

Captain JOHN AVERY

Captain **JOHN AVERY**

President Judge at the Whorekill in Delaware Bay and his descendants

by

Edwin Jaquett Sellers

Philadelphia

MDCCCICVIII

Captain **JOHN AVERY**

INTRODUCTION

For account of Captain **JOHN AVERY**'s descendants, see "Kollock Genealogy," by the writer, printed 1897.

For English Avery references, see "The Genealogist's Guide," by George W. Marshall, last edition; for reference to **JOHN AVERY**, the Pirate, see "Dictionary of National Biography," edited by Sidney Lee.

For American Avery references, see Munsell's "Index to American Genealogies," last edition; "The Dedham Branch of the Avery Family in America," published by **WINSLOW W. AVERY**, 1893; and "The Averys of Groton," by Homer De Lois Sweet, 1894.

The following are the only references I have found to any Avery settlers in Virginia. There were Averys there at a later period who may have been descendants of this settler.

The "Virginia Magazine of History and Biography," Vol. II., p. 181:

Abstracts of Virginia Land Patents.

"(101) **JACOB AVERY** (lease for 21 years) 500 acres on Skiff's Creek (Warwick County), extending northerly 'towards the Creek towards Martin's Hundred,' Southwest towards the land of **THOMAS NOWELL**, and East towards the main - beginning on the east side of a spring called Jacob's Well - 1680 - By Sir **JOHN HARVEY**."

P. 185:

"(109) **THOMAS HARWOOD**, of Skiffes Creek, gentleman, 140 acres on Skiffes Creek abutting southerly on the land of Mr. **AVERY**. Due in right of **HUGH HEYWARD** made over to him June 20, 1631 - By Harvey, September 1, 1632."

"(110) **JOHN POTT**, of **HARROP**, within the Corporation of James City, doctor in Physic, 200 acres on Skiffes Creek, adjoining the lands of Mr. **THOMAS NOWELL** and Mr. **JACOB AVERY**. Due for the adventure of four servants: **JOHN MILWARD**, **RANDOLPH HOLT**, **RUTH** a maid servant, and **THOMAS POPKIN** - By **JOHN HARVEY**, Sep. 1, 1632."

P. 311:

"(137) **JACOB AVERY**, gentleman, lease of 500 acres on Skiffes Creek, 250 thereof stretching northerly towards the creek towards Martin's Hundred, Southwest towards the lands of **THOMAS NOWELL**, & c. (one of the line marks named is a spring called Jacob's Well), and the other 250 lying at the head of said Creek - By **JOHN HARVEY**, February 2, 1630 - (sic)."

The following references to Avery settlers in Maryland are abstracted from the Records of the Land Office at Annapolis, and are here given without any attempt to suggest the relationship to each other or to Captain **JOHN AVERY**.

Captain JOHN AVERY

Liber X, folio 173:

"**JOHN AVERY**¹ of Maryland, Mariner, has patented 300 acres out of a warrant of 500, Sep. 22, 1658, lying on the North side of Cuttance, Manor of Nanticoke. Recorded 1666."

Liber VI, fol. 85:

"I **GEORGE BARRETT** do assign over unto **THOMAS BRADLEY** Esq or his assigns all my right and Title of land due to me for transporting into this Province: **CORNELIS JONES**, who came in the year 1650, myself 1650, **FRANCIS STONE** 1654, **JOHN AVERY**² 1657, **MARK DAVENPORT**, 1660, **RICHARD COGER** 1658, **ABRAHAM CLARK**, 1654, Witness my hand this 4th October 16638.

GEORGE BARRETT {his B mark}

Test:

RICHARD FOSTER

SUSAN TUCKER {her X mark}

Liber XII, fol. 381:

"1669 - December the 16th Came **JOHN AVERY**³ of Calvert County and proved right unto one hundred & fifty acres of land being due to him for transporting into this Province himself and his daughter **ANN [AVERY]**, and **WILLIAM JOHNSON** his servant, to inhabit.

Warrant then issued in the name of the said **JOHN AVERY** for 150 acres of land being due to him for the consideration above said.

Cert. returnable 16th March next."

Liber XII, fol. 513:

"These may certify that I **EDWARD AVERY** do assign all my right of land due to me for my servitude in this province unto **JOHN GIBBS** of the County of Baltimore, planter.

Witness my hand and seal this 31st of October 1668

EDWARD AVERY {his X mark}

Signed and sworn mark unto before me

JOHN COLLETT"

¹ This was **JOHN AVERY**, of Dorchester, whose will is hereafter given.

² This may have been either Captain **JOHN AVERY** or the **JOHN AVERY**, of Dorchester, whose will is hereafter given.

Captain JOHN AVERY

Liber XI, fol. 104:

"Know all men by these presents that I **CHARLES JAMES** of Baltimore County, Gent., have assigned, and by these presents do assign unto **THOMAS GODLINGTON** of London, merchant all my right, title and interest due to me upon record for the transportation of **JOHN FOSTER, RICHARD LEAKE, STEPHEN HARPER, THOMAS PRICE, EDWARD AVERY, GILES PORTER, ...** Witness my hand the xiith day of October Anno Domini MDCLxvii

CHARLES JAMES {seal}"

Liber XII, fol. 351:

"October xxist Mdclxix came **GEORGE BECKWITH** and proved right to three hundred acres of land for transporting himself, **JOHANNAH PORTER, HENRY AVERY, JOHN WATTS, THOMAS WEEKE & THOMAS STEVENS** here to inhabit."

Liber XVII, fol. 574:

"Decr. 23rd 1678 **WILLIAM AVERY** of St. Mary's County proved right to fifty acres of land for his time of service performed in this province. Assigned said right to **THOMAS COURTNEY** of same county"

Liber XI, fol. 554:

"June the fourth 1670 Came **HENRY HOSIER** of the County of Calvert, merchant and proved right unto 1050 acres of land it being due to him for transporting these persons following into this Province to inhabit. Vizt: **WILLIAM KEY, JOHN AVERY⁴, VIRTUE AVERY** (and 21 others)"

Liber XV, fol. 332:

"January 24, 1675 Came **VIRTUE AVERY** of St. Mary's County and proved her right to Fifty acres of land for her time of service performed in this province to **THOMAS GRIFFIN**"

Liber XV, fol. 344:

"Know all men by these presents that I, **VIRTUE AVERY** for a valuable consideration do hereby assign over unto **MICHAEL ROCKFORD** my right to fifty acres of land due to me for my time of service performed in this province. To have and to hold the same unto him the said **MICHAEL ROCKFORD** his heirs and assigns forever.

Witness my hand and seal this 24th of January 1675

Test:

VIRTUE AVERY {her X mark}
_____ **PAINTER**"

³ This is the same **JOHN AVERY**, of Dorchester, whose will is hereafter given.

⁴ This may have been either Captain **JOHN AVERY** or the **JOHN AVERY**, of Dorchester, whose will is hereafter given.

Captain JOHN AVERY

Liber XXII, fol. 337:

"**ROBERT AVERY**. Cert. 240 acres called 'Unpleasant' 1685."

Liber XXII, fol. 355:

"Cert 160 acres called 'Teagues Content' 1688."
(This refers to the same **ROBERT AVERY**.)

Liber LX, fol. 120:

"**ARTHUR AVERY** Cert. 100 acres called 'Chance' 1665"

Liber XI, fol. 308:

"**JOSEPH AVERY** receives 100 acres called 'Knotting'."

Liber X, fol. 180-1:

"To the Honorable Lieutenant General

A survey had and taken of a parcel of Land for **JOHN AVERY**⁵ lying and being on the north side of Cuttomactico beginning at a marked oak dividing it from the land of **THOMAS COTTINGHAM** called Avery's Policy from thence running easterly the breadth of one hundred and fifty pole to a marked tree, thence running northerly the length of three hundred and twenty pole to a marked tree, from thence running westerly the breadth of one hundred and fifty pole to a marked tree, with a line drawn southerly to the first bounder, Surveyed and now laid out for three hundred acres more or less by me March the last, 1666

STEVEN HORST
Surveyor General

Attested by me
JEROME WHITE"

⁵ Probably **JOHN AVERY**, of Dorchester.

Captain JOHN AVERY

"Cecelius & c To all persons to whom these presents shall come Greeting in our Lord God everlasting. Know ye that wee for and in consideration that **JOHN AVERY** of our Province of Maryland, Mariner hath due unto him three hundred acres of Land within our said province out of a warrant for five hundred acres of land granted to the said Avery as appears upon record & upon such considerations and terms as are expressed in our conditions of Plantation of our said Province of Maryland under our Greater Seal, at arms bearing date at London the second day of July in the year of our Lord God One thousand six hundred forty-nine with such alterations as in them is made by our declaration bearing date the two and twentieth day of September Anno One thousand six hundred fifty-eight and remaining upon record in our said Province of Maryland, do hereby Grant unto the said **JOHN AVERY** a parcel of Land called Averys Policy lying & being on the north side of Cuttamactico beginning at a marked oak dividing it from the land of **THOMAS COTTINGHAM** from thence running easterly the breadth of one hundred and fifty pole to a marked tree, thence running northerly the length of three hundred and twenty pole to a marked tree from thence running westerly the breadth of one hundred and fifty pole to a marked tree with a line drawn southerly to the first bounder, containing and laid out for three hundred acres more or less together with all rights profits and benefits thereunto belonging Royal mines excepted. To have and to hold the same unto him the said **JOHN AVERY** his heirs and assigns forever to be holden of us and our heirs as of our Manor of Nanticoke in free and common socage by fealty only for all manner of services yielding and paying therefor yearly unto us or our heirs at our Receipt at St. Mary's at the two most usual feasts in the year vizt: at the feast of the Annunciation of the blessed Virgin Mary and at the feast of St. Michael the Arch angel by even & equal portions the rent of six shillings sterling in silver or gold and for a fine upon every alienation of the said land or any part or parcel thereof one whole years rent in silver or gold or the full value thereof in such commodities as wee or our heirs or such officer or Officers appointed by us or our heirs from time to time to collect and receive the same shall accept in discharge thereof at the choice of us or our heirs or such officer or officers as aforesaid Provided that if the said **JOHN AVERY** his heirs or assigns shall not pay unto us or our heirs or such Officer or Officers as aforesaid the said sum for a fine before such alienation and enter the said alienation upon Record either in the Provincial Court or in the County Court where the said parcel of land lieth within one month next after such alienation the said alienation shall be void and of none effect. Given at St. Mary's under our great seal of our said Province of Maryland this eighth and twentieth day of September in the five and thirtieth year of our Dominion over our said province of Maryland Anno Domini one thousand six hundred sixty six.

