





The  
Works of  
Thomas Jefferson  
in  
Twelve Volumes



Federal Edition



# The Works of Thomas Jefferson

Collected and Edited

by

Paul Leicester Ford

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Volume II

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Jefferson's School at Forest Hill

Monticello, Virginia

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# ITINERARY AND CHRONOLOGY

OF

## THOMAS JEFFERSON

1771-1779

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1771.—Feb. 20.	At Monticello.
Mar. 14-16.	At Albemarle, attending County Court.
19-22.	At Augusta, attending County Court.
Apr. 8.	At "The Forrest" (Charles City).
Apr. 10-May 11.	At Williamsburg, attending General Court.
May 17.	At "The Forrest."
May 21-24.	At Augusta, attending County Court.
June 1.	At Monticello.
June 5.	At Tuckahoe.
June 9.	At "The Forrest."
June 11-13.	At Williamsburg, attending Court of Oyer and Terminer.
July 11.	At "The Forrest."
15-20.	At Williamsburg.
24.	At "The Forrest."
25.	At Tuckahoe.
Aug. 3.	At Monticello.
8-10.	At Albemarle, attending County Court.
Aug. 20-23.	At Augusta, attending County Court.
Aug. 30-1.	At Tuckahoe.
Sept. 7.	At Monticello.
Oct. 2.	At Eppington.
8.	At "The Forrest."
10.	At Williamsburg, attending General Court. Argues case of Godwin <i>et al. v. Lunan</i> .
Nov. 11.	At "The Forrest."
14-16.	At Albemarle, attending County Court.
19-22.	At Augusta, attending County Court.
Dec. 10.	At Williamsburg, attending Court of Oyer and Terminer.
27-28.	At Eppington.

1772.—Jan. 1.	At "The Forrest."
	Marries Martha (Waylies) Skelton.
25.	At Monticello.
Feb. 25.	At Albemarle.
Mar. 30.	At Shadwell.
May 19.	At Charlottesville.
28.	At Eppington.
June 1.	At "The Forrest."
11.	At Williamsburg.
23.	At "The Forrest."
July 15—Aug. 20.	At Monticello.
Sept. 27.	At Monticello.
	His first daughter, Martha, born.
Nov. 4.	At "The Forrest."
12.	At Monticello.
Dec. 5.	At Rocky Ridge.
19.	At Richmond.
1773.—Feb. 25.	At Albemarle.
Mar. 4.	At Williamsburg, attending House of Bur- gesses.
12—13.	Attends Committee of Correspondence.
15.	House of Burgesses dissolved.
Apr. 6.	Attends Committee of Correspondence.
May 19.	At Charlottesville.
25—28.	At Williamsburg, attending Committee of Correspondence.
Oct. 14.	Appointed Surveyor of Albemarle Co.
1774.—Mar.—Apr.	At Monticello.
Apr. 3.	His second daughter, Jane Randolph, born.
May 9.	At Williamsburg, attending House of Bur- gesses.
24.	Petitions House of Burgesses.
	Resolutions for Fast.
26.	House of Burgesses dissolved.
May 27.	Signs Association.
30.	Attends meeting of members.
June.	At Monticello.
	Recommends Fast.
July.	At Monticello.
26.	Drafts Resolutions of Albemarle Co.
	Writes "A Summary View."
	Starts for Williamsburg, but is taken sick.
Aug. 3.	At Monticello.
Oct.—Dec.	At Monticello.

# Itinerary and Chronology

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- 1775.—Jan. 5. At Monticello.  
Elected member of Albemarle Committee of Safety.
- Feb. 27. At Monticello.
- Mar. 10. At Monticello.
20. At Richmond, attending Convention.
23. On Committee for defence of colony.
24. Makes motion relative to New York Assembly.
27. Offers resolution on Crown lands.  
On Committee on Crown lands.  
Elected deputy delegate to Continental Congress.
27. Convention dissolves.
- June 1. At Williamsburg, attending House of Burgesses.
2. On Committee to draft address to governor.
5. On Committee to inspect public stores.
10. Drafts address to Dunmore.
11. Leaves Williamsburg.
20. Arrives at Philadelphia.
21. Attends Continental Congress.  
Added to Committee to draft Declaration on Arming.  
Prepares draft.
- July 21. On Committee to report on Lord North's motion.
31. Reports draft of reply.  
Congress adjourns.  
Leaves Philadelphia.
- Aug. 9. At Richmond, attending Virginia Convention.  
On Committee on Crown lands.
11. Re-elected a member of Continental Congress.
16. On Committee on defence.  
Granted leave of absence for session.
17. On Committee to examine ballots.
19. At Williamsburg.
- Sept. 25. At Monticello.  
Leaves Monticello.
- Oct. 1. Arrives at Philadelphia.
- Oct. 2. Attends Continental Congress.
17. On Committee on Pa.-Conn. land dispute.
- Nov. 16. On Committee on Massachusetts papers.

- 1775.—Nov. 23. On Committee on Currency.  
 24. On Committee on condition of North Carolina.  
 On Committee on Petition of Newton.  
 Dec. 2. Makes resolution concerning Ethan Allan.  
 8. On Committee on Petition of Hudson.  
 11. On Committee on Petition of Beveredge.  
 13. On Committee on Committee of Congress.  
 15. Prepares rules for Committee of Congress.  
 16. On Committee on Petition of Phila. merchants.  
 18. On Committee on Letters of Schuyler.  
 22. On Committee on Business of Congress.  
 28. Leaves Philadelphia for Virginia.
- 1776.—Jan. 2. At Bushtown.  
 3. At Baltimore.  
 4. At Upper Marlboro.  
 5. At Piscataway.  
 7. At Fredericksburg.  
 9. At Monticello.  
 Mar. 31. Mother dies.  
 May 7. Leaves Monticello.  
 8. At Orange Court-House and Culpeper Court-House.  
 9. At Fairfax Court-House and Red House.  
 10. At Lacys, Leesburgh, and Knowlands on Potomac.  
 11. At Fredericktown and Tawneytown.  
 12. At Rhengher and Wright's ferriage (Susquehannah).  
 13. At Lancaster.  
 14. At Chester and Philadelphia.  
 Lodges at "Randolphi."  
 Attends Congress.  
 On Committee on Letters.  
 21. Drafts report of Committee.  
 On Committee to address foreign mercenaries.  
 23. Takes lodgings at Mrs. Graafs.  
 28. On Committee to prepare address.
- June ? Drafts Constitution for Virginia.  
 5. On Committee for preventing news and supplies for enemy.  
 10. On Committee to prepare rules for Congress.

# Itinerary and Chronology

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- 1776.—June 11. On Committee to prepare Declaration of Independence.
15. On Committee to investigate Cedars' cartel.
17. Drafts report of Committee.
20. Re-elected member of Congress.  
Drafts report on Canada.
28. Reports draft of Declaration.
- July 4. Declaration adopted.  
On Committee to plan seal of U. S.
6. On Committee on Indian affairs.
10. Committee to prepare rules of Congress report.
11. On Committee on Philadelphia prisoners.
15. On Committee on Flying Camp.
17. On Committee to revise journals.
18. On Committee on Letters.
24. On Committee on Gold and Silver coins.
25. On Committee on Memorial of Parsons.
- ? Moves for rotation of Congress.
- ? Requests Virginia Convention to allow his return.
- Aug. 9. On Committee to encourage Hessians to desert.
14. Committee reports.
20. On Committee on Washington's letter.  
On Committee on captures.
21. On Committee to revise resolutions.
26. On Committee on Wilson's letter.  
Drafts report.
28. Moves resolution in regard to Drummond.
- Sept. 2. Leaves Philadelphia.
4. At Whitehouse and Lancaster.
5. At Wright's ferry and York.
6. At Tawneytown and Frederic.
7. At Leesburgh.
8. At Red House.
9. At Monticello.
26. Elected Commissioner to France.
27. Leaves Monticello.
- Oct. 1. At Williamsburg.
6. At "Coles."
8. At "Bassetts."
11. At Williamsburg.  
Attends Assembly.

- 1776.—Oct. 11. On Committee on Propositions and Grievances.  
On Committee on Privileges and Elections.  
On Committee on Religion.  
On Committee to draft Militia bill.  
On Committee to draft Tobacco bill.
12. Receives thanks of Assembly.  
On Committee to draft bill ending entails.  
On Committee to draft repeal of frontier ordinance.
14. On Committee to draft bill to remove seat of government.  
On Committee to draft Naturalization bill.  
Entail bill introduced.
15. On Committee to draft Infantry bill.
16. On Committee to draft bill dividing Fin- castle Co.  
On Committee to draft Punishment bill.  
Reports on Ross.
18. Leave of absence granted by Assembly.  
Entail bill amended.
19. Reports on Corbin.
25. Reports on Garland and Barber.  
On Committee to draft Courts bill.
28. On Committee to draft bill defining treason.  
On Committee to draft bill dividing Augusta Co.  
Introduces Infantry bill.
- Nov. 2. Reports on Goodrich.
4. On Committee to draft bill dissolving local governments.
5. Bill to establish County Courts introduced.  
On Committee to report on Va.—Pa. boundaries.  
Bill for trial of certain offences introduced.
6. Chosen one of five to revise laws.
7. On Committee to draft Copper-coinage bill.
11. Introduces bill to remove capital.
12. On Committee to confer with Senate.
13. On Committee to draft restraining bill.

# Itinerary and Chronology

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1776.—Nov.	19.	On Committee to draft bill suspending tithes.
	28.	Reports on Upshur.
Dec.	4.	On Committee to draft bill to punish certain offences.
	6.	On Committee to draft bill for loan office. Bill for suspending debt executions introduced.
	14.	Leaves Williamsburg.
	25-31.	At Monticello.
1777.—Jan.	1-10.	At Monticello.
	13-16.	At Fredericksburg. Attends meeting of "Revisors."
	17.	At Orange Court-House.
Mar.	10.	At Monticello.
Apr.	1-19.	At Monticello.
May	4.	Leaves Monticello.
	5.	Arrives at Williamsburg. Attends Assembly.
	9.	On Committee on Religion. On Committee on Privileges and Elections. On Committee on Courts of Justice.
	10.	Reports bill regulating militia.
	12.	Reports bill for electing Congress delegates.
	20.	Granted leave of absence for session.
	22.	At Richmond.
	28.	At Monticello. Son born.
June	14.	Son dies.
	18.	At Bedford.
	23.	At Cumberland Court-House.
July	6.	At Monticello.
	24.	At Monticello.
Aug.	21.	At Monticello.
Oct.	20.	At "Charlton's."
	24.	At "Cowles."
	30.	At Williamsburg. Attends Assembly. On Committee on Religion. On Committee on Privileges and Elections. On Committee of Propositions and Grievances.

## Itinerary and Chronology

- 1777.—Oct. 30. On Committee of Courts of Justice.  
On Committee to draft Court of Appeals bill.  
On Committee to draft General Court bill  
On Committee to draft Chancery Court bill.
- Nov. 5. Leave of Absence granted.  
On Committee Petition of Vanbibber.  
On Committee on Forestalling.
28. On Committee to amend Militia bill.
- Dec. 1. On Committee to confer with Senate.  
4. Prepares reply to Senate.  
On Committee on Army bill.
5. On Committee on Losses of Norfolk.
6. At Charles City.
9. At Williamsburg.  
Attends Assembly.  
Reports answer to Senate.
10. At Cowles Ferry.
12. At Williamsburg.  
Attends Assembly.
13. On Committee to draft Tax bill.
16. On Committee to draft Salary bill.  
On Committee to draft bill legalizing certain acts.
17. On Committee to draft bill dividing Counties.
19. On Committee to draft bill granting Letters of Marque.
24. On Committee to draft County Court bill.
27. On Committee to draft bill granting powers to contractors.  
On Committee to amend Small-Pox bill.
- 1778.—Jan. 2. On Committee to prepare Answer to Senate.
3. Granted leave of absence.
9. Reports Answer to Senate.
12. On Committee to confer with Senate.
13. On Committee to draft Sequestration bill.  
On Committee to report on Loyauté.
20. On Committee to draft Chancery Court bill.
24. Assembly adjourns.
- Feb. 26-28. At Monticello.
- Mar. 2-14. At Monticello.

1778.—Apr. 8.	At Williamsburg.
May 12.	At Williamsburg. Attends Assembly.
13.	On Committee on Privileges and Elections. On Committee on Propositions and Grievances. Reports bill granting Pardon.
14.	On Committee on Norfolk Losses.
15.	On Committee to draft Cavalry bill. On Committee to draft Volunteer bill.
16.	On Committee on Recruiting bill.
18.	On Committee to draft bill for Recovery of Debts. On Committee to draft bill for Foreign Correspondence.
19.	On Committee to draft bill giving appointing power to Chancery Court.
20.	On Committee to draft bill relating to Town of Bath.
26.	On Committee to draft bill enforcing attendance of Assemblymen.
28.	On Committee to consider Oyer and Terminer Court bill. On Committee to draft Salt bill. Reports bill to attaint Philips.
June 1.	Assembly adjourns.
June 10.	Leaves Williamsburg.
July 19.	At Monticello.
Aug. 1.	Third daughter born (Mary Jefferson).
Sept. 12.	At Monticello.
Oct. 7.	Ordered into Custody of Sergeant at Arms of Assembly.
Oct. 12—Nov. 4.	At Monticello.
Nov. 22.	At Tuckahoe.
29.	At Cowles.
30.	At Williamsburg. Attends Assembly in custody of Sergeant at Arms.
Dec. 1.	On Committee to draft bill establishing Auditors.
3.	On Committee on Privileges and Elections. On Committee on Propositions and Grievances.
5.	On Committee to draft Court of Appeals bill.

- 1778.—Dec. 8. On Committee to draft Pay-bill of Assembly.  
 12. Ordered into Custody of Sergeant at Arms of Assembly.  
 14. Attends Assembly in custody of Sergeant at Arms.  
 15. On Committee to draft bill agreeable to resolution of Assembly.  
 18. Reports bill to prevent Forestalling.  
 19. Assembly adjourns.
- 1779.—Jan. 22. At Williamsburg.  
 Feb. 2. At Williamsburg.  
 Attends Meeting of "Revisors."  
 Mar. 1. At "The Forrest."  
 27. At Monticello.  
 Apr. 21-29. At Monticello.  
 May 8. At Williamsburg.  
 Attends Assembly.  
 On Committee on Privileges and Elections.  
 On Committee on Propositions and Grievances.
11. On Committee to draft Board of War bill.  
 On Committee to draft Board of Trade bill.  
 On Committee to draft Money bill.  
 On Committee to draft Land Office bill.
13. On Committee to draft Militia bill.  
 14. On Committee to draft Militia Supply bill.  
 15. On Committee to draft Congressional Delegate bill.  
 19. On Committee to draft Foreign Exchange bill.  
 25. On Committee to draft Spottsylvania County bill.  
 On Committee to amend Congressional Delegate bill.  
 On Committee to draft Counterfeit bill.
27. Reports Escheat bill.  
 Ordered to draft bill for paying Members of Assembly.  
 On Committee to draft bill for removing Capital.  
 29. Ordered to draft bill prescribing Oaths.

# Itinerary and Chronology

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1779.—May. 29.	Ordered to draft bill suspending Oaths in certain cases.
31.	On Committee to report on Maryland's action on Confederation.
June 1.	Elected Governor of Virginia.
13.	Bill for Religious freedom introduced in Assembly.
18.	"Revisors" report Code to Assembly.
July 1.	Issues proclamation concerning Escheats
17.	At "The Forrest."
25.	At Williamsburg.
Aug. 4.	At Monticello.
Sept. 25.	At Williamsburg.
Nov. 30.	Issues Proclamation laying Embargo.



CORRESPONDENCE AND MISCELLANEOUS  
WRITINGS

1760-1774 CONTINUED



1861

CORRESPONDENCE  
AND  
MISCELLANEOUS WRITINGS  
1760-1774 CONTINUED

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TO THOMAS ADAMS <sup>1</sup>

MONTICELLO, Feb. 20, 1771.

DEAR SIR,—Not expecting to have the pleasure of seeing you again before you leave the country, I inclose you an order on the inspectors at Shockoe for two hhds of tobo. which I consign to you, and give you also the trouble of shipping as I am too far from the spot to do it myself. They are to be laid out in the purchase of the articles on the back hereof. You will observe that part of these articles (such as are licensed by the association) are to be sent at any event. Another part (being prohibited) are only to be sent if the tea act should be repealed before you get home; if it is not, you will observe a third class to be sent instead of those which are prohibited. I am not without expectation that the repeal may take place. I believe the parliament want nothing but a

<sup>1</sup> From *Harper's New Monthly Magazine*, lxxxi, 205.

colorable motive to adopt this measure. The conduct of our brethren of New York affords them this. You will observe by my invoice that I have supposed my tobo. to clear me £50. sterl. per hhd; should it be less, dock the invoice of such articles as you think I may get in the country.—In consequence of your recommendation I wrote to Waller last June for £45 sterl. worth of books inclosing him a bill of exchange to that amount. Having written to Benson Pearson for another parcel of nearly the same amount, I directed him to purchase them also of Waller. I acquainted both of the necessity of my situation brought on by the unlucky loss of my library, and pressed them most earnestly to lose not a day in sending them; yet I have heard not a tittle from either gentlemen.—I mentioned to you that I had become one of several securities for a gentleman of my acquaintance lately engaged in trade. I hope and indeed hear he is doing very well; I would not therefore take any step to wound his credit; but as far as it can possibly be done without affecting that, I must beg you to have me secured. It can surely do no mischief to see that his remittances are placed to the credit of the money for which we stand engaged, and not of any new importations of goods made afterwards. I must rely entirely on your friendly assistance in the matter, which I assure you gives me concern, as should my friend prove unsuccessful, (and ill foe. may render any person unsuccessful,) it might sweep away the whole of my little fortune.—I must once more trouble you for my friend Ogilvie. The commissary promised to write

in his favor to the bishop by Neeks. I did not see his letter, and with this gentleman I believe no farther than I see. I wrote by the same opportunity to Ogilvie and apprised him of the commissary's engagement. Should your route to the ship be thro' Wms.burgh I would trouble you to know whether he has in truth written or not. The inclosed letter to Ogilvie you will please to deliver with our most earnest advice that he lose not a day in coming over.—One farther favor and I am done; to search the Herald's office for the arms of my family. I have what I have been told were the family arms, but on what authority I know not. It is possible there may be none. If so, I would with your assistance become a purchaser, having Sterne's word for it that a coat of arms may be purchased as cheap as any other coat.—The things I have desired you to purchase for me I would beg you to hasten, particularly the Clavichord, which I have directed to be purchased in Hamburgh, because they are better made there, and much cheaper. Leave me a line before you go away with instructions how to direct to you.

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TO JAMES OGILVIE <sup>1</sup>

MONTICELLO, Feb. 20, 1771.

DEAR OGILVIE,—I wrote you a line from Wms-burgh last October; but lest that may have miscarried I take this oppty of repeating what was material in that. On receipt of your letter (and, oh

<sup>1</sup> Kindly furnished by Miss Sarah N. Randolph. For more concerning Ogilvie, see letters of July 11 and 23, 1770, *ante*.

shame! of your only letter) of March 28, 1770, which came not to hand till August we took proper measures for prevailing on the commissary to withdraw his opposition. But lest you should be uneasy in your situation in the mean time I directed mr T. Adams by the means of his partners Perkins and Brown to let you know they would answer any calls from you. In this your friend mr Walker insisted on joining me. In October I transmitted to the commissary a certificate of your conduct in life, on which he promised to write in your favor by Neeks, and tho I did not see the letter I expect he did. By the same oppty I wrote to you inclosing a duplicate of the certificate of which you might avail yourself if the commissary should fail us again. About the same time I wrote from Wmsburgh to a gentleman of the vestry in Orange to secure for you a vacancy which had happened in that parish by the death of Martin. I have had no answer, but the parish is still vacant, which gives me hopes it is kept for you. Mr Maury incumbent in Fredericksville parish (of which I was when you were here) has a tempting offer from another quarter. I know not whether he will accept of it. If he should we shall do for you all that can be done in your absence. But for god's sake let not that be a moment longer than is of absolute necessity. Your settlement here would make your friends happy, & I think would be agreeable to yourself. Your Dulcinea is in health. Her brother T. Strachan is settled with Y. Walker for life. Another reason for her and you to wish for a residence with us. He is wishing to take to himself a wife; and nothing ob-

structs it but the unfeeling temper of a parent who delays, perhaps refuses to approve her daughter's choice. I too am in that way; and have still greater difficulties to encounter not from the forwardness of parents, nor perhaps want of feeling in the fair one, but from other causes as unpliant to my wishes as these. Since you left us I was unlucky enough to lose the house in which we lived, and in which all its contents were consumed. A very few books, two or three beds &c were with difficulty saved from the flames. I have lately removed to the mountain from whence this is dated, and with which you are not unacquainted. I have here but one room, which, like the cobblers, serves me for parlour for kitchen and hall. I may add, for bedchamber and study too. My friends sometimes take a temperate dinner with me and then retire to look for beds elsewhere. I have hope however of getting more elbow room this summer. But be this as may happen, whether my tenements be great or small, homely or elegant they will always receive you with a hearty welcome. If any thing should obstruct your setting out immediately for Virginia I would beg the favor of you to send the things I asked of you to purchase by some careful captain coming on James river. Such of them as were for my buildings, or for house keeping I am particularly in want of. Nothing material occurs relative to the health and fortunes of your friends here. They are well in both as far as I can recollect them. I conclude my epistle with every wish for your felicity which friendship can inspire. Adieu and believe me to be yours sincerely,

"INSCRIPTION FOR AN AFRICAN SLAVE"<sup>1</sup>

1771.

Shores there are, bless'd shores for us remain,  
 And favor'd isles with golden fruitage crown's  
 Where tufted flow'rets paint the verdant plain,  
 Where ev'ry breeze shall med'cine every wound.  
 There the stern tyrant that embitters life,  
 Shall vainly suppliant, spread his asking hand;  
 There shall we view the billow's raging strife,  
 Aid the kind breast, and waft his boat to land.

AGREEMENT WITH JOHN RANDOLPH<sup>2</sup>

April 11th, 1771.

It is agreed between John Randolph, Esq., of the city of Williamsburg, and Thomas Jefferson, of the County of Albemarle, that in case the said John shall survive the said Thomas, that the Exr's or Adm'rs of the said Thomas shall deliver to the said John 800 pounds sterling of the books of the said Thomas, to be chosen by the said John or if not books sufficient, the deficiency to be made up in money: And in case the

<sup>1</sup> This is written in Jefferson's copy of the *Virginia Almanack for 1771*. A careful search has been made, without finding it in print, so it was probably written by Jefferson.

<sup>2</sup> From Randall's *Life of Jefferson*, 1, 131. On the eve of the departure of Randolph for England, in 1775, this agreement was cancelled, and the violin became the property of Jefferson on terms recorded by him in his diary as follows: "Williamsburg, August 17.—Delivered to Carter Braxton an order on the Treasurer in favor of J. Randolph, Atty. General, for £13, the purchase money for his violin. This dissolves our bargain recorded in the General Court, and revokes a legacy of £100 sterling to him now standing in my will, which was made in consequence of that bargain."

said Thomas should survive the said John, that the Executors of the said John shall deliver to the said Thomas the violin which the said John brought with him into Virginia, together with all his music composed for the violin, or in lieu thereof, if destroyed by any accident, 60 pounds sterling worth of books of the said John, to be chosen by the said Thomas. In witness thereof the said John and Thomas have hereunto subscribed their names and affixed their seals the day and year above written.

JOHN RANDOLPH (L. S.)

TH. JEFFERSON (L. S.)

Sealed and delivered in presence of:

G. Wythe,	Richard Starke,
Tho's Everand,	Wm. Johnson,
P. Henry, Jr.	Ja. Steptoe.

Will Drew,

Virginia, S. S.

At the general court held at the capital on the 12th day of April, 1771, this agreement was acknowledged by John Randolph and Thomas Jefferson, parties thereto, and ordered to be recorded. Teste,

BEN. WALLER, C. C. Cur.

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TO INGLIS AND LONG, MERCHANTS AT PORTSMOUTH<sup>1</sup>

WILLIAMSBURGH, May 11, 1771.

GENTLEMEN.—Yours of the eighth of April I have received, & since that your favour of five pounds as

<sup>1</sup> Printed by courtesy of Mrs. J. W. Drexel, the possessor of the original.

counsel for Messrs. Cunningham & Nisbett at the suit of Jamieson & Taylor. Before we can regularly proceed to take any proofs in the cause it will be necessary for Messrs. Cunningham & Nisbett to send us their answer denying or admitting the several charges in the bill as far as their own knowledge enables them. For this purpose a copy of the bill should be transmitted them. The answer must be sworn to before some justice of the peace, & that he is such must be certified under the seal of their province. As soon as I shall receive the answer immediate care shall be taken to send a commission for the examination of any witnesses Messrs. Cunningham & Nisbett may choose to call on, with directions what matters it will most avail them to prove. This I shall be the better enabled to do when their answer shall have apprised me of the nature of their defence.

With respect to the part yourselves are to act, it will be very plain, as you are not concerned in interest. You must declare what effects of Cunningham & Nisbett you have in your hands, and submit them to the direction of the Court. If you will be pleased by way of letter to state these matters to me I will put them into the usual form of answers & return them to be sworn to. Any further instructions you may think proper to give in this matter shall be diligently attended to by Gent., your very hble servt,

TO THOMAS ADAMS <sup>1</sup>

MONTICELLO, June 1, 1771.

DEAR SIR,—As it was somewhat doubtful when you left the country how far my little invoice delivered you might be complied with till we should know the fate of the association,<sup>2</sup> I desired you to withhold purchasing the things till you should hear farther from me. The day appointed for the meeting of the associates is not yet arrived; however from the universal sense of those who are likely to attend, it seems reduced to a certainty that the restrictions will be taken off everything but the dutied articles. I will therefore venture to desire that branch of my invoice may be complied with in which were some shoes and other prohibited articles; since if contrary to our expectations the restrictions should be continued, I can store, or otherwise dispose of them as our committees please. I must alter one article in the invoice. I wrote therein for a Clavichord. I have since seen a Forte-piano and am charmed with it. Send me this instrument then instead of the Clavichord: let the case be of fine mahogany, solid, not veneered, the compass from Double G. to F. in alt, a plenty of spare strings; and the workmanship of the whole very handsome and worthy the acceptance of a lady for whom I intend it. I must add also  $\frac{1}{2}$  doz pr India cotton stockings for myself @ 10/ sterl pr pair,  $\frac{1}{2}$  doz pr best white silk do.; and a large umbrella with brass ribs, covered with green silk, and neatly finished. By this

<sup>1</sup> From *Harper's New Monthly Magazine*, lxxxii., 206.

<sup>2</sup> See vol. i., page 9.

change of the Clavichord into a Forte-piano and addition of the other things, I shall be brought in debt to you, to discharge which I will ship you of the first tobacco I get to the warehouse in the fall. I expect by that time, and also from year to year afterwards, I must send you an invoice, with tobacco, somewhat enlarged, as I have it in prospect to become more regularly a pater-familias.—I desired the favor of you to procure me an architect. I must repeat the request earnestly, and that you will send him in as soon as you can.—I shall conclude with one petition: that you send me the articles contained in my invoice and written for above as soon as you receive this, as I suppose they may be bought ready made; and particularly the Forte-piano, for which I shall be very impatient. By this means I may get them in Octob., which will prevent my being obliged to purchase as I must do if they do not come in time.

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TO ROBERT SKIPWITH

MONTICELLO, Aug. 3, 1771.

I sat down with a design of executing your request to form a catalogue of books to the amount of about 50 lib. sterl. But could by no means satisfy myself with any partial choice I could make. Thinking therefore it might be as agreeable to you I have framed such a general collection as I think you would wish and might in time find convenient to procure. Out of this you will chuse for yourself to the amount you mentioned for the present year and

may hereafter as shall be convenient proceed in completing the whole. A view of the second column in this catalogue would I suppose extort a smile from the face of gravity. Peace to its wisdom! Let me not awaken it. A little attention however to the nature of the human mind evinces that the entertainments of fiction are useful as well as pleasant. That they are pleasant when well written every person feels who reads. But wherein is its utility asks the reverend sage, big with the notion that nothing can be useful but the learned lumber of Greek and Roman reading with which his head is stored?

I answer, everything is useful which contributes to fix in the principles and practices of virtue. When any original act of charity or of gratitude, for instance, is presented either to our sight or imagination, we are deeply impressed with its beauty and feel a strong desire in ourselves of doing charitable and grateful acts also. On the contrary when we see or read of any atrocious deed, we are disgusted with its deformity, and conceive an abhorrence of vice. Now every emotion of this kind is an exercise of our virtuous dispositions, and dispositions of the mind, like limbs of the body acquire strength by exercise. But exercise produces habit, and in the instance of which we speak the exercise being of the moral feelings produces a habit of thinking and acting virtuously. We never reflect whether the story we read be truth or fiction. If the painting be lively, and a tolerable picture of nature, we are thrown into a reverie, from which if we awaken it is the fault of the writer. I appeal to every reader of feeling and sentiment

whether the fictitious murder of Duncan by Macbeth in Shakespeare does not excite in him as great a horror of villany, as the real one of Henry IV. by Ravailac as related by Davila? And whether the fidelity of Nelson and generosity of Blandford in Marmontel do not dilate his breast and elevate his sentiments as much as any similar incident which real history can furnish? Does he not in fact feel himself a better man while reading them, and privately covenant to copy the fair example? We neither know nor care whether Lawrence Sterne really went to France, whether he was there accosted by the Franciscan, at first rebuked him unkindly, and then gave him a peace offering: or whether the whole be not fiction. In either case we equally are sorrowful at the rebuke, and secretly resolve *we* will never do so: we are pleased with the subsequent atonement, and view with emulation a soul candidly acknowledging its fault and making a just reparation. Considering history as a moral exercise, her lessons would be too infrequent if confined to real life. Of those recorded by historians few incidents have been attended with such circumstances as to excite in any high degree this sympathetic emotion of virtue. We are therefore wisely framed to be as warmly interested for a fictitious as for a real personage. The field of imagination is thus laid open to our use and lessons may be formed to illustrate and carry home to the heart every moral rule of life. Thus a lively and lasting sense of filial duty is more effectually impressed on the mind of a son or daughter by reading King Lear, than by all the dry volumes of ethics, and divinity

that ever were written. This is my idea of well written Romance, of Tragedy, Comedy and Epic poetry.—If you are fond of speculation the books under the head of Criticism will afford you much pleasure. Of Politics and Trade I have given you a few only of the best books, as you would probably chuse to be not unacquainted with those commercial principles which bring wealth into our country, and the constitutional security we have for the enjoyment of that wealth. In Law I mention a few systematical books, as a knowledge of the minutiae of that science is not necessary for a private gentleman. In Religion History, Natural philosophy, I have followed the same plan in general,—But whence the necessity of this collection? Come to the new Rowanty, from which you may reach your hand to a library formed on a more extensive plan. Separated from each other but a few paces the possessions of each would be open to the other. A spring centrally situated might be the scene of every evening's joy. There we should talk over the lessons of the day, or lose them in music, chess or the merriments of our family companions. The heart thus lightened our pillows would be soft, and health and long life would attend the happy scene. Come then and bring our dear Tibby with you, the first in your affections, and second in mine. Offer prayers for me too at that shrine to which tho' absent I pray continual devotions.<sup>1</sup> In every scheme of happiness she is placed in the foreground of the picture, as the principal figure. Take

<sup>1</sup> Robert Skipwith married a daughter of John Waylies, and half sister of Martha (Waylies) Skelton, soon to become Jefferson's wife.

that away, and it is no picture for me. Bear my affections to Wintipock clothed in the warmest expressions of sincerity; and to yourself be every human felicity. Adieu.

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ARGUMENT IN GODWIN *et al.* vs. LUNAN <sup>1</sup>

[Oct. 1771.]

I was of counsel for the libellant also, and though I thought the ecclesiastical jurisdiction of the court es-

<sup>1</sup> This is reprinted from Jefferson's *Reports of Cases in the General Court*. Cf. note at page 470 of vol. i. Of it Jefferson there wrote:

"The plaintiff's were churchwardens and vestrymen of the upper parish, in the county of Nansemond, and filed a libel in the General Court, as a court of ecclesiastical jurisdiction, against the defendant, charging that he was minister of the gospel of Christ, regularly ordained, according to the rites of the church of England; that he was received to the care of the said parish; that he was of evil fame and profligate manners; that he was much addicted to drunkenness, in so much, as to be often drunk at church, and unable to go through divine service, or to baptize or marry those who attended for those purposes; that he officiated in ridiculous apparel unbecoming a priest; that he was a common disturber of the peace, and often quarrelling and fighting; that he was a common and profane swearer; that on the 10th of July 1767, and at other times, he exposed his private parts to view in public companies, and solicited negro and other women to fornication and adultery with him; that he neglected the parochial duties of performing divine service, preaching and administering the sacrament of the Lord's supper; that he had declared he did not believe in the revealed religion of Christ, and cared not of what religion he was so he got the tobacco, nor what became of the flock so that he could get the fleece. Wherefore the libellants prayed that the said Patrick Lunan might be corrected, punished and deprived, or otherwise, that right and justice might be administered. The defendant pleaded to the jurisdiction of the court, and on that plea it came to be argued in October 1771. . . . The Court adjudged that they possessed ecclesiastical jurisdiction, and that as an ecclesiastical court they might proceed to censure or deprive the defendant, if there should be just cause."

established beyond a doubt, yet I conceived it did not follow thence that they might deprive the defendant of his parish, because visitation and deprivation are no parts of the office of an ecclesiastical judge. To prove this it was proposed,

To enquire into the first establishment of Christian churches in Great Britain;

To develop their several kinds and constitutions;

To see who is entrusted with their care and visitation; and to apply the principles which this enquiry would evolve to the parochial churches of our own country.

On the first introduction of Christianity into Great Britain, it is certain there were no parochial divisions. The bishops and their clergy lived in common, and occasionally sent out itinerant preachers, to those places where the people seemed disposed to receive them. But when the number of converts became considerable, and the tract of country they occupied extensive, this occasional mission was found inconvenient, and a division into districts or parishes took place. This is supposed by some to have been in the time of Archbishop Honorius, anno 636. But Mr. Selden and others think it of later origin. It is not pretended that this division was then made, as it now remains, into small parishes: it is probable that at first they were few and large, till time and the progress of conversion, made it necessary to divide and subdivide them. 3 Burn's *Eccles. Law*, 58.

The King, his great Lords and thanes, for the accommodation of their tenants, having built churches on their manors, obliged their tenants to pay tythes

to these churches: for though a law of Ethelwolf, so early as the year 854 (Hume's *History of England*) had given tythes to the clergy, yet it left the people at liberty to pay them where and to whom they pleased; a grievance to the drones among the ecclesiastics, not entirely rectified till a law of King Edgar, c. 1. obliged them to pay them to the mother church of the parish. "*Debtur omnes decimæ primariæ, ecclesiæ, and quam parochia pertinet.*" 1. Bl. 112. The church being situated then on the soil of the lord, being built by himself, and the tythes paid from his tenements and tenants, gave him a natural right to employ any clerk for the celebration of divine service, whom he should choose. 1 Inst. 119. b. The same circumstances would give him a right to remove the clerk whenever he should become deficient in duty. Hence arose the rights of *donation*, or the disposition of church livings, by laymen. 1 Bl. 111. Gibs. 819. Watson c. 15.

In process of time, however, an encroachment was made by the bishops, on some of the lay patrons who possessed churches of the donative kind. They insisted, and in some instances prevailed on the patron, to give the bishop a right of previously examining the person to whom the church was to be given. For this purpose the patron was to present him to the bishop, who on examination admitted him able, and instituted him into the cure, or refused him altogether; and a maxim was soon established of "once presentative and always presentative." 1 Inst. 344. a. This innovation is said by Selden, to have been introduced by that pious saint and martyr Thomas

à Becket, in the time of Henry II. Seld. tyth. c. 12. But Lord Coke, seems to think that it was not done till the time of Pope Innocent III., which was in the reign of our John. 3. Inst. 201. And thus was introduced a second class of churches distinguished by the name of *presentatives*.

Of the residue of the parishes, after the donatives and presentatives were taken off, the bishops and clergy still retained the care, and appointed persons to officiate at the several churches. These churches, they doubtless, sometimes built themselves, and sometimes procured leave to convert the old British temples into Christian churches, and so may, in some degree be considered as the founders of them. 3. Bum. E. L. 59. Light as this foundation was, it gave them some color for *collating* the clerk, and this having been exercised by them from the infancy of Christianity, has acquired the force of immemorial custom, and given reality to the right now known by the name of *collation*. So that at present, churches are comprehended as Dr. Blackstone rightly says, under the classes of *donatives*, *presentatives* and *collatives*. 2 Bl. 22. Donatives are those churches originally founded and endowed by the crown or lay subject, or perhaps by both, which lie merely in the gift of the lay patron, whose deed of donation is an absolute investiture of the clerk, without presentation to the bishop or any other ceremony. Presentatives are churches originally founded in the same manner by a lay patron, and which, though at first, donatives, were by encroachment by the bishops subjected to presentation to them for their examination,

admission, or refusal. The reasons of refusal, are, however, examinable by the temporal courts on an action of *Quare impedit*, if brought by the patron. 2 Inst. 631. Collatives are those remnants of the old parishes, left after the King and great men had taken off their manors, the right of collating to which, is by immemorial custom, vested in the bishop. Of the donative and presentative church, the lay founder is patron; a right acquired by the acts of foundation (*fundi-datio*) and endowment (*donatio*). Of the collative church the bishop is patron, because he is *quasi* the founder of that, having built it himself, or been principally instrumental in procuring it to be built, or applied to the purpose of religion. See 1 Bl. 111, 112, 113. 2 Bl. 21, 22, 23, 25. 3 Inst. 201.

Having investigated the nature of the several kinds of churches and shewn the origin of the rights of patronage, it remains to enquire what these rights are. 1st. Nomination, or the right of naming the clerk. 2nd. Donation or induction, which is the investing with actual possession. 3rd. Visitation, which is the superintending his conduct after he is in possession. The latter is the object of the present enquiry; as it includes deprivation; which is only one of the higher degrees of punishment exercisable by the visitor. So said my Lord Holt, in the case of the Bishop of St Davids *v. Lucy*. Salk. 134. "By allowing his power to visit, all is admitted; for he that may visit, may deprive as well as censure, these being but several degrees of ecclesiastical punishment, and by the 26 Henry VIII., and the 1 El. c. 1. the only power given to the ecclesiastical commissioners was to visit

without a word of deprivation, yet they were always allowed a power to deprive." So that the visitor of the church, whoever he be, is the person empowered to deprive the incumbent. With respect therefore to the right of visitation, as it is one of the rights of patronage arising from foundation and endowment, so it will, in general, be found coupled with them. Thus in collative churches, the bishop alone visits, he having, in some degree, been the founder of the church. In a donative church, the patron is visitor, because he originally founded the church, and so its constitution is the work of his hands; a point which I shall presently incontestably prove. In presentative churches indeed, the right of continuing to superintend, or in other words to visit, seems to have been encroached on, when the right of approving the nominee was first acquired to the bishop. 1 Mod. 12. It might, perhaps, be thought that if the bishop was the proper person to judge of the fitness of the clerk, he would be the proper person to judge also how long that fitness continued. But whatever may be the cause why the presentative church varies, in this instance, from the general rule, "that the right of visitation follows the foundation," is immaterial, because it will be shown that our churches are donatives, to the visitation of which, therefore, I shall confine my future enquiries. Lord Holt, in his argument in the case of *Philips v. Bury*, Holt's Rep. 724, expressed himself in these words: "But private and particular corporations for charity, founded and endowed by private persons, are subject to the private government of those who erect them; and

therefore if there be no visitor appointed by the founder, I am of opinion that the law doth appoint the founder and his heirs to be visitors. The founder and his heirs are patrons, and not to be guided by the common known laws of the kingdom. But such corporations are, as to their own affairs, to be governed by the particular laws and constitutions assigned by the founder. It was said, the common law doth not appoint a visitation at all; I am of another opinion; the law doth, in defect of a particular appointment, make the founder visitor; if he is silent during his own time, the right will descend to his heirs. Yelv. 65. and 2 Cro. 60. So 8 Edward III., 70 and 8 Ass. 29. So that patronage and visitation are necessary consequences, one upon another. For this visitorial power was not introduced by any canons or constitutions ecclesiastical; it is an appointment of law; it arises from the property which the founder had in the lands assigned to support the charity; and so he is the author of the charity; the law gives him and his heirs a visitorial power, that is, an authority to inspect their actions, and regulate their behavior, as he pleaseth. Indeed, where the poor are not incorporated, according to the case in 10 Co. there is no visitorial power; because the interest of the revenue is not vested in them; but where they are incorporated, there, to prevent all perverting of the charity, there is by law a visitorial power; and it being a creature of the founder's own, it is reason he and his heirs should have that power, unless they please to devolve it elsewhere.

“In our old books, deprived by patron and de-

prived by visitor, are all one. For it is a benefit that naturally springs out of foundation; and it is in his power to transfer it to another." And so in 2 Jur. Eccles. 473. by Twisten. "Whenever there is a cure of souls, the church is visitable, either by the bishop if it belongs to him; if to a layman he must make delegates, if to the King my Lord Keeper does it." And he cites 1 Mod. 12. And the author adds, "I presume the Judge, in this case, is to be understood as to the man's making delegates, to mean if he finds himself unequal to his duty, then he is bound in conscience to delegate commissioners qualified for it; but not that he may not do it himself, though he be really able; for it is to be observed, if his commissioners do otherwise than he is convinced in his conscience they ought, he may still undertake and determine it himself, according to conscience, and as he may so take it up. I conceive, no reason can be shewn, why he cannot do it in the first instance; for his commissioners are but in aid of him, and I conceive, in this case, his power, though more absolute, may be compared to the Ordinary's authority, who, though ordinarily he judges by his Chancellor, or other official; yet he may sit himself and determine matters within his limited jurisdiction, if he pleases, and have, as is to be presumed, abilities." Moore, 765. *Fayrechild v. Gayre*. "Pasch. 3. Jac. En bank le roy, sur un special verdict suit adjudged que l'incumbent dun benefice donative poit resigner a son patron, et que il esteant del foundacon le Patron est auxi de son Visitation et correction, et l'ordinary n'ada ove luy. 8 Ass. 29. and 32." S. C. Cro. Jac.

63. S. P. 1 Mod. 90. Dean of Ferne's case, Dav. 44. a. 46. b. 47. a. And by Co. Lit. 344. a. "A church parochial may be Donative and exempt from all ordinary jurisdiction, and the incumbent may resign to the patron, and not to the Ordinary; neither can the Ordinary Visit, but the Patron by commissioners to be appointed by him." So that this much is certain, that in donative churches the right of visitation is in the Patron. And here we must note that in the case of the King's donatives, he does not visit in person, but may make commissioners for that purpose; and if he does not make them his Chancellor acts *ex officio* for him. Thus by F. N. B. 42 a. "The King may have a prohibition directed to the Ordinary, that he shall not visit the hospitals, which are of the King's foundation, or of the foundation of his predecessors; because that the Chancellor of England ought to visit them and no other. And so is it of the King's or his progenitors free chapels, no Ordinary shall visit them, but the Chancellor of England." S. P. Dav. 26. b. "If the King doth found a church Hospital, or free chapel, donative, he may exempt the same from ordinary jurisdiction, and then his Chancellor shall visit the same. Nay, if the King do found the same without any special exemption, the Ordinary is not, but the King's Chancellor, to visit the same." Co. Lit. 344. a. But "the King may, if he pleases, make a special commission." 6. H. 4. 14. Dy. 273. As in the case of Waldron *v.* Pollard, Dyer 273, the King gave a commission to visit his donative. So in the case of the college of William and Mary in this country, which is of royal founda-

tion, the King did by his charter appoint commissioners for the purpose of visitation, and prescribed the rules for keeping up a perpetual succession of them. So that it appears that the patron of a donative is visitor of right, and where the King is patron, he may appoint commissioners, but if he does not, his Chancellor visits *ex officio* for him. And indeed, it is worthy the attention of this court, that if as an ecclesiastical court they should take on them to visit our clergy, and it should appear they are not visitable for any ecclesiastical court, the error is not excused by the law in this as in other cases, where a judge happens to be mistaken in his opinion, but he incurs the penalties of a premunire, which are a forfeiture of property, outlawry, and perpetual imprisonment of the person. These were first introduced by the stat. 16. R. 2. for drawing causes of temporal cognisance (and all cases of advowsons are tryable by the temporal courts only) "*in curiam Romanam vel alibi.*" The word "*alibi*" has been construed to extend to any ecclesiastical court. Thus in 12 Co. 38. "For as it was resolved by all the Justices, Pasch. 4 Jac. reg. *est contra coronam et dignitatem regiam*, when any ecclesiastical Judge doth usurp upon the temporal law, because, as in all those writs it appeareth, the interest or cause of the subject is drawn *ad aliud examen*, that is, when the subject ought to have his cause ended by the common law, where unto by birthright he is inheritable, he is drawn in *aliud examen* (viz) to be decided and determined by the ecclesiastical law; and this is truly said *contra coronam et dignitatem regiam*. And this appears by

all the prohibitions (which are infinite) which have been directed to the high commissioners and others, after the said act. By 1 Eliz. *a fortiori*, he who offends in a premunire shall be said to offend *contra coronam et dignitatem regiam*. And this in effect answers to all the aforesaid objections; but yet other particular answers shall be given to every of them.

As to the third, although the court by force of high commission is the court of the King, yet their proceedings are ecclesiastical: and for this, if they usurp upon the temporal law, this is the same offence which was before the said act of 10 Eliz. For this was the end of all the antient acts, that the temporal law shall not in any manner be emblemished by any ecclesiastical proceedings.

As to the fourth, although it be a new court, yet the antient statutes extend to it within this word *alibi*, and divers new Bishopricks were erected in the time of Henry VIII., and yet there was never any question but that the antient acts of premunire, extended to them." And in Bro. Abr. I find it expressly determined to be a premunire to call the incumbent of a donative before an ecclesiastical visitation. "Per aliquos benefice donative per le patron tantum est lay chose et levesque ne visitera, et ideo ned deprivera, et donque sil mella in ce il est in le case de premunire, et in ce case suit Barloo evesque de Bathe tempore. E. 6. Et suit arct de obtenir un pardon, eo que il avoit deprive le deane de Welles que suit un donative per letters patents le ray per acte de parlement ent sait, tamen 8. E. 3. supra ne adjudge. (8 Ass. p 29.)" Bro. Abr. Premunire 21. So that my conclusions

from the premises, so far as necessary in the present question are, That donative churches, being originally founded by a lay-patron, and being still subject to his donation, are likewise subject to his sole visitation, the ecclesiastical judge having no right to intermeddle: and again, That if the patron be a subject, he may visit either in person or by commissioners; if he be the King, he may also appoint commissioners, but if he make no appointment, the Chancellor visits *ex officio*.

Our last enquiry is, To what class belong the churches of our government? are they collatives? are they presentatives? or are they donatives? Collatives they are not: because these were described as having existed immemorially, and been all that time disposed of by the bishop, which immemorial usage had confirmed the right in law. But our parishes pretend to no immemorial existence, for that would make them older than our government itself: they have been erected by acts of Assembly long within memory, to be found by any one who will recur to our records. Nor was there ever an instance of collation to one of them by a bishop. "If an act of Parliament make a particular district a particular separate distinct parish, the jurisdiction of the ecclesiastical court does not attach upon it, for this clear reason, that it was not such immemorially. Parish St. John, Clerkenwell, 9 Geo. 2. B. R." 2 Jur. Eccl. 348. Neither are our churches of the presentative kind because of these the distinguishing characteristic is, that, though of lay foundation, yet the bishop has acquired a right of having the clerk presented for his

examination, admission or refusal. But no such right was ever pretended in our churches, nor was there ever an instance in them of presentation to a bishop. But they are of the donative kind. These were said, 1st. to have been founded by laymen; 2nd. not to be subject to presentation to a bishop; 3rd. to lie purely in the gift of the patron. Now let us see if these characters are not applicable to our churches. The act of Assembly, 1661, c. 1. directs that a church shall be built in every parish, and c. 2. that the expenses of building and keeping it in repair, provision for the poor, and maintenance of the minister, be levied on the people of the parish; c. 3. that there be a glebe laid out in every parish, and a convenient house built for the abode of the minister; and that a maintenance be provided for him, which shall be worth eighty pounds per annum, besides his perquisites and glebe. The act of 1696, c. 11. instead of the £80 given the minister by that of 1661, c. 3. gives him sixteen thousand pounds of tobacco, besides his perquisites, to be levied "by the vestries in their respective parishes"; and lastly the act of 1748, c. 34. (*old ed'ns*) sect. 1. confirms this salary to them, to be levied by the vestry "upon the titheable persons in their respective parishes"; and sect. 5. directs that the glebe shall contain two hundred acres of good land at the least, and that there shall be built on it a convenient mansion house, kitchen, barn, stable, dairy, meat house, cornhouse, and garden, the expenses of which are to be levied on the titheable persons in the parishes. Here it might be thought *prima facie* perhaps, that as the

parishioners pay the money they are the founders and endowers. But a little attention will, I think, discover this to be a fallacy. The parishioners are indeed the persons ordered to furnish the money; but the erection of the parishes and gift of the salary, or in other words, the foundation and endowment of the church, is the act of the legislature. They direct an officer to levy sixteen thousand pounds of tobacco on the titheable persons of the parish. As soon as it is in his hands it is the money of the public, and then they order him to pay it to the minister of the parish, just as if the founder of a church should endow it with an annuity which, by his charter of donation, should be payable out of his manor of Blackacre; his tenants of that manor, though they furnished the money, would hardly be considered as the founders and endowers. Suppose the legislature, instead of directing the payment of these expenses to be levied on the particular parishioners, had ordered the payment out of the public purse; the foundation and endowment would surely then have been their acts: but what difference can it produce, if instead of ordering the parish collector to pay the money to the treasurer, and him again to the minister, they adopt the shorter method of making the collector pay it immediately to the minister. Our own country furnishes a decisive refutation of this notion. The college of William and Mary is endowed with duties on skins, furs, liquors, tobaccos, paid by the exporters and importers, though given by the legislature. Yet was it never supposed, that that college was founded or endowed by the exporters or

importers of these commodities. As little then can the parishioners, though the parochial taxes be assessed on them, be called the founders and endowers of our churches. The truth is, the parish is erected, the church and its soil given, and also the endowment, by the legislature, or in other words by the community whom they represent. Now that is a civil, not an ecclesiastical body. The churches are therefore of lay foundation. Again, if we consider the community, as made up of King and People, the King will then be the patron of our churches, it being a known branch of the royal prerogative, that where the King and his subjects are joint founders, the rights of patronage vest in the King. 1 Bl. 481. Or if we consider it in a constitutional point of view, the same consequence will be evolved. For wherever an act of Parliament or of Assembly erects a new office, without prescribing the particular mode of appointing the officer, it belongs to the King to make the appointment. And for this reason; that possessing the executive power of the laws, it is his peculiar duty to see each act carried into execution, which cannot be unless an officer is appointed. 1 Bl. 272. On this principle, is almost every officer in Great Britain, as well as in Virginia, appointed by the crown; the acts erecting the offices, never prescribing the mode of appointment unless where they mean to give it from the crown. If then our acts of Assembly, erecting cures of souls, and declaring that they shall be given to ecclesiastics of a certain sect, have not said by whom the nomination shall be, it will follow that the King, who is to see the law executed, must nominate per-

sons for that purpose. We have but two acts relative to this matter. The act of 1661, c. 4. says that a minister, producing to the Governor letters of ordination from some bishop in England, and subscribing, &c. the Governor is to induct them into "any parish that shall make presentation of him." This law, without doubt, gave the nomination to the parishioners collectively, though it preserved to the crown the right of donation or actual investiture. But the impropriety and inconvenience of popular elections of priests, and the unfitness of the people to judge of their qualifications, had soon caused the vestries to usurp this right, and even their unreadiness to choose where the choice was to be followed by immediate assessments for maintenance, together with the doubt at what time the King might interpose to supply the vacancy, induced the necessity of altering the constitution of the churches in this respect. In 1748, therefore, the right of nomination was restored to the crown, except for the first twelve months after an avoidance, during which it was given to the vestrymen of the parish. Act 1748, c. 34. (*old ed'ns.*) s. 7. "And whereas it is doubted how long the right of presentation of a minister to a parish, remains in the vestries in this colony: for settling that matter be it enacted, that the sole right of presentation shall be, and remain, in the several vestries, for and during the term of twelve months next after a vacancy shall happen in their respective parishes." But perhaps it may be thought that the right of choosing, given by this act to the vestries in the first instance, is another mark of foundership; and if they are founders, of

course they are visitors. This must be answered by distinguishing between the act of nomination, which is given them for a twelve month, and of donation or induction, which is reserved to the crown, and is better expressed by the word investiture. Nomination is defined by Cowell to be "a power to appoint a clerk to a patron of a benefice." And he says the word "invest, signifies to give *possession*. Others," says he, "define it thus, *investiture est in suum jus alicujus introductio*, a giving livery of seisin or possession." This, in donative churches, is effected by the single deed of donation, without other ceremony. "Donatives are given and fully possessed by the single donation of the patron in writing, without presentation, institution, or induction." Gibs. 819. 1 Burn. Eccl. L. 154. And in collatives and presentatives it is effected by induction. "Induction is, by the canon law, called corporal possession, and is compared in the books of common law to livery and seisin, by which possession is given to temporal estates." Gibs. 814. Burn. Eccl. L. 157. So that the right given the vestry is barely to name for one twelve month, whereas the crown, is on that nomination, to make the deed of donation, or give corporal possession. The act indeed for nomination, uses the presentation; the sense of which, as used in the ecclesiastical law, is to present to a bishop, and is in its nature and effect very different from nomination and for donation, it uses the word induction, which has indeed the same meaning of delivering actual possession, only that it is usually applied to the delivery of a different kind of church. However our legis-

lators of 1661, were not critics in the language of the law; and it matters not, since they have plainly enough signified what they meant. These rights of nomination and investiture are generally indeed in the same person, and are both exercised by one and the same act. Thus when in a donative, a patron makes a deed of donation, it is a nomination as well as an investiture. But they may be separated; as happens when the patron grants away the next avoidance. There the grantee has only the right of nominating; but the grantor or patron is to invest. For says Gibs. 794, "the right of nomination may be in one person, and the right of presentation in another. And this is where he who was seized of the advowson doth grant unto another and his heirs, that as often as the church becomes void, the grantee and his heirs shall nominate to the grantor and his heirs; who shall be bound to present accordingly. In such case it was agreed by the whole court in the case of Shirley and Underhill, Mod. 894, that the nomination is the substance of the advowson, and the presentation no more than a ministerial interest." 1 Burn. Eccl. L. 122. Now this is precisely the case between our vestries and the crown under the act of Assembly. The King being considered as the founder and patron of the church, if nothing had been said, would have possessed both rights of nomination and vestiture. But the acts give the vestries, for one twelve month, the right of nominating to the Governor, the person whom he is to induct or invest with possession. It is similar to the case of sheriffs and inspectors, who are nominated by the court,

but commissioned or invested with their office by the Governor. So in the case of a clerk, it is not the nomination by the vestry, but the Governor's investiture which puts him into possession, and entitles him to the temporalities of his cure. So that while the act takes from the King, *pro tempore*, and transfers to the vestry, the right of nomination, which was one of the rights incident to his patronage, it leaves him the ensigns of that right, to wit, investiture. And still the estate in law which was in the King, is made to pass from him by his act of investiture, and not from the vestry by their nomination. So that like the case before cited of the grant of a next avoidance, though the nomination be in the grantee, yet the presentation to the bishop, if it be presentative, or the deed of donation, if it be donative, must be by the patron. He still continues the patron, and he, not the grantee, possesses the right of visitation. Thus then it may be stated in fewer words. The King is the patron of all our churches. The rights of patrons are 1st. Nomination. 2nd. Investiture. 3rd. Visitation. Only one of these rights, viz. nomination, was taken away, and that but for a limited time. The other two, of vestiture and visitation, were not touched, and consequently still remain in him.

We may safely, therefore conclude that our churches are donatives, because they wear the three characteristics of donatives. 1. They are of lay foundation. 2. They are not subject to presentation to a bishop. 3. They lie in the gift of the patron. That patron is the King, and though one

right of patronage, viz. nomination, is taken away *pro tempore*, yet the others, of vestiture and visitation, still remain in him. The latter is the power now called into exercise; and his majesty having never been pleased to appoint commissioners for that purpose, it is to be exercised by his Chancellor here; that is by the members of this honorable court who possess the powers of a Chancellor: not indeed sitting on this bench of chancery, but as a court of visitation at any other time or place, at which you shall think proper to call the incumbent before you.

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TO MESSRS. INGLIS AND LONG, MERCHANTS AT  
PORTSMOUTH <sup>1</sup>

WILLIAMSBURGH, June 11. 1772.

GENTLEMEN,—I have just received notice from Mr. Wythe that in the case of Jamieson and Taylor *v.* Meredith and others he will move at the next court to have the effects delivered in to the plaintiff's hands. I have not yet had time to enquire whether such steps have been yet taken as will entitle him to do this. However it is better that your correspondents prevent it which cannot be done with certainty but by their sending in their answers in proper form before the next court. I am this moment leaving town having just taken time to inform you of this measure.

<sup>1</sup> From a copy courteously furnished by Dr. J. S. H. Fogg, of Boston.

TO CHAS. MCPHERSON †

ALBEMARLE, IN VIRGA, Feb. 25, 1773.

DEAR SIR,—Encouraged by the small acquaintance which I had the pleasure of having contracted with you during your residence in this country, I take the liberty of making the present application to you. I understood you were related to the gentleman of your name (Mr. James McPherson), to whom the world is so much indebted for the elegant collection, arrangement, and translation of Ossian's poems. These pieces have been and will, I think, during my life, continue to be to me the sources of daily pleasures. The tender and the sublime emotions of the mind were never before so wrought up by the human hand. I am not ashamed to own that I think this rude bard of the north the greatest poet that has ever existed. Merely for the pleasure of reading his works I am become desirous of learning the language in which he sung, and of possessing his songs in their original form. Mr. McPherson, I think, informs us he is possessed of the originals. Indeed, a gentleman has lately told me he had seen them in print; but I am afraid he has mistaken a specimen from *Temora*, annexed to some of the editions of the translation, for the whole works. If they are printed, it will abridge my request and your trouble, to the sending me a printed copy; but if there be more such my petition is, that you would be so good as to use your interest with Mr. McPherson to obtain leave to take a manuscript copy of them, and procure it to be done. I would choose it in a fair, round hand, on

† A merchant in Edinburgh.

fine paper, with a good margin, bound in parchments as elegantly as possible, lettered on the back, and marbled or gilt on the edges of the leaves. I would not regard expense in doing this. I would further beg the favor of you to give me a catalogue of the books written in that language, and to send me such of them as may be necessary for learning it. These will, of course, include a grammar and dictionary. The cost of these, as well as the copy of Ossian, will be (for me), on demand, answered by Mr. Alexander McCaul, sometime of Virginia, merchant, but now of Glasgow, or by your friend Mr. Ninian Minzees, of Richmond, in Virginia, to whose care the books may be sent. You can, perhaps, tell me whether we may ever hope to see any more of those Celtic pieces published. Manuscript copies of any which are in print, it would at any time give me the greatest happiness to receive. The glow of one warm thought is to me worth more than money. I hear with pleasure from your friend that your path through life is likely to be smoothed by success. I wish the business and the pleasures of your situation would admit leisure now and then to scribble a line to one who wishes you every felicity, and would willingly merit the appellation of, dear sir, Your friend and humble servant.

TO WILLIAM FLEMING <sup>1</sup>May 19, 1773. MRS. CARR'S.<sup>2</sup>

DEAR FLEMING,—You have before this heard and lamented the death of our good friend Carr.<sup>3</sup> Some steps are necessary to be immediately taken on behalf of his clients. You practised in all his courts except Chesterfield and Albemarle. I shall think I cannot better serve them than by putting their papers into your hands if you will be so good as to take them. I once mentioned to you the court of Albemarle as worthy your attention. If you chuse now to go there I would get you to take his papers for that court also. They put you in possession of a valuable business. The king's attorney's place is vacant there, and might be worth your solliciting. If you think so you should dispatch an express for commission. Otherwise you may be prevented. Write me a line in answer to this and lodge it here within a week, as I shall about that time call here to take the law papers and put them into some channel. Your assistance in these matters will oblige, Dear Fleming your friend and humble serv't.

## ADVERTISEMENT IN "VIRGINIA GAZETTE"

May 20th, 1773.

On serious Consideration of the present state of our practice in the General Court we find it can no longer

<sup>1</sup> From the *Southern Literary Messenger*, iii., 305.

<sup>2</sup> His sister's home in Charlottesville.

<sup>3</sup> Dabney Carr, his brother-in-law, who died May 16, 1773. In the *Virginia Gazette* for June 24, 1773, are some commemorative lines to him by "J. B."

be continued on the same Terms. The Fees allowed by Law, if regularly paid, would barely compensate our incessant Labours, reimburse our expences and the losses incurred by Neglect of our private Affairs; yet even these Rewards, confessedly moderate, are withheld from us, in a great Proportion, by the unworthy Part of our Clients. Some regulation, therefore, is become absolutely requisite to establish Terms more equal between the Client and his Council. To effect this, we have come to the following Resolution, for the invariable Observance of which we mutually plight our Honour to each other: "That after the 10th day of *October* next we will not give an Opinion on any Case stated to us but on Payment of the whole Fee, nor prosecute or defend any Suit or Motion unless the Tax, and one half of the Fee, be previously advanced, excepting those Cases only where we choose to act *gratis*;" and we hope no person whatever may think of applying to us in any other Way. To prevent Disappointment, however, in Case this should be done, we think it proper to give this Warning, that no such Application, either verbal or by Way of Letter, will be answered to in the smallest Degree. We would feel much Concern if a Thought could be entertained that the worthy Part of our Clients could disapprove of this Measure. Their Conduct has been such as calls for our Acknowledgements and might merit exemption from this Strictness, were such Exemption practicable, but they will readily perceive this would defeat the Purpose, and that no distinction of Persons can by any means be attempted. We hope, therefore, from

their Friendship, a cheerful concurrence in this Plan, since the Requisition is such only as their Punctuality would of itself prevent.

EDMUND PENDLETON,	THOMAS JEFFERSON,
JOHN RANDOLPH,	PATRICK HENRY, JUNIOR
JAMES MERCER,	GUSTAVUS SCOTT.

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ADVERTISEMENT IN "VIRGINIA GAZETTE"

July 15th, 1773.

*To be sold.*

Two Thousand five Hundred and twenty Acres of LAND in *Cumberland*, commonly known by the Name of SAINT JAMES'S; one Thousand four Hundred and twenty Acres in the Counties of *Goochland* and *Cumberland*, on both Sides of *James River*, opposite to *Elk Island*; and one Thousand four Hundred and eighty Acres on *Herring Creek*, in *Charles City County*. The above Tracts of Land were of the Estate of the late *John Wayles*, deceased, devised to the Subscribers, and are now offered for Sale. Persons disposed to purchase may be informed of the Terms, on application to any of the Subscribers; and the Terms of Payment will be made easy, on giving bond and security to

THOMAS JEFFERSON,  
FRANCIS EPPES,  
HENRY SKIPWITH.

## ADVERTISEMENT IN "VIRGINIA GAZETTE"

September 16th, 1773.

*To be sold.*

FIVE Hundred and fifty Acres of LAND in the County of *Charles City*, with a convenient Dwelling house and other Improvements.

Two Hundred and twenty Acres, in the same County, pleasantly situated on *James River*.

Two Thousand five Hundred and twenty Acres in the County of *Cumberland*, commonly known by the name of *Saint James's*.

And one Thousand four Hundred and twenty-one Acres in the Counties of *Goochland* and *Cumberland*, on both sides of *James River*, opposite to *Elk Island*.

The above TRACTS of LAND were of the Estate of the late *John Wayles*, deceased, devised to the Subscribers, and are now offered for Sale. Persons disposed to purchase may be informed of the Terms, on application to any one of the Subscribers; and the Times of Payment will be made easy, on Bond and Security to

THOMAS JEFFERSON,  
FRANCIS EPPES,  
HENRY SKIPWITH.

NOTICE OF FAST <sup>1</sup>

[June, 1774.]

To the Inhabitants of the parish of Saint Anne.

The members of the late house of Burgesses having taken into their consideration the dangers

<sup>1</sup> See Jefferson's Autobiography, *ante*, vol. i., p. 11.

impending over British America from the hostile invasion of a sister colony, thought proper that it should be recommended to the several parishes in this colony that they set apart some convenient day for fasting, humiliation and prayer devoutly to implore the divine interposition in behalf of an injured and oppressed people; and that the minds of his majesty, his ministers, and parliament, might be inspired with wisdom from above, to avert from us the dangers which threaten our civil rights, and all the evils of civil war. We do therefore recommend to the inhabitants of the parish of Saint Anne that Saturday the 23d instant be by them set apart for the purpose aforesaid, on which day will be prayers and a sermon suited to the occasion by the reverend Mr. Clay at the new church on Hardware river, which place is thought the most central to the parishioners in General.

JOHN WALKER.<sup>1</sup>

THOMAS JEFFERSON.

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RESOLUTION OF ALBEMARLE COUNTY <sup>2</sup>

[July 26, 1774.]

At a Meeting of the Freeholders of the County of *Albemarle*, assembled in their collective body, at the Court House of the said County, on the 26th of *July*, 1774:

<sup>1</sup> Jefferson's fellow-member from Albemarle Co., in the House of Burgesses.

<sup>2</sup> From Force's *Archives*, 4th, i., 638. From the similarity of these resolutions and instruction with Jefferson's *Summary View*, it is evident that they proceeded from the same pen.

*Resolved*, That the inhabitants of the Several States of *British America* are subject to the laws which they adopted at their first settlement, and to such others as have been since made by their respective Legislatures, duly constituted and appointed with their own consent. That no other Legislature whatever can rightly exercise authority over them; and that these privileges they hold as the common rights of mankind, confirmed by the political constitutions they have respectively assumed, and also by several charters of compact from the Crown.

*Resolved*, That these their natural and legal rights have in frequent instances been invaded by the Parliament of *Great Britain* and particularly that they were so by an act lately passed to take away the trade of the inhabitants of the town of *Boston*, in the province of *Massachusetts Bay*; that all such assumptions of unlawful power are dangerous to the right of the *British* empire in general, and should be considered as its common cause, and that we will ever be ready to join with our fellow-subjects in every part of the same, in executing all those rightful powers which God has given us, for the re-establishment and guaranteeing such their constitutional rights, when, where, and by whomsoever invaded.

It is the opinion of this meeting, that the most eligible means of affecting these purposes, will be to put an immediate stop to all imports from *Great Britain*, (cotton, osnabrigs, striped duffil, medicines, gunpowder, lead, books and printed papers, the necessary tolls and implements for the handicraft arts and manufactures excepted, for a limited term) and to all

exports thereto, after the first day of *October*, which shall be in the year of our Lord, 1775; and immediately to discontinue all commercial intercourse with every part of the *British* Empire which shall not in like manner break off their commerce with *Great Britain*.

It is the opinion of this meeting, that we immediately cease to import all commodities from every part of the world, which are subjected by the *British* Parliament to the payment of duties in *America*.

It is the opinion of this meeting, that these measures should be pursued until a repeal be obtained of the Act for blocking up the harbour of *Boston*; of the Acts prohibiting or restraining internal manufactures in *America*; of the Acts imposing on any commodities duties to be paid in *America*; and of the Act laying restrictions on the *American* trade; and that on such repeal it will be reasonable to grant to our brethren of *Great Britain* such privileges in commerce as may amply compensate their fraternal assistance, past and future.

*Resolved*, However, that this meeting do submit these their opinions to the Convention of Deputies from the several counties of this Colony, and appointed to be held at *Williamsburg* on the first day of *August* next, and also to the General Congress of Deputies from the several *American* States, when and wheresoever held; and that they will concur in these or any other measures which such convention or such Congress shall adopt as most expedient for the *American* good; and we do appoint *Thomas Jefferson* and *John Walker* our Deputies to act for this county

at the said Convention, and instruct them to conform themselves to these our Resolutions and Opinions.

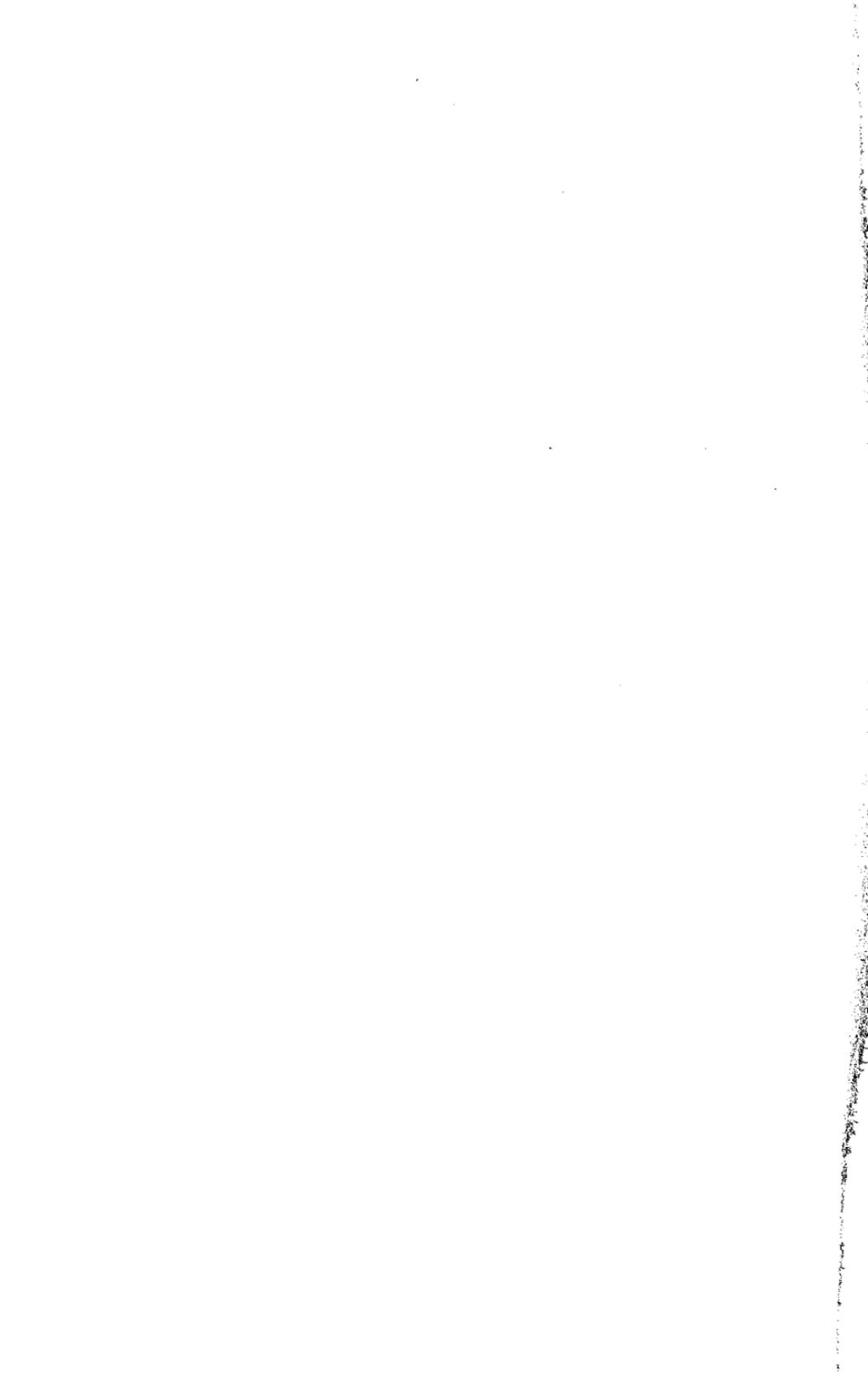
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PROPOSED ARMS FOR THE UNITED STATES <sup>1</sup>

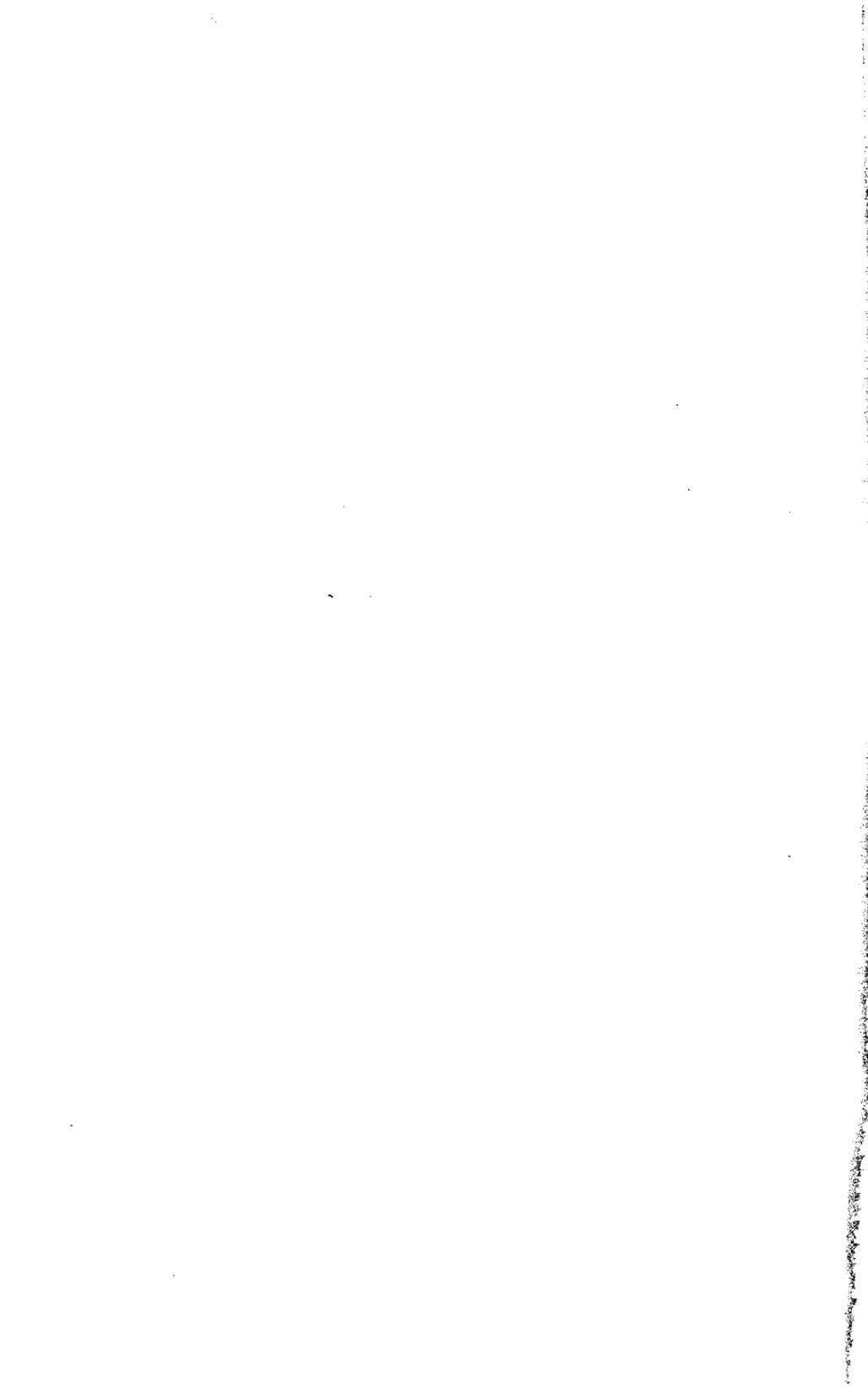
A proper device (instead of arms) for the American states united would be the Father presenting the bundle of rods to his sons.

The motto "Insuperabiles si inseparabiles" an answer given in parl. to the H. of Lds & comm. 4. Inst. 35. He cites 4. H. 6. nu 12. parl. rolls, which I suppose was the time it happd.

<sup>1</sup> This is a note written in Jefferson's copy of the *Virginia Almanack for* ——— 1774. All his other entries in this volume are contemporary with the date of the almanac, and if, as all the internal evidence indicates, this was also written at that time, it is not merely interesting as a proposed emblem, but even more so as the earliest reference to the "American States." In a letter of John Adams (*Familiar Letters*, 211) Aug. 4, 1776, on the subject of the national arms, is the following: "Mr. Jefferson proposed the children of Israel in the wilderness, led by a cloud by day and a pillar of fire by night; and on the other side, Hengist and Horsa, the Saxon chiefs from whom we claim the honor of being descended, and whose political principles and forms of government we have assumed."



## A SUMMARY VIEW



A  
SUMMARY VIEW  
OF THE  
RIGHTS  
OF  
BRITISH AMERICA.  
SET FORTH IN SOME  
RESOLUTIONS  
INTENDED FOR THE  
INSPECTION  
OF THE PRESENT  
DELEGATES  
OF THE  
PEOPLE OF VIRGINIA.  
NOW IN  
CONVENTION.

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BY A NATIVE, AND MEMBER OF THE  
HOUSE OF BURGESSES.

*by Thomas Jefferson.*

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WILLIAMSBURG:  
PRINTED BY CLEMENTINARIND.

Est proprium munus magistratus intelligere, se gerere personam civitatis, debereque; ejus dignitatem & decus sustinere, servare leges, jura describere, ea fidei suæ commissa meminisse.

CICERO *De Of.* L. I, C. 34.

It is the indispensable duty of the supreme magistrate to consider himself as acting for the whole community, and obliged to support its dignity, and assign to the people, with justice their various rights, as he would be faithful to the great trust reposed in him.

#### THE PREFACE OF THE EDITORS

THE following piece was intended to convey to the late meeting of DELEGATES the sentiments of one of their body, whose personal attendance was prevented by an accidental illness. In it the sources of our present unhappy differences are traced with such faithful accuracy, and the opinions entertained by every free American expressed with such a manly firmness, that it must be pleasing to the present, and may be useful to future ages. It will evince to the world the moderation of our late convention, who have only touched with tenderness many of the claims insisted on in this pamphlet, though every heart acknowledged their justice. Without the knowledge of the author, we have ventured to communicate his sentiments to the public, who have certainly a right to know what the best and wisest of their members have thought on a subject in which they are so deeply interested.

## A SUMMARY VIEW

1774

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One of the most difficult points to be met by the proposed Congress of the Colonies was an agreement of a common ground on which to rest their statements of grievances and claims for redress. While all the colonies were united in resisting and protesting, they nevertheless, like the individuals in each colony, disagreed on foundations and degrees. The various arguments of James Otis, Stephen Hopkins, John Dickinson, Daniel Dulaney, and Richard Bland had each its own supporters and followers, and were all almost equally untenable. Virginia being so prominent in the movement for the Congress, as well as in colony influence generally, her instructions to her attending delegates would carry great if not controlling influence in that body, and might supply the field for all future contests. Under this belief, Jefferson desired that the strongest position should be taken from the start, and so prepared this paper as the instructions for the delegates from Virginia to the first Congress. Of it, he himself wrote:

“Before I left home to attend the Convention, I prepared what I thought might be given, in instruc-

tion, to the Delegates who should be appointed to attend the General Congress proposed. They were drawn in haste, with a number of blanks, with some uncertainties and inaccuracies of historical facts, which I neglected at the moment, knowing they could be readily corrected at the meeting. I set out on my journey, but was taken sick on the road, and was unable to proceed. I therefore sent on, by express, two copies, one under cover to Patrick Henry, the other to Peyton Randolph, who I knew would be in the chair of the Convention. Of the former, no more was ever heard or known. Mr. Henry probably thought it too bold, as a first measure, as the majority of the members did. On the other copy being laid on the table of the Convention, by Peyton Randolph, as the proposition of a member, who was prevented from attendance by sickness on the road, tamer sentiments were preferred, and, I believe, wisely preferred; the leap I proposed being too long, as yet, for the mass of our citizens. The distance between these, and the instructions actually adopted is of some curiosity, however, as it shews the inequality of pace with which we moved, and the prudence required to keep front and rear together. My creed had been formed on unsheathing the sword at Lexington. They printed the paper, however, and gave it the title of 'A summary view of the rights of British America.' In this form it got to London, where the opposition took it up, shaped it to opposition views, and, in that form, it ran rapidly through several editions."

See also Jefferson's Autobiography, Vol. I., p. 15.

Edmund Randolph gives a further and somewhat different account of it as follows:

“Thomas Jefferson, who was one of the elected, was prevented by indisposition from attending. But he forwarded by express for the consideration of its members a series of resolutions. I distinctly recollect the applause bestowed on the most of them, when they were read to a large company at the house of Peyton Randolph, to whom they were addressed. Of all the approbation was not equal. From the celebrated letters of the Pennsylvanian Farmer (John Dickinson) we had been instructed to bow to the external taxation of parliament, as resulting from our migration, and a necessary dependence on the mother country. But this composition of Mr. Jefferson, shook this conceded principle although it had been confirmed by a still more celebrated pamphlet of Daniel Dulaney of Maryland, and cited by Lord Chatham as a text book of American rights. The young ascended with Mr. Jefferson to the source of those rights, the old required time for consideration before they could tread this lofty ground, which, if it had not been abandoned, at least had not been fully occupied throughout America. From what cause it happened, that the resolutions were not printed by order of the convention does not appear; but as they were not adopted, several of the author’s admirers subscribed for their publication. When the time of writing is remembered, a range of inquiry not then very frequent, and marching far beyond the politics of the day will surely be allowed them.”—*Ms. History of Virginia*, p. 25.

These resolutions were printed in a twenty-three-paged pamphlet at Williamsburg, from a copy of which edition, formerly in Jefferson's possession, and now in the Library of Congress, containing his MS. notes and corrections, it is here reprinted. The numerals inserted in the text indicate the pagings of this edition.

Of this copy Jefferson wrote to Merriwether Jones, Oct. 19, 1804:

"I received last night your favor of the 15th. I have but a single copy of the pamphlet you ask for and that is bound up in a volume of pamphlets of the same year and making one of a long suite of volumes of the same nature. I mention this to impress you with the value I set on the volume as part of the history of the times, and to justify a request of attention in the use and return of it. It happens that Mr. Duval sets out this afternoon for Richmond & furnishes an opportunity of conveying it to you. It should be noted in the republication that the title, the motto and the preface were of the editors, and, with the piece itself, were printed without my knolege. I had drawn the paper at home, set out for the Convention, was taken ill on the road & sent on the paper to Peyton Randolph, moderator of the Convention. It was laid by him on the table of the convention for the perusal of the members, and by them justly deemed ahead of the sentiments of the times: but some of them deemed it useful to publish it & they affixed the title, epigraph and preface. I was informed by Parson Hurt who was in England when it arrived there that it ran through several editions there."

It was reprinted in Philadelphia, without any change of text, with the following title:

A / summary view / of the / Rights / of / British America./ Set forth in some / Resolutions / Intended for the / inspection / Of the present / Delegates / Of the / people of Virginia, / Now in / Convention./ By a Native, and Member of the / House of Burgesses./ Williamsburg: Printed: / Philadelphia: Re-Printed by John Dunlap./ M,DCC,LXXIV. [8vo. pp. 23.]

Jefferson states that it was "taken up by the opposition" in England, "interpolated a little by Mr. Burke so as to make it answer opposition purposes, and in that form ran rapidly through several editions." Two editions were printed in England with the following titles:

A / summary view / of the / Rights / of / British America./ Set forth in some / Resolutions / intended for / the Inspection of the present Delegates / of the People of Virginia, now in Con-/ vention./ . . . / By a Native, and Member of the House of Burgesses./ Williamsburg, Printed by Clementina Rind./ London,/ Re-printed for G. Kearsley, at No. 46, near Sergeants /Inn, in Fleet Street, 1774. [8vo. pp. xvi, 5-44.]

A / summary view / of the / Rights / of / British America./ Set forth in some / Resolutions / intended for / the inspection of the Delegates / of the People of Virginia, now in Con-vention./ . . . / By a Native, and Member of the House of Burgesses. / The Second Edition. / Williamsburg, Printed by Clementina Rind./ London,/ Re-printed

for G. Kearsley, at No. 46, near Sergeants / Inn in Fleet Street, 1774. [8vo. pp. xvi, 5-44.]

The texts of these two editions are not, however, in the slightest degree altered or added to, except by a new preface. Of it the *Monthly Review* said:

“It affords a concise and spirited review of the rights and grievances of the colonies, deduced from their first settlement, and proposed as the subject of an address to his majesty from the several ‘*States of British America.*’

“To this pamphlet is prefixed an address to the King, severely reflecting on the late measures of government, and written with much freedom and boldness, but by whom we are not told.”

This preface here alluded to was written by Arthur Lee, and is as follows:

“To the King.

“SIR,

“There is not a man of thought, in the whole nation, who does not espouse bad measures from bad principles, but is justly alarmed, and seriously anxious, for the common good. Affairs of such magnitude now employ the public attention, as seem to involve in them the fate of EMPIRE. The times are big with great events. What will be the consequences, it is not in human sagacity to foretel. But if the same system be pursued, which for a long time hath employed the attention of your Majesty’s ministers, they ought to tremble for their heads.

“The present contentions with America, if not soon happily terminated, must end in such scenes of trouble, bloodshed, and devastation, which, in con-

templation alone, shock us with horror. But little time remains for deliberation or choice: a blow will lead on to the decisive scene; and the tyranny begun. This era of your Majesty's reign is likely to be marked with the most important characters. It is impossible for subjects to stand by idle, unaffected spectators, when they see their Sovereign, and themselves, nearly involved in distresses, which, for ought he can foresee, may end in the ruin of both: you, Sir! may lose your sovereignty and honour; we, our liberties, fortunes, and lives.

“The charge of presumption upon individuals, for speaking freely upon these important things, is at once taken off, by the evidence of things themselves, and the transcendant interest that every man has in them. Of affairs of state; of the artifice, cunning, address, and subtlety of courts, it is the general lot to be ignorant: But of the great principles of government, especially of this free state, of those laws, and proceedings, that are either subversive, or corroborative of the system, many are as able to judge as any minister employed in your Majesty's service. These, with the first laws of nature, the prerogatives of man in human society, with the sacred and immutable laws of justice, equity, moderation, and wisdom, men fully understand, who were never tutored or well received at court; where indeed, for the most part, men are more likely to lose than gain, accurate ideas of these things. They are not among the *arcana imperii*: we can judge of them; and have a fair, undoubted, constitutional right, as free subjects, who claim liberty by birth-right, and enjoy it by the laws,

to apply these principles to the present conduct of your Majesty's ministers. And, in justice bound to our country, and ourselves, and that fidelity we owe, Sir, to you, as our Sovereign, we openly declare, that the whole proceedings against our brethren in America, who are entitled, in common with ourselves, to the privileges of men, and the liberties, franchises, and protection of Englishmen, are in open violation of the natural laws of equity and justice: and unparalleled infractions upon the principles, and promulgated laws of this free state: not to say, that every idea of good policy is sacrificed to maintain and inforce the most vicious and dangerous system that ever infatuated despots pursued.

“ Fruitless were the hopes that these few pages will effect, what the sagest counsels, the most consummate wisdom and plainest remonstrances, of some of the wisest, and best men, of the present age, have not been able to accomplish. But if the perusal, either by your Majesty, or your ministers, should for a moment, suspend the fatal counsels, or designs which are now taking, or seem systematically planned to overturn AMERICAN LIBERTY, I shall think my labours well rewarded. God is my witness, that I write not these things to excite sedition, or stir up rebellion: I should deem my life well disposed of, if, by the sacrifice, your Majesty could learn the wisdom of righteous government, and your ministers be taught to counsel good things. Happy should I be to convince your Majesty, where legal authority ends, and tyranny begins; and that your dignity alone consists in the happiness of your subjects; and

that when virtue and justice forsake your councils, error and ruin must inevitably ensue. With your Majesty's ministers we can keep no longer. If at any time we pitied their innocent infirmities, that pity has long ago been converted into abhorrence from the wickedness of their counsels, and the injustice of their deeds. By their breaches upon your prerogative, Sir! they have broken down the legal barriers of the constitution, and destroyed the distinctions of government; they have changed, or attempted to change lawful possession into arbitrary dominion: and, in the mad career, they may endeavor to make their Sovereign dispense with every thing that entitles him to obedience; and, by this means, convert the first duty of subjects into an opposition which the great and primary law of nature, self-defence, makes necessary. Those cruel, in-expedient tyrannical measures, which first they adopted, respecting America, notwithstanding the perilous circumstances into which they have brought both the colonies, and our own country, they carry violently on; as if they could persuade us that perseverance was integrity; and open opposition, state necessity. Their system is not only manifestly repugnant to the laws of the state; but it runs counter to the whole stream of authority, and examples derived from the various histories of the several states of the world. From them, they ought to have learned that confidence is the first, and strongest principle of obedience; and, which once lost, is seldom recovered; and that almost all struggles for liberty, against violence, and oppression, have been crowned with success;

and, without impiety, whatever doctrines concerning Providence may prevail at court, we attribute such success to the interposition of Heaven: and to Heaven the Americans now appeal. And, would to God that any accommodations could soften those rigours which your Majesty's ministers seemed determined to pursue. But it seems that no equivalent but Liberty will be deemed a sufficient satisfaction for the affronts which the honest struggles for freedom have given: under the pretence of law, natural justice and equity fall defeated; and the constitution is wounded under the semblance of a temporary cure.—Your ministers, Sir! are total strangers to those nice temperaments and allays to mitigate the evils and maladies of the state, in which much of the wisdom of government consists. They strain, where they ought to relax; and think to accomplish by exertion, what they want abilities to effect by lenient measures. They do not see these happy mediums, so necessary in the adjustments of great affairs; by which authority is preserved on the one hand, and allegiance secured on the other. These impracticable men renounce all expedients but power. They have recourse to arms, when they should seek only counsel. They attempt that by oppression which justice, well administered, would more effectually accomplish.—They talk of enforcing the laws, when they are violating the constitution; and urge the necessities of state, when they themselves are the authors of the very necessities of which they complain. They are for doing that in a free state, which the most despotic, in like circumstances, if wise, would carefully

avoid. What is there, Sir! to countenance so great a hazard of ruining America, and distressing ourselves? of exciting them to arms, and ourselves to the slaughter of our own sons? Have your ministers, Sir! discovered mines of inexhaustible riches in America, which they wish to plunder, to discharge our enormous national debt? Alas! they will find no other riches but what a strenuous industry has gained; virtue, which the love of Liberty has inspired; and a race of men not degenerate enough to part with Freedom without a noble struggle. Before their charters were violated, their laws infringed, their trade oppressed, one of their chief cities, and its inhabitants sent to awe and intimidate them, their lives and fortunes were at our disposal: can subjects offer, can they give more? I will be bold to declare to your Majesty, that before these fatal proceedings, no nation in the known history of the world, considering the growing strength, grandeur, and extent of that mighty empire, tho' dependent, could ever boast such confidence and obedience, as Great Britain did in her Colonies. These are now in danger of being irrecoverably lost, not by their defection, but our own unaccountable folly. *Quos Deus vult perdere, eos prius dementat.*

“Your ministers, Sir! as tyrants ever do, justify their oppressions, by the resistance they have met with: and perhaps have imposed upon their Prince, by talking of the satisfaction which the honour and dignity of the crown should receive upon their supposed violation. Satisfy, Sir! the dignity and honour of the crown; but let your ministers beware that

they do not sacrifice your crown to the vain, and impracticable schemes of satisfying its honour, and maintaining its dignity. I will boldly affirm, Sir, that if the dignity and honour of the crown are to be purchased at the rate your ministers seem to estimate them, that the price will be held too dear by every good, and virtuous man in the nation.

“And here, Sir! pause——disappoint your ministers, and gratify millions of your subjects. The Americans have not as yet revolted. They have not thrown off their allegiance. Their submission is so habitual, that it cannot easily be dispensed with. Do them but justice, and they will esteem it an act of Grace. They will call that a favour now, which hereafter they will claim as their right. What they now demand, the following pages, which, with all due submission, I offer to your Majesty, will declare—hitherto they have kept themselves within proper limits; and have extended their requests no farther than they were countenanced by the laws, and that friendly protection, which from our country, they had reason to expect. But further oppressions, Sir, may probably change their mode of suit. Allegiance will sometimes relax its submission. Wisdom itself does not intermeddle in the regulation of extremities; and what can moderate the conduct of despair? When dangers surround men they are not very nice in the method of salvation. And the only means of extricating themselves, will appear the right. When our friends rise up to oppress us, it is pardonable, and justifiable, to throw ourselves into the arms,

even of an enemy, for protection. I am, with all due submission, and allegiance, your Majesty's faithful subject,

"TRIBUNUS."



## A SUMMARY VIEW, ETC.

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Resolved, that it be an instruction to the said deputies, when assembled in general congress with the deputies from the other states of British America, to propose to the said congress that an humble and dutiful address be presented to his Majesty, begging leave to lay before him, as Chief Magistrate of the British empire, the united complaints of his Majesty's subjects in America; complaints which are excited by many unwarrantable encroachments and usurpations, attempted to be made by the Legislature of one part of the empire, upon those rights which God and the laws have given equally and independently to all. To represent to his Majesty that these his states have often individually made humble application to his imperial throne to obtain, through its intervention, some redress of their injured rights, to none of which was ever even an answer condescended; humbly to hope that this their joint address, penned in the language of truth, and divested of those expressions of servility which would persuade his Majesty that we were asking favours, and not rights, shall obtain from his Majesty a more respectful acceptance. And this his Majesty will think we have reason to expect when he reflects that he is no more

than the chief officer of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government, erected for their use, and consequently subject [6] to their superintendance. And in order that these our rights, as well as the invasions of them, may be laid more fully before his Majesty, to take a view of them from the origin and first settlement of these countries.

To remind him that our ancestors, before their emigration to America, were the free inhabitants of the British dominions in Europe, and possessed a right which nature has given to all men, of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies, under such laws and regulations as to them shall seem most likely to promote public happiness. That their Saxon ancestors had, under this universal law, in like manner left their native wilds and woods in the north of Europe, had possessed themselves of the island of Britain, then less charged with inhabitants, and had established there that system of laws which has so long been the glory and protection of that country. Nor was ever any claim of superiority or dependence asserted over them by that mother country from which they had migrated; and were such a claim made, it is believed that his Majesty's subjects in Great Britain have too firm a feeling of the rights derived to them from their ancestors, to bow down the sovereignty of their state before such visionary pretensions. And it is thought that no circumstance has occurred to distinguish materially the

British from the Saxon emigration. America was conquered, and her settlement made, and firmly established, at the expense of individuals, and not of the British public. Their own blood was spilt in acquiring lands for their settlements, their own fortunes expended in making that settlement effectual; for themselves they fought, for themselves they conquered, and for themselves alone they have right to hold. Not a shilling <sup>1</sup> was ever issued from the public treasures of his Majesty, or his ancestors, for their assistance, till, of very late times, after the colonies had become established on a firm and permanent footing. That then, indeed, having become valuable to Great Britain for her commercial purposes, his Parliament [7] was pleased to lend them assistance against the enemy, who would fain have drawn to herself the benefits of their commerce, to the great aggrandizement of herself, and danger of Great Britain. Such assistance, and in such circumstances, they had often before given to Portugal, and <sup>2</sup> other allied states, with whom they carry on a commercial intercourse; yet these states never supposed, that by calling in her aid, they thereby submitted themselves to her sovereignty. Had such terms been proposed, they would have rejected them with disdain, and trusted, for better to the moderation of their enemies, or to a vigorous exertion of their own force. We do not, however, mean to under-rate those aids, which to us were doubtless valuable, on whatever principles granted; but we would shew that they

<sup>1</sup> Altered in author's copy to "No shilling."

<sup>2</sup> "Portugal, and" struck out in author's copy.

cannot give a title to that authority which the British Parliament would arrogate over us, and that they may amply be repaid by our giving to the inhabitants of Great Britain such exclusive privileges in trade as may be advantageous to them, and at the same time not too restrictive to ourselves. That settlements having been thus effected in the wilds of America, the emigrants thought proper to adopt that system of laws under which they had hitherto lived in the mother country, and to continue their union with her by submitting themselves to the same common Sovereign, who was thereby made the central link connecting the several parts of the empire thus newly multiplied.

But that not long were they permitted, however far they thought themselves removed from the hand of oppression, to hold undisturbed the rights thus acquired, at the hazard of their lives, and loss of their fortunes. A family of princes was then on the British throne, whose treasonable crimes against their people brought on them afterwards the exertion of those sacred and sovereign rights of punishment reserved in the hands of the people for cases of extreme necessity, and judged by the constitution unsafe to be delegated to any other judicature. While every day brought forth some new and unjustifiable exertion of power over their subjects on that side the water, it was not [8] to be expected that those here, much less able at that time to oppose the designs of despotism, should be exempted from injury.

Accordingly that country, which had been ac-

quired by the lives, the labours, and the fortunes of individual adventurers, was by these princes, several times, parted <sup>1</sup> out and distributed among the favourites and <sup>2</sup> followers of their fortunes, and, by an assumed right to the crown alone, were <sup>3</sup> erected into distinct and independent governments; a measure which it is believed his Majesty's prudence and understanding would prevent him from imitating at this day, as no exercise of such power, of dividing and dismembering a country, has ever occurred in his Majesty's realm of England, though now of very ancient standing; nor could it be justified or

<sup>1</sup> Altered to "parcelled" in author's copy.

<sup>2</sup> 1632 Maryland was granted to Lord Baltimore, 14, c. 2. Pennsylvania to Penn, and the province of Carolina was in the year 1663 granted by letters patent of majesty, king Charles II. in the 15th year of his reign, in propriety, unto the right honourable Edward earl of Clarendon, George duke of Albemarle, William earl of Craven, John lord Berkeley, Anthony lord Ashley, sir George Carteret, sir John Coleton, knight and barronet, and sir William Berkeley, knight; by which letters patent the laws of England were to be in force in Carolina: But the lords proprietors had power, with the consent of the inhabitants, to make by-laws for the better government of the said province; so that no money could be received or law made, without the consent of the inhabitants, or their representatives. *Note in original.* In the author's copy it is struck out and the following substituted:

In 1621 Nova Scotia was granted by James I. to Sir Wm. Alexander. In 1632 Maryland was granted by Charles I. to Lord Baltimore. In 1664 New York was granted by Charles II. to the D. of York: as also New Jersey, which the D. of York conveyed again to Ld Berkely & Sr Geo. Carteret. So also were the Delaware counties, which the same Duke conveyed again to Wm. Penn. In 1665 the country including North & South Carolina, Georgia & the Floridas was granted by Charles II. to the E. of Clarendon, D. of Albemarle, E. of Craven, Ld Berkely, Ld Ashley, Sr George Carteret, Sr John Coleton, & Sr. Wm Berkely. In 1681 Pennsylvania was granted by Charles II. to Wm. Penn.

<sup>3</sup> Altered to "was" in author's copy.

acquiesced under there, or in any other part of his Majesty's empire.

That the exercise of a free trade with all parts of the world, possessed by the American colonists, as of natural right, and which no law of their own had taken away or abridged, was next the object of unjust encroachment. Some of the colonies having thought proper to continue the administration of their government in the name and under the authority of his Majesty King Charles the First, whom, notwithstanding his late deposition by the commonwealth of England, they continued in the sovereignty of their state; the Parliament for the commonwealth took the same in high offence, and assumed upon themselves the power of prohibiting their trade with all other parts of the world, except the island of Great Britain. This arbitrary act, however, they soon recalled, and by [9] solemn treaty, entered into on the 12th day of March, 1651, between the said commonwealth by their commissioners, and the colony of Virginia by their house of burgesses, it was expressly stipulated, by the 8th article of the said treaty, that they should have "free trade as the people of England do enjoy to all places and with all nations, according to the laws of that commonwealth." But that, upon the restoration of his majesty king Charles the second, their rights of free commerce fell once more a victim to arbitrary power; and by several acts <sup>1</sup> of his reign, as well as of some of his successors, the trade of the colonies was laid

<sup>1</sup> 12. c. 2. c. 18. 15. c. 2. c. 11. 25. c. 2. c. 7. 7. 8. W. M. c. 22. 11. W. 3. 4. Anne. 6. G. 2. c. 13.—*T. J.*

under such restrictions as shew what hopes they might form from the justice of a British Parliament, were its uncontrouled power admitted over these states. History has informed us that bodies of men, as well as individuals, are susceptible of the spirit of tyranny. A view of these acts of parliament for regulation, as it has been affectedly called, of the American trade, if all other evidence were removed out of the case, would undeniably evince the truth of this observation. Besides the duties they impose on our articles of export and import, they prohibit our going to any markets northward of Cape Finisterre, in the kingdom of Spain, for the sale of commodities which Great Britain will not take from us, and for the purchase of others, with which she cannot supply us, and that for no other than the arbitrary purposes of purchasing for themselves, by a sacrifice of our rights and interests, certain privileges in their commerce with an allied state, who in confidence that their exclusive trade with America will be continued, while the principles and power of the British parliament be the same, have indulged themselves in every exorbitance which their avarice could dictate, or our necessities extort; have raised their commodities called for in America, to the double and treble of what they sold for before such exclusive privileges were given them, and of what better commodities of the same kind would cost us elsewhere, and at the [10] same time give us much less for what we could carry thither than might be had at more convenient ports. That these acts prohibit us from carrying in quest of other purchasers the surplus of our tobaccoes

remaining after the consumption of Great Britain is supplied; so that we must leave them with the British merchant for whatever he will please to allow us, to be by him reshipped to foreign markets, where he will reap the benefits of making sale of them for full value. That to heighten still the idea of parliamentary justice, and to shew with what moderation they are like to exercise power, where themselves are to feel no part of its weight, we take leave to mention to his majesty certain other acts of British parliament, by which they would prohibit us from manufacturing for our own use the articles we raise on our own lands with our own labour. By an act<sup>1</sup> passed in the 5th year of the reign of his late majesty king George the second, an American subject is forbidden to make a hat for himself of the fur which he has taken perhaps on his own soil; an instance of despotism to which no parallel can be produced in the most arbitrary ages of British history. By one other act<sup>2</sup> passed in the 23d year of the same reign, the iron which we make we are forbidden to manufacture, and heavy as that article is, and necessary in every branch of husbandry, besides commission and insurance, we are to pay freight for it to Great Britain, and freight for it back again, for the purpose of supporting not men, but machines, in the island of Great Britain. In the same spirit of equal and impartial legislation is to be viewed the act of parliament<sup>3</sup> passed in the 5th year of the same reign, by which American lands are made subject to the demands of British creditors, while their own lands were still

<sup>1</sup> 5. G. 2.—*T. J.*    <sup>2</sup> 23. G. 2. c. 29.—*T. J.*    <sup>3</sup> 5. G. 270.—*T. J.*

continued unanswerable for their debts; from which one of these conclusions must necessarily follow, either that justice is not the same in America as in Britain, or else that the British parliament pay less regard to it here than there. But that we do not point out to his majesty the injustice of these acts, with intent to rest on that principle the cause of their [11.] nullity; but to shew that experience confirms the propriety of those political principles which exempt us from the jurisdiction of the British parliament. The true ground on which we declare these acts void is, that the British parliament has no right to exercise its authority over us.

That these exercises of usurped power have not been confined to instances alone, in which themselves were interested, but they have also intermeddled with the regulation of the internal affairs of the colonies. The act of the 9th of Anne for establishing a post office in America seems to have had little connection with British convenience, except that of accommodating his majesty's ministers and favourites with the sale of a lucrative and easy office.

That thus we have hastened through the reigns which preceded his majesty's during which the violations of our rights were less alarming, because repeated at more distant intervals than that rapid and bold succession of injuries which is likely to distinguish the present from all other periods of American story. Scarcely have our minds been able to emerge from the astonishment into which one stroke of parliamentary thunder had involved us, before another more heavy, and more alarming, is fallen on us. Single

acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions begun at a distinguished period, and pursued, unalterably through every change of ministers, too plainly prove a deliberate and systematical plan of reducing us to slavery.

That the act,<sup>1</sup> passed in the 4th year of his majesty's reign, entitled "An act for granting certain duties in the British colonies and plantations in America, &c."

One other act,<sup>2</sup> passed in the 5th year of his reign, entitled "An act for granting and applying certain stamp duties and other duties in the British colonies and plantations in America, &c."

One other act,<sup>3</sup> passed in the 6th year of his reign, entitled "An act for the better securing the depend- [12]ency of his majesty's dominions in America upon the crown and parliament of Great Britain"; and one other act,<sup>4</sup> passed in the 7th year of his reign, entitled "An act for granting duties on paper, tea, &c." form that connected chain of parliamentary usurpation, which has already been the subject of frequent applications to his majesty, and the houses of lords and commons of Great Britain; and no answers having yet been condescended to any of these, we shall not trouble his majesty with a repetition of the matters they contained.

But that one other act,<sup>5</sup> passed in the same 7th year of the <sup>6</sup> reign, having been a peculiar attempt,

<sup>1</sup> 4. G. 3. c. 15.—*T. J.*

<sup>2</sup> 5. G. 3. c. 12.—*T. J.*

<sup>3</sup> 6. G. 3. c. 12.—*T. J.*

<sup>4</sup> 7. G. 3.—*T. J.*

<sup>5</sup> 7. G. 3. c. 59.—*T. J.*

<sup>6</sup> Altered to "his" in author's copy.

must ever require peculiar mention; it is entitled "An act for suspending the legislature of New York." One free and independent legislature hereby takes upon itself to suspend the powers of another, free and independent as itself; this exhibiting a phenomenon unknown in nature, the creator and creature of his own power. Not only the principles of common sense, but the common<sup>1</sup> feelings of human nature, must be surrendered up before his majesty's subjects here can be persuaded to believe that they hold their political existence at the will of a British parliament. Shall these governments be dissolved, their property annihilated, and their people reduced to a state of nature, at the imperious breath of a body of men, whom they never saw, in whom they never confided, and over whom they have no powers of punishment or removal, let their crimes against the American public be ever so great? Can any one reason be assigned why 160,000 electors in the island of Great Britain should give law to four millions in the states of America, every individual of whom is equal to every individual of them, in virtue, in understanding, and in bodily strength? Were this to be admitted, instead of being a free people, as we have hitherto supposed, and mean to continue ourselves, we should suddenly be found the slaves not of one but of 160,000 tyrants, distinguished too from all others by this singular circumstance, that they are removed [13] from the reach of fear, the only restraining motive which may hold<sup>2</sup> the hand of a tyrant.

<sup>1</sup> "Common" struck out in author's copy.

<sup>2</sup> Altered to "withhold" in author's copy.

That by "an act <sup>1</sup> to discontinue in such manner and for such time as they are therein mentioned, the landing and discharging, lading or shipping, of goods, wares, and merchandize, at the town and within the harbour of Boston, in the province of Massachusetts Bay, in North America" which was passed at the last session of British parliament; a large and populous town, whose trade was their sole subsistence, was deprived of that trade, and involved in utter ruin. Let us for a while suppose the question of right suspended, in order to examine this act on principles of justice: An act of parliament had been passed imposing duties on teas, to be paid in America, against which act the Americans had protested as inauthoritative. The East India Company, who till that time had never sent a pound of tea to America on their own account, step forth on that occasion the assertors of parliamentary right, and send hither many ship loads of that obnoxious commodity. The masters of their several vessels, however, on their arrival to America, wisely attended to admonition, and returned with their cargoes. In the province of New England <sup>2</sup> alone the remonstrances of the people were disregarded, and a compliance, after being many days waited for, was flatly refused. Whether in this the master of the vessel was governed by his obstinacy, or his instructions, let those who know say. There are extraordinary situations which require extraordinary interposition. An exasperated people, who feel that they possess power, are not easily restrained

<sup>1</sup> 7. G. 3. c. 59. *T. J.*

<sup>2</sup> Altered to "Massachusetts" in author's copy.

within limits strictly regular. A number of them assembled in the town of Boston, threw the tea into the ocean, and dispersed without doing any other act of violence. If in this they did wrong, they were known and were amenable to the laws of the land, against which it could not be objected that they had ever, in any instance, been obstructed or diverted from their regular course in favour of popular offenders. They should therefore not have been distrusted on this occasion. [14] But that ill fated colony had formerly been bold in their enmities against the house of Stuart, and were now devoted to ruin by that unseen hand which governs the momentous affairs of this great empire. On the partial representations of a few worthless ministerial dependants, whose constant office it has been to keep that government embroiled, and who, by their treacheries, hope to obtain the dignity of the British knighthood,<sup>1</sup> without calling for the party accused, without asking a proof, without attempting a distinction between the guilty and the innocent, the whole of that ancient and wealthy town is in a moment reduced from opulence to beggary. Men who had spent their lives in extending the British commerce, who had invested in that place the wealth their honest endeavors had merited, found themselves and their families thrown at once on the world for subsistence by its charities. Not the hundredth part of the inhabitants of that town had been concerned in the act complained of, many of them were in

<sup>1</sup> "Alluding to the knighting of Sir Francis Bernard."—*MS. note in author's copy.*

Great Britain and in other parts beyond sea, yet all were involved in one indiscriminate ruin, by a new executive power unheard of till then, that of a British Parliament. A property, of the value of many millions of money, was sacrificed to revenge, not repay, the loss of a few thousands. This is administering justice with a heavy hand indeed! and when is this tempest to be arrested in its course? Two wharfs are to be opened again when his Majesty shall think proper. The residue, which lined the extensive shores of the bay of Boston, are forever interdicted the exercise of commerce. This little exception seems to have been thrown in for no other purpose than that of setting a precedent for investing his majesty with legislative powers. If the pulse of his people shall beat calmly under this experiment, another and another shall be tried, till the measure of despotism be filled up. It would be an insult on common sense to pretend that this exception was made in order to restore its commerce to that great town. The trade which cannot be received at two wharfs alone must of necessity be transferred to some other place; to which [15] it will soon be followed by that of the two wharfs. Considered in this light, it would be insolent and cruel mockery at the annihilation of the town of Boston.

By the act<sup>1</sup> for the suppression of riots and tumults in the town of Boston, passed also in the last session of parliament, a murder committed there is, if the governor pleases, to be tried in a court of King's Bench, in the island of Great Britain, by a jury of

<sup>1</sup> 14. G. 3.—*T. J.*

Middlesex. The witnesses, too, on receipt of such a sum as the governor shall think it reasonable for them to expend, are to enter into recognizance to appear at the trial. This is, in other words, taxing them to the moment of their recognizance, and that amount may be whatever a governor pleases; for who does his majesty think can be prevailed on to cross the Atlantic for the sole purpose of bearing evidence to a fact? His expences are to be borne, indeed, as they shall be estimated by a governor; but who are to feed the wife and children whom he leaves behind and who have had no other subsistence but his daily labour? Those epidemical disorders too, so terrible in a foreign climate, is the cure of them to be estimated among the articles of expence, and their danger to be warded off by the almighty power of parliament? And the wretched criminal, if he happen to have offended on the American side, stripped of his privilege of trial by peers of his vicinage, removed from the place where alone full evidence could be obtained, without money, without council, without friends, without exculpatory proof, is tried before judges predetermined to condemn. The cowards who would suffer a countryman to be torn from the bowels of their society, in order to be thus offered a sacrifice to parliamentary tyranny, would merit that everlasting infamy now fixed on the authors of the act! A clause<sup>1</sup> for a similar purpose had been introduced into an act passed in the twelfth year of his majesty's reign, entitled "An act for the better securing and preserving his majesty's dockyards, magazines,

<sup>1</sup> 12. G. 3. c. 23.—*T. J.*

ships, ammunition and stores," against which, as [16] meriting the same censures, the several colonies have already protested.

That these are acts of power, assumed by a body of men, foreign to our constitutions, and unacknowledged by our laws, against which we do, on behalf of the inhabitants of British America, enter this our solemn and determined protest; and we do earnestly entreat his majesty, as yet the only mediatory power between the several states of the British empire, to recommend to his parliament of Great Britain the total revocation of these acts, which, however nugatory they may yet prove the cause of further discontents and jealousies among us.

That we next proceed to consider the conduct of his majesty, as holding the executive powers of the laws of these states, and mark out his deviations from the line of duty. By the constitution of Great Britain, as well of the several American states, his majesty professes the power of refusing to pass into a law any bill which has already passed the other two branches of legislature. His majesty, however, and his ancestors, conscious of the impropriety of opposing their single opinion to the united wisdom of two houses of parliament, while their proceedings were unbiassed by interested principles, for several ages past have modestly declined the exercise of this power in that part of his empire called Great Britain. But by change of circumstances, other principles than those of justice simply obtained an influence on their determinations; the addition of new states to the British empire has produced an addition of new,

and sometimes opposite interests. It is now, therefore, the great office of his majesty, to resume exercise of his negative power, and to prevent the passage of laws by any one legislature of the empire, which might bear injuriously on the rights and interests of another. Yet this will not excuse the wanton exercise of this power which we have seen his Majesty practise on the laws of the American legislatures. For the most trifling reasons, and sometimes for no conceivable reason at all, his majesty has rejected laws of the most salutary tendency. The abolition of do-[17]mestic slavery is the great object of desire in those colonies, where it was unhappily introduced in their infant state. But previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa; yet our repeated attempts to effect this by prohibitions, and by imposing duties which might amount to a prohibition, have been hitherto defeated by his majesty's negative: Thus preferring the immediate advantages of a few African<sup>1</sup> corsairs to the lasting interests of the American states, and to the rights of human nature deeply wounded by this infamous practice. Nay, the single interposition of an interested individual against a law was scarcely ever known to fail of success, though in the opposite scale were placed the interests of the whole country. That this is so shameful an abuse of a power trusted with his majesty for other purposes, as if not reformed, would call for some legal restrictions.

With equal inattention to the necessities of his

<sup>1</sup> Altered to "British" in author's copy.

people here has his Majesty permitted our laws to lie neglected in England for years, neither confirming them by his assent, nor annulling them by his negative; so that such of them as have no suspending clause we hold on the most precarious of all tenures, his majesty's will and such of them as suspend themselves till his majesty's assent be obtained, we have feared, might be called into existence at some future and distant period, when the time and change of circumstances shall have rendered them destructive to his people here. And to render this aggrivance still more oppressive, his majesty by his instructions has laid his governors under such restrictions that they can pass no law of any moment unless it have such suspending clause; so that, however immediate may be the call for legislative interposition, the law cannot be executed till it has twice crossed the Atlantic, by which time the evil may have spent its whole force.

But in what terms, reconcilable to majesty, and at the same time to truth, shall we speak of a late instruction to his majesty's <sup>1</sup> governor of the colony of Virginia, by which he is forbidden to assent to any law for the division of a county, unless the new county [18] will consent to have no representative in assembly? That colony has as yet fixed no boundary to the westward. Their westward counties, therefore, are of indefinite extent; some of them are actually seated many hundred miles from their eastward limits. Is it possible, then, that his majesty can

<sup>1</sup> "His majesty's" stricken out, and "the" substituted in author's copy.

have bestowed a single thought on the situation of those people, who, in order to obtain justice for injuries, however great or small, must, by the laws of that colony, attend their county court, at such a distance, with all their witnesses, monthly, till their litigation be determined? Or does his majesty seriously wish, and publish it to the world, that his subjects should give up the glorious right of representation, with all the benefits derived from that, and submit themselves the absolute slaves of his sovereign will? Or is it rather meant to confine the legislative body to their present numbers, that they may be the cheaper bargain whenever they shall become worth a purchase.

One of the articles of impeachment against Trestlain, and the other judges of Westminster-Hall, in the reign of Richard the second, for which they suffered death, as traitors to their country, was, that they had advised the king that he might dissolve his parliament at any time; and succeeding kings have adopted the opinion of these unjust judges. Since the establishment,<sup>1</sup> however, of<sup>2</sup> the British constitution, at the glorious revolution,<sup>3</sup> on its free and antient principles, neither his majesty, nor his ancestors, have exercised such a power of dissolution in the island of Great Britain; and when his majesty was petitioned, by the united voice of his people there, to dissolve the present parliament, who had become

<sup>1</sup> "Establishment" struck out, and "reign of the Second William" substituted in author's copy.

<sup>2</sup> "Of" struck out, and "under which" substituted in author's copy.

<sup>3</sup> "At the glorious revolution" struck out, and "was settled" substituted in author's copy.

obnoxious to them, his ministers were heard to declare in open parliament, that his majesty possessed no such power by the constitution.' But how different their language and his practice here! To declare, as their duty required, the known rights of their country, to oppose the usurpations of every foreign judicature, to disregard the imperious mandates of a minister or governor, have been the avowed causes of dissolving houses of representatives in America. But if such powers be [19] really vested in his majesty, can he suppose they are there placed to awe the members from such purposes as these? When the representative body have lost their confidence of their constituents, when they have notoriously made sale of their most valuable rights, when they have assumed to themselves powers which the people never put into their hands, then indeed their continuing in office becomes dangerous to the state, and calls for an exercise of the power of dissolution. Such being the causes for which the representative body should, and should not be dissolved, will it not appear strange to an unbiased observer, that that of Great Britain was not dissolved, while those of the colonies have repeatedly incurred that sentence?

<sup>1</sup> "Since this period the king has several times dissolved the parliament a few weeks before its expiration, merely as an assertion of right."—*MS. note in author's copy.* "On further inquiry I find two instances of dissolutions before the Parliament would, of itself, have been at an end: viz., the Parliament called to meet August 24, 1698, was dissolved by King William, December 19, 1700, and a new one called, to meet February 6, 1701, which was also dissolved November 11, 1701, and a new one met December 30, 1701."—*Additional note by author, in MS. copy, Department of State Archives.*

But your majesty, or your governors, have carried this power beyond every limit known, or provided for, by the laws: After dissolving one house of representatives, they have refused to call another, so that for a great length of time, the legislature provided by the laws has been out of existence. From the nature of things, every society must at all times possess within itself the sovereign powers of legislation. The feelings of human nature revolt against the supposition of a state so situated as that it may not in any emergency provide against dangers which perhaps threatened immediate ruin. While those bodies are in existence to whom the people have delegated the powers of legislation, they alone possess and may exercise those powers; but when they are dissolved by the lopping off one or more of their branches, the power reverts to the people, who may exercise it to unlimited extent, either assembling together in person, sending deputies, or in any other way they may think proper.<sup>1</sup> We forbear to trace consequences further; the dangers are conspicuous with which this practice is replete.

That we shall at this time take notice of an error in the nature of our land holdings, which crept in at a very early period of our settlement. The introduction of the feudal tenures into the kingdom of England, though ancient, is well enough understood to set this matter in a proper light. In the earlier ages

<sup>1</sup> "insert 'and the frame of government thus dissolved, should the people take upon them to lay the throne of your majesty prostrate, or to discontinue their connection with the British empire, none will be so bold as to decide against the right or the efficacy of such avulsion.'"—*MS. note in author's copy.*

of the Saxon settlement feudal holdings were [20] certainly altogether unknown; and very few, if any, had been introduced at the time of the Norman conquest. Our Saxon ancestors held their lands, as they did their personal property, in absolute dominion, disencumbered with any superior, answering nearly to the nature of those possessions which the feudalists term allodial. William, the Norman, first introduced that system generally. The land which had belonged to those who fell in the battle of Hastings, and in the subsequent insurrections of his reign, formed a considerable proportion of the lands of the whole kingdom. These he granted out, subject to feudal duties, as did he also those of a great number of his new subjects, who, by persuasions or threats, were induced to surrender them for that purpose. But still much was left in the hands of his Saxon subjects; held of no superior and not subject to feudal conditions. These, therefore, by express laws, enacted to render uniform the system of military defence, were made liable to the same military duties as if they had been feuds; and the Norman lawyers soon found means to saddle them also with all the other feudal burthens. But still they had not been surrendered to the king, they were not derived from his grant, and therefore they were not holden of him. A general principle indeed, was introduced, that "all lands in England were held either mediately or immediately of the crown," but this was borrowed from those holdings, which were truly feudal, and only applied to others for the purposes of illustration. Feudal holdings were therefore but exceptions out of the

Saxon laws of possession, under which all lands were held in absolute right. These, therefore, still form the basis, or groundwork, of the common law, to prevail wheresoever the exceptions have taken place. America was not conquered by William the Norman, nor its lands surrendered to him, or any of his successors. Possessions there are undoubtedly of the allodial nature. Our ancestors, however, who emigrated hither, were farmers,<sup>1</sup> not lawyers. The fictitious principle that all lands belong originally to the king, they were early persuaded to believe [21] real; and accordingly took grants of their own lands from the crown. And while the crown continued to grant for small sums, and on reasonable rents, there was no inducement to arrest the error, and lay it open to the public view. But his majesty has lately taken on him to advance the terms of purchase, and of holding to the double of what they were, by which means the acquisition of lands being rendered difficult, the population of our country is likely to be checked. It is time, therefore, for us to lay this matter before his majesty, and to declare that he has no right to grant lands of himself. From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself are assumed by that society, and subject to their allotment only. This may be done by themselves assembled collectively, or by their legislature, to whom they may have delegated sovereign authority; and if they are allotted in either of these ways, each individual of the society may appropriate to himself

<sup>1</sup> "Farmers" altered to "laborers" in author's copy.

such lands as he finds vacant, and occupancy will give him title.

That in order to force the arbitrary measures before complained of, his majesty has from time to time sent among us large bodies of armed forces, not made up of the people here, nor raised by the authority of our laws. Did his majesty possess such a right as this, it might swallow up all our other rights whenever he should think proper. But his majesty has no right to land a single armed man on our shores, and those whom he sends here are liable to our laws made for the suppression and punishment of riots, and unlawful assemblies; or are hostile bodies, invading us in defiance of the law. When in the course of the late war it became expedient that a body of Hanoverian troops should be brought over for the defence of Great Britain, his majesty's grandfather, our late sovereign, did not pretend to introduce them under any authority he possessed. Such a measure would have given just alarm to his subjects in Great Britain, whose liberties would not be safe if armed men of another country, and of another spirit, might be brought into the realm at any time without the consent of their legislature. He therefore applied to parliament, who passed an act for that purpose, limiting the number to be brought in, and the time they were to continue. In like manner is his majesty restrained in every part of the empire. He possesses, indeed, the executive power of the laws in every state, but they are the laws of the particular state which he is to administer within that state, and not those of any one within the limits of another. Every

state must judge for itself the number of armed men which they may safely trust among them, of whom they are to consist, and under what restrictions they shall be laid.

To render these proceedings still more criminal against our laws, instead of subjecting the military to the civil powers, his majesty has expressly made the civil subordinate to the military. But can his majesty thus put down all law under his feet? Can he erect a power superior to that which erected himself? He has done it indeed by force, but let him remember that force cannot give right.

That these are our grievances which we have thus laid before his majesty, with that freedom of language and sentiment which becomes a free people claiming their rights, as derived from the laws of nature, and not as the gift of their chief magistrate: Let those flatter who fear, it is not an American art. To give praise which is not due might be well from the venal, but would ill beseem those who are asserting the rights of human nature. They know, and will therefore say, that kings are the servants, not the proprietors of the people. Open your breast, sire, to liberal and expanded thought. Let not the name of George the third be a blot in the page of history. You are surrounded by English counsellors, but remember that they are parties. You have no minister for American affairs, because you have none taken up from among us, nor amenable to the laws on which they are to give you advice. It behooves you, therefore, to think and to act for yourself and your people. The great principles of right and wrong are

legible to every reader; to pursue them requires not the aid of many counsellors. The whole art of government consists [23] in the art of being honest. Only aim to do your duty, and mankind will give you credit where you fail. No longer persevere in sacrificing the rights of one part of the empire to the inordinate desires of another; but deal out to all equal and impartial right. Let no act be passed by any one legislature which may infringe on the rights and liberties of another. This is the important post in which fortune has placed you, holding the balance of a great, if a well poised empire. This, sire, is the advice of your great American council, on the observance of which may perhaps depend your felicity and future fame, and the preservation of that harmony which alone can continue both in Great Britain and America the reciprocal advantages of their connection. It is neither our wish nor our interest to separate from her. We are willing, on our part, to sacrifice everything which reason can ask to the restoration of that tranquillity for which all must wish. On their part, let them be ready to establish union and <sup>2</sup> a generous plan. Let them name their terms, but let them be just. Accept of every commercial preference it is in our power to give for such things as we can raise for their use, or they make for ours. But let them not think to exclude us from going to other markets to dispose of those commodities which they cannot use, or to supply those wants which they cannot supply. Still less let it be proposed that our properties within our own territories

<sup>2</sup> "And" altered to "on" in author's copy.

shall be taxed or regulated by any power on earth but our own. The God who gave us life gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them. This, sire, is our last, our determined resolution; and that you will be pleased to interpose with that efficacy which your earnest endeavors may ensure to procure redress of these our great grievances to quiet the minds of your subjects in British America, against any apprehensions of future encroachment, to establish fraternal love and harmony through the whole empire, and that these may continue to the last ages of time, is the fervent prayer of all British America.



**CORRESPONDENCE AND MISCELLANEOUS  
WRITINGS**

**1774-1779**



CORRESPONDENCE  
AND  
MISCELLANEOUS WRITINGS  
1774-1779

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"DEFECTS IN THE ASSOCIATION":

J. MSS.

[October, 1774.]

We are permitted to buy any goods imported before Nov. 1, 1774.

We are not allowed to import the implements of manufacturing, nor books.

We may still import wines, Coffee etc. tho' dutied articles.

We are allowed to continue commerce with other parts of the British empire, tho' they should refuse to join us.

The American grievances are not defined.

We are to conform to such resolutions only of the Congress as our deputies assent to: which totally destroys that union of conduct in the several colonies which was the very purpose of calling a Congress.

Upon the whole we may say:

<sup>1</sup> This paper has reference to the non-importation and non-exportation "Association" of the Congress of 1774.

We have left undone those things which we ought to have done,

And we have done those things which we ought not to have done.

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TO ARCHIBALD CARY AND BENJAMIN HARRISON J.MSS.

[Dec. 9th, 1774.]

DEAR SIR,—As I mean to be a conscientious observer of the measures generally thought requisite for the preservation of our independent rights, so I think myself bound to account to my country for any act of mine which might wear an appearance of contravening them. I therefore take the liberty of stating to you the following matter that thro your friendly intervention it may be communicated to the committee of your county. You may remember it was about the last of May that the house of Burgesses after it's dissolution met in the Raleigh and formed our first association <sup>1</sup> against the future use of tea only, tho' the proceedings of the ministry against the town of Boston were then well known to us. I believe nobody thought at that time of extending our association further to the total interruption of our commerce with Britain; or if it was proposed by any (which I do not recollect) it was condemned by the general sense of the members who formed that association. Two or three days therefore after this I wrote to Cary & co. of London for 14 pr of sash Windows, to be sent me ready made & glazed with a small parcel of spare glass to mend with. This letter went

<sup>1</sup> See Autobiography, *ante*, vol. i., p. 9.

by a ship which sailed abt the 3d. of June just before Power arrived here, & I did not suppose they would send them till Power should come in again in the spring of 1775. About the middle of June as nearly as I can recollect, a few of the late members were again convened (in consequence of fresh advices from Boston) and then it was suggested a more extensive association might be necessary. A convention met for that purpose the first of August and formed a new association: of which I received a copy about the 11th of the month. But as a General congress was appointed to be held within four weeks of that time to reconsider the same matters and it was agreed that our Association should be subject to any alterations that they might recommend I did not write to countermand my order, thinking I should have sufficient time after the final determinations of the congress should be known, to countermand it before Power should sail in the spring. Accordly within a few days after receiving a copy of the general association I wrote to Cary & co. not to send the sashes, glass &c. which I had ordered & gave my letter to the care of a gentleman (Mr. Evans) just then going downward who promised to send it out speedily, but three or four days after I received a letter from those gentl. dated Aug. 29 in which they informed me my window frames and glass are ready but that it being necessary to detain them about a month to harden the puttying, they were not sent by that but might be expected by the first ship afterwards. From this I conclude they may be near arriving at this time, in which case they will come under the 1st & 10th

articles of the Association. In order therefore that no proceeding of mine might give a handle for traducing our measures I thought it better previously to lay before your committee, (within whose ward they will probably be landed) a full state of the matter by which it might be seen under what expectations I had failed to give an earlier countermand and to shew that as they come under the prohibitions of the Continental association (which without the spirit of prophecy could not have been foretold when I ordered them) so I mean they shall be subject to it's condemnation. To your committee therefore if landed within their county I submit the disposal of them which shall be obeyed as soon as made known to their and your most humble servt.

Dec. 9. 1774. A copy of this sent by Mr. Mazzei to Col. A. Cary, & another to Col. B. Harrison.

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MOTION IN CONVENTION OF VIRGINIA<sup>1</sup> V. S. A.

[Mar. 24, 1775.]

Ordered that certain paragraphs in the public papers, said to have been the votes of the house of representatives of New York be read.<sup>2</sup>

The house of Convention taking into their consideration that the said province of New York did by their delegates in General Congress solemnly accede

<sup>1</sup> Printed from the original in Jefferson's handwriting. It was somewhat altered and lengthened before adoption by the Convention.

<sup>2</sup> This was evidently the vote declining to consider the proceedings of the Congress of 1774.

to the compact of Association there formed for the preservation of American rights, that a defection from such their compact would be a perfidy too atrocious to be charged on a sister colony but on the most authentic information, and also doubting whether from some radical defect in the constitution of that government the sense of their house of representatives on questions of this nature should be considered as the sense of the people in general, come to the following resolution:

Resolved that it be an instruction to the committee of correspondence for this colony that they procure authentic information from the committee of correspondence for the province of New York or otherwise; Whether their house of representatives by any vote or votes whatsoever have deserted the Union with the other American Colonies formed in General congress for the preservation of their just rights; Whether the other Colonies are to consider such vote or votes as declaring truly the sense of the people of their province in general, and as forming a rule for their future conduct; And if they are not so to be considered that then they inform us by their names and other sufficient descriptions, of the individuals who may have concurred in such vote, or votes; and that the said committee lay such their information before the next convention or assembly.

DRAFT OF A RESOLUTION OF THE VIRGINIA CONVENTION<sup>1</sup>

V. S. A.

His Excellency the Governor having by proclamation bearing date the 21st day of March<sup>2</sup> in the present year declared that his majesty hath given orders that all vacant lands within this colony shall be put up in lot to public sale and that the highest bidder for such lots shall be the purchaser thereof, and shall hold the same subject to a reservation of one-penny sterling per acre by way of annual quit rent and all mines of gold, silver, and precious stones; which terms are an innovation on the established usage of granting lands within this colony; Resolved that a committee be appointed to enquire whether

<sup>1</sup> This resolution is printed from the original in Jefferson's handwriting. It was offered in the Convention, Mar. 27, 1775, and in pursuance of it, Henry, Bland, Jefferson, Nicholas, and Pendleton were appointed a committee, but seem to have done nothing concerning it. At the next session, on July 18th, a new committee was named, and on the arrival of Harrison, Henry, and Jefferson, on Aug. 9, they were added to this second committee, but it was equally fruitless of results. "One of the last acts of the Convention was dictated by a proclamation of the governor . . . declaring that the king had given orders that all vacant lands should be put up in lots at public sale. . . . It was an innovation on the established usage of granting lands within the Colony. Announced that revenue was to be hunted for in disregard of charters and ancient habits, and to be embraced in it minutest shapes. To attack this new head of the hydra of precedent, a committee was appointed of Patrick Henry, Richard Bland, Thomas Jefferson, Robert Carter Nicholas, and Edmund Randolph, to inquire whether his majesty may of right advance the terms of granting lands in this colony, and to make report to the next General assembly or Convention. But this affair was lost in the subsequent events, and at any other time would probably have died away with those numerous thoughtless acquiescences with which our history is strewed, in exercises of doubtful prerogative."—Edmund Randolph's (MS.) *History of Virginia*, ii., 35.

[March 27, 1775.]

<sup>2</sup> Printed in Force's *Archives*, 4th, ii., 174.

his majesty may of right advance the terms of granting lands in this colony, and make report thereof to the next General assembly or Convention. And that in the mean time it be recommended to all persons whatever to forbear purchasing or accepting grants of lands on the conditions aforementioned; and that \_\_\_\_\_ be appointed to be of the said Committee.

TO DR. WILLIAM SMALL <sup>1</sup>

May 7, 1775.

DEAR SIR,—Within this week we have received the unhappy news of an action of considerable magnitude, between the King's troops and our brethren of Boston, in which it is said five hundred of the former, with the Earl of Percy, are slain.<sup>2</sup> That such an action has occurred, is undoubted, though perhaps the circumstances may not have reached us with truth. This accident has cut off our last hope of reconciliation, and a phrensy of revenge seems to have seized all ranks of people. It is a lamentable circumstance, that the only mediatory power, acknowledged by both parties, instead of leading to a reconciliation of his divided people, should pursue the incendiary purpose of still blowing up the flames, as we find him constantly doing, in every speech and public declaration. This may, perhaps, be intended to intimidate into acquiescence, but the effect has been most

<sup>1</sup> From Randolph's edition of Jefferson's writings.

<sup>2</sup> The affairs at Lexington and Concord.

unfortunately otherwise. A little knowledge of human nature, and attention to its ordinary workings, might have foreseen that the spirits of the people here were in a state, in which they were more likely to be provoked, than frightened, by haughty deportment. And to fill up the measure of irritation, a proscription of individuals has been substituted in the room of just trial. Can it be believed, that a grateful people will suffer those to be consigned to execution, whose sole crime has been the developing and asserting their rights? Had the Parliament possessed the power of reflection, they would have avoided a measure as impotent, as it was inflammatory. When I saw Lord Chatham's bill, I entertained high hope that a reconciliation could have been brought about. The difference between his terms, and those offered by our Congress, might have been accommodated, if entered on, by both parties, with a disposition to accommodate. But the dignity of Parliament, it seems, can brook no opposition to its power. Strange, that a set of men, who have made sale of their virtue to the Minister, should yet talk of retaining dignity! But I am getting into politics, though I sat down only to ask your acceptance of the wine, and express my constant wishes for your happiness.

ADDRESS TO GOVERNOR DUNMORE FROM THE HOUSE  
OF BURGESSES <sup>1</sup>

Monday, June 12, 15 Geo. III., 1775.

MY LORD:—We, His majesty's dutiful and loyal subjects, the Burgesses of Virginia, now met in General Assembly, have taken into our consideration the joint Address of the two Houses of Parliament, His Majesty's Answer, and the Resolution of the Commons, which your Lordship has been pleased to lay before us. Wishing nothing so sincerely as the perpetual continuance of that brotherly love which we bear to our fellow-subjects of Great Britain, and still continuing to hope and believe that they do not approve the measures which have so long oppressed their brethren in America, we were pleased to receive your Lordship's notification, that a benevolent tender had at length been made by the British House of Commons towards bringing to a good end our unhappy disputes with the Mother Country. Next to the possession of liberty, my Lord, we should consider such a reconcilliation as the greatest of all human blessings. With these dispositions we entered into the consideration of that Resolution; we examined it minutely; we viewed it in every point

<sup>1</sup> From Force's *Archives*, 4th, ii., 1204. The preparation of this address was referred by the House of Burgesses on June 10th to a committee consisting of "Mr. Cary, Mr. Treasurer (R. C. Nicholas), Mr. Jefferson, Mr. Mumford, Mr. Mercer, Mr. Jones, Mr. Digges, and Mr. Nelson." It was reported on the 12th by Archibald Cary, and on its acceptance he was first named on the committee to present it to the Governor, both of which duties were usually assigned to the drafter. But Jefferson claims it as his production in his *Autobiography* (*ante*, i., 17) in which he also gives an account of it.

of light in which we were able to place it; and, with pain and disappointment, we must ultimately declare it only changes the form of oppression, without lightening its burden. We cannot, my Lord, close with the terms of that Resolution, for these reasons:

Because the British Parliament has no right to intermeddle with the support of civil Government in the Colonies. For us, not for them, has Government been instituted here. Agreeable to our ideas, provision has been made for such officers as we think necessary for the administration of publick affairs; and we cannot conceive that any other legislature has a right to prescribe either the number or pecuniary appointments of our offices. As a proof that the claim of Parliament to interfere in the necessary provisions for the support of civil Government is novel, and of a late date, we take leave to refer to an Act of our Assembly, passed so long since as the thirty second year of the reign of King Charles the Second, intituled, "An Act for raising a publick revenue, and for the better support of the Government of His Majesty's Colony of Virginia." This act was brought over by Lord Culpeper, then Governour, under the great seal of England, and was enacted in the name of the "King's most Excellent Majesty, by and with the consent of the General Assembly."

Because to render perpetual our exemption from an unjust taxation, we must saddle ourselves with a perpetual tax, adequate to the expectations, and subject to the disposal of Parliament alone; Whereas we have a right to give our money, as the Parliament do theirs, without coercion, from time to time, as

publick exigences may require. We conceive that we alone are the judges of the condition, circumstances, and situation of our people, as the Parliament are of theirs. It is not merely the mode of raising, but the freedom of granting our money, for which we have contended. Without this, we possess no check on the royal prerogative; and what must be lamented by dutiful and loyal subjects, we should be stripped of the only means, as well of recommending this country to the favours of our most gracious Sovereign, as of strengthening those bands of amity with our fellow-subjects, which we would wish to remain indissoluble.

Because on our undertaking to grant money, as is proposed, the Commons only resolve to forbear levying pecuniary taxes on us, still leaving unrepealed their several Acts passed for the purposes of restraining the Trade, and altering the form of Government of the Eastern Colonies; extending the boundaries, and changing the Government and Religion of Quebeck; enlarging the jurisdiction of the Courts of Admiralty; taking from us the right of Trial by Jury, and transporting us into other countries to be tried for criminal offences. Standing Armies, too, are still to be kept among us, and the other numerous grievances, of which ourselves and sister Colonies, separately and by our Representatives in General Congress, have so often complained, are still to continue without redress.

Because at the very time of requiring from us grants of money, they are making disposition to invade us with large armaments by sea and land, which

is a style of asking gifts not reconcilable to our freedom. They are also proceeding to a repetition of injury, by passing Acts for restraining the Commerce and Fisheries of the Provinces of New England, and for prohibiting the Trade of the other Colonies with all parts of the world, except the Island of Great Britain, Ireland, and the West Indies. This seems to bespeak no intention to discontinue the exercise of this usurped power over us in future.

Because on our agreeing to contribute our proportion towards the common defence, they do not propose to lay open to us a free trade with all the world: whereas, to us it appears just that those who bear equally the burdens of Government should equally participate of its benefits; either be contented with the monopoly of our trade, which brings greater loss to us and benefit to them than the amount of our proportional contributions to the common defence; or, if the latter be preferred, relinquish the former, and do not propose, by holding both, to exact from us double contributions. Yet we would remind Government, that on former emergencies, when called upon as a free people, however cramped by this monopoly in our resources of wealth, we have liberally contributed to the common defence. Be assured, then, that we shall be as generous in future as in past times, disclaiming the shackles of proportion when called to our free station in the general system of the empire.

Because the proposition now made to us involves the interests of all the other Colonies. We are now represented in General Congress by members ap-

proved by this House, where the former union, it is hoped, will be so strongly cemented, that no partial applications can produce the slightest departure from the common cause. We consider ourselves as bound in honour, as well as interest, to share one general fate with our sister Colonies; and should hold ourselves base deserters of that union to which we have acceded, were we to agree on any measures distinct and apart from them.

There was, indeed, a plan of accommodation offered in Parliament, which, though not entirely equal to the terms we had a right to ask, yet differed but in few points from what the General Congress had held out. Had Parliament been disposed sincerely, as we are, to bring about a reconciliation, reasonable men had hoped, that by meeting us on this ground, something might have been done. Lord Chatham's Bill, on the one part, and the terms of Congress on the other, would have formed a basis for negotiations, which a spirit of accommodation on both sides might, perhaps, have reconciled. It came recommended, too, from one whose successful experience in the art of Government should have insured it some attention from those to whom it was intended. He had shown to the world, that Great Britain, with her Colonies united firmly under a just and honest Government, formed a power which might bid defiance to the most potent enemies. With a change of Ministers, however, a total change of measures took place. The component parts of the Empire have, from that moment, been falling asunder, and a total annihilation of its weight in the

political scale of the world, seems justly to be apprehended.

These, my Lord, are our sentiments on this important subject, which we offer only as an individual part of the whole Empire. Final determination we leave to the General Congress, now sitting, before whom we shall lay the papers your Lordship has communicated to us. To their wisdom we commit the improvement of this important advance; if it can be wrought into any good, we were assured they will do it. To them, also, we refer the discovery of that proper method of representing our well-founded grievances, which your Lordship assures us will meet with the attention and regard so justly due to them. For ourselves, we have exhausted every mode of application which our invention could suggest as proper and promising. We have decently remonstrated with Parliament: they have added new injuries to the old. We have wearied our King with applications: he has not deigned to answer us. We have appealed to the native honour and justice of the British Nation. Their efforts in our favour have been hitherto ineffectual. What, then, remains to be done? That we commit our injuries to the even-handed justice of the Being who doth no wrong, earnestly beseeching him to illuminate the counsels, and prosper the endeavours of those to whom America hath confided her hopes, that through their wise direction we may again see reunited the blessings of liberty, property, and harmony with Great Britain.

TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, June 26th, 1775.

DEAR SIR,—You will before this have heard that the war is now heartily entered into, without a prospect of accommodation but through the effectual interposition of arms. General Gage has received considerable reinforcements, though not to the whole amount of what was expected. There has lately been an action at the outlet of the town of Boston.<sup>2</sup> The particulars we have not yet been able to get with certainty. The event, however, was considerable in our favor as to the numbers killed. Our account says we had between 40 and 70 killed and 140 wounded. The enemy has certainly 500 wounded and the same account supposes that number killed; but judging from the proportion of wounded and slain on our part, they should not have perhaps above two hundred killed. This happened on Saturday, and on Monday, when the express came away, the provincials had begun to make another attack. Washington set out from here on Friday last as generalissimo of all the provincial troops in North America. Ward and Lee were appointed major-generals and Gates adjutant. We are exceedingly anxious till we hear of their arrival at Boston, as it is evident to every one that the provincial encampment is the most injudicious that can possibly be conceived. For the sole purpose of covering two small towns near Boston they have encamped so near the line of the minis-

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 567.

<sup>2</sup> This was the battle of Bunker's Hill.

terial army that the sentries may converse. Gage, too, being well fortified, is in little danger of an attack from them; while their situation is such that he may attack them when he pleases, and if he is unsuccessful, they cannot pursue him a foot scarcely, on account of the ships and floating batteries bearing on the Neck of Boston. If no evil arises from this till General Washington arrives, we may expect to hear of his withdrawing the provincial troops to a greater distance. The Congress have directed 20,000 men to be raised, and hope by a vigorous campaign to dispose our enemies to treaty. Governor Carleton has been spiring up the Canadian Indians to fall on our back settlements; but this we hope will be prevented. Governor Skeene, appointed to take charge of the fortresses on the lakes, was intercepted here, as we had already taken possession of those fortifications and provided a governor, there was no occasion for him to proceed. He is now, therefore, our prisoner. My best affections attend Mrs. Eppes and family.

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TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, July 4th, 1775.

DEAR SIR,—Since my last, nothing new has happened. Our accounts of the battle of Charleston have become clear, and greatly to our satisfaction.

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 568.

Contrary to what usually happens, the first account were below truth; and it is now certain that the regulars have had between 1200 and 1400 killed and wounded in that engagement, and that of these 500 were killed. Major Pitcairn is among the slain, at which everybody rejoices, as he was the commanding officer at Lexington, was the first who fired his own piece there and gave the command to fire. Among those was a Doctor Warren, a man who seems to have been immensely valued at the North. The New-Englanders are fitting out light vessels of war, by which it is hoped we shall not only clear the seas and bays here of everything below the size of a ship of war, but that they will visit the coasts of Europe and distress the British trade in every part of the world. The adventurous genius and intrepidity of those people is amazing. They are now intent on burning Boston as a hive which gives cover to regulars; and none are more bent upon it than the very people who came out of it and whose prosperity lies there. This however, if done at all, it is thought better to defer till the cold season is coming on, as it would then lay them under irremediable distress. Powder seems now to be our only difficulty, and towards getting plenty of that nothing is wanting but saltpetre. If we can weather out this campaign, I hope that we shall be able to have a plenty made for another. Nothing is requisite but to set about it, as every colony has materials, but more especially Virginia and Maryland. My compliments most affectionately to Mrs. Eppes. Mr. and Mrs. Skipwith, I expect, have left you. Adieu.

DRAFTS OF DECLARATION ON TAKING UP ARMS<sup>1</sup>

[July 6, 1775.]

## FIRST DRAFT

The large advances strides of late taken by the legislature of Great Britain towards

## SECOND DRAFT

A Declaration of by  
We the representatives of the United colonies of America now sitting in General Congress, ~~to all nations send greeting of~~ setting forth the causes & necessity of their taking up arms.

The large strides of late taken by the legislature of Great Britain towards estab-

<sup>1</sup> The first of these papers is apparently Jefferson's rough draft, the second being that submitted to the committee. They are both printed, with the parts struck out or altered, as an interesting specimen of the way he drew his papers. The originals are in the Jefferson MSS. in the Department of State. The second draft has MSS. notes in the handwriting of John Dickinson. Cf. his letter to *John Vaughn* of July 16, 1825, *post*.

The adoption of the troops about Boston into the Continental service, and the appointment of Washington as Commander in Chief, were the first real steps on the part of the United Colonies towards war, and required explanation and justification from Congress. On June 23d accordingly, "on a motion" the Congress "Resolved, That a Committee of five be chosen to draw up a Declaration to be published by General *Washington*, upon his Arrival at the Camp before *Boston*. The Committee chosen are Mr. J. Rutledge, Mr. W. Livingston, Mr. Franklin, Mr. Jay and Mr. Johnson" (*Journal*). This commee brought in their "Report" on June 24th, which "was read and debated, and after some Time referred for farther consideration." Charles Thomson states (*Pa. Mag. of Hist. and Biography*) that it "occasioned long and warm debates in Congress, in which D[ickinson] took a distinguished part." It was again considered on June 26th, and, according to Jefferson (*endorsement on draft of declaration*):

"Being disliked, it was recommitted & Mr. Dickinson & T. Jefferson added to the committee. The latter being desired by the commee to draw up a new one, he prepared this paper. On a meeting of the commee J. Dickinson objected that it was too harsh, wanted softening

establishing ~~in~~ over these colonies their absolute rule, and the hardiness of their present attempt to effect by force of arms what by law or right they could never effect, renders it necessary for us also to

lishing over these colonies their absolute rule, and the hardiness of the present attempt to effect by force of arms what by law or right they could never effect, *render* it necessary for us also to

&c. Whereupon the commee desired him to retouch it, which he did in the form which they reported July 6, which was adopted by Congress."

And in his Autobiography Jefferson further stated:

"On the 24th a committee which had been appointed to prepare a declaration of the causes of the taking up arms brought in their report (drawn I believe by J. Rutledge) which, not being liked, the House recommitted it, on the 26th and added Mr. Dickinson and myself to the committee. On the rising of the House, the committee not having yet met I happen to find myself near Governor W. Livingston, and proposed to him to draw the paper. He excused himself, and proposed that I should draw it. . . . I prepared a draught of the declaration committed to us. It was too strong for Mr. Dickinson. He still retained the hope of reconciliation with the mother country, and was unwilling it should be lessened by offensive statements. He was so honest a man, and so able a one, that he was greatly indulged even by those who could not feel his scruples. We therefore requested him to take the paper, and put it into a form he could approve. He did so, preparing an entire new statement, and preserving of the former only the last four paragraphs and the half of the preceding one. We approved and reported it to Congress."

William Livingston also wrote (*to Stirling*, July 4th):

"We are now working upon a Manifesto on arming. The first was not liked by the Congress and was recomitted. The second was not liked by the committee. Both had the faults common to our Southern gentlemen. Much fault-finding and declamation, with little sense or dignity. They seem to think a reiteration of tyranny, despotism, bloody, &c. all that is needed to unite us at home and convince the bribed voters of North of the justice of our cause."

It is evident from a comparison of these two drafts, with Dickinson's draft (reproduced in Dr. George H. Moore's *John Dickinson*) as well as with that ultimately adopted by the Congress (*Journal*, July 6th), that Jefferson is mistaken in claiming the final paragraphs of that accepted as his. Dickinson has certainly embodied a few of Jefferson's phrases and ideas, but not more so in those than in the other parts of the Declaration.

~~shift~~ change the ground of opposition and to close with their last appeal from reason to arms. And as it behoves those who are called to this great decision to be assured that their cause is approved before supreme reason, so is it of great avail that its justice be made known to the world whose ~~prayers cannot be wanting~~ ~~intercessions~~ affections will ever be favorable to ~~a people~~ take part with those encountering oppression. Our forefathers, inhabitants of the island of Gr. Britn ~~harassed~~ having ~~there vainly~~ long endeavored to bear up against the evils of misrule, left their native land to seek on these shores a residence for civil & religious freedom. At the expense of their blood, ~~with~~ to the ~~less~~ ruin of their fortune, with the relinquishment of everything quiet & comfortable in life, they effected settlements in the inhospitable wilds of America; they there established civil societies ~~under~~ with various forms of constitution, but possessing all, what is inherent in all, the full & perfect powers of legislation. To continue their connection with the ~~these~~ friends

change the ground of opposition, and to close with their last appeal from reason to arms. And it behooves those, who *are called to this great decision*, to be assured that their cause is approved before supreme reason; so is it of great avail that its justice be made known to the world, whose affections will ever take part with those encountering

oppression. Our forefathers, inhabitants of the island of Great Britain, ~~having long endeavored to bear up against the evils of misrule~~, left their native lands to seek on these shores a residence for civil & religious freedom. At the expense of their blood, ~~with~~ to the ruin of their fortunes, with the relinquishment of everything quiet & comfortable in life, they effected settlements in the inhospitable wilds of America; ~~they~~ and there established civil societies with various forms of constitution. ~~But possessing all, what is inherent in all, the full and perfect powers of legislation.~~ To continue their connection with the friends whom they had left, they ar-

whom they had left ~~& loved~~ but they arranged themselves by charters of compact under ~~the same~~ one common king ~~who became the thro' whom~~ who thus became the link ~~uniting~~ of union between the several ~~union was ensured to~~ them multiplied parts of the empire. Some occasional assumptions of power by the parl. of Gr. Brit. however ~~foreign & unknown~~ to unacknowledged by the constitutions ~~we had formed~~ of our governments were finally acquiesced in thro' the warmth of affection. Proceeding thus in the fullness of mutual harmony & confidence both parts of the empire increased in population and wealth with a rapidity unknown in the history of man. The various ~~soils~~ political institutions of America, its various ~~climes~~ soils & climates opening ~~sure~~ certain resource to the unfortunate & to the enterprising of all every countrys ~~where~~ and ensured to them the acquisition and ~~full~~ possession of property. Great Britain too acquired a lustre & a weight in the ~~political system~~ among the powers of the world earth which it is ~~thought~~ her inter-

ranged themselves by charters of compact under ~~one~~ the same common king, who thus completed their powers of full and perfect legislation and became the link of union between the several parts of the empire. Some occasional assumptions of power by the parliament of Great Britain, however unacknowledged by

the constitution of our governments, were finally acquiesced in thro' warmth of affection. Proceeding thus in the fullness of mutual harmony and confidence, both parts of the empire increased in population & wealth with a rapidity unknown in the history of man. The political institutions of America, its various soils and climates opened a certain resource to the unfortunate & to the enterprising of every country, and ensured to them the acquisition & free possession of property. Great Britain too acquired a lustre and a weight among the powers of the earth which her internal resources could never have given her. To a communication of the wealth and power

nal resources could never have given her. To the a communication of the wealth & the power of the several parts of the whole every part of the empire we may surely ascribe in some measure surely ascribe the illustrious character she sustained thro' her last European war and its successful event. At the close of that war however Gr. Britain having subdued all her foes she took up the unfortunate idea of subduing her friends also. Her parliament then for the first time asserted a right of unbounded legislation fer over the colonies of America: by several acts passed in the year of the 5th the 6th & the 7th & the 8th years of the reign of his present majesty several duties were imposed for the purpose of raising a revenue on the said colonists, the powers of courts of admiralty were extended beyond their antient and the inestimable right of being tried in all cases civil trial by twelve peers of our vicinage was taken away in

of the whole every part of the empire we may surely ascribe in some measure the illustrious character she sustained through her last European war, & its successful event. At the close of that war however having subdued all her foes<sup>1</sup> it pleased our sovereign to make a change in his counsels. The new ministry finding all the foes of Britain subdued she took up the unfortunate idea of subduing her friends also. By them<sup>2</sup> & her parliament then for the first time asserted a right<sup>3</sup> assumed a power of unbounded legislation over the colonies of America; and

<sup>1</sup> John Dickinson has here interlined "her successful & glorious ministry wars."

<sup>2</sup> John Dickinson has here altered it to read "by their influence."

<sup>3</sup> Altered by Dickinson to "were persuaded to assume & assert."

~~places affecting both life & property. By part of an act passed in the 12th year of the present reign an American colonist charged with the offenses described in that act may be transported beyond sea for trial of such offenses by the very persons against whose pretended sovereignty the supposed offense is supposed to be committed and pursuing with eagerness the newly assumed thought have in the space of 10 years during which they have exercised yt right have made given such decisive severe specimens of the spirit [illegible word] this new legislation would be exercised conducted [illegible word] towards the establishment of absolute government over us as leaves no room to doubt the consequence of our further acquiescence under it by two those two other acts passed in the 14th of his present majesty they have assumed a right of altering the form of our governments altogether, and of thereby taking away every security for the possession of life and property.~~

By several acts of parliament passed ~~in the reign of~~

~~in the space course of ten years during which they have proceeded to exercise this right,~~ have given such decisive specimens of the spirit of this new legislation, as leaves no room to doubt the conse-

quence of acquiescence under it. By several acts of parliament passed within that space

~~his present majesty~~ within that period space of time they have ~~imposed upon us duties for the purpose of raising a revenue~~ attempted to take from us our money without our consent, they have ~~taken away~~ the interdicted all commerce ~~first of~~ one of our principal trading towns thereby annihilating its property in the hands of the holders, & ~~more lately~~ they have cut off ~~our~~ the commercial intercourse ~~with all of several of these~~ of whole colonies with all foreign countries ~~whatsoever~~; they have extended the jurisdiction of the courts of admiralty beyond their antient limits thereby depriving us right of trial by jury in cases affecting both life & property & ~~subjecting both to the decision arbitrary decision of a single & dependent judge~~; they have declared that American subjects committing charged with certain ~~pretended~~ offences shall be transported beyond sea ~~for trial~~ to be tried before the very persons against whose pretended sovereignty offenses supposed to be committed; they have attempted fundamentally to alter the form of

of time they have attempted ~~to take from us~~ undertaken to give and grant our money

without our consent: a right of which we have ever had the exclusive exercise: they have interdicted all commerce to one of our principal towns, thereby annihilating its property in the hands of the holders; they have cut off the commercial intercourse of whole colonies with foreign countries; they have extended the jurisdiction of courts of admiralty beyond their antient limits; ~~thereby~~ they have ~~depriving~~ deprived us of the inestimable ~~right~~ privilege of trial by a jury of the vicinage in cases affecting both life &

property; they have declared that American Subjects charged with certain offenses shall be transported beyond sea to be tried before the very persons against whose pretended sovereignty the offense is supposed to be committed; they have attempted fundamentally to alter the form of government in one of these

government in one of these colonies, a form established by acts of its own legislature and further secured ~~to them~~ by charters ~~of compact with & grants from~~ on the part of the crown; they have erected ~~a tyranny~~ in a neighbouring province acquired by the joint arms of Great Britain & America, a tyranny dangerous to the very existence of all these colonies. But why should we enumerate their injuries in the detail? By one act they have suspended the powers of one American legislature & by another ~~they~~ have declared they may legislate for us themselves in all cases whatsoever. These two acts alone form a basis broad enough whereon to erect a despotism of unlimited extent, ~~when it is considered that the person by whom these acts are passed are not with us subject to their [illegible word]~~ and what is to prevent secure us against the ~~demolition of our present & establishment of new & despotic government?~~ this dreaded evil? The persons ~~who~~ assuming the power ~~of doing this~~ are not chosen by ~~ourselves~~ us, are not subject

colonies, a form ~~established~~ secured by charters on the part of the crown and confirmed by acts of its own legislature; ~~and further secured by charters on the part of the crown;~~ they have erected in a neighboring province acquired by the joint arms of Great Britain & America, a tyranny dangerous to the very existence of all these colonies. But why should we enumerate their injuries in the detail? By one act they have suspended the powers of one American legislature, & by another have declared they may legislate for us themselves in all cases whatsoever. These two acts alone form a basis broad enough whereon to erect a despotism of unlimited extent. And what is to secure

us against this dreaded evil? The persons assuming these powers are not chosen by us, are not subject to our con-

to us our controul from us are ~~themselves freed the~~ exempted by their situation from the operation of these laws ~~they thus pass, and remove from themselves as much burthens as they impose on us.~~ lighten their own burthens in proportion as they encrease ours. These temptations might put to trial the severest characters of antient virtue: with what new armour shall a British parliament ~~then~~ encounter the rude assault? Towards these deadly injuries from the tender plant of liberty which we have brought over & with so much affection ~~we have planted and~~ have fostered on these our own shores we have pursued every lawful measure. We have supplicated our king at various times in terms almost disgraceful to freedom; we have reasoned, we have remonstrated with parliament in the most mild & decent language; we have even proceeded to ~~break off our commercial intercourse with them altogether as to the last peaceable admonition of our determination to be free by breaking of altogether our commercial intercourse with them~~

troul or influence, are exempted by their situation from the operation of these laws,

and lighten their own burthens in proportion as they increase ours. These temptations might put to trial the severest characters of antient virtue: with what new armour then shall a British parliament encounter the rude assault? towards these deadly injuries from the tender plant of liberty which we have brought over, & with so much affection fostered on these our own shores, we have pursued every temperate, every respectful measure. We have supplicated our king at various times, in terms almost disgraceful to freedom; we have reasoned, we have remonstrated with parliament in the most mild & decent language; we have even proceeded to break off our com-

break off our commercial intercourse with ~~them~~ our fellow subjects as the last peaceable admonition that our attachment to no nation on earth should supplant our attachment to liberty: and here we had well hoped was the ultimate step of the controversy. But subsequent events have shewn how vain was even this last remain of confidence in the moderation of the British ministry. During the course of the last year ~~they~~ their troops in a hostile manner invested the town of Boston in the province of Massachusetts bay, from that time have held the same beleaguered by sea & land. On the 19th day of April last in the present year they made an unprovoked attack assault on the inhabitants of the sd province at the town of Lexington, ~~killed~~, murdered eight of them on the spot and wounded many others. From thence they proceeded in the ~~same warlike~~ manner of war to the town of Concord where they attacked set upon another party of the inhabitants of the sd same

mercial intercourse with our fellow subjects, as the last peaceful admonition that our attachment to no nation on earth should supplant our attachment to liberty. And here we had well hoped was the ultimate step of the controversy. But subsequent events have shewn how vain was even this last remain of confidence in the moderation of the British ministry.<sup>1</sup> During the course of the last year their troops in a hostile manner invested the town of Boston in the province of Massachusetts bay, and from that time have held the same beleaguered by sea & land. On the 19th day of April in the present year they made an unprovoked attack assault on the inhabitants of the said province at the town of Lexington, murdered eight of them on the spot and wounded many others. From thence they proceeded in the all the array of war to the town of

Concord, where they set upon another party of the inhabitants of the same province,

<sup>1</sup> "Here insert substance of the Address declaring a Rebellion to exist in Massachusetts Bay, &c."—*Marginal note by John Dickinson.*

province killing many of them also burning their houses & laying waste their property & ~~continuing these depredations~~ until repressed by the arms of the people assembled to oppose this hostile unprovoked cruel [~~illegible word~~] aggression ~~on their lives & properties.~~ Hostilities being thus commenced on the part of the ~~British Ministerial troops~~ army they have been since ~~without respite~~ by them pursued ~~the same by their~~ without regard to faith or to fame. The inhabitants of the ~~said~~ town of Boston having entered into treaty with a certain Thomas Gage ~~said to be commander of these troops and who has actually been a principal actor in the siege of the town of Boston, proffered to the inhabitants of the sd town a liberty to depart from the same on principal & encourager of these in chief of adverse enormities~~ violence enormities it was stipulated that the sd inhabitants having first deposited their arms and [~~illegible~~] with their own

killing many of them also, burning houses, & laying waste property, until re-

pressed ~~by the arms~~<sup>1</sup> the people<sup>2</sup> suddenly assembled to oppose this cruel aggression.

Hostilities thus commenced on the part of the ministerial army have been

since by them pursued without regard to faith or to fame. The inhabitants of the town of Boston in order to procure their enlargement having entered into treaty with a certain Thomas Gage General Gage their Governor principal instigator of these enormities<sup>3</sup>

it was stipulated that the said inhabitants,<sup>4</sup> having first deposited their arms with their own magistrates their arms &

<sup>1</sup> "Country" inserted here by Dickinson.

<sup>2</sup> "Only" inserted by Dickinson.

<sup>3</sup> "To procure their Enlargement," inserted by Dickinson.

<sup>4</sup> Dickinson inserts here the word "after."

magistrates their arms & military stores should have free liberty to depart out of the same from out of the sd town taking with them their other goods and other effects. Their arms & military stores were they accordingly delivered into their magistrates, & claimed the stipulated license of departing with their effects. But in open violation of plighted faith & honour, in defiance of these that the sacred laws of nations obligations of treaty which even the savage nations observe, their arms & warlike stores deposited with their own magistrates to be kept preserved as their property were immediately seized by a body of armed men under orders from the sd Thomas Gage, the greater part of the inhabitants were detained in the town & the few permitted to depart were compelled to leave their most valuable effects goods behind. We leave to the world their to its own reflections on this atrocious perfidy. The same Thos Gage on the 18th day of June That we might no longer be in doubt the ultimate purpose object aim of these Ministerial

~~military stores~~ should have liberty to depart from out of the said town taking with them their other goods & effects. Their arms and ~~military stores~~ they accordingly delivered in, and claimed the stipulated license of departing

with their effects. But in open violation of plighted faith & honour, in defiance of the sacred obligations of treaty which even savage nations observe, their arms and warlike stores, deposited with their own magistrates to be preserved as their property, were immediately seized by a body of armed men under orders from the said Thomas Gage General, the greater part of the inhabitants were detained in the town, and the few permitted to depart were compelled to leave their most valuable effects behind. We leave the world to their own its own reflections on this atrocious perfidy. That we might no longer doubt the ultimate aim of these ministerial maneuvers the same Thomas General Gage, by

manœuvres, the same Thos Gage by proclamn bearing date the 12 day of June by after reciting the ~~most abandoned~~ grossest falsehoods & calumnies against the good people of America these colonies proceeds to declare them all, either by name or description, to be rebels & traitors, to supersede by his own authority the common law of the land of the sd province and to proclaim & order instead thereof the use & exercise of the law martial throughout the sd province. This bloody edict issued, he has proceeded to commit further ravages & murders in the same province burning the town of Charlestown, & attacking & killing great numbers of the people residing or assembling therein; and is now going on in an avowed course of murder & devastation taking every occasion to destroying the lives & properties of the inhabitants of the said province.

To oppose ~~their~~ his arms we have also taken up arms. We should be wanting to ourselves, we should be wanting perfidious to ~~our~~ posterity, we should be unworthy that free ancestry from ~~which both~~

proclamation bearing date the 12th day of June, after reciting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to declare them all, either by name or description, to be rebels & traitors, to supersede ~~by his own authority~~ the exercise of the common law of the said province, and to proclaim and order instead thereof the use and exercise of the law mar-

tial. This bloody edict issued, he has proceeded to commit further ravages & murders in the same province, burning the town of Charlestown, attacking & killing great numbers of the people residing or assembled therein; and is now going on in an avowed course of murder & devastation, taking every occasion to destroy the lives & properties of the inhabitants ~~of the said province~~. To oppose his arms we also have taken up arms. We should be wanting to ourselves, we should be perfidious to posterity, we should be unworthy that free ancestry from ~~whom~~ which we derive our descent,

~~they & we are derived one common birth, whom we derive our birth descent, were we to suffer ourselves to be butchered, and our properties to be laid waste should we submit with folded arms to military butchery & depredation to gratify the lordly ambition of any nation on earth and or sate the avarice of a British ministry. We do then most solemnly before in the presence of before God & the world declare, that, regardless of every consequence at the risk of every distress, the arms we have been compelled to assume we will wage with bitter perseverance, exerting to their utmost energies all those powers with which our creator hath invested given us to guard preserve that sacred Liberty which He committed to us in sacred deposit, & to protect from every hostile hand our lives & our properties. But that this our declaration & our determined resolution may give no disquietude to not disquiet the minds of our good fellow subjects in any part of the empire, we do further declare and~~

should we submit with folded arms to military butchery & depredation, to gratify the lordly ambition, or sate the avarice of a British ministry. We do then most solemnly, before God and the world declare that, regardless of every consequence, at the risk of every distress, the arms we have been compelled to assume we will wage use with the perseverance, exerting to their utmost energies all those powers which our creator hath given us, to guard preserve that liberty which he committed to us in sacred deposit & to protect from every hostile hand our<sup>1</sup> lives & our properties. But that this our declaration may not disquiet the minds of our good fellow subjects<sup>2</sup> in any parts of the empire, we do further assure them that we mean not in any wise to affect that union with them in which we have so long & so happily lived and which we wish so much to see again restored. That necessity must be hard indeed which may force upon us that desperate measure, or induce us to avail ourselves of any

<sup>1</sup> "Friends &" inserted by Dickinson.

<sup>2</sup> "In Britain or other" inserted by Dickinson.

assure them that we mean not in any wise to affect that union with them in which we have so long & so happily lived & which we wish so much to see again restored: that necessity must be hard indeed which ~~could~~ may force upon us this desperate measure, or induce us to avail ourselves of any aid which their enemies of Great Britain might proffer. We took up arms to defend in defense of our persons & properties under actual violation: when that violence shall be removed, when hostilities shall cease on the ministerial part the ministerial party therefore shall cease to be suspended hostilities on their part ministerial cease part of the oppression of hostilities they shall be suspended cease on our part also; the moment they withdraw their armies we shall disband ours. We did not embody & c<sup>1</sup> next to a vigorous exertion of our own internal force we throw ourselves towards the achievement of this happy event we call for

aid which their enemies might proffer. We did not embody a soldiery to commit aggression on them; we did not raise armies for glory or for conquest; we did not invade their island carrying death or

slavery to its inhabitants. We took up arms in defence of our persons and properties under actual violation, we took up arms ~~we have taken up arms~~ when that violence shall be removed, when hostilities shall cease on the part of the aggressors, hostilities shall cease on our part also. The moment they withdraw their armies, we will disband ours. For the achievement of this happy event, we call for & confide in the good offices of our fellow subjects beyond the Atlantic. Of their friendly dispositions we do not cease to hope; aware, as they must be, that they have nothing more to expect from the same

<sup>1</sup> Jefferson writes at bottom of page: "We did not embody men a soldiery to commit aggression on them; we did not raise armies for ~~march to glory or to conquest~~ or for glory; we did not invade their island proffering death or slavery to its inhabitants."

we confide in on the good offices of our fellow subjects beyond the Atlantic. Of their friendly dispositions we ~~confide we hope with justice reason can not yet cease to hope & assure them they are aware~~ as they must be that they have nothing more to expect from the same common enemy than the humble favour of being last devoured.

common enemy, than the humble favour of being last devoured. And we devoutly implore assistance of Almighty God to conduct us happily thro' this great conflict, to dispose the minds of his majesty, his ministers, & parliament to ~~reasonable terms~~ reconciliation with us on reasonable terms, & to deliver us from the evils of a civil war.

? If it might not be proper to take notice of Ld. Chatham's Plan and its being [illegible] mentioning his great abilities.

? If it might not be proper to take notice how many great Men in Parlt. and how many considerable Cities and Towns in England, have acknowledged the Justice of our Cause.

? Ld. North's Proposals.<sup>1</sup>

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DRAFT OF REPORT ON LORD NORTH'S MOTION<sup>2</sup> J. MSS.

[July 25, 1775.]

The Congress proceeding to take into their consideration a resolution of the House of Commons of

<sup>1</sup> These three queries are in the handwriting of John Dickinson.

<sup>2</sup> On July 22d Franklin, Jefferson, John Adams, and Lee were named by Congress a committee to report on the "conciliatory resolution" moved by Lord North, and adopted February 20, 1775, by the

Gr Br referred to them by the several assemblies of New Jersey, Pnnsylva & Virga, which resolu is in these words "that it is the opinion &c" are of Opinion

That the colonies of America possess ~~an~~ the exclusive ~~right~~ privilege of giving & granting their own money; that this involves the right of deliberating whether they will ~~give any sums~~ make any gift, for what purposes ~~they will give them~~ it shall be made, and what shall be ~~it's~~ the amount of the gift, and that it is a high breach of this privilege for any body of men, extraneous to their constitutions, to prescribe the purposes for which money shall be levied on them, & to take to themselves the authority of judging ~~what shall be a sufficient levy~~ of their conditions circumstances, & and situation, & of determining the ~~sufficiency or insufficiency of any the levy~~ proposed amount of the contribution to be levied.

That as they possess a right of appropriating their gifts, so are they entitled at all times to inquire into ~~its~~ their application; to see that ~~it~~ they be not ~~distributed~~ wasted among the venal & corrupt ~~to sap~~ for the purpose of ~~sapping~~ undermining ~~their~~ the civil rights of the givers, ~~of overbearing them by with military force power by diverting them~~ nor yet applied be diverted to the support of standing armies ~~for the purpose of overbearing these states by mili-~~

House of Commons. Jefferson in the Virginia House of Burgesses had already drawn a reply to this, which "having been approved, I was requested by the committee to prepare" the report. It was introduced July 25th, but was not adopted till July 31st. This is Jefferson's draft of that paper, and varies considerably from the paper as finally adopted.

tary inconsistent with domestic ~~quiet~~ their freedom & subversive of their ~~our~~ quiet. To propose therefore as this resolution does that the monies given by the colonies shall be subject to the disposal of parliament alone, is to propose that they shall ~~surrender~~ ~~give~~ relinquish this right of enquiry; and to put it in the power of others to render their gifts ruinous in proportion as they are liberal.

That this privilege of giving or withholding our monies is an important barrier against in the undue exertion of prerogative, which if left altogether without controul ~~might~~ may be exercised to our great oppression; & ~~that is also~~ & all history shows ~~it~~ how efficacious its intercession for redress of grievances & reestablishment of rights and how improvident would be the surrender of so powerful a mediator.

We are ~~further~~ of opinion

That the proposition contained in this resolution is ~~uncandid-unequal~~ unreasonable & insidious: ~~uncandid-unequal~~ unreasonable because if we declare we accede to it we declare in ~~absolute terms~~ without reservation we will purchase the favour of parliament not without knowg ~~not~~ at the same time & ~~leave the price of that purchase to be fixed by the sellers alone,~~ at what price they will please to estimate their favour; it is insidious because ~~a colony on refusal of any a proffered sum~~ any individual colonies having bid & bidden again till ~~it they finds the height of parliamentary~~ avidity of the seller unattainable by all ~~its~~ their powers, are then to return into opposition ~~single & unsupported~~

divided from ~~its~~ their sister colonies ~~having in the~~  
~~meantime been taken~~ whom the minister ~~shall~~ will  
have previously imparted ~~fully~~ detached from the  
Union by ~~acceptance~~ a grant of easier terms, or  
~~deluded into inactivity by keeping up into a~~  
~~definite answer and by delayg of the definitive~~  
answer or by an artful procrastination of a defini-  
tive answer.

That the suspension of the exercise of their pre-  
tended power to ~~tax levy taxes~~ of taxation being  
expressly made commensurate with the ~~duration~~  
continuing of our gifts, in order these must be per-  
petual to make that so: ~~and experience has in-~~  
variably proven that to render a governing power  
perpetually independent it is not the best method  
of preserving the friendship & good offices of any  
part of government to render it independent by  
vesting it with perpetual revenues and whereas  
no experience has shewn that a gift of perpetual  
revenues secures a perpetual return of duty or of  
good kind dispositions. On the contrary the  
parliament itself ~~with a wisdom we mean worthy~~  
~~to imitation~~ cautiously wisely attentive to this  
circumstance observation are in the established  
practice of granting their own money but from  
year to year only.

~~We are of the opinion that even fair terms could~~  
hardly be accepted by us

Tho' desirous & determined to consider in the  
most dispassionate ~~light~~ view every advance to-  
wards reconciliation made by the British parlmt.  
let our brethren of Britain reflect what could have

been the sacrifice to men of free spirits had [~~illegible~~] even fair terms been proffered by freemen when attended as these were with ~~the most irritating~~ circumstances of insult & defiance ~~with circumstances so insulting circumstances~~. A proposition to give our money, when accompanied with large fleets & armies. Addressed to our fears rather than to our freedom. ~~Let Britons our brethren of Britain~~ reflect with what patience ~~they would they~~ have received articles of treaty from any power on earth when sent ~~by such messengers plenipotentiaries borne by on the point of the bayonet by the hands of military plenipotentiaries? on the point of a bayonet.~~

We think ~~that the attempt alike unreasonable & unnecessary & unwarrantable to raise upon us by force or by threats our proportional contributions to the common defense, when all know, and themselves acknowledged we have ever freely & fully given those contributions~~ whenever called upon to contribute in the character freemen ~~should be is one among a plain proof, among many others that not the obtaining these but the rendering to their absolute dominion was not the ultimate end of Parliamentary object of parliament.~~

We are of opinion it is not just yt the colonies should ~~make any~~ be required to oblige themselves stipulate to other contributions while Great Britain possesses a monopoly of their trade. This ~~is of~~ does of itself lay them under a heavy contribution levied on them. To demand therefore ~~another~~ an additional contribution ~~by way~~ in the form of a tax

is to demand the double of their equal proportion. ~~We conceive no reason~~ If we are to contribute ~~proportionally~~ equally with the other parts of the empire, let us equally with them enjoy ~~like them equal rights~~ of free commerce with the whole world. But while the restrictions on our trade shut up to us the resources of wealth ~~we cannot bear~~ it is ~~it unjust~~ we should ~~be expected~~ to bear all other burthens equally with those to whom ~~under no restriction~~ have every resource is open?

We conceive that the Brit. parl. has no right to intermeddle with our provisions for the support of civil governmt or administration of justice. That the provisions ~~has been made in such manner as to we have already~~ we have made are such as please ourselves, they answer the substantial purposes governmt & of justice, & other purposes than these should not be answered. We do not mean to ~~burthen~~ that our people shall be burthened with heavy & oppressive taxes to provide sinecures for ~~the drones of creation ministerial partisans~~ the idle or wicked under color of providing for a civil list. But while parliament pursue their ~~unmolested~~ their plan of civil govnt within their own jurisdiction we hope also to pursue ours also without molestation.

We are of opinion the proposition is altogether unsatisfactory, because ~~the parliament~~ it imports only a suspension, not a renunciation of the right to tax us; because too it is does not proposed to repeal the several acts of parl. passed for the pur-

poses of restraining the trade and altering the form of government of the Eastern colonies; extending the boundaries, & changing the government & religion of Quebec; enlarging the jurisdiction of the courts of admiralty & vice admiralty; taking from us the rights of trial by jury of the vicinage in cases affecting both life and property; ~~exempting the murderers of colonists from legal trial~~ transporting us into other countries to be tried for criminal offenses; exempting by mock-trial the murderers of colonists from punishment; and for quartering soldiers upon us in times of profound peace. Nor do they renounce the power of suspending our own legislatures & of legislating for us themselves in all cases whatsoever. ~~So far indeed from repealing the injurious acts of parl. before mentioned they pass others at the same time equally injurious~~ On the contrary to show they mean not ~~to discontinue~~ discontinuance of injuries injury ~~at the very time of making this proposition~~ they are passing acts at the very time of ~~making~~ holding out this proposition, for restraining the commerce & fisheries of the province of New England & for interdicting ~~in general~~ the trade of the other colonies with all foreign nations. This ~~proof is~~ proves unequivocally ~~of what we may expect in the future~~ they mean not ~~discontinuance of~~ to relinquish ~~this usurpation~~ the exercise of indiscriminate legislation over us.

Upon the whole

This proposition seems to have been held up to the world to deceive ~~them~~ it into a belief that ~~the~~

~~colonies are unreasonable~~ there was no matter &c.<sup>1</sup> but and more particularly to lull into fatal security our well affected fellow subjects on that other side the water ~~into a fatal security~~ till time should be given for the operation of those arms which a British minister pronounced would instantaneously reduce the "cowardly" sons of America to unreserved submission. But when the world reflects how inadequate to justice are the vaunted terms offered, when it attends to the rapid & bold succession of injuries which ~~for the space~~ during a course of 11. years have been aimed at these colonies ~~by a wicked administration~~, when it reviews the pacific & respectful ~~applications complaints~~ expostulations which during that whole time have been made the sole arms we oppose to ~~their usurpations~~, them, when it ~~considers~~ observes that our complaints were either not heard at all, or were answered with new & accumulated injuries, when it ~~considers~~ recollects that the minister himself declared ~~from the beginning~~ on an ~~former~~ early occasion he would never cease [*blank space in copy*]<sup>2</sup>

<sup>1</sup> That there is no matter in dispute between us but the single circumstance of the mode of levying taxes, which mode they are so good as to give up to us, of course that the colonies are unreasonable if they are not thereby perfectly satisfied: whereas in truth our adversaries not only still claim a right of demanding ad libitum and of taxing us themselves to the full amount of their demands if we do not fulfil their pleasure, which leaves us without anything we can call property, but what is of more importance & what they keep in this proposal out of sight as if no such point was in contest, they claim a right of altering all our charters and established laws which leaves us without the least security for our lives or liberties. The proposition seems also calculated more particularly &c.—*T. J.*

<sup>2</sup> In the copy as printed in the *Journals of Congress* (i., 191) the

till America was at his feet, & that an avowed partisan of ministry has more lately denounced against America the dreadful sentence "Delenda est Carthago," that this was done in the presence of a British senate & being unreprieved by them ~~we~~ must ~~considered~~ be taken to be as ~~approved~~ their own sentiment; when it considers the great armaments ~~by sea & land~~ with which they have invaded us ~~by sea & land~~, & the circumstances of cruelty with which these have commenced & prosecuted hostilities; when these things we say are laid together & attentively considered, can the world be deceived ~~by the artifices of a ministry~~ into an opinion that we are unreasonable, or can it hesitate to believe with us that nothing but our own exertions can may defeat the ministerial sentence of death or submission.

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TO JOHN RANDOLPH <sup>1</sup>

MONTICELLO, August 25, 1775.

DEAR SIR,—I am sorry the situation of our country should render it not eligible to you to remain longer in it. I hope the returning wisdom of Great Britain will, ere long, put an end to this unnatural contest. There may be people to whose tempers and dispositions contention is pleasing, and who, therefore, wish a continuance of confusion,

words "that he would never treat with America till he had brought her to his feet" are inserted here.

<sup>1</sup> From Randolph's edition of Jefferson's writings.

but to me it is of all states but one, the most horrid. My first wish is a restoration of our just rights; my second, a return of the happy period, when, consistently with duty, I may withdraw myself totally from the public stage, and pass the rest of my days in domestic ease and tranquillity, banishing every desire of ever hearing what passes in the world. Perhaps (for the latter adds considerably to the warmth of the former wish), looking with fondness towards a reconciliation with Great Britain, I cannot help hoping you may be able to contribute towards expediting this good work. I think it must be evident to yourself, that the Ministry have been deceived by their officers on this side of the water, who (for what purpose I cannot tell) have constantly represented the American opposition as that of a small fraction, in which the body of the people took little part. This, you can inform them, of your own knowledge, is untrue. They have taken it into their heads, too, that we are cowards, and shall surrender at discretion to an armed force. The past and future operations of the war must confirm or undeceive them on that head. I wish they were thoroughly and minutely acquainted with every circumstance relative to America, as it exists in truth. I am persuaded, this would go far towards disposing them to reconciliation. Even those in Parliament who are called friends to America, seem to know nothing of our real determinations. I observe, they pronounced in the last Parliament, that the Congress

of 1774 did not mean to insist rigorously on the terms they held out, but kept something in reserve, to give up; and, in fact, that they would give up everything but the article of taxation. Now, the truth is far from this, as I can affirm, and put my honor to the assertion. Their continuance in this error may, perhaps, produce very ill consequences. The Congress stated the lowest terms they thought possible to be accepted, in order to convince the world they were not unreasonable. They gave up the monopoly and regulation of trade, and all acts of Parliament prior to 1764, leaving to British generosity to render these, at some future time, as easy to America as the interests of Britain would admit. But this was before blood was spilt. I cannot affirm, but have reason to think, these terms would not now be accepted. I wish no false sense of honor, no ignorance of our real intentions, no vain hope that partial concessions of right will be accepted, may induce the Ministry to trifle with accommodation, till it shall be out of their power ever to accommodate. If, indeed, Great Britain, disjointed from her colonies, be a match for the most potent nations of Europe, with the colonies thrown into their scale, they may go on securely. But if they are not assured of this, it would be certainly unwise, by trying the event of another campaign, to risk our accepting a foreign aid, which, perhaps, may not be attainable, but on condition of everlasting avulsion from Great Britain. This would be thought a hard condition, to those who still wish for re-union

with their parent country. I am sincerely one of those, and would rather be in dependence on Great Britain, properly limited, than on any other nation on earth, or than on no nation. But I am one of those, too, who, rather than submit to the rights of legislating for us, assumed by the British Parliament, and which late experience has shown they will so cruelly exercise, would lend my hand to sink the whole Island in the ocean.

If undeceiving the Minister, as to matters of fact, may change his disposition, it will, perhaps, be in your power, by assisting to do this, to render service to the whole empire, at the most critical time, certainly, that it has ever seen. Whether Britain shall continue the head of the greatest empire on earth, or shall return to her original station in the political scale of Europe, depends, perhaps, on the resolutions of the succeeding winter. God send they may be wise and salutary for us all. I shall be glad to hear from you as often as you may be disposed to think of things here. You may be at liberty, I expect, to communicate some things, consistently with your honor, and the duties you will owe to a protecting nation. Such a communication among individuals, may be mutually beneficial to the contending parties. On this or any future occasion, if I affirm to you any facts, your knowledge of me will enable you to decide on their credibility; if I hazard opinions on the dispositions of men or other speculative points, you can only know they are my opinions. My best wishes for your felicity, attend you, wherever you

go, and believe me to be assuredly, Your friend  
and servant.

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TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, Oct. 10th, 1775.

DEAR SIR,—I wrote to Patty [Mrs. Jefferson] on my arrival here, and there being nothing new in the political way, I enclosed her letter under a blank cover to you. Since that we have received from England news of much importance which coming through many channels we believe may be confidently relied on. Both the ministerial and provincial accounts of the battle of Bunker's Hill had got to England. The ministry were determined to push the war with vigor, a measure in which they were fixed by the defeat of the Spaniards by the Moors. Ninety brass cannon were embarked from the tower, and may be hourly expected either at N. York or Boston. Two thousand troops were to sail from Ireland about the 25th Sept.; these we have reason to believe are destined for N. York. Commodore Shuldham was to sail about the same time with a great number of frigates and small vessels of war, to be distributed among the middle colonies. He comes at the express and earnest intercessions of Ld. Dunmore, and the plan is to lay waste all the plantations on our river sides. Of this we give immediate notice to our Committee of Safety by an express whom we dispatched last Friday, that if any defence could be

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 569.

provided on the rivers by fortifications or small vessels it might be done immediately. In the spring, 10,000 men more are to come over. They are to be procured by taking away two-thirds of the garrison at Gibraltar (who are to be replaced by some Hessians) by 2,000 Highlanders and 5,000 Roman Catholics, whom they propose to raise in Ireland. Instead of Roman Catholics, however, some of our accounts say foreigners are to be sent. Their plan is this. They are to take possession of New York and Albany, keeping up a communication between them by means of their vessels. Between Albany and St. John's, they propose also to keep open the communication, and again between St. John's and Quebec, and Boston. By this means they expect Gage, Tryon, and Carleton may distress us on every side, acting in concert with one another. By means of Hudson's River, they expect to cut off all correspondence between the northern and southern rivers. Gage was appointed Governor-General of all America; but Sir Jeffrey Amherst consented afterwards to come over, so that Gage is to be recalled; but it is believed Amherst will not come till the spring; in the meantime Howe will have the command. The coöperation of the Canadians is taken for granted in all the ministerial schemes. We hope, therefore, they will be dislocated by the events in that quarter. For an account of these I must refer you to Patty. My warmest affections attend Mrs. Eppes. Adieu.

TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, Oct. 24, 1775.

DEAR SIR,—Since my last, we have nothing new from England or from the camps at either Cambridge or St. John's. Our eyes are turned to the latter place with no little anxiety, the weather having been uncommonly bad for troops in that quarter, exposed to the inclemencies of the sky without any protection. Carleton is retired to Quebec, and though it does not appear he has any intimation of Arnold's expedition, yet we hear he has embodied 1,100 men to be on his guard. A small vessel was the other day cast away on the Jersey shore (she was one of the transports which had some time ago brought over troops to Boston) on board of which were a captain, with his subordinate officers and marines, amounting to 23 in all, and also a Duncan Campbell who was going to recruit men at New York for General Gage, he having some time before undertaken the same business in the same place, and actually carried off 60 men. The marines and their officers were all taken immediately, except their captain and the recruiting gentleman; these pushed off in a little boat, and coasted it to Long Island, where they got on board a sloop which was to have sailed in an hour, when the party sent after them came upon them. They were brought to this city this morning, the marines having been here some time. Our good old speaker died the night before last. For the particulars of that melancholy event I must

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 569.

refer you to Patty. My affections attend Mrs. Eppes. Adieu.

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TO JOHN PAGE <sup>1</sup>

PHILADELPHIA, Oct. 31, 1775.

DEAR PAGE,—We have nothing new from England or the camp before Boston. By a private letter this day to a gentleman of Congress from General Montgomery we learn that our forces before St. John's are 4,000 in number besides 500 Canadians, the latter of whom have repelled with great intrepidity three different attacks from the fort. We apprehend it will not hold out much longer as Monsr. St. Luc de la Corne and several other principal inhabitants of Montreal who have been our great enemies have offered to make terms. This St. Luc is a great Seigneur amongst the Canadians and almost absolute with the Indians, he has been our most bitter enemy, he is acknowledged to be the greatest of all scoundrels, to be assured of this I need only to mention to you that he is the ruffian who when during the late war Fort William Henry was surrendered to the French & Indians on condition of saving the lives of the garrison had every soul murdered in cold blood. The check which the Canadians received at first is now wearing off. They were made to believe we had an army of 15,000 men going there, but when they saw Montgomery with but 2,700 they were thunderstruck at the situation they had brought themselves into. However when they saw even this

<sup>1</sup> From the *Historical Magazine*, xiv., 244.

small armament march boldly to invest St. John's & put a good face on the matter they revived, & the recruits since have contributed to inspire them more.

I have set apart nearly one day in every week since I came here to write letters. Notwithstanding this I never had received the scrip of a pen from any mortal breathing. I should have excepted two lines from Mr. Pendleton to desire me to buy him 24 lb of wire from which I concluded he was alive. I speak not this for you from whom I would not wish to receive a letter till I know you can write one without injury to your health, but in future as I must be satisfied with information from my colleagues that my county still exists, so I am determined to be satisfied also with their epistolary communications of what passes within our knowledge. Adieu, Dear Page.

Delenda est Norfolk.<sup>1</sup>

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TO FRANCIS EPPES<sup>2</sup>

PHILADELPHIA, NOV. 7, 1775.

DEAR SIR,—We have no late intelligence here except of the surrender of Chambly, with 90 prisoners of war, 6½ tons of powder, 150 stands of arms, and some other small matters. The acquisition of this powder, we hope, has before this made us masters of St. John's, on which Montreal and the upper parts of St. Lawrence will of course be ours. The fate of Arnold's expedition we know not as yet. We have

<sup>1</sup> The British had just burned Norfolk in Virginia.

<sup>2</sup> From Randall's *Life of Jefferson*, iii., 570.

had some disagreeable accounts of internal commotions in South Carolina. I have never received the script of a pen from any mortal in Virginia since I left it, nor been able by any inquiries I could make to hear of my family. I had hoped that when Mrs. Byrd came I could have heard something of them; but she could tell me nothing about them. The suspense under which I am is too terrible to be endured. If anything has happened, for God's sake let me know it. My best affections to Mrs. Eppes. Adieu.

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TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, NOV. 21st, 1775.

DEAR SIR,—After sealing my last letter to you, we received an account of the capture of St. John's which I wrote on the letter. What I then gave you was true account of the matter. We consider this as having determined the fate of Canada. A committee of Congress is gone to improve circumstances, so as to bring the Canadians into our Union. We have accounts of Arnold as late as October 13. All well and in fine spirits. We cannot help hoping him into possession of Quebec, as we know Carleton to be absent in the neighborhood of Montreal. Our armed vessels to the northward have taken some of the ships coming with provisions from Ireland to Boston. By the intercepted letters we have a confirmation that they will have an army of four or five and twenty thousands there by the spring, but they

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 570.

will be raw-teagues.<sup>1</sup> 3,000 are lately arrived there. I have written to Patty a proposition to keep yourselves at a distance from the alarms of Ld. Dunmore. To her, therefore, for want of time, I must refer to you, and shall hope to meet you as proposed. I am, dear Sir, with my best affections to Mrs. Eppes, your friend and servant.

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TO JOHN RANDOLPH <sup>2</sup>

PHILADELPHIA, November 29, 1775.

DEAR SIR,—I am to give you the melancholy intelligence of the death of our most worthy Speaker, which happened here on the 22d of the last month. He was struck with an apoplexy, and expired within five hours.

I have it in my power to acquaint you, that the success of our arms has corresponded with the justice of our cause. Chambly and St. John's were taken some weeks ago, and in them the whole regular army in Canada, except about forty or fifty men. This day, certain intelligence has reached us, that our General, Montgomery, is received into Montreal; and we expect, every hour, to be informed that Quebec has opened its arms to Colonel Arnold, who, with eleven hundred men, was sent from Boston up the Kennebec, and down the Chaudière river to that place. He expected to be there early this month. Montreal acceded to us on the 13th, and Carlton set out, with

<sup>1</sup> Referring to Irish, whom the rumors of the day stated were being recruited in large numbers.

<sup>2</sup> From Randolph's edition of Jefferson's writings.

the shattered remains of his little army, for Quebec, where we hope he will be taken up by Arnold. In a short time, we have reason to hope, the delegates of Canada will join us in Congress, and complete the American union, as far as we wish to have it completed. We hear that one of the British transports has arrived at Boston; the rest are beating off the coast, in very bad weather. You will have heard, before this reaches you, that Lord Dunmore has commenced hostilities in Virginia. That people bore with everything, till he attempted to burn the town of Hampton. They opposed and repelled him, with considerable loss on his side, and none on ours. It has raised our countrymen into a perfect phrensy. It is an immense misfortune, to the whole empire, to have a King of such a disposition at such a time. We are told, and everything proves it true, that he is the bitterest enemy we have. His Minister is able, and that satisfies me that ignorance or wickedness, somewhere, controls him. In an earlier part of this contest, our petitions told him, that from our King there was but one appeal. The admonition was despised, and that appeal forced on us. To undo his empire, he has but one truth more to learn; that, after colonies have drawn the sword, there is but one step more they can take. That step is now pressed upon us, by the measures adopted, as if they were afraid we would not take it. Believe me, dear Sir, there is not in the British empire a man who more cordially loves a union with Great Britain, than I do. But by the God that made me, I will cease to exist before I yield to a connection on such terms as the

British Parliament propose; and in this, I think I speak the sentiments of America. We want neither inducement nor power, to declare and assert a separation. It is will, alone, which is wanting, and that is growing apace under the fostering hand of our King. One bloody campaign will probably decide, everlastingly, our future course; and I am sorry to find a bloody campaign is decided on. If our winds and waters should not combine to rescue their shores from slavery, and General Howe's reinforcements should arrive in safety, we have hopes he will be inspirited to come out of Boston and take another drubbing; and we must drub him soundly, before the sceptred tyrant will know we are not mere brutes, to crouch under his hand, and kiss the rod with which he designs to scourge us,

Yours, &c.

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DECLARATION CONCERNING ETHAN ALLEN: J. MSS.

[Dec. 2, 1775 ?]

A Declaration (or a letter to Howe) on Allen's case.

When necessity compelled us to take up arms against Great Britain in defence of our just rights, we thought it a circumstance of some comfort that our enemy was brave and civilized. It is the happiness of modern times that the evils of necessary war are softened by the refinement of manners & sentiment and that an enemy is an object of vengeance, in

<sup>1</sup> Probably proposed on the arrival of the news of Allen's confinement, Dec. 2, 1775. It was not accepted by the Congress.

arms, & in the field only. It is with pain we hear that Mr. Allen and ~~eleven~~ others taken with him while fighting bravely in their country's cause, are sent to Britain in irons, to be punished for pretended treason; treasons too created by one of those very laws whose obligation we deny, and mean to contest by the sword. This question ~~is~~ will not ~~to~~ be decided by reeking vengeance on a few ~~wretched~~ helpless captives ~~brave men who unfortunately~~ but by ~~subduing~~ conquering ~~vanquishing~~ your enemies in the ~~field of glory encounters of virtue~~ atchieving success in the fields of war, by and gathering there those laurels which grow for the warrior brave ~~alone~~. In this light we view the object between us, in this line we have hitherto conducted ourselves for its attainment. To those ~~of your~~ who bearing your arms have fallen into our hands we have ~~extended~~ afforded every comfort for which captivity ~~will admit~~ and misfortune call for ~~enlargement upon parole has been admitted this they will do us the justice to testify.~~ Enlargement & comfortable subsistence have been extended to both officers & men, ~~trusting to the ties of honour & their bondage~~ restraint is a ~~bondage~~ restraint of honour only. Should you think proper in these days to revive ~~the antient barbarity of antient ages,~~ barbarism and again disgrace our nature with the ~~practi~~ce sacrifice the fortune of war has put it into our ~~hands~~ power subjects for multiplied retaliation. To them, to you, & to the world we declare they shall not be wretched unless their imprudence or your example shall oblige us to make them so; but we declare that their lives shall ~~compel~~

teach our enemies to respect the rights of nations. We have ordered Brigadr. General Prescott to be bound in irons & to be confined in close jail, there to experience ~~sufferings similar to those~~ corresponding miseries to those which shall be inflicted on Mr. Allen. His life shall answer for that ~~life~~ of Mr. Allen, & the lives of as many others ~~for those sent with him~~ of the brave men captivated with him. We deplore the event which shall oblige us to ~~retaliate~~ shed blood for blood, and shall resort to retaliation but as the means of stopping the progress of butchery. This it is a duty we owe to those engaged in ~~support of our~~ the cause of their country, to assure them that if any unlucky circumstance baffling the efforts of their bravery shall put them in the power of their enemies, ~~their lives shall be warranted from sacrifice by the lives of the prisoners in our hands~~ we will use the pledges in our hands to warrant their lives from sacrifice.

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TO JOHN PAGE <sup>1</sup>

[About Dec. 10th, 1775.]

De rebus novis, ita est. One of our armed vessels has taken an English store ship coming with all the implements of war (except powder) to Boston. She is worth about £30,000 sterling as General Washington informs us, & the stores are adapted to his wants as perfectly as if he had sent the invoice. They have also taken two small provision vessels from Ireland

<sup>1</sup> From the original in the possession of the American Antiquarian Society of Worcester, Mass.

to Boston. A forty gun ship blew up the other day by accident in the harbor of Boston. Of a certainty the hand of God is upon them. Our last intelligence from Arnold to be relied on is by letter from him. He was then at Point Levy opposite Quebec & had a great number of canoes ready to cross the river. The Canadians received him with cordiality & the regular force in Quebec was too inconsiderable to give him any inquietude. A later report makes him in possession of Quebec, but this is not authenticated. Montgomery had proceeded in quest of Carleton & his small fleet of 11 pickeroons, then on Lake St. Francis. He had got below him & had batteries so planted as to prevent his passing. It is thought he cannot escape their vigilance. I hope Ld. Chatham may live till the fortune of war puts his son into our hands, & enables us by returning him safe to his father, to pay a debt of gratitude. I wish you would get into Convention & come here. Think of it. Accomplish it. Adieu.

The Congress have promoted Brigadier Genl. Montgomery to be a Major General, and on being assured that Arnold is in possession of Quebec it is probable he will be made a Brigadier General, one of those offices being vacant by Montgomery's promotion. This march of Arnold's is equal to Xenophon's retreat. Be so good as to enquire for the box of books you lodged for me at Nelson's & get them to a place of safety. Perhaps some oppty may offer of sending it to Richmond.

REPORT TO CONGRESS ON CONGRESS COMMITTEE<sup>1</sup> c.c.

[December 15, 1775.]

The Committee appointed to consider and prepare instructions for a committee who are to sit during the recess of Congress have agreed to the following resolutions

Resolved that it is the opinion of this committee that the sd Committee during the Recess of Congress should be authorized & instructed

To receive and open letters directed to the Congress

To correspond with the several Conventions, Assemblies, or Committees of safety, with the Committee of Congress sent to Canada, the Commissioners for Indian affairs; and the Commanding officers of the Continental forces in the several departments

To give counsel to the sd commanding officers whenever applied to by them

To supply the Continental forces by sea and land with all necessaries from time to time

To expedite the striking monies ordered by the Congress to be struck

To transmit to the several Commanding officers, Paymasters & Commissaries from time to time such sums of money as may be necessary for the pay &

<sup>1</sup> This committee, consisting of Jefferson, Hooper, Franklin, Jay, and Dean, were appointed December 13, 1775, to prepare instructions for a "Committee to sit during the adjournment" of Congress. They reported this paper on December 15th, but it seems never to have been acted on by the Congress, as no immediate adjournment took place, as was at that time expected. The feeling seems to have been in favor of a committee which should sit at Hartford or some other town nearer the seat of war. (See *Coll. of Conn. Hist. Soc.*, ii., 249.) Compare with Jefferson's "Draft of Report on a Committee of the States," *post.*, January 30, 1784.

subsistence of the Continental forces, and order payment by the Treasurer for such contracts as they, the said committee, may make in pursuance of the authorities and instructions given them

To take charge of all military stores belonging to the United Colonies, to procure such further quantities as may probably be wanted, & to order any part thereof wheresoever it may be most requisite for the Common service.

To direct the safe keeping and comfortable accommodation of all Prisoners of War.

To contribute their counsel and authority towards raising recruits ordered by Congress

To procure intelligence of the condition and designs of the enemy.

To direct military operations by sea and land; not changing any objects or expedition determined on by Congress

To attend to the defence and preservation of forts and strong posts and to prevent the enemy from acquiring new holds

To apply to such officers in the several colonies as are entrusted with the executive powers of government for the occasional aid of Minute-men and militia whenever & wherever necessary

In case of the death of any officer within the appointment of Congress, to employ a person to fulfil his duties, until the meeting of Congress, unless the office be of such nature as to admit of a delay of appointment until such meeting

To examine public claims and accounts and report the same to the next Congress.

To publish and disperse authentic accounts of military operations.

To expedite the printing of the Journal of Congress as by them directed to be published

To summon a meeting of Congress at an earlier date than that to which it may stand adjourned, if any great and unexpected emergence shall render it necessary for the safety or good of the United colonies

And to lay before the Congress at their meeting all letters received by them with a report of their proceedings.

Resolved that the said Committee shall be authorized to appoint their own clerk who shall take an oath of secrecy before he enters on the exercise of his office.

Resolved that in case of the death of any member of the said Committee, they immediately apply to his surviving colleagues to appoint some one of themselves to be a member of the said Committee.

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TO THOMAS NELSON <sup>1</sup>

PHILADELPHIA, May 16, 1776.

DEAR NELSON,—I arrived here last Tuesday after being detained hence six weeks longer than I intended by a malady of which Gilmer can inform you. I have nothing new to inform you of as the last post carried you an account of the naval engagement in Delaware. I inclose a vote of yesterday

<sup>1</sup> From the original in the American Antiquarian Society, of Worcester, Mass.

on the subject of government as the ensuing campaign is likely to require greater exertion than our unorganized powers may at present effect. Should our Convention propose to establish now a form of government perhaps it might be agreeable to recall for a short time their delegates. It is a work of the most interesting nature and such as every individual would wish to have his voice in. In truth it is the whole object of the present controversy; for should a bad government be instituted for us in future it had been as well to have accepted at first the bad one offered to us from beyond the water without the risk & expence of contest. But this I mention to you in confidence, as in our situation, a hint to any other is too delicate however anxiously interesting the subject is to our feelings. In future you shall hear from me weekly while you stay, and I shall be glad to receive Conventional as well as publick intelligence from you.

P. S.—In the other colonies who have instituted government they recalled their delegates, leaving only one or two to give information to Congress of matters which might relate to their country particularly, and giving them a vote during the interval of absence.

I am at present in our old lodgings tho' I think, as the excessive heats of the city are coming on fast, to endeavor to get lodgings in the skirts of the town where I may have the benefit of a freely circulating air. Tell Page & McClurgh that I received their letters this morning and shall devote myself to their contents. I am here in the same uneasy anxious

state in which I was the last fall without Mrs. Jefferson who could not come with me. I wish much to see you here, yet hope you will contrive to bring on as early as you can in convention the great questions of the session. I suppose they will tell us what to say on the subject of independence,<sup>1</sup> but hope respect will be expressed to the right of opinion in other colonies who may happen to differ from them. When at home I took great pains to enquire into the sentiments of the people on that head, in the upper counties I think I may safely say nine out of ten are for it. Adieu. My compliments to Mrs. Nelson.

May 19. Yesterday we received the disagreeable news of a second defeat at Quebec. Two men of war, two frigates and a tender arrived there early on the 6th instant. About 11 o'clock the same day the enemy sallied out to the number of a thousand. Our forces were so dispersed at different posts that not more than 200 could be collected at Headquarter's. This small force could not resist the enemy. All our cannon, 500 muskets & 200 sick men fell into their hands. Besides this one of their frigates got possession of a batteau with 30 barrels of powder & an armed vessel which our crew was forced to abandon. Our army was to retreat to the mouth of the Sorel.

Genl. Arnold was to set off from Montreal to join them immediately, upon whose rejoining them, it was hoped they might return as far as Dechambeau.

<sup>1</sup> The Virginia Convention passed the instruction for independence the day before this was written.

General Wooster has the credit of this misadventure, and if he cannot give a better account of it than has yet been heard, I hope he will be made an example of. Generals Thomas and Sullivan were on their way with reinforcements. Arnold had gone up to Montreal on business, or as some say, disgusted by Wooster.

The congress having ordered a new battalion of riflemen to be raised in Virginia, Innis wishes much to be translated to it from the Eastern shore which was so disagreeable to him that he had determined to have resigned.

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REPORT OF COMMITTEE ON CANADIAN AFFAIRS<sup>1</sup> c. c.

[May 21, 1776.]

**R. I. post-pon'd** Resolved that the Commissioners for Indian affairs in the Northern department be directed to use their utmost endeavors to procure the assistance of the Indians within their department to act against the enemies of the Colonies, that they particularly endeavor to engage them to undertake the reduction of Niagara, engaging on behalf of Con-

<sup>1</sup> On May 14, 1776, "a letter of the 11th from general Washington inclosing sundry papers; a letter of the 3d from general Schuyler; and a letter of the 9th from Daniel Robertson, were laid before Congress and read: Resolved, That they be referred to a committee of three. The members chosen, Mr. W. Livingston, Mr. Jefferson, and Mr. J. Adams." On May 16th letters from the Commissioners of Congress in Canada, and from Washington, were referred to the same Committee. They presented the above report May 21st, which was read the same day, and consideration postponed. It was again considered on the 22d, and sundry resolutions adopted. Cf. *Journal of Congress*. This report is printed from the original in Jefferson's handwriting, which is headed "Report on Indians."

gress to pay them 133 $\frac{1}{4}$  dollars for every prisoner they shall take and bring to headquarters, or to the said Commissioners.

Resolved that the Commissioners for Indian affairs in the Middle department be directed to use their utmost endeavors to procure the assistance of the Indians within their department, that they particularly endeavor to engage them to undertake the reduction of Detroit upon the same terms offered the Indians who shall go against Niagara. R. 2. post-pon'd

Resolved that the Commissioners in each of the said departments be directed to employ one or more able partisans whom the Congress will liberally reward for their exertions in the business to be committed to them. R. 3. post-pon'd

Resolved that it is the opinion of this Committee that there be raised for the Service of the United Colonies one battalion of Germans <sup>1</sup>. R. 4. referred to N. J. & P. for

Resolved that the companies of riflemen from Virginia and Maryland be regimented and that the regiment be compleated to the original number of the Pennsylvania battalion. R. 5.

Resolved that the Pennsylvania battalion of riflemen be compleated to their original establishment. R. 6. a

<sup>1</sup> This paragraph is stricken out.

R. 6. b Resolved that two Companies of the forces now in the Delaware counties be ordered to Cape May.

R. 7. Resolved that the Committee appointed to Contract for cannon be directed to procure a number of brass or iron field pieces to be made or purchased immediately [and sent to Canada.]<sup>1</sup>

R. 8. Com<sup>e</sup> already appointed to procure medec.<sup>s</sup>? Resolved that a proper assortment of Medicenes be sent to Canada.

R. 9. Resolved that Mr. James Mease be directed to purchase & forward to the Quarter Master general in New York as much cloth for tents as he can procure.

R. 10. Com<sup>d</sup> to the Com<sup>e</sup> of which Mr. Shearman is Chairman Resolved that proper persons be appointed by Congress to purchase such articles as may be wanted for the use of the soldiers in Canada & send the same to Albany, that they may be forwarded to the army in Canada: and that they be particularly attentive to provide in time a sufficient number of leathern breeches & under waistcoats, and such other winter cloathing as may be necessary for them.

R. 11. Resolved that the Committee appointed to contract for the making of shoes for the army be directed to forward with all expedition to

<sup>1</sup> The words in brackets are stricken out.

the Quarter Master in Canada such as are already provided.

Resolved that Prisoners taken by continental arms be not exchanged by any authority but the Continental Congress. **R. 12.**

Resolved that it is the opinion of this Committee that all vessels which sailed from the port or harbor of Boston whilst the town of Boston was in possession of the enemy, having on board the effects belonging to the enemies of America & which have been or may be seized be liable, together with the said effects, to confiscation; in the same manner and proportions as have been heretofore resolved by Congress. **R. 13.**

Resolved that the Continental agents in the respective colonies where no courts have been established for the trial of captures have power & be directed to dispose at public sale of such articles of a perishable nature as shall be taken from the enemies of America, and that the money arising from such sale be liable to the decree of such court whenever established. **R. 14.**

Resolved that the inventory of the Ordinance Stores taken by Capt. Manly be sent to General Washington, & that he be requested to appoint a person on the part of the Colonies to join one on the part of Captain Manly & his crew, who, