan was to create two counties on the mainland, leaving the islands as a third. East Greenwich made trouble from the start. Disputes arose over whether it was to be in the northern or southern county and over how many jurors it should supply.⁴

The real question for East Greenwich, however, was whether it could get to be the shire town of the southern county, a prize it wanted avidly, probably in order to promote itself as the business center on the west side of Narragansett Bay. To get its way, it had to defeat its obvious rival, South Kingstown, which had the advantages of wealth and roughly central position, if not a good port. East Greenwich, with the wrong location and only a mediocre port, hardly stood a chance and became a pawn in the legislative wrangling over the dividing line and subsidiary matters, such as the location of the mainland county courthouses. From the skeletal notations in the *Journal of the House of Deputies*, it is impossible to figure out just how the maneuvers worked. Possibly the upper house backed putting East Greenwich into the southern county, maybe only as a means of bargaining, while the deputies generally held the opposite side. At a joint session in February 1730, the swaps resulted in making South Kingstown the shire

terms and applied only to county courts (if indeed to anything at all) without stipulating who was to sit on the bench or in the jury box or what competence the tribunals might have. If anything came of this decision, it does not appear on the record.

4. *Journal of the House of Deputies*, State Archives, Providence, 2 Nov. 1728, 19 Feb. 1728/29, 10 May 1729, 20 June 1729, 21 June 1729, 24 June 1729, 31 Oct. 1729, 1 Nov. 1729, 25 Feb. 1729/30.

town in the southern county, Providence the shire town in the northern county, and drawing the line south of East Greenwich.⁵

There the frustrated town remained until fear joined with ambition to motivate it to a successful campaign for a county of its own. A horrifying judgment by the county Inferior Court, sustained by the colonial Superior Court, suggested that any alternative would be better for East Greenwich than remaining the tag end of Providence County.

The excitement got going in 1747, when a Warwick man named John Rice sued a pair of brothers in East Greenwich, John and Thomas Peirce (or Pierce or Pearce). He took his case to the Providence County Inferior Court of Common Pleas. Rice was a man of middling prominence. He had held a few public offices, including a commission in the militia. More interesting, his son was the sheriff of Providence County, so probably the family was firmly entrenched in the more successful of the two political parties then contending for control of the colonial government. The Peirces were described respectively as cordwainer and yeoman. Rice wanted two-fiftieths of their land and £3,000 damages (in Rhode Island paper currency; perhaps around £400 sterling). The claim appeared minor—a few acres out of a tract of 136 acres and a demand for damages that the court almost certainly would scale down—but the implications were great.

As was brought out in court, Rice claimed this slice of land because his father, also named John, had obtained a strong right to divisions of land in the grant of East Greenwich by the General Assembly of Rhode Island. The steps by which the elder Rice had got this right were unusual, but clearly he had it, and it amounted to two-fiftieths in divisions made after 1679. What had happened was this: In 1673 the elder Rice had joined three other Warwick men to buy a small peninsula jutting into Greenwich Bay and the land behind it from some Narra-

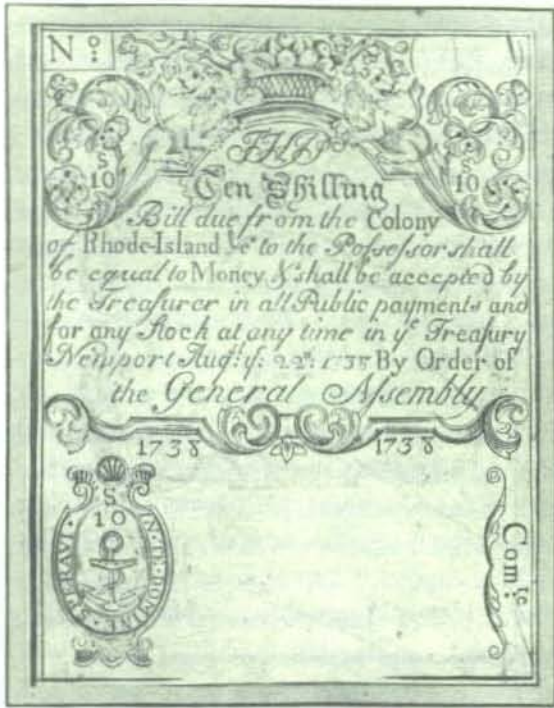
gansett Indians. This was called the Mascackuak or Maskachusetts Purchase on the rare occasions when anybody mentioned it. Subsequently the elder Rice bought the share of one of his partners. In 1677, when the General Assembly granted lands to a company of other men who were to be the original settlers in East Greenwich, it included the Mascackuak Purchase in the grant, possibly because it was unaware of that purchase. The Mascackuak partners protested, and with the encouragement of the General Assembly they and some other aggrieved persons submitted their complaints to arbitrators in 1679. The arbitrators recommended that the protesters be merged into the roster of original grantees of East Greenwich and be given rights to share in divisions in the new town. This recommendation was accepted by the General Assembly, and thus the elder Rice, with two Mascackuak shares, got two-fiftieths of the share rights in East Greenwich lands. According to his son's lawyer, this right to receive allocations "Should Reciprocally Pass through the Whole," a murky formulation at best. The old Mascackuak purchaser died in 1734 and left to his son what he was entitled to in East Greenwich.⁶

Just what the younger John Rice inherited was debatable. When he finally went to court in 1747, he claimed nothing except two-fiftieths of the Peirces' farm. He said that his father had been given a share in the divisions of the East Greenwich grant only once and should have been given more, above all in the division that allocated the Peirces' land. Possibly the Assembly's decision in 1679 meant that the elder Rice should have received shares in divisions authorized before that year; certainly it meant that he should have received them in divisions authorized then and after. The Peirces produced evidence that they said would show that the elder Rice had sold his divisions in East Greenwich land in such ways as to alienate his rights to share

5. Journal of the House of Deputies, 31 Oct. 1729, 25-27 Feb. 1729/30.

6. Copy of the case of *John Rice v. John Peirce and Thomas Peirce*, papers of Superior Court of Judicature, Court of Assize, and General Goal [sic] Delivery for Providence County, Providence College Library (hereafter cited as papers of Providence Superior Court), September term, 1750; *Recs. of R.I.*, 3:55. (The staff of the Providence College Library has been exception-

ally helpful in aiding research on this article.) When the Assembly endorsed the arbitrators' recommendation, it had to retreat from its original plan for East Greenwich, which had made grants of shares conditional on the recipients' taking up residence in the new town. Rice and others admitted to share rights in 1679 lived elsewhere and intended to remain there, so the Assembly removed the residence requirement from all of East Greenwich. Nevertheless, most of the grantees went to the



A Rhode Island ten-shilling note, 1738. From the Sidney Rider Collection of Rhode Island Currency, RIHS Collection (RHi X3 6273).

in later divisions there. Maybe fearful that this evidence was weak, the Peirces also wanted to rely on the Rhode Island law of 1711 guaranteeing sound title to anybody who held land for twenty years without a challenge from an adverse claimant. Rice's evidence was sounder, and after some deliberations on the law pertaining to the dispute—deliberations that will be explained in due course—he won in the court.⁷ Potentially he then could claim the same fraction of all other lands allocated in the divisions in which his father had not been

given shares, and heirs of two or more other men with similar rights to one-fiftieth slices in divisions might press their claims.

Understandably, the townsfolk of East Greenwich took alarm. Surely nobody imagined that Rice wanted scraps of land all over town; presumably he wanted to have a swarm of owners buy out his claims. In any event, the men with rights to divisions voted to assess themselves £500 in Rhode Island money to back the Peirces in an appeal.⁸ From this fund or other money, the town paid for leading lawyers to represent the Peirces.

The appeal to the Superior Court of Judicature, Court of Assize, and General Goal [sic] Delivery kept being postponed because too many of the officers of the court had conflicts of interest. James Honyman, the principal lawyer for the Peirces, made the most of this impediment. In fact, he made more of it than it was worth. He pointed out that Sheriff Rice was the son of one of the parties and so could not legally return the jurors or carry out the court's orders; that Stephen Hopkins, one of the judges of the Superior Court to which the appeal was directed, was related to the Rices through his wife; and that two other judges, Gideon Cornel and Joshua Babcock, were concerned in a parallel case in Westerly. Honyman asked that they all be removed.⁹ The General Assembly picked a new sheriff, John Mawney, but the choice did Honyman and his clients no good. As they alleged later, Mawney had campaigned for the job by vowing to back Rice aggressively, while his rival proclaimed sympathy with East Greenwich.¹⁰ Cornel and Hopkins resigned from the bench, probably glad to flee a case that could only give them a flock of new enemies whichever way they sided. Other men chosen to replace them declined to serve or died in

new town, conducted its civic affairs as though nobody else was concerned, and probably forgot about the absentee shareholders.

7. Copy of the case of *John Rice v. John Peirce and Thomas Peirce*, papers of Providence Superior Court, September term, 1750.

8. Record of Providence County Inferior Court of Common Pleas, consulted several years ago in the office of the clerk of Providence Superior Court, Providence County Courthouse, 2:149 (current location of document unknown); minutes of a proprietors' meeting in East Greenwich Town Council Records, 1711-1805, Town Hall, East Greenwich (actually, this volume is

one of proprietors' records and contains entries as late as 1829], session of 12 Jan. 1747/48.

9. Record of Providence County Superior Court of Judicature, Court of Assize, and General Goal [sic] Delivery, Providence College Library (classified there as Providence Superior Court Records; hereafter cited as Record of Providence Superior Court), 1:13. (For the current status of this volume, I am indebted to Carol Frost.)

10. Copy of the case of *John Mawney v. Joseph Nichols*, in papers of Providence Superior Court, March term, 1751.

office.¹¹ After almost three years, the five judges once again included three with connections to the case in East Greenwich or to a parallel one, so the General Assembly resorted to another method to get around the barrier posed by this vexing conflict of interest: it appointed special judges to sit on this single case.¹² Finally the appeal could be heard.

After all that, the Superior Court upheld the lower court's judgment for Rice.¹³

The Peirces, surely backed by their neighbors, planned an appeal to the only higher court with undoubted jurisdiction, the Privy Council of King George II. The proper way to carry the appeal was to get permission from the Superior Court. But the judges turned them down on the grounds that the land in controversy was worth less than a colonial statute required to allow an appeal.¹⁴ The sheriff went to partition the land, an expedition that led to more than he bargained for, as will appear.

While Sheriff Mawney set about his mission, the Peirces tried to circumvent the court's refusal to

allow them an appeal by petitioning the General Assembly. Failing there, they sent a petition to the king asking permission to appeal. In order to get over the obstacle posed by the colonial statute limiting appeals, their lawyers somehow concocted a theory that if Rice won, their clients might lose forty-seven fiftieths more of their lands.¹⁵ It must have been a marvelously ingenious line of reasoning. Sad to say, no record of it survives. It was plausible enough, however, to persuade the Privy Council—or give the Privy Council a pretext—to grant the petition and order the General Assembly to direct the Superior Court to allow the appeal. So the court did, whereupon the case drifted off into oblivion on the languid stream of adjudication in the imperial capital.¹⁶ Astonishingly, there is no record of the Privy Council hearing the appeal or issuing an order to Rhode Island.¹⁷

Well before the petitions had been presented to the General Assembly and the king, the East Greenwich men had taken other steps to prevent

11. Joseph Jenckes Smith, *Civil and Military List of Rhode Island, 1647-1800* (Providence, 1900), 130; untitled printed "schedules" of sessional reports of the General Assembly of Rhode Island, reports for May 1748-February 1748/49 (Newport, 1749), 49; [sometimes untitled] Records of the Governor and Company of the Colony of Rhode Island and Providence Plantations, State Archives, Providence, 6:142, 148, 153, 157.

12. John Rice to the General Assembly, May 1750, Petitions to the General Assembly, State Archives, Providence, 7:94; Journal of the House of Magistrates of Rhode Island, State Archives, Providence, 15 June 1750; Journal of the House of Deputies, 15 June 1750.

13. Record of Providence Superior Court, 1:66-67.

14. It was normal for British American colonies to set a threshold amount to prevent frivolous appeals or appeals by parties who could afford them against parties who could not and so would have to lose by default. At this time Rhode Island law required that to justify an appeal to the Privy Council, the value of what was in dispute must be at least £1,200 in the old-tenor colonial currency, which came to less than £200 sterling. See Records of the Governor and Company of the Colony of Rhode Island and Providence Plantations, 6:28. When the Peirces presented their grievance to the Privy Council, they asserted that the colonial court had denied the appeal because the value in contest was less than £150 sterling. See Register of the Privy Council for May 1750-March 1752, Public Record Office, Chancery Lane, London, PC 2/102, 492 [for this citation and subsequent ones to the same document, I am indebted to Adele Hast]. Copy of Privy Council's order in Kent Superior Court files for 1752, Providence College Library, files for 1752.

15. Register of the Privy Council, May 1750-March 1752, 438. The Peirces complained that the judges of the Superior Court had erred by refusing to allow the jury to hear a recitation

of the Rhode Island statute on quiet possession and by calling on the jury to decide whether Rice had been a tenant in common with them. See copy of the order by the Privy Council dated 13 Feb. 1752, in file papers of Kent County Superior Court. This date poses a difficulty: there was no 13 Feb. 1752 in the official British calendar. Great Britain in September 1752 shifted from the Julian calendar, under which the new year began on March 25, to the Gregorian calendar, under which the new year began on January 1, so the previous February had been in 1751 and the following one would be in 1753. The Privy Council's order must have been given in the previous February, because it reached Rhode Island in time for the June 1752 session of the General Assembly.

16. Copy of the case of *John Rice v. John Peirce and Thomas Peirce*, in papers of Providence Superior Court, September term, 1750; Journal of the House of Deputies, 14 June 1751, 3 June 1752; Register of the Privy Council, May 1750-March 1752, 491-92; copy of Privy Council's order and draft of the court's response, made by Thomas Ward, with suggestions for alteration by James Honyman (presumably for entry into Record of Kent Superior Court), in Kent Superior Court files for 1752. [For a copy of the draft I am indebted to Carol Frost.] Rice unsuccessfully petitioned the Assembly to reverse its order to allow the appeal. His grounds were signs of desperation, though interesting all the same: they were constitutional arguments that allowing the appeal amounted to surrender of Rhode Island's legislative competence under its charter to set conditions for appeal and its judicial competence in ruling on the case in judgments so far rendered—and also an ad hominem argument that the Peirces had vilified the colony's laws when petitioning the king to allow the appeal. John Rice to General Assembly, August 1752, Petitions to General Assembly, 9, pt. 2:27.

17. I have tried without success to find an outcome. The

Rice from striking again. They had gone to the General Assembly, while it was still trying to find judges to hear the appeal at the Superior Court, to seek the creation of Kent County. The leading spirit probably was the town's foremost booster, Joseph Nichols, whose house lot adjoined the Peirces' land.

Maybe they moved too late, but quite likely Nichols and his friends reasoned that the trouble had come from their town's being submerged in Providence County. Though the judges of the Superior Court were the same in all counties, they held court for each county separately and relied on the sheriff there and on juries chosen by lot in that county's towns. More important, the Inferior Court in each county was entirely a local institution—judges, juries, sheriff, and all.

The key to Rice's success had been in the Providence County Inferior Court, where the jury had been as troublesome as the judges. To see how this was so will require another look at the original trial. At the beginning of that event, the Peirces claimed that a colonial law of 1711, which was fully consonant with English law, granted unquestionable ownership to anyone who held property unchallenged for twenty years. On the strength of an even longer stretch of untroubled ownership (fifty-four years), they asked the judges to bar the action—that is, to rule that Rice could not attack their ownership by a suit, so the trial should not proceed. The judges refused, because Rice claimed that he had been a tenant in common with the Peirces all along, whether they had known it or not. Therefore, by virtue of his father's right to two shares in East Greenwich, he had an undivided two-fiftieths interest in what the Peirces thought was entirely theirs, and his suit asked the court to separate his portion from the rest. The judges ruled that twenty

years' quiet possession could not defeat the rights of a tenant in common and that the jury must decide whether Rice in fact was a tenant in common with the Peirces. The jury said he was.¹⁸ Because Rice presented an admirably solid chain of evidence to support his derivation of ownership, his victory followed logically. All the Peirces could offer was evidence that nobody had pressed the claim for a long time, that most of East Greenwich had been divided before Rice's father got his share, and that his sale of land rights there could be construed as the sale of rights to further divisions.¹⁹ That argument was not enough.

Nichols and his friends, then, could well have concluded that East Greenwich needed a favorable bench and jury in an inferior court to blight a scheme like Rice's before it could make mischief. It might be too late to stymie Rice by such means in the first suit, but if he prevailed against the Peirces and wanted to follow up his success with suits against others, he should face a hostile inferior court. If this was how the East Greenwich men reasoned, however, they were only half right, as they would learn by disappointing experience.

By 15 June 1750 Nichols and company somehow had mobilized a majority in the General Assembly for a new county. Nichols was an old hand in the lower house, but he surely needed more than a familiar face to accomplish this feat. Possibly he took advantage of a realignment of parties that was dividing the previously allied towns of Warwick and Providence. Possibly the fracas in East Greenwich hastened the reshuffle.²⁰ Maybe he got support from men representing Westerly and Providence, towns where similar land claims were scaring people. Also, advocates of the new county promised that it would cost the colonial treasury nothing.

Privy Council records yield no clue; the existing registers are silent on the case after the order to allow the appeal in 1752; nor has a final judgment by the Privy Council come to light among the surviving Rhode Island court papers. The leading parallel case, the one in Westerly, resulted in victory at the Privy Council in 1759 for the side parallel to the Peirces'. I suspect that the Westerly case was taken as controlling. Alas, the Kent County court papers for much of the 1750s are incomplete and ill-organized.

18. Record of Providence Inferior Court of Common Pleas, 2:491.

19. Copy of the case of *John Rice v. John Peirce and Thomas Peirce*, papers of Providence Superior Court, September term, 1750.

20. Previously, Stephen Hopkins of Providence had been a rising star in the political party (if the word does not imply too much) including the Greenes of Warwick and the political heirs of Samuel Cranston elsewhere. This coalition had a solid base in Warwick and Providence. The contest over East Greenwich land pitted Hopkins against his old political friends for the first time, as far as I know. Not only was he related to Rice by marriage, but he also was a business associate (if not always in



This Kent County seal was used on legal documents until at least 1782. From *Emblems of Rhode Island*, by Howard Chapin (Providence, 1930). RIHS Collection (RHi X3 6274)

However it was done, the Assembly suddenly decided, on the same day when it found the remaining justices to hear the Peirces' appeal at the Superior Court, to set off Kent County with East Greenwich as the shire town. The act to do this piously gave reasons: Providence County was too populous, and people in the south-

ern part were put to inconvenience in going to court in Providence. As a condition for erecting the new jurisdiction, the act further announced, the inhabitants of the new county would pay for a courthouse by voluntary subscription. Sardonicly, the Assembly prescribed a seal for Kent County "with the Device of a Dove on it."²¹

The Assembly made Nichols one of the first judges of the new county Inferior Court. None other than John Peirce promptly donated land for the courthouse.²² Nichols and his neighbors had detached Warwick, where Rice lived, from Providence County, reportedly over objections from both Warwick and Providence,²³ and Rice now would be in their bailiwick. When the General Assembly passed along the royal order to allow the appeal, the message went to the new Kent County Superior Court.²⁴

Probably Nichols and the nervous East Greenwich landowners were happy with this turn of events, though the new court may not have saved

them. If the Privy Council ruled for the Peirces, Rice could do no more damage in any court. The mysterious absence of a ruling by the Privy Council leaves the usefulness of the new county uncertain. Nothing in the town books, however, suggests that Rice successfully sued others for slices of their land. To this extent, Kent County may have been a success. The land, after all, was the main concern.

But the new county courts could not do all that Nichols and his friends wanted in the subsidiary war of litigation waged against them by Rice and others. The East Greenwich men exploited their new Inferior Court as best they could, but as things turned out, their new Superior Court got in their way. The bird of peace was no omen of things to come. The high jinks had begun when the sheriff of Providence County, John Mawney, took a jury to execute the judgment of September 1750 in favor of Rice. The party of thirteen men planned a partition of the Peirces' land to give Rice eight acres in one corner and also a house on a small tract next to the nearby road.

Joseph Nichols tried to thwart the execution, though whether acting as a justice of the peace or in spite of his judicial dignity, the record does not say. The sheriff and his men intended to cross Nichols's land to get to the Peirces'. Nichols gathered a number of neighbors armed with staves to block the way. Mawney retreated, but returned a week later with a larger force. He fortified his men with "1 Nipp of Punch," among other things, and came out the victor. He reported to the Superior Court that he had successfully carried out the writ of execution. Then he sued Nichols—in Providence County Inferior Court of Common Pleas—for participating in a riotous assembly that had impeded him in his official duties and put him to "great Charges and expences" to get a force of men to assist him. He

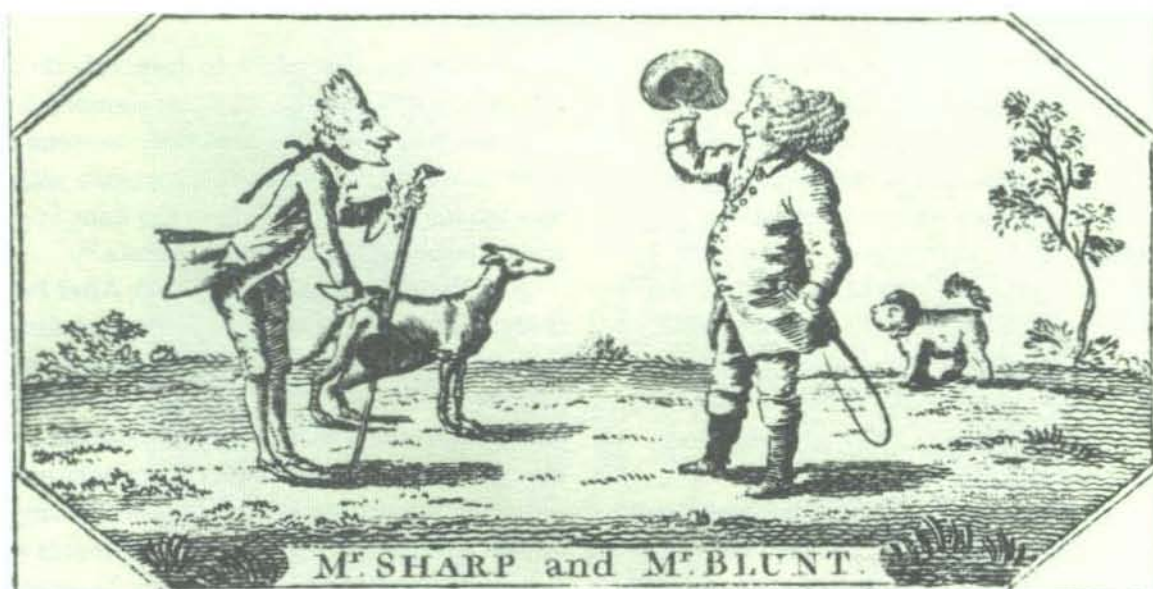
harmonious terms) of John Mawney, while Rufus Greene stood by Joseph Nichols. On the connection of Hopkins to Mawney, see papers of *John Andrews v. Stephen Hopkins and John Mawney*, papers of Providence Inferior Court of Common Pleas, Providence College Library, June term, 1752; papers of *John Mawney v. Stephen Hopkins*, Providence Inferior Court, June term, 1750.

21. Records of the Governor and Company of the Colony of Rhode Island and Providence Plantations, 6:198-99.

22. Daniel H. Greene, *History of the Town of East Greenwich and Adjacent Territory, from 1677 to 1877* (Providence, 1877), 41.

23. J. R. Cole et al., *History of Washington and Kent Counties, Rhode Island, Including Their Early Settlement and Progress to the Present Time; a Description of Their Historic and Interesting Localities; Sketches of Their Towns and Villages; Portraits of Some of Their Prominent Men; and Biographies of Many of Their Representative Citizens* (New York, 1889), 914.

24. Journal of the House of Deputies, 3 June 1752; Journal of the House of Magistrates, 3 June 1752; draft of the court's response to the General Assembly, papers of Kent Superior Court, 1752.



A catchpenny engraving, circa 1760, by Bowles & Carver, London. Reprinted by Dover Books, New York, 1970. RIHS Collection (RHi X3 6275).

asked for £500 in damages. The court ruled in his favor and awarded him £180 10s. plus costs. Both parties appealed, but in the end Mawney was awarded the same damages and additional costs.²⁵ Mawney also sued John Peirce, who had refused to honor a note he had signed to pay the sheriff for the amount due on the judgment and costs.²⁶

Furthermore, shortly before Mawney's suits went to trial, a justices' court in Providence County had impaneled a jury that investigated the fracas at the Peirces' land. As a result, Nichols and a few of his companions were bound over for trial on charges of riot. They could well have considered this move against them as the work of their ene-

mies who backed Rice.²⁷ The accused, after an unexplained delay, petitioned the General Assembly to "disanul or make . . . void" the jury's order—or else to transfer the trial to Kent County. They persuaded the lower house but not the upper.²⁸

The East Greenwich men, however, could use their own county court to counterattack in the war. John Peirce sued Sheriff Mawney in Kent. Peirce claimed that Mawney had acted on an improper writ of execution and also had set out maliciously to ruin him. The sheriff even "Multiplied and Encreas'd the Costs" and held his victim prisoner until he signed the note to pay the inflated charges.²⁹ Peirce asked for £100 damages for tres-

25. See papers in the case of *John Mawney v. Joseph Nichols*, Providence Inferior Court, December term, 1750; copy of the same case in papers of Providence Superior Court, March term, 1751; Record of Providence Superior Court, 1:76; and writ of execution and sheriff's return. (For several of these items I am indebted to Carol Frost.)

26. Papers of *John Mawney v. John Peirce*, Providence Inferior Court, June term, 1751.

27. A justices' court was one held by any two (or, for some purposes, three) officials who had the powers of justices of the peace. These officials included the governor, deputy governor, the other ten members of the upper house of the General Assembly, the judges of the Superior Court and the Inferior Courts, and the men appointed by the Assembly simply as justices of the peace for each of the several towns. In criminal matters, the justices in any one town had jurisdiction through-

out their county. They might try certain small crimes but could do no more than send people accused of more serious crimes for trial by the Inferior Court. The decision to send someone for trial, to be sure, involved an evaluation of the evidence behind the accusation. Justices' courts were useful for such preliminary considerations of criminal charges because they could be called into session easily at any time and place, whereas the Inferior Court held only two regular sessions in the county courthouse each year. Nevertheless, the flexibility of the justices' courts had a clear potential for abuse. For the basic law on the criminal jurisdiction of justices' courts, see Records of the Governor and Company of Rhode Island and Providence Plantations, 5:13.

28. *Journal of the House of Magistrates*, 19 Aug. 1752.

29. Copy of the case of *John Pierce* [i.e., Peirce] v. *John Mawney* at Kent Inferior Court of Common Pleas, papers of Providence Inferior Court, December term, 1751.

pass on his lands and body by the defendant. Mawney's attorney asked that four judges on the Kent County Inferior Court bench—Joseph Nichols, John Fry, Daniel Howland, and Rufus Greene—be disqualified because they were concerned in the outcome of the claim made by Rice. The court obdurately denied the request and awarded £1,000 damages and costs to Peirce. Here was an inferior court doing what it was intended to do! Mawney, of course, appealed to the Superior Court, where, amazingly, Peirce walked out during the hearing and so lost by default.³⁰

Mawney, to be sure, sued Peirce right back—and did so in Providence County. He accused Peirce of misusing the Kent County courts and wanted £500 to compensate him for his expenses in defending himself. The court heard most of the evidence previously presented in the Kent courts and then awarded the plaintiff £100, whereupon both parties appealed. The Superior Court in Providence then doubled the award, and the Peirces appealed to the General Assembly. They asked that both judgments be set aside because one man, Grindal Rawson, served in the jury at both trials. The Assembly annulled both judgments and sent the case back for a new hearing at the Providence Superior Court.³¹

After Nichols, Rufus Greene, and two others had been convicted of riot, Nichols sued Mawney in Kent County Inferior Court. He alleged that the trials had been held without the defendants' knowledge. The deputy sheriff sent to arrest them said he could not find any of them. Quite possibly they were in hiding. Mawney asked the judges and jurors

residing in East Greenwich to disqualify themselves, but they refused. The jury awarded Nichols £450 and costs. Mawney appealed, claiming the amount was too high. Nichols appealed, claiming it was too low.³² Mawney won in the Kent Superior Court, but he collected only his costs.³³

And the contest went on and on. After Peirce defaulted in his appeal on the suit to get damages from Mawney for trespass, Mawney sued Peirce in Providence Inferior Court. He asked for £500 damages as compensation for his vexation and expense. Peirce replied that these tribulations were only what Mawney had to endure while carrying out the duties of his office. The documents in this case and related ones get hazy then, because the Kent County Inferior Court clerk was neglecting his responsibilities, but evidently the case got decided, appealed, transferred to Kent County, and heard again at least once, finally eventuating in an award of costs to Mawney.³⁴ In Peirce's suit to reopen the old controversy over Mawney's conduct as sheriff, Peirce won in the lower court, and Mawney appealed.³⁵ Possibly by that time John Peirce had fallen out with Joseph Nichols: a John Peirce of Warwick sued Nichols and got a judgment for costs in August 1754.³⁶

Maybe the tangle of litigation had more strands, and an exhaustive investigation of this dispute might bring further ramifications to light. But the spectacle of squabbling in court should be plain enough by now. So too should the way the new Inferior Court served its purpose, only to be stymied by the Superior Court.

30. Copy of the case of *John Peirce v. John Mawney* at Kent Inferior Court, July term, 1751, and Kent Superior Court, October term, 1751, in papers of Providence Inferior Court, December term, 1751. Both Joseph Nichols and John Fry had been sureties for the Peirces' bond when the Peirces appealed to the Privy Council. See the bond in papers of Providence Superior Court for 1752.

31. Papers of *John Mawney v. John Pierce* (i.e., Peirce), Providence Inferior Court, December term, 1751; *Recs. of R.I.*, 5:338-39.

32. Copy of the case of *Joseph Nichols v. John Mawney*, Kent Inferior Court, October term, 1751, in papers of Kent Superior Court, 1752.

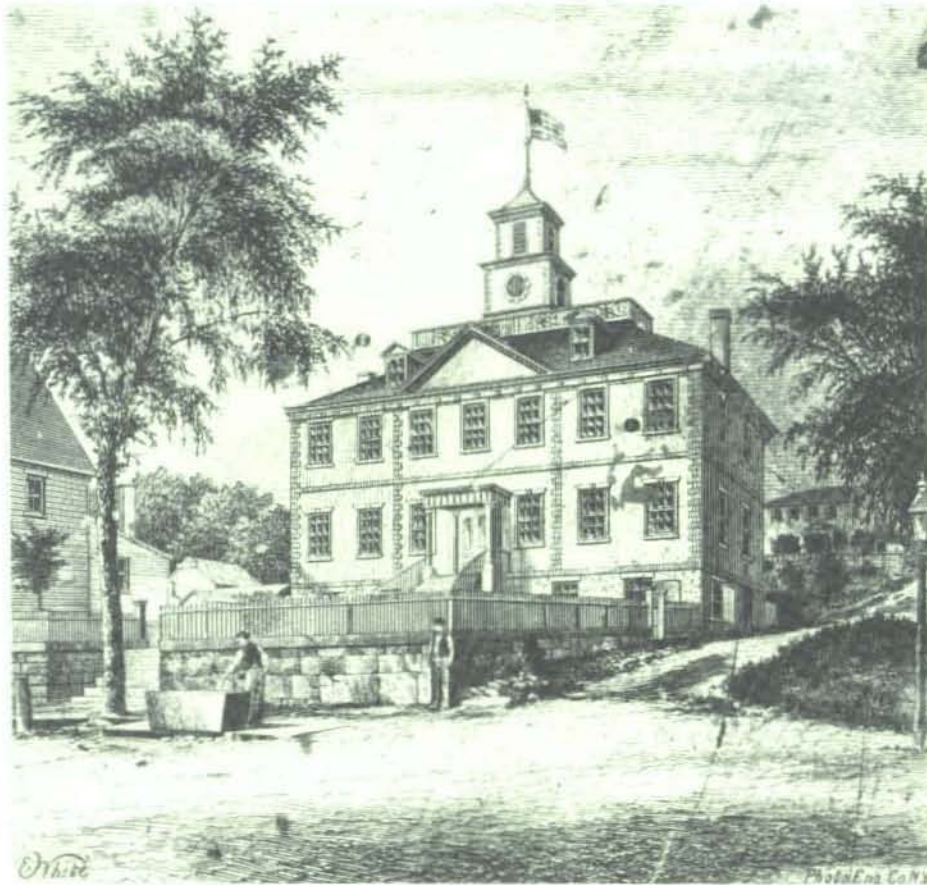
33. Returned writ of execution, 12 Feb. 1752, in file of executions in papers of Kent Superior Court.

34. Copy of the case of *John Mawney v. John Pierce* (i.e.,

Peirce) in Providence Inferior Court, and on through appeals and transfer, in papers of Kent County Superior Court, April term, 1754; returned writ of execution, 25 Mar. 1754, papers of Kent Superior Court. Evidently some of the documents were preserved in Providence while the clerk's office was in confusion in East Greenwich. A slip of paper interleaved in a copy of the case (now in Kent Superior Court papers) of *John Mawney v. John Peirce* concerning the dispute over Peirce's suit against Mawney for trespass contains a plea from Silas Downer in Providence asking for a copy of a special verdict in order to complete a record in the clerk's office in Providence.

35. Papers of *John Pearce* (i.e., Peirce) *v. John Mawney*, Kent County Superior Court, April term, 1753.

36. Return of a writ of execution, 31 Aug. 1754, papers of Kent County Superior Court.



The second Kent County Courthouse. Engraving by E. White. Courtesy of the East Greenwich Historical Society.

And what about the fledgling county, apart from this foolishness? By February 1753 the citizens had not done all they promised to pay for the courthouse. They had contributed only enough to get the basic structure erected. The interior remained unfinished, as did the associated jail. The court met in the incomplete building but got cold, especially at the January term. The donors refused to give any more and asked the Assembly for permission to finance completion by the proceeds of a lottery. The Assembly gave them the green light.³⁷ Joseph Nichols was one of the men in charge. Tickets sold

so slowly that the time of drawing had to be postponed twice. Then the organizers gave up completely, and the General Assembly ordered them to refund the money.³⁸

Discouraged after all that had taken place, Joseph Nichols and Rufus Greene asked that Kent County be abolished. The Assembly refused, however, and Nichols was stuck with his bargain.³⁹ He may have known of more than the county's financial woes. The first court clerk, John Walton, had stopped keeping the records complete after the July 1754 term of the Inferior Court. He lost a

37. John Peirce and Thomas Peirce to General Assembly, December 1750, Petitions to the General Assembly, 7:172; *Recs. of R.I.*, 5:366-67. The act was amended to raise money also for two bridges, one in Scituate and one over Hunt River for a road that runs south from East Greenwich. Records of Governor and Company of the Colony of Rhode Island and Providence

Plantations, 6:325-26.

38. Untitled printed schedules of the proceedings of the General Assembly, May 1753-February 1754, 24; schedules for May 1754-March 1755, 46; schedules for May 1755-February 1756, 16.

39. Cole et al., *History of Washington and Kent Counties*,

docket; he stopped recording judgments; nobody knows how many of the papers he lost or threw away. It is just possible that nobody suspected him of nefarious purposes. Such behavior seriously undermined the usefulness of the court. When word of his derelictions got around, and the General Assembly decided to replace him, Walton refused to surrender the documents he had. The Assembly sent the sheriff to take them by force. The commit-

tee that received them from the sheriff had to help the new clerk bring such order as was possible out of the tumble of ledgers and papers.⁴⁰

By the time Walton was thrown out of office, Joseph Nichols had ceased to care. He died of smallpox in 1757.⁴¹ Eventually the colonial treasury had to foot the bill to finish the county courthouse. And Rhode Island had a Kent County, for better or for worse.

915. The petition is not in the State Archives now, but according to the late archivist Mary T. Quinn, unsuccessful petitions were discarded in the early twentieth century—or Nichols may have taken back what he had submitted, which would have been perfectly legal. In any event, the unverifiable assertion in Cole is too good to skip.

40. Journal of the House of Deputies, 3 Nov. 1750; untitled

printed schedules of the General Assembly for May 1759–February 1760, 18–19, and sessions of August 1759 and February 1760, n.p.

41. Record of the Proceedings of the Town Council of East Greenwich in the County of Kent &c, June 1752–May 1784, town clerk's office, East Greenwich, sessions of 16 Oct. 1757 and 26 Nov. 1757.

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