Witness our dear son **CHARLES CALVERT** Esq. our Lieutenant General of our said province of Maryland."

Liber XII, fol. 610:

"On the backside of a warrant granted unto **JOHN AVERY** of the County of Dorchester for one hundred and fifty acres of land the twelfth day of May 1670 was thus written (vizt:)

Surveyed of this warrant thirty six acres

THOMAS TAYLOR Deputy Surveyor.

Captain JOHN AVERY

To the Honorable the Surveyor General May the 16th 1670 -

By virtue of a warrant granted unto **JOHN AVERY** out of his Ldpps Secretaries Office dated the twelfth day of May, this is in humble manner to certify that I, **THOMAS TAYLOR** have laid out a parcel of land on the east side of Chesapeake Bay in a creek called Oyster creek upon the west side of the said creek beginning at a marked cedar, for length one hundred seventy five perches to a marked pine thence west south west the breadth of thirty four perches to a marked pine bounding on the west with Oyster creek and a line north north west the length of one hundred seventy five perches thence with a parallel line to the first bounded tree containing and now laid out for thirty six acres more or less to be held of the manor of Nanticoke.

THOMAS TAYLOR Deputy Surveyor."

Liber XIV, fol. 107:

"**CECILIUS** & c. Know ye that wee for and in consideration that **JOHN AVERY** of the County of Dorchester in our said province of Maryland Planter hath due unto him thirty six acres of land within our said province, part of a warrant for 150 acres to him formerly granted as appears upon record. And upon such conditions and terms as are expressed in our conditions of plantation of our said province of Maryland under our greater seal at arms bearing date at London the second day of July in the yer of our Lord God 1649 with such alterations as in them is made by our declaration bearing date 22nd day of September Anno 1658 and remaining upon record in our said province of Maryland do grant unto him the said **JOHN AVERY** all that parcel of Land called Averys Lott on the east side of Chesapeake Bay in a creek called Oyster creek upon the west side of the said creek, Beginning at a marked cedar, for length of one hundred seventy five perches, to a marked pine thence west south west thirty-four perches to a marked pine bounding on the west with Oyster creek & a line drawn north north west the length of one hundred seventy five perches thence with a parallel line to the first bounded tree, Containing and now laid out for 36 acres more or less Together with all Rights profits and benefits thereunto belonging (Royal Mines Excepted) To have & to hold the same unto him the said **JOHN AVERY** his heirs & assigns forever to be holden of us and our heirs as of our manor of Nanticoke in free & common socage by fealty only for all manner of services - yielding and paying therefor yearly to us or our heirs at our Receipt at our City of St. Mary's at the two most usual feasts in the year, vizt. at the feast of the annunciation of the blessed Virgin Mary, and at the feast of St. Michael the archangel by even & equal portions the rent of 7^d 2^f Sterling in silver or gold, and for a fine upon every alienation of the said land or any part or parcel thereof, one whole years rent in silver or gold or the full value thereof in such commodities as we or our heirs or such officer or officers appointed by us or our heirs from time to time to collect or receive the same shall accept in discharge thereof as the choice of us or our heirs or such officer or officers as aforesaid Provided that if he the said **JOHN AVERY** his heirs or assigns shall not pay to us or our heirs or such officer or officers as aforesaid the said sum for a fine before such alienation and enter the said alienation upon record either in the Provincial Court or in the County Court where the said parcel of land lieth within one month next after such alienation, the said alienation shall be void and of none effect. Given at our City of St. Mary's under our great seal of our said province of Maryland this sixth day of September in the thirty ninth year of our dominion over our said province Anno Domini 1670."

Captain JOHN AVERY

Liber XVIII, fol. 54:

"To his Excellency the Cap'. General August 6, 1674

By virtue of a warrant bearing date the fifth day of August in the 42nd year of the Dominion of the Rt. Honorable **CECILIUS** Anno Domini 1673 granted unto **JOHN AVERY**⁶ of Somerset County, Mariner, signed by me **FRANCIS JENKINS** by order and appointment of his Excellency the Capt General of this province. These are therefor humbly to certify that I **FRANCIS JENKINS**, Deputy Surveyor under the Honorable **BAKER BROOKE** Esqr., Surveyor General, have laid out for the said **JOHN AVERY** a parcel of Land called Averys Choice, Situate, lying and being on the seaboard side near Delaware Bay about four miles from the Whorekill on the east side of a bay called Rehoboth bay, bounded as followeth, Beginning at a marked white oak standing upon a point of land at the mouth of a small creek called Island creek, thence with a line drawn west by north for breadth up the said Rehoboth Bay ninety perches to a marked white oak stake sett up in a marsh near the bounded tree on the south side of a parcel of land surveyed for **JOHN WALKER**, thence with a line drawn north by east for length five hundred thirty three perches and one third part of a perch to a marked oak thence by a line drawn East by south ninety perches to a marked Red oak standing on the south side of a branch, and from thence with a right line drawn to the first bounder, Containing three hundred acres more or less To be holden of the manor of Worcester.

FRANCIS JENKINS
Deputy Surveyor."

Rent Rolls, Somerset & Dorchester No. 1, fol. 26:

"300 acres Averys Policy, surveyed 31, Mar. 1666, for **JOHN AVERY** on the North side of Cuttomactico at a marked oak dividing it from the land of **THOMAS COTTINGHAM**. The Land Poss^t is included in a survey of 480 a for **WILLIAM ELGETT** by Special Warrant."

Rent Rolls Somerset & Dorchester No. 1, fol. 223:

"300 acres Averys Choice, surveyed 6th August, 1673 for **JOHN AVERY** on the seaboard side near Delaware Bay about 4 miles from the Whorekill on the East side Rehoboth Bay as before.

The Whorekill's not in this County."

Reg. of Wills, Annapolis, Md.

⁶ The same **JOHN AVERY** as before, of Dorchester.

Captain JOHN AVERY

Liber A, 1676-1677, fol. 199:

"In the name of God, Amen.

I, **JOHN AVERY** of the County of Dorchester in the Province of Maryland, ship-wright, now being in perfect memory although somewhat indisposed in bodily health - praised be God Almighty do make & ordain this to be my last will & testament.

Imprimis: I will and bequeath my soul to God that gave it in perfect hope by Christ Jesus my Redeemer to be saved by his only merits and my body to the earth from whence it came, by decent burial.

Secondly: I will and bequeath all my real estate in the County of Dorchester unto my well-beloved wife **ANNE** during her natural life and after her decease unto my grandson John Granger and his heirs forevermore.

Thirdly : I will and bequeath unto my said beloved wife **ANNE [AVERY]** all and every part and parcel of my personal estate whatever chattels, movables, bonds, bills, accounts or whatsoever unto me may personally belong or appertain in every respect, unto her and her heirs for ever, after my debts are paid and funeral charges satisfied.

Lastly: I will and bequeath that my said beloved wife **ANNE** be my full and sole executrix of this my last will and testament, and she do take care of my said grand child John Granger, hereby making null and void all other wills and testaments and codicils whatever formerly by me made, and published This to be my last will and testament.

JOHN AVERY {seal, his A mark}

Published, sealed and declared in the presence of

GEORGE TAURY

THOMAS PATTISON

MARY MEREDITH {her X mark}

MARY JANES {her X mark}

Proved in common form

April 21, 1677."

From Register of St. Mary Ann's Parish, Cecil Co., Md.:

"**LITAN LEEDS KIMBLE** was married to **MARY AVERY** the 22nd day of January 1675. He was born July 27th 1747"

"**MARY AVERY**, daughter of **PETER [AVERY]** & **ELIJAH (?) AVERY** was born October 8, 1744."

1 Pa. Col. Rec., p. 549-580, Capt. **JOHN AVERY**, the pirate.

Captain JOHN AVERY

Pa. Mag., Vol. V, p. 175, Capt. **JOHN AVERY**, the pirate.

The following is copied from an old poem in possession of Mr. **CHARLES R. HILDEBURN**, of Philadelphia.

At the top of the poem is a picture of a three-masted ship under full sail.

Captain JOHN AVERY

BOLD CAPTAIN AVERY

Come all ye young Sailors of courage so bold,
That venture for money, I'll cloath you with gold.
Come resort unto Broney, and there you will find,
A ship call'd the Fanny wil] pleasure your mind.

Bold Avery commands her and calls for his own,
And he'll box her about before he has done:
French, Spaniards, Portuguese, and Heathens likewise
He has made war with them till the day that he dies.

She's rigg'd and man'd, and most neatly trim'd,
She's model'd like wax-work and sails with the wind.
She has all things in order fit for our design,
God prosper the Fanny, she's bound for the main.

Farewel to the Plymouth, Catwater be damn'd,
For once I was owner of part of this land;
But since I'm disowned, Adieu I will take
My person from England my fortune to make.

I'll cross the South Seas with courage so bold,
For my men I resolve to cloath them with gold;
Five hundred and fifty brave boys of courage,
Resolve the first ship they meet to engage.

The Northerly climate is now fit for me,
I'll cross the Tropicks that all men may see
That I'm not afraid to let the world know,
I'll cross the seas, and to Persia will go.

I'll honor St. George and his Colours I'll bear,
Good quarters I'll give you, but no nations spare;
For the world must supply me if ever I want,
I'll give them my fill when my money grows scant.

Lo this is the Course I intend for to steer,
They that honor St. George the better shall fare,
For he that refuses shall surely soon spy,
Strange Colours on board my Fanny to fly.

Three shivers of gold, with a red flow'ry
Field, Embroidered with Gold, that shall be our shield,
So call for your quarter as soon as you can see,
Our bloody flag hoisted, this is our decree.

No quarter I'll give, no quarter I'll take,
There is no one man living, one glass is too late;
For we are sworn brothers, and it is my design,
I'm bound for the Indies, the gold shall be mine.

Captain JOHN AVERY

Now this is the Course I intend for to steer,
My hard-hearted nation to you I declare;
I have done you no wrong, 80 you may me forgive,
For my sword shal] maintain me as long as I live.

My commission is large, for I made it myself,
My captain may stretch it wider by half;
Twas dated at Croney, believe me, my friend,
In the year ninety-two boys unto my life's end."

Captain JOHN AVERY

CAPTAIN JOHN AVERY

I. 1. Captain **JOHN AVERY** was undoubtedly of English origin, but when or where he was born is unknown. The first reference to him, with certainty, is the following:

Land Office, Annapolis, Md.

Liber VII, fol. 580:

"June vi, 1665 - **JOHN AVERY** enters rights himself, **SARAH [AVERY]** his wife, **FRANCIS RAINES, EDWARD PERKINS**, this year. Warrant dated ut supra, returnable vith December next for two hundred acres."

From this reference we are unable to determine when **JOHN AVERY** came here, for it frequently happened that land was not claimed until several years after settlement. It may be, therefore, that the above **JOHN AVERY** is one of those referred to in the Introduction; he may have come here at one of the dates there mentioned and afterwards have gone to Virginia or elsewhere, married, and brought his wife back to Maryland with him. The writer believes such to have been the case, although, for certainty, he has decided to begin the account of Captain **JOHN AVERY** with the reference to his claiming rights in 1665. His wife's surname has not been ascertained, which is probably due to his having married without the Province of Maryland.

Although he claimed two hundred acres, the writer has been unable to find that he received them; he may have assigned his rights before settling in Delaware.

It has not been ascertained when he moved to Delaware; the first reference to him there is the following:

Deeds, Georgetown, Del.

Book 2, p. 288:

"**EDMUND ANDROSS** Esq., Seigneur of Sausmare etc. ... Certain parcel or tract of land near unto Whore Kill in Delaware Bay called "Avery's Rest," lying upon Rehoboth's Bay. The said **JOHN AVERY** to pay therefor yearly Quit Rent of 8 bushels of good winter wheat.

Signed 15 Jan. 1675, **EDMUND ANDROSS** - **MATTHIAS NICHOLLS**, Dep."

Captain JOHN AVERY

Pa. Ar., Sec. Ser., Vol. V, p. 690:

"Commission of **JOHN AVERY** as Captain by Sir **EDMUND ANDROSS**.

EDMUND ANDROSS Esqr. & c.

By virtue of his Majesties Letters Patents, and the Commission and authority unto me given by his royal Highness, I do hereby in his Majesties Name, constitute and appoint you **JOHN AVERY** to be a Captain of the Foot Company, of the Militia at the Whore Kill; You are therefore carefully to perform the Duty of a Captain, in all Things, and to observe such orders, as you shall from time to time receive from me, or other your Superior Officer, and all other Inferior Officers and Soldiers of the said Company, are to obey you as their Captain, according to the Discipline of Warr, This Commission to be of force for the space of one whole Year or till further Order.

Given under my Hand and Seal in New York, this 26th day of October 1676.

EDMUND ANDROSS."

From N. Y. Col. Mss., Vol. XXI, p. 8. In N. Y. State Library, Albany, N. Y.:

"To the Honorable **EDMUND ANDROSS** Esqr. Capt. General of all his Royal Highness Territories in America.

Whereas it was Your Honors good pleasure to put and Consign me though a person unworthy of so high a Calling to be a magistrate at the Whorekills in which office & Calling I have Endeavored by the help of god to discharge my Conscience before god and man to the best of my skill and knowledge without favor or Affection to any person and for so Doing I have received many Abuses both from Mr. **JOHN AVERY** and Mr. **HENRY SMITH** and for no other Cause nor Reason as I know of but for Doing my office which I humble conceived to be my Duty to do when Lawful Called thereto by any of his majesties subjects and not to be called Rogue and beggarly Rogue with many such like abusive speeches saying **SARRA** you pitiful Lousy rascal let me know you ever grant any attachment or warrants again and you had better be hanged and if the Governor Doth let Such pitiful rascals to be in Commission I will not sit for I hold it beneath me to sit with such a pitiful fellow as thou art. It is not only me but others of the Commission when they will not be Conformable to his unreasonable will for Mr. **JOHN KIPHAVEN** because he would not Draw him a bottle of rum for a Indian he had hired on the Sabbath Day In the Like terms and for no other Cause that I know of unreasonably abused by Mr. **JOHN AVERY** And as for Mr. **HENRY SMITH** his Abuses to the Court and the book of Laws are not Inferior to the Rest: for if wee do act any thing Contrary against Mr. **SMITH** his will then wee are Called rogues and a Confederate with rogues and with other threatening words which as I Humbly conceived not to be omitted therefore thought it my Duty to Inform Your Honor with it for if I Issue forth a summons or a warrant In His Majesties name to warrant In any persons who are living In Mr. **SMITH** his house Either the warrant is not Executed or if Executed not obeyed for he Doth pretend they are his Servants and not to Answer no warrant or summons without his Leave but I Humbly Conceive though they where Mr. **SMITH** his Servants which I know not such thing for to my knowledge they were both freeman not long since yet they where as Liable to his Majesties Laws as Mr. **SMITH** or any other person if they be good subjects this being part of the Irregular proceedings I humble beseech Your Honor to give me the patient personal hearing hereof for should I take a penman to write all it would weary the hand of a good penman to write and Your Honors Ears to hear an Like Your Honor I

Captain JOHN AVERY

have send all the proceedings that I have Done in my office and place which I hope Your Honor will peruse and find whither I have Deserved these Abuses or no and wholly Rely upon Your Honors good pleasure Either to Justify me or condemn me as Your Honors wisdom shall think fit so hoping Your Honor In Your good time will rectify Both these and all others misdemeanors by whosoever committed one thing I humble beg of Your Honor not that I am worthy to give advise but only beg it of Your Honor Both for the good of the people and the good of the place that Your Honor will be pleased to Constitute Sum wise discrete sober minded Gentleman that may Lead the people into obedience for the safety of a King or Chief governor Consists In obedient people for he that knows not how to obey neither knows not how to Command for which Cause I humbly Beseech Your Honor to make Choice of a Chief Commander according to Your Honors Discretion for this parties And that Your Honor will be pleased to Discharge me from this and all other offices of trust which is the humble Request of Your Honors Servant to Command so hoping Your Honor will be pleased to pardon my Boldness and make the best Constructions of these my Rude Lines I am and ever shall Remain as in Duty bound your Honors Humble Servant so wishing all health and happiness to Attend Your Honor Both in this Life and the Life to Com which is the prayer of him who is yo? Honors Humble Servant to Command.

EDWARD SOUTHRIN.

From the Whorekill
Sept. 18 Anno 1676"

Deed recorded at Georgetown, Del.:

"**EDMUND ANDROSS** Esq; SEIANEUR OF SAUSMAREZ LIEUTENANT & GOVERNOR General, under his Royal Highness, JAMES, DUKE OF YORK, and ALBANY, & of all his territories in AMERICA, to all to whom these Presents shall come, sendeth GREETING:

WHEREAS, There is a certain tract of land called Martin's Vineyard lying at the Whorekill on the west side of Delaware Bay, the metes by virtue of a warrant hath been laid out for **HENRY STRITCHOR** [**STRETCHOR**]; Beginning at a certain small creek lying by a place called Kickout, beginning at the point by the Whorekills running & bounding upon the said kill south east in breadth One hundred and fifty perches to a bounded white oak standing upon the point of a marsh, and from thence up the said marsh south west six hundred & forty perches to an other bounded white oak standing by the said marsh and from thence north west bounding upon the woods to a bounded hickory or walnut tree standing by the aforesaid creek one hundred and fifty perches then the said creek to the point in the Whorekill north east six hundred and forty perches, containing and laid out for Six Hundred Acres, as by the return of the survey brought in by Captain **EDMOND CANTWELL**, the surveyor doth & may appear. Now for a confirmation unto him the said **HENRY STRITCHOR** in his possession and enjoyment of the premises; Know ye that by virtue of the commission and authority unto me given by his Royal Highness I have Ratified Confirmed & Granted and by these Presents do ratify confirm and grant unto the said **HENRY STRITCHOR**, his heirs and Assigns the aforesaid parcel of land and premises. With all and Singular, the Appurtenances to have and to hold the said parcel of land and premises unto the said **HENRY STRITCHOR** his heirs and assigns unto the proper use and behoof of the said **HENRY STRITCHOR** his heirs and assigns forever. He continuing in obedience and conforming himself according to the laws of the Government. And yielding and paying therefore yearly and every year as a quit rent unto his Royal Highness six bushels of good winter wheat unto such person or persons there in authority as shall be empowered to receive same.

Captain JOHN AVERY

Given under my hand, and sealed with the seal of the Province in New York, the Twenty fifth day of March in the Twenty Eighth year of his Majesty's reign, Anno Domini, One Thousand Six Hundred and Seventy Six.

(Recorded by order of the Governor. the day and year above written.) **EDMUND ANDROSS.**

Examined by me,
MATTHIAS NICHOLLS, Sec."

"Know all men by these presents that we **HENRY STRETCHOR** and **SARAH STRETCHOR** for a valuable consideration already received do by these presents alienate assign and make over all our right title and interest of this within mentioned patent from us our heirs executors administrators and assigns unto Capt. **JOHN AVERY** his heirs executors administrators and assigns forever.

In Witness hereof, have hereunto set our hands this 11th day of Feb. A. D. 1678.

Signed sealed and delivered in the presence the mark of of us,

HENRY STRETCHER {seal}
SARAH STRETCHER {seal, her X mark}

Acknowledged in open court Feb. 11th 1678.

Test.
Com. **VERHOOR** Clk. Whorekills

Recorded the 2nd. of May 1715. **JOHN HEPBURN** master of the Rolls. for County of Sussex."

Pa. Ar., Sec. Ser., Vol. V, p. 705:

"Commission to Capt. **JOHN AVERY** & c. to be Justices at the Whore Kill in Delaware Bay.

Sir **EDMUND ANDROSS** K^t & c.:

By virtue of his Ma Letters Patents & the Commission and Authority unto me given by his Royal Highness I do hereby in his Ma" Name Constitute, appoint and Authorize you **JOHN AVERY, FRANCIS WHITWELL, ALEXANDER MOLESTINE, JOHN KIPHAVEN, LUKE WATSON, JOHN ROADES, & JAMES WELLS** to be Justices of the Peace at the Whore Kill and dependencies in Delaware Bay and any four or more of you to be a Court of Judicature And in case of Sickness, absence or otherwise of ye first & c. The Next in Commission to preside Giving and Granting unto you and every of you full power to Act in said Employment according to Law regulation and former practice of which all Persons concerned are to take Notice & give you the due Respect & Obedience belonging to your Places in Discharging your Duties This Commission to be of force for the space of One Year after the date hereof and taking your Oaths and Places for the same or till further Order.

Given under my hand and seal of the Province in New York this 8th of October in the 30th Year of his Majesties Name Anno Domini 1678.

EDMUND ANDROSS.

Captain JOHN AVERY

Examined by me
MATTHIAS NICHOLLS, Secr.:"

P. 706:

"Certificate of Capt Avery taking the Oath with power to Administer to ye rest of ye Bench.

By the Governor:

Whereas you have this day taken your Oath as Magistrate or Justice of the Peace of the Court at the Whore Kill in Delaware Bay for the ensuing Year These are in his Majesties Name to Appoint and Authorize you at your Arrival there to Administer the Oath to the others Joined which you in Commission **WILLIAM** done and having taken your Places to act accordingly.

Given under my hand in New York this 12th day of October 1678.

Past the office

MATTHIAS NICHOLLS, Secr."

From N. Y. Col. Mss., Vol. XXI, p.62. Letter of **LUKE WATSON :**

"Whore Kill ye 30th June 1679. Honorable SIR

Your Honor hath been pleased to join me in Common with others as Magistrate for this county; which I have ever since been both willing and ready to serve you and my Country to the best of my Judgment; And having that Trust reposed in me I look upon myself obliged to Inform your Honor of such miscarriages and misdemeanors as happen or fall out that Cannot be rectified here; And that is the Gross Abuses that hath been Committed by Capt. **JOHN AVERY** president of this Court; both relating to the Trust reposed in him and other ways;

1stly That when the rest of the Magistrates could not Consent to do and determine things as he would have it; Contrary to our Judgment He have in A great Rage and fury went out of Court Cursing and swearing; Calling of the rest of the Court Fools Knaves, and Rouges; wishing that if ever he sat Amongst us again; that the devil might Come and fetch him away; and also threatening and presently after did strike one of the Magistrates with his cane; and had he not been prevented by the spectators might a done much damage that way.

2ndly He Tooke upon himself to Marry the widow **CLAIMENT** to one **BRYANT ROSELES**; without publication not withstanding shew ... out ask at least a Month to an other man; namely **EDWARD LEEKE**; The which when the said **LEEKE** heard that she was married to another man said ... before death, And presently ... home, fell sick and in about forty eight hours after ... Left it on his death that her Marrying was the Cause of his ...

3ndly He took upon him to grant A License to marry **DANIEL BROWNE** to **SUSAN GARLAND** widow; without any publication, which Marriage was effected; notwithstanding it is Generally known; or at least, the said **DANIEL** Confesses that he knows no other but that he have a wife Living in England;

Captain JOHN AVERY

4^{thly} one **JUDITH [DAVIDS]** the wife of **THOMAS DAVIDS** being suspected to have stolen some goods from several persons, the goods being found in her custody; was had in examination by me; And at first she did Confidently Affirm that she brought the said goods out of Maryland; and that they ware her own Lawful goods; but she well knowing that it would be proved to be otherwise did soon Confess that she did steal them and from whom; upon her Confession I made her ... is and committed her to the Custody of the Constable Till the next Court then following; but soon After Capt. **AVERY** sent a note by her husband to the Constable requiring him to give her her Liberty : threatening both me that had committed her and the Constable that did detain her so that the Constable being surprised with fear did discharge her out of his Custody; In short he the said Capt. **AVERY** is an encourager and upholder of drunkenness, Theft, Cursing, swearing, and fighting to the frightening, amazing and terrifying of his Majesties quiet peaceable subjects; whose gross wickedness and inhuman conduct ... if a timely stop be not put to it; may Justly be expected to bring down God's Heavy Judgment upon this place.

5^{thly} I going into the house of **HELMAINAS WITTBANCK** on the fifteenth Day of this Instant, June, being the Lords day; where the said Capt. **AVERY** was drunk; who soon after broke out in a great Rage and fury; (without any provocation); Calling me beggarly Rouge and thief with money more reflecting speeches; saying that he would prove me to be both Rouge and thief: and that I was not worth one grot; I did tell him that if he would not give me satisfaction; for the abuse he had cast upon me; that I would sue him; To which he replied; That he would fain see any Magistrate that would dare to sign warrant or summons Against him; And that what he had said he would not be Accountable to any Court but only to the Governor; and that he is above any power here; so that the other Commissioners have refused to sign A summons against him; he Curses & swears at such a rate that he frightens all others from Doing any thing in order to the bringing him to Justice.

... I could do no Less ... these things before your ... for the Clearing of myself from having any unity ... such his Abominable wicked practices Life and Conversation.

And my Humble Request unto your Honor is that you will be pleased to give such order and directions that the said Capt. Avery may be Compelled to make good his Charge Against me; or Else to give me such satisfaction as shall Appear to you Just and Equal; which is the thing desired and Humbly Craved for by your Honors Obedient & faithful servant, **LUKE WATSON.**"

(NOTE. The ... in the above copy signify the loss of letters in the original manuscript where the paper was torn and missing.)

Deeds, Georgetown, Del.

Book A, p. 104:

"Ct. held for the Whore Kill 8 & 9 of April 1679, Commissioners present, Capt. **JOHN AVERY**, Mr. Frances Whitwell, Mr. **ALEXANDER MALLESTON**, Mr. **JOHN KIPSHAVEN**, Mr. **LUKE WATSON**, Mr. **JOHN ROADS** and Mr. **JAMES WELLS**. There was granted unto Capt. **JOHN AVERY** 800 acres of land in addition to former grant."

Captain JOHN AVERY

From N. Y. Col. MSS8., Vol. XXVIII, p. 109:

"New York ye 9th of June, 1679.

Capt. **AVERY**,

I received Your I think by this Bearer Mr. **PETER GROENENDYCK** & Did Direct Capt. **NICOLLS** to prepare an order in Answer to ye Several particulars & some others but not being Done & Capt. **NICOLLS** out of town, Upon the saying of said **GROENENDYCK** occasions this to tell you the Substance or Result, viz' I do approve & Confirm your Choice & Recommendations of **CORNELIS VORHOOFE** to Continue Clerk of the Court & be Surveyor till further order, & Mr. **JOHN VINES** to be Sheriff Giving Security During this Court Commission & there's an account of about 40,000 lbs of tobacco for Surveys which I hear is sworn to by **WILLIAM TAYLOR** afore **GUILLEM VERPLANCKEN** & attested by him as Alderman being Irregularly & Illegally taken be void & of none effect & to Remain as if not done. I am Your Affectionate friend.

EDMUND ANDROSS"

Underneath was written, "True Copy from ye original Examined per me, **JOHN AVERY.**"

From N. Y. Col. Mss., Vol. XXI, p. 76:

"New York, August 23^o, 1679. Capt. **JOHN AVERY**,

Sir: Capt. **NATHANIEL WALKER** having the Last year produced a Survey under the hand of **CORNELIS VORHOOFE** of a parcel of Land laid out for him at the Whorekill, called Cedar neck, containing six hundred and eighty acres, the which was afterwards certified by your Court, upon my writing to them from the Governor about it: And the said Capt. **WALKER** having the Governors Grant of a patent for the same, hath for the present respited it upon his desire that there may be inserted in the said patent, besides the number of Acres aforementioned, a certain Swamp lying in the meddle of Cedar neck, together with the Sand Hills & pines by the Sea Side, with the Slashes & marshes or broken land, between the said neck and the sea, and Rehobay bay, and the Indian inlet to the Southward, all which the Governor is willing to comply with him in, provided it will be no prejudice to any township or persons seated thereby & before his voyage to the Eastward, which he began this day fortnight, had he not been very full of business had written to you himself, but being prevented, desired me to do it so that my Request to you is that you will propose it to the Court & if it will be no prejudice as before, that you will with the first opportunity return me your result, that Capt. **WALKER** may no longer be delayed about his patent, who when he comes to settle amongst you, will I doubt not, prove a good neighbor & Inhabitant. I have not farther on this occasion, so subscribe,

Sir, Your Friend and Servant **MATTHIAS NICOLLS.**"

Captain JOHN AVERY

Deed Office, Georgetown, Del.

Book A, p. 106:

"At a Court held Dec. 1679, Capt. **JOHN AVERY** hath made and acknowledged a deed of conveyance of 300 acres to **LEVIT COLLINS** and **JOHN WEST**."

Same page :

"**WILLIAM FUTCHER** granted unto Capt. **JOHN AVERY** 'a parcel of land.' (No description.)

Dec. 1679."

Book A, p. 106:

"At a Court held Dec. 1679, **HENRY STRETCHER** and **SARAH [STRETCHER]** his wife, for a valuable consideration already rec'd. acknowledged a 'patent' of land unto Capt. **JOHN AVERY**. Recorded May 2, 1715. See Book D, p. 157-159."

York's Books:

"A parcel of land called 'Goulden quartered' patented to Capt. **JOHN AVERY** containing 300 acres, 7 Mar. 1681. **CORNELIS VORHOOFE**, Surveyor.

Certified by **LUKE WATSON**."

Deed Book No. 1, p. 10. Georgetown, Del.:

"Warrant given April 16, 1682 to Capt. **JOHN AVERY** for the Island in Rehoboth Bay upon which he now lives, to be added thereto. The Court approve."

Reg. of Wills, Georgetown, Del.:

Will of **EDWARD** Boothe of Deal County. Bequest of 300 pounds of tobacco to Mr. Avery. Will dated 1682.

Pa. Ar., Sec. Ser., Vol. XVI, p. 369:

"Oct. 29, 1682. From the Records in Sussex County. The entry of a notification, signed William Penn, dated at Upland, and directed to William Clarke, **LUKE WATSON**, **JOHN ROADS**, **JOHN AVERY**, Halmanus **WILT BANK**, and **ALEXANDER** Molistone; he notifies them, that the Duke of York had, by feoffment, dated 24 Aug. 1682, past and conveyed to him, from 12 miles Southward of New Castle upon Delaware River, to Cape Henlopen, together with the Powers and Jurisdictions thereunto belonging, reserving unto himself one Moiety of the Rent thereof, whereby the said William Penn becomes, also, Proprietary and Governor of the before-mentioned Tract of Land; He desires them to meet him, next Thursday, at the Town of Newcastle, being the 2d of November, where he intends to hold a General Court for the settling the Jurisdiction of these, and your Parts, in which they will oblige him. If there be any Persons of NOTE, or others, that desire to be present, they may come freely, which you are desired to communicate. Sussex Records, No. 17. Fol. 16."

(The foregoing was part of the evidence used in the case of Penn v. Baltimore. - E. J. S.)

Captain JOHN AVERY

P. 370:

"Nov. 7, 1682. From the Records in Sussex County. Commission from William Penn Esq; dated in New Castle, whereby he, as Proprietary, and Governor of Pennsylvania, Newcastle, St. Jones, Whorekill alias New Deal, with their proper Liberties, does, in the King's Name, constitute **LUKE WATSON**, William Clark, **JOHN ROADS**, **JOHN AVERY**, and Halmanus **WILTBANK**, or any three of them, to be Justices of the Peace, and Court of Judicature for the County of Whorekill alias New Deal; this Commission to be in Force for one Year, or till further Order. Sussex Records, No. 17, Fol. 17."

(Evidence in Penn v. Baltimore.)

"Records of the Court of Sussex County, Delaware," from the old Court Docket in possession of the Pa. His. Soc.

P. 104:

"April 1682 the Court grant unto Capt. **JOHN AVERY** the island lying in Rehouer Bay, adjoining unto the land that the said Capt. Avery now lives upon and to be surveyed and added to his land he lives on. Wart. given out the 16th instant."

P. 129:

"William Penn's Commission of the Peace Nov 7, 1682. **LUKE WATSON**, William Clark, **JOHN ROADES**, **JOHN AVERY** and Halmanus **WILTBANK**, to be Justices."

P. 130:

"Record of the oath subscribed to by the above commissioned justices on the 14th of Nov. 1682. **JOHN AVERY** did not sign."

P. 144:

"Court held 9th 10th 11th 11th Mo. 1682."

JOHN AVERY, plaintiff
RICHARD Harvey, defendant

The suit falls by the death of the plaintiff who departed this life the 16th Sept. 1682."

P. 166:

"Ct. held 13 & 15, mo/12 1682.

In Action of Trespass:

SARAH Avery, plaintiff, administratrix to Capt **JOHN AVERY**, deceased,
RICHARD Harvey, defendant

The plaintiff not appearing to present her suit and the defendant craving an non suit the Court order an non suit to be entered against the plaintiff with costs of suit, Also Execution eodem die [same day]."

Captain JOHN AVERY

P. 168:

An action of the case.

"**SARAH** Avery, plaintiff, Administratrix of the Estate of Capt. **JOHN AVERY**, deceased William Traford, defendant"

P. 171:

"**HERCULES SHEPHERD**, petitioner.

The petitioner sets forth by his petition that Capt. **JOHN AVERY**, deceased, did before the petitioner was joined in marriage with Mary, the wife of the petitioner and daughter of the said Capt. Avery, [say] that he would give unto your petitioner with his daughter a certain parcel or tract of land which was late in the occupation of **THOMAS DAVIDS**, together with the plantation, house & premises thereunto belonging, which said land Lies Between the land of John Depree and the land that the widow Avery now lives upon, and that the said **JOHN AVERY** did after the said marriage was solemnized give your petitioner possession of the said land and premises; and that he did declare the same when he lay upon his death bed and proved the same by the testimony of several witnesses. The Court, taking the same into their consideration and several members of the Court having themselves heard the said **JOHN AVERY** say that his daughter Mary should have the said land, the Court, therefore, pass their judgment that the land do properly belong unto the petitioner and his heirs and assigns forever."

P. 172:

"Eodie. Upon the petition of **SARAH** Avery, the administratrix of **JOHN AVERY** deceased, the Court is pleased to remit and forgive the fine of the said **JOHN AVERY** that is as yet unpaid, being nine hundred and fifty pounds of tobacco."

P. 204:

"15th June 1683.

The Court ordered the appraisers of Capt. Avery's Estate should appraise it as it was when he died as near as could be and if any of the 4 appraisers be wanting, they may choose another in his place, and that **JOHN ROADS** shall swear them for the true appraising thereof."

From N. Y. Coll. MSS., Vol. XXI, p. 127:

"To the Right Honorable **EDMUND ANDROSS** Governor General over ye nordⁿ parts in America.

The humble Petition of **PETER GROENENDYCK** sheweth

That Whereas Your petitioner att ye Whorekill hes obtained on order against Capt **JOHN AVERY** for ye sum of £23.01.07½ in money & 2,116 pounds of tobacco for ye which said sum of money & tobacco Execution was Granted & served upon sum of said Capt. Avery his estate & appraised, but so it is yet said goods is appraised so extraordinary unreasonably as Your honor if please by ye proceedings thereof may see so yet Your petitioner should be a great loser thereby.

Captain JOHN AVERY

There for Your Petitioner humbly Requests Your Honor will be pleased to take this in his serious consideration & to Grant Your petitioner on order yt ye said goods may be sold at a public outcry or other ways yet ye appraisers may be compelled to keep ye said goods at ye price as it is appraised ... them & yet your petitioner may have his Just due According to order & so Your petitioner shall pray for ever."

From N. Y. Coll. Mss., Vol. XX VI, p. 102:

"At a General Court of Assizes held in New York beginning the 3rd & ending the 5th day of October (1677).

PETER Groenendyke plaintiff **JOHN AVERY & HENRY SMITH** defendants

The plaintiff having at the last Court of Assizes made complaint against the Court & Jury at the Whorekill that they had not done him justice in an action depending there between the plaintiff & **HENRY SMITH** one of the defendants alleging the president to be a party against him or Attorney to the said **SMITH** & producing under the hand of 6 of the Jury that they were misled in the case, several matters being then alleged of want of proof, & **HENRY SMITH** not appearing, The case was referred to this Court where none of ye defendants but **HENRY SMITH** being present whose excuse for non attendance on ye last Court was admitted, & pleading not to have had legal summons, or a declaration delivered in against him now according to Law, The Court doth dismiss the Cause & order the Action to be divided, That is to say the plaintiff in one Action to prosecute the Court & Jury & in another shall prosecute the said defendant **SMITH** by way of Appeal at the next General Court of Assize.

It is likewise ordered that Evidence taken in open Court at the Whorekill relating to this matter shall be admitted in this Court as valid. And the plaintiff & defendants are both to put in security the one to prosecute & the other to make answer at the Court aforesaid. By order of ye Court of Assizes."

From N. Y. Col. Mss., Vol. XXVI, p. 103:

"At a General Court of Assize ...

PETER Groenendyke plaintiff
JOHN AVERY & HENRY SMITH, defendants

In the case between the plaintiff & defendants brought into this Court by way of Appeal from the verdict & Judgment of the Court at Whorekill in Delaware, wherein the plaintiff taxeth both Court & Jury for acting contrary to law & Justice in a suite depending between him & **HENRY SMITH** one of the defendants:

The matter being debated in Court & it being that several evidences & Copies of ye Court Records were wanting, which if time were given might be produced & the said **HENRY SMITH** one of the defendants though served with the order for his Appearance being absent: It is ordered That the farther hearing of the Case be remitted until there General Court of Assize to be held in ... city when all parties concerned are to appear, & bring their farther proofs & evidences with them.

The Costs & Charges of this Court to be pd by **HENRY SMITH** by reason of his non-appearance unless he shew good Cause to the Governor for the same, which if he do, then to be paid by the plaintiff.

By order of the General Court of Assizes."

Captain JOHN AVERY

(Endorsed 1677.)

From N. Y. Col. Mss., Vol. XXI., p. 122:

"At A Called Court Held for the Whore Kill the first day of May Anno Domini 1680;

Commissioners:

Mr. **ALEXANDER** Moulston

Mr. **JOHN KIPHAVEN**

Mr. **LUKE WATSON**)

Mr. **JAMES WELLS**) present

PETER Groundik plaintiff

Capt. **JOHN AVERY** defendant

Whereas the defendant the last Court Appealed from the verdict of the Jury; the defendant In pursuance for the Judgment to Commissioners the said verdict of the Jury given In the last Court upon deference then depending between this plaintiff and this defendant, of which verdict the defendant then Appealed, the Court therefor hath examined the Matter of the proceedings from the last Court and pass Judgment to be entered Against the defendant to pay forthwith According to the verdict of the Jury being the sum of Two Thousand one hundred and sixteen pounds of Tobacco and £23.00.73d of money, one shilling of damages with cost of suite Alias Exemption and the bonds passed for the prosecution and Answering the said Appeal from the order of the last Court to be void and surrendered to each party; and if the defendant be aggrieved of this Judgment may if please entry Appeal to the Honorable Governor & Councell According to Law;

Test

CORNELOUS **VORHOOFE** Clerk

A True copy taken & examined. pr. William Clark."

Extracts from the old Court Docket of Sussex County, Delaware, in possession of the His. Soc. of Pa., p. 58:

"14, and 15, June 1681.

The differences that are depending between Capt. **JOHN AVERY** and **PETER** Groundyk concerning the account of Capt. Avery overcharging the said **PETER** Groundyk, it is ordered and agreed by both the said parties that it shall be referred to two men to be by them chosen to end and determine, as also what is once charged in the said **PETER** Groundyk's account to Capt. **JOHN AVERY**; and the charges of the Suit that was this day tried between them to be paid equally by them; and both persons to enter into bond, the one to the other of one hundred pounds ... to stand to the award of the two men to be chosen."

P. 57. Same date:

"**HENRY** Bowman, plaintiff

Joseph **BROWNE**, defendant

an action of Debt.

Captain JOHN AVERY

The defendant being out of the Government and his attorney, Capt. **JOHN AVERY**, being sick, petitions the Court for a reference; the Court, therefore, grants the defendant a reference until the next Court."

Same page and date:

"**HENRY** Bowman, plaintiff
Andrew Depree and Joseph **BROWNE**, defendants
An action of Debt."

Entry as above.

"Joseph **BROWNE** & Andrew Depree, plaintiffs.
HENRY Bowman, defendant Entry same as above.
An action of Debt."

P. 58. Same date:

"**THOMAS** Howard & Wright Howard, plaintiff.
NATHANIEL WALKER, defendant } action of Trespass.
Entry same as above."

"Andrew **DRAPER**, plaintiff
THOMAS Denison, defendant } Action of the case
Entry same as above."

"Capt. **JOHN AVERY**, plaintiff
Benjamin Coudrey, defendant } Attachment.
Entry as above."

P. 59. Eodie:

"Francis Gunby, plaintiff
Capt. **JOHN AVERY**, defendant } Action of the Case.
Entry as above."

P. 62:

"Capt. **JOHN AVERY**, plaintiff
PETER Grundyk, defendant } Plea upon the Case."

"In June Court last it was Referred by Agreement of the plaintiff and the defendant to be tried in December Court next ensuing, the date thereof or sooner if the defendant be here; in Sept. Court the defendant not being here the cause is referred until] the next Court; in November Court the defendant not being here the cause is referred until the next Court."

Captain JOHN AVERY

P. 62:

"8 & 9 of Nov. 1681.

HENRY Bowman, plaintiff;
Joseph **BROWNE**, defendant } An action of Debt.

Jurymen:

DANIEL Brown
ALEXANDER DRAPER
William Emmitt
William ffootcher

John Long
Simon Psawling
John **SMITH**

In Sept. Court the defendant being out of the Government and his Attorney, Capt. **JOHN AVERY** being sick petitioned the Court for a reference; the Court therefore granted the defendant a reference until the next Court; in November Court the plaintiff declares that the defendant stands indebted unto him in 1000 lb. of tobacco; the defendant pleads that he had satisfied the Sheriff for that debt and craved a jury to try the cause; and after it was debated on both sides, the jury went out and brought in their verdict, that they find that the defendant had paid and satisfied the 1000 lb. tobacco by Capt. Avery engaging for the payment of it and therefore find for the defendant with one shill. damages and costs of suit. The Court passed judgment accordingly according to the verdict of the jury. Alias Execution."

P. 68:

"8, 9, Nov. 1681.

THOMAS Howard & Wright Howard, plaintiff
NATHANIEL WALKER, defendant } An action of Trespass.

Jurymen:

HENRY Bowman
ROBERT Bracey
Daniell **BROWNE**
Norton Claypoole
ALEXANDER DRAPER
William ffootcher

Samuel Gray
John Hill
THOMAS Pinder
John **SMITH**
James Welles
Halmanus **WILTBANK**

In Sept. Court the defendant being out of the Government and his Attorney, Capt. **JOHN AVERY**, being sick, petitioned the Court for a reference; the Court, therefore, granted the defendant a reference until the next Court; the plfs. declare that the defendant committed a trespass on his land; the defendant denied it; and both plaintiff and defendant agreed to put it to a jury, before whom the business was debated, after which the jury went out and brought in their verdict, expressed in these words: the jury finds for the defendant and gives him twelve pounds damages. The Court order judgment to be entered according to the verdict of the jury. Alias Execution."

Captain JOHN AVERY

P. 68:

"8,9, Nov. 1681.

HENRY Bowman, plaintiff
Joseph **BROWNE** and Andrew Depree, defendants } An action of Debt."

Capt. **JOHN AVERY**, Attorney for defendant

Andrew Depree, plaintiffs
HENRY Brown, defendant } Action withdrawn by order of plaintiffs Atty."

"Joseph **BROWNE** & !

P. 64:

"8, 9, Nov. 1681.

Andrew Depre, plaintiff
THOMAS Denison, defendant } An action of the Case.
Capt. **JOHN AVERY**, Attorney for defendant.

Ibid.:

"Capt. **JOHN AVERY**, plaintiff } An action of the case upon attachment.
Benjamin Coudrey, defendant
Plaintiff non suit for default of an appearance."

P. 65. Same date:

"Francis Gunby, plaintiff
Capt. **JOHN AVERY**, defendant } An action of the Case. (Debt.)
Judgment for plaintiff"

P. 68:

"13 Dec. 1681.
Capt. **JOHN AVERY**, plaintiff
PETER Grundyk, defendant } Plea upon the case.
Referred until next Court."

P. 70. Same date:

"Capt. **JOHN AVERY**, plaintiff
Benjamin Coudrey, defendant } An action of the case.
Referred until next Court."

Same page and date:

"Capt. **JOHN AVERY**, plaintiff
Francis Gunby, defendant } An action of the case.
Verdict for plaintiff"

Captain JOHN AVERY

Same page and date:

"Capt. Avery, plaintiff
ffra. Gumby, defendant } An action of the case.
Nonsuit."

P. 75:

"10 Jan. 1681-2.
Capt. **JOHN AVERY**, plaintiff
PETER Grundyk, defendant } Plea upon the case.
Nonsuit."

P. 76. Same date:

"Capt. **JOHN AVERY**, plaintiff
Benjamin Coudrey, defendant } Case.
Verdict for plaintiff"

P. 91:

"14, 15, March 1681-2.
Capt. **JOHN AVERY**, plaintiff
RICHARD Patte, defendant } Case.
Withdrawn."

P. 129:

1682.

"Copy. 7th November

William Penn Esqr. Proprietary & Governor of Pennsylvania, New Castle, St. Jones,
Whore Kill, als New Deal with their proper Liberties:

I do in the King's name hereby Constitute & Authorize you **LUKE WATSON**, William
Clark, **JOHN ROADES**, **JOHN AVERY** and Halmanias **WILTBANK** or any three of you to be
Justices of the Peace And Court of Judicature for the County of Whore Kills als New
Deal, to Act in the said Employment and Trust for the preservation of the peace and
Justices of the province. Hereby willing and charging all persons within the said
Limits to take notice hereof. An accordingly to yield you all due and Just
obedience in the discharge of your said Trust. And this Commission to be of force
for the space of one whole year from the date hereof or until further order. Giuen
under my hand and Seal In New Castle this 7 day of November 1682.

WILLIAM PENN

To My Loving Friends

LUKE WATTTSON
WILLIAM CLARK
JOHN RHOADES
JOHN AVERY
HALMANIAS **WILTBANK**"

Captain JOHN AVERY

P. 162:

"9, 10, 11, November, 1682.

The Court order and appoint **JOHN ROADES**, Norton Claypoole, William Footcher and John deprece Appraisers of the Estate of Capt. **JOHN AVERY**, deceased."

P. 172:

"Upon petition of **SARAH** Avery, Admx. of Capt. **JOHN AVERY**, deceased, the Court remit a fine against decedent."

P. 204:

"31, June, 1683.

In re-appraisement of Estate of Capt. **JOHN AVERY**, dec'd."

P. 248:

11th January 1684.

Mathew Scarborough, plaintiff
ROBERT CLIFTON, marrying the Relix & Admx. of Capt. **JOHN AVERY**, defendant. } Case
Nonsuit."

P. 11, No. 2:

"11th January 1684.

William **ROADES**, plaintiff
Estate of George Andrews
in the custody of
ROBERT CLIFTON, defendant. } Case upon Attachment.
Suit withdrawn. **SARAH** mentioned as wife of **ROBERT CLIFTON**."

P. 12, No. 2:

"Eodie.
Mathew Scarborough, plaintiff
ROBERT CLIFTON, marrying the Relix & Admx. of Capt. **JOHN AVERY**, defendant } Case.
Nonsuit."

Sussex County Court Record. (Old Docket in possession of the Pa, His. Soc.)

Captain JOHN AVERY

P. 46:

"Court held 12th June, 1684.

THOMAS Hodgkins petitioned against the Estate of Capt. **JOHN AVERY** for being indebted to the Estate of Halmanus **WILTBANK**, seventeen hundred and ninety pounds of tobacco and one hundred and ninety five pounds of pork due, upon account for which 1798 lb. tobacco and 195 lb. pork he craves order of this Court for, with costs. **THOMAS CLIFTON** and **SARAH** his wife, who is the relict and administratrix of the Estate of Capt. **JOHN AVERY**, do plead they have never had a copy of the said account and do believe they may have a discharge to part of the said. account or that they may have another account against it; upon which, the Court orders the petitioner to deliver unto **THOMAS CLIFTON** a copy of the account."

"Return of Proprietary Quit Rents in Lewes and Rehoboth [Hundreds] of Sussex County on Delaware, 18th of December, 1705-6."

P. 2:

"**RICHARD HINMAN** - 300 acres on King's Creek.

Refuses to account.

Part of 800 acres called 'Avery's Rest,' granted by Pat. from Sr. **EDMUND ANDROSS**, dated 15 January, 1675, to **JOHN AVERY**, who sold about 200 to **JOHN DEPRE** whose son **JOHN** holds it. The other 600 he left to his 2 daughters, **MARY** and **JEMIMA**. **MARY** intermarried with **HERCULES SHEPPARD** and **R. HINMAN** married her, being his widow. Capt. **AVERY** died 1682."

"**JOHN MORGAN**, 300 acres. The other moiety of the 600 acres left by Capt. **AVERY** Nothing appears. to his daughter **JEMIMA** who intermarried with **JOHN MORGAN**; he married his wife about 7 years ago."

P. 10:

"**GEORGE MARINER**, 300 acres. Taken up by Capt. **AVERY** who sold it to **JOHN SHEPPARD**, whose attorney sold it to Mariner. It was taken up about 1680.

900 acres granted by Sir **EDMUND ANDROSS**, by patent dated 20 Aug. 1679 to **ROBERT HIGNAT & JOHN CREW**. **JOHN** immediately sold his interest to **R. HIGNAT**."

Deed Book A, p. 74, Georgetown, Del.:

"**JOHN** and **JEMIMA MORGAN**, plaintiffs
GRIFFITHS JONES, attorney for the former;
RICHARD and **MARY HINMAN**, defendants.
JAMES THOMAS, attorney for the defendants;

Declaration was read against the defendants for £200 damages, for gainsaying to make partition according to law of a certain 800 acres of land lying upon Rehoboth Bay, belonging to said **MARY** and **JEMIMA**, the late inheritance of Capt. **JOHN AVERY**, their father, deceased. A copy of the record with manifesto to possession of one of the said messuages given by Capt. **AVERY** in his lifetime to **HERCULES SHEPARD**, joined in marriage with the said **MARY**, and the said Capt. **AVERY** in his lifetime often saying, and upon his death-bed, that his daughter Mary should have the land, which

Captain JOHN AVERY

several members of the Court having also heard the said Capt. **AVERY** declare the same; therefore, upon the petition of the said **HERCULES SHEPARD**, the Court passed judgment that the land doth belong to the same petitioner and to his heirs and assigns.

The plaintiffs attorney pleaded that the Court could not make title to lands, nor no one else, except Captain Avery had done it by deed and writing under hand and seal, acknowledged according to law in his lifetime.

The Defendants Attorney pleaded that the said **HERCULES** had been at great charge and trouble in building upon and improving the said land for the good of his children, which is a thing of great moment and should be taken notice of, as that they have had sixteen or seventeen years quiet possession.

With some other pros and cons, the case was left to-the jury which found for the plaintiffs, saving the improvements of **HERCULES SHEPARD** to the defendants. **THOMAS FENWICK**, foreman. The Court accepted the verdict and ordered a jury of twelve men to meet at said plantation on Saturday, 18 June 1698, to view and appraise the improvements of said **HERCULES SHEPARD** and to make return of the same valuation and appraisement at next assembling of Court, Issued out the 17th instant."

Deed Book A, p. 217, Georgetown, Del.:

"**JOHN [MORGAN]** and **JEMIMA MORGAN**, at a Court held 9 June last (1698), did recover judgment of Court by verdict of the jury against **RICHARD [HINMAN]** and **MARY HINMAN** for partition and division of two messuages or plantations of 800 acres left to be divided equally according to the true and equal worth and value of the whole according to the said verdict of improvements of **HERCULES SHEPARD**, deceased, to the use of his children by the said **MARY**. The Court ordered a jury of twelve freeholders, who, 28 June 1698, by **WILLIAM DYER**, Sheriff, gave unto the Court in writing the following: The Jury whose names are here subscribed have valued and appraised the land and plantation, formerly belonging unto Capt. **JOHN AVERY**, now in dispute between **RICHARD HINMAN** and Mary, his wife, and **JOHN MORGAN** and Jemima, his wife, coheirs of the same **JOHN AVERY**. That part of the land as now divided with the plantation where the said **JOHN AVERY** formerly lived and the other half where **HERCULES SHEPARD** formerly lived is valued at £380. Our verdict is that whichsoever of them hath the plantation and dividend of land as now divided and where the said Capt. **AVERY** lived shall pay to the other 100£ current money. And whichsoever of them shall have the other division where **HERCULES SHEPARD** formerly lived shall pay the improvements as appraised by the former appointed Jury. Witness our hand 23 June 1698.

JAMES ASKUE
JOHN BARKER
ROBERT BARTON
WILLIAM DYER.
THOMAS FENWICK

PETER LEWIS
JOHN MEIRS
JOHN PAYNTER
RICHARD PAYNTER
HENRY STRETCHER

RICHARD WILLIAMS
CORNELIS WILTBANK
THOMAS BESANT

JOHN and **JEMIMA MORGAN** being present acknowledge themselves agreed within themselves for choice in the premises."

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Deed Book F, fol. 21:

"Deed dated Aug. 7, 1720, Recorded Aug. 7, 1722. **HENRY DRAPER** of Sussex County, and **SARAH** his wife, one of the granddaughters of **JOHN AVERY**, deceased, Convey to **RICHARD HINMAN** Esq. ¼ portion of 800 acres confirmed by patent unto **JOHN AVERY**, 15 Jan. 1675, called 'Avery's Rest,' lying upon Rehoboth; and in same deed it is recited that said **JOHN AVERY** died intestate, leaving issue five children, viz: **MARY, ELIZABETH, SARAH, JEMIMA** and **JOHN**, since deceased, and that the said **SARAH** intermarried with **JOHN KIPSHAVEN** and had issue **SARAH DRAPER** and that **SARAH** the mother being dead, the said ¼ interest doth belong to **SARAH**, wife of H. **DRAPER**."

ROBERT CLIFTON, the second husband of **SARAH**, the widow of Captain **JOHN AVERY**, was quite a prominent man in Sussex County. He was appointed one of the judges of the Court April 9, 1686, and appears in office as late as 1696. (See the Court Records of that period.)

There was a younger **ROBERT CLIFTON** who married **ANNE**, daughter of **THOMAS FENWICK**, but whether he was the son of the former by his marriage with Capt. **AVERY**'s widow I have not ascertained.

SARAH CLIFTON appears upon the Court Record May 65, 17038, as widow of **ROBERT CLIFTON**. Upon the death of the former **ROBERT CLIFTON**, the widow married, third, **THOMAS CLIFTON**, who was a Prov. Councilor, 1690. (Col. Rec., Vol. I, p. 824.) I do not know what relation he was to either of the aforementioned **ROBERT CLIFTONS**.

Capt. **JOHN AVERY** left issue by his wife **SARAH [AVERY]**:

2. **MARY [AVERY]**.
3. **ELIZABETH [AVERY]**.
4. **SARAH [AVERY]**.
5. **JEMIMA [AVERY]**.
6. **JOHN [AVERY]**.

II. 2. **MARY AVERY**, daughter of Capt. **JOHN AVERY** (1), m. first, **HERCULES SHEPHERD**; second, **RICHARD HINMAN**.

Old Court Docket of Sussex Co. in possession Pa. His. Soc.

"14, 15, March 1681, The Court grant unto **HERCULES SHEPHERD** 300 acres; warrant given him the 16th."

"List of Officers of the Colonies on the Delaware and the Province of Pennsylvania, 1614-1776." (Pa. Ar., Sec. Ser.)

P. 664:

HERCULES SHEPHERD appointed a Justice of the Peace 1683.

Captain JOHN AVERY

The old Court Docket of Sussex County in possession of the Pa. His. Soc.

P. 207:

HERCULES SHEPHERD present as a judge of the Court 1683.

P. 214:

Ditto.

P. 228:

Ditto.

P. 239:

Ditto. The signature of **HERCULES SHEPHERD**, subscribed to a Declaration of Fidelity to the Proprietary by the Judges of the Court. His name is distinctly spelled "**SHEPHEARD**," although references to him and the names of his descendants, named after him, appear spelled either "**SHEPHERD**," "**SHEPPARD**," or "**SHEPHERD**."

It is very difficult to give the numbers of the pages of the references in the old Docket before mentioned, as it is not numbered regularly. References, therefore, must be sought according to the dates given.

HERCULES SHEPHERD sits as a Judge of the Orphans' Court, 2nd July, 1684. (See also Scharf's " His. of Del.," p. 1211.)

"List of Officers of the Colonies, etc.," p. 667; "Duke of York's Laws," p. 495.

HERCULES SHEPHERD, Member from Sussex of the Assembly of the Three Lower Counties, 1684.

HERCULES SHEPHERD acknowledges sale of land to **NORTON CLAYPOOLE** for use of daughter **MARY**, 10, 1 mo., 1685. (I do not know whose daughter is meant.)

RICHARD HINMAN and his wife, Admx. of **HERCULES SHEPHERD**, appear in Court May 9, 1706.

Orphans' Court held May 9, 1706, **RICHARD HINMAN** and **MARY** his wife, Admx. of **HERCULES SHEPHERD** dec'd., filed an account.

HERCULES SHEPHERD appears as one of the Overseers of Highways Oct. 5 & 6, 1687.

Orphans' Ct. held Mar. 4, 1706, **RICHARD HINMAN**, in right of his wife **MARY**, Admx. of the Estate of **HERCULES SHEPHERD**, deceased.

HERCULES SHEPHERD fined 10 for non-attendance as a juryman Dec. 7, 1694.

"Orphans' Ct. held Sep. 2, 1707. **RICHARD HINMAN** appeared in relation to the Estate of **HERCULES SHEPHERD** deceased, and Comfort **SHEPHERD**, daughter of **HERCULES SHEPHERD** acknowledged herself satisfied in her father's estate."

Captain JOHN AVERY

"Civil List of Officers & c." **RICHARD HINMAN** mentioned as a Justice of the Peace 1719.

RICHARD HINMAN Commissioned a Judge of the Supreme Court by **WILLIAM KEITH**, April 13, 1720. (Record Book D, p. 384.)

Book D, p. 64:

MARY, wife of **RICHARD HINMAN**, gives to her son **JOHN HINMAN**, from natural love and affection, by deed of gift, land belonging to **JOHN AVERY**, her father. Dated May 3, 1709. Recorded Aug. 9, 1709.

MARY [SHEPHERD] (2), by her husband **HERCULES SHEPHERD**, had issue:

7. **SARAH [SHEPHERD]**.
8. **COMFORT [SHEPHERD]**, m. first, **PRETTYMAN**; m. second, **SIMON KOLLOCK**, from which marriage the writer descends. For the descendants, see "Kollock Genealogy."
9. **ALICE**, m. Col. **JACOB KOLLOCK**. For descendants, see "Kollock Genealogy."
10. **JOHN**.

MARY (2), by her husband **RICHARD HINMAN**, had issue:

11. **JOHN [HINMAN]**.
12. **RICHARD [HINMAN]**.

III. 11. **JOHN HINMAN**, son of **RICHARD HINMAN** and **MARY AVERY SHEPHERD** (2), his wife, m. **MARY**.

Will Book A, Georgetown, Del.:

Will of **JOHN HINMAN**, dated Aug. 27, 1724, probated Sep. 23, 1727. Mentions wife **MARY**, two sons, **JOHN** and **RICHARD**, and daughter **ELIZABETH**. He also mentions his brother **RICHARD HINMAN**, **JOLIN ROADES** and **PHILIP RUSSELL**, Overseers.

JOHN HINMAN (11) and Mary his wife had issue:

13. **JOHN [HINMAN]**.
14. **RICHARD [HINMAN]**.
15. **ELIZABETH [HINMAN]**.

II. 12. **RICHARD HINMAN**, son of **RICHARD HINMAN** and **MARY** (2) his wife, m. _____.

Will Book A, p. 373, Georgetown, Delaware. Will of **RICHARD HINMAN**:

"In the name of God Amen The thirtieth day of January one thousand and seven Hundred and forty one, I **RICHARD HINMAN** of the County of Sussex Upon Delaware being sick and weak of body but of good sound disposing mind and memory praised be God for the same and knowing the uncertainty of all things on Earth and being desirous to settle things in order and dispose of that Estate which God of his Goodness far above my deserts hath been pleased to bless me with do make ordain constitute and appoint this my Last will and testament to be in manner and form following.

Captain JOHN AVERY

I give and bequeath my soul unto the hand of Almighty God who gave it me and my body to the Earth to receive such decent Christian like Burial as by my Executrix and Executor hereafter named shall be thought meet and convenient in sure and certain hopes of a resurrection in and through the Merits and Mediation of my blessed Lord and Savior Jesus Christ.

I give and bequeath unto my daughter **NAOMY ROADES** widow of **JOHN ROADES** decd., the Land and plantation whereon I now dwell containing three hundred and thirty five acres of land and Marsh taken up and patented in my own name as pr the patent being thereunto had may more fully appear with all the Housing and Improvements thereunto belonging with and Island of land and Marsh lying in Rehoboth Bay partly adjoining to the aforesaid land commonly called and known by the name of the Horse Island to her and her heirs forever.

I give and bequeath unto my two grandsons **HINMAN ROADS** and **JOHN ROADS** Sons of my above said. daughter **NAOMY** all other my land and plantation which I purchased from **DANIEL COE** and others in this County or elsewhere with my housing and lots in and near Lewis Town to be equally divided between my aforesaid two grand sons in quality and quantity to be possessed thereof when they arrive to the age of twenty one years or day of marriage which shall first happen to them and their heirs forever. And in case either of the above said. two grandsons should die before they arrive to lawful age or day of marriage as aforesaid. then the survivor to enjoy the whole land and housing as aforesaid to him and his heirs forever. I further will and order that all of my estate consisting either in Negroes gold silver paper money household goods cattle sheep horses hogs or any other merchandise or movables whatsoever in this County or elsewhere to be divided into three equal shares one full third part thereof I give and bequeath unto my aforesaid daughter **NAOMY ROADES** and her heirs forever; one full third part thereof I give and bequeath unto my grandson **HINMAN ROADES** and his heirs forever. And the other third part I give and bequeath unto my grandson **JOHN ROADES** and his heirs forever.

Lastly, I make and ordain my aforesaid daughter **NAOMY ROADES** and my friend **CORNELIS WILTBANK** Esq. Executrix and Executor of this my last will and testament, thereby revoking all other will or wills by me heretofore made either by word of mouth or in writing. In witness whereof I have hereunto set my hand and Seal the day and year first within written.

RICHARD HINMAN {seal}

Signed Sealed published pronounced and declared by the aforesaid **RICHARD HINMAN** to be his last will and testament in the presence of us

JOHN BICKNALL
JOHN MOLLESTON
JOHN LEWIS"

This will was probated the 18th of August, 1742.

Col. Rec., Vol. LI, p. 259: **RICHARD HINMAN** commissioned a Justice of the Peace for Sussex Co. '

Captain JOHN AVERY

P. 270: Apr. 20, 1727, again commissioned.

RICHARD HINMAN (12) and his wife had issue:

16. **NAOMY**.

IV. 16. **NAOMY**, daughter of **RICHARD HINMAN** (12), m. **JOHN ROADES** and had issue:

17. **HINMAN [ROADES]**. (See will of **RICHARD HINMAN** (12).)

18. **JOHN [ROADES]**. (Ditto.)

II. 4. **SARAH AVERY**, daughter of Capt. **JOHN AVERY** (1) and **SARAH** his wife, m. **JOHN KIPSHAVEN**. Will of **JOHN KIPSHAVEN** on file at Georgetown, Delaware.

P. 664: **JOHN KIPSHAVEN** mentioned as a Justice of the Peace, 1681.

"List of Officers, etc.,"

p. 667; Col. Rec., Vol. I, p. 48.

JOHN KIPSHAVEN Member of Assembly from Sussex 2nd February, 1682-3.

(For further reference to **JOHN KIPSHAVEN** and his wife **SARAH** (4), see account of Capt. **JOHN AVERY** (1).)

JOHN KIPSHAVEN and **SARAH** his wife had issue:

19. **SARAH**, m. **HENRY DRAPER**. (See Capt. **JOHN AVERY** (1).)

II. 5. **JEMIMA**, daughter of Capt. **JOHN AVERY** (1), m. **JOHN MORGAN**.

(See Capt. **JOHN AVERY** (1).)

II. 6. **JOHN AVERY**, son of Capt. **JOHN AVERY** (1), d. young, according to the letter of **DANIEL NUNEZ**, a copy of which is herein inserted.

The original letter, of which the following is a copy, is in possession of Mr. **CHARLES SWIFT**, **RICHE HILDEBURN**. **DANIEL NUNEZ**, the writer, married **HANNAH**, daughter, of Col. **JACOB KOLLOCK** and **ALICE SHEPHERD**, referred to in the letter, which is addressed to John Swift, who married the said **HANNAH**'s sister, **MAGDALEN KOLLOCK**. (See "Kollock Genealogy.")

"Sir:

I have after a long search amongst the old records found most of the papers that is necessary for us towards the recovery of our part of the land that belonged to the late Mrs. **ALICE KOLLOCK**, but as there is [word torn out] papers at Philadelphia and New Castle which [word torn out] be necessary for us to have as we must depend altogether upon copies as the originals are out of our possession and the tenants in possession are determined not to give up any part of the land until it is legally recovered from them for which reason I shall be obliged to you to make search in the Surveyor general's office in Philadelphia for the surveys & returns of the following tracts of land and send a copy of them down to me, viz, one granted to Capt. **JOHN AVERY** the 9th April 1679 for 800 acres

Captain JOHN AVERY

called Avery's rest also a grant or resurvey of an island laying adjoining to the aforesaid tract granted the 16th April 1682 (but I believe this island was afterwards secured by **HERCULES SHEPARD** surveyed and Patented in his own name as **AVERY** died some short time afterwards) another tract called Martin Vineyard or black walnut neck granted & Patented to **HENRY STRETCHER** which he afterwards assigned over to **AVERY** there is one or two more tracts Avery had a right in but how they have been transferred from his heirs or how he came by them I cannot at present say. I want also the survey and return of a grant that was made to **HERCULES SHEPARD** the 16 March 1682 for 300 acres but if it should be for any lands on the South East side of Indian river I have [word torn out] use for it as I have the original Patent for all the [word torn out] he held on that side of the river. but should you in your searching find any more surveys & returns of land made to either **AVERY** or **SHEPARD** please to take notice of them and send me what they are for and I will let you know whether they will be of service to me or not.

As you Sir may want to know how we claim under **AVERY** I will just give you a short state of our descent from him viz. **AVERY** died intestate and left issue four daughters and one son to wit Mary, **ELIZABETH**, **SARAH**, **JEMIMA** & **JOHN** the son died a minor **HERCULES SHEPARD** intermarried with **MARY** by whom he had four children to wit **SARAH**, **COMFORT**, **ALICE** & **JOHN** which son died an infant **SHEPARD** died also intestate And under **ALICE** we claim. I would have been more particular in informing you of what became of Avery's other children and of what part of the lands we claim, but I have had a very severe return of my disorder in my stomach that for this eight or ten days past I have not been well able to write as much as is contained in this paper had that not been the case I should have gone up with **JOHN WOODS** to [word torn out] some affairs I have there which I cannot well do without going up. I have had Mr. **MCKEAN**'s second opinion on Mr. **PHILLIPS** will he says he has carefully considered Mr. Chew's case and confesses at first now they appear to be cases in point that is in favor of the limitation over but upon a careful comparison of them and the case then before him there is a manifest difference for the remainder man was to take immediately upon the death of the first devisee without leaving a child then living But in default of issue of **H. N.** it is given to her next of kin & c. So that the principal & interest is not to go over at her death without issue (then living) but after a general failure of issue of **H.** which would tend to a perpetuity and be too remote and therefore void. The following are the cases he refers to 2 Vent 349 sid 450 Pollexfen from fol. 24 to 44 Fitzgibbons 68 Green & Rod Avery strong case as he says and so concludes that if the principal don't go to **HANNAH** he cannot see what service it can be to an Executor of Mr. **PHILLIPS** who must always pay interest for it so that you see he still retains his former opinion.

I am heartily tired with writing and I [doubt] not you will in reading it for which [reason] I will conclude.

Captain JOHN AVERY

HANNAH is well and desires a tender of her love to you Mr. **SWIFT** and family.

With Sir
Your assured friend,
and Humble Servant
DANIEL NUNEZ

May 23: 1772.

JOHN SWIFT, Esq."

A facsimile copy of the foregoing is inserted in this work.

Captain JOHN AVERY

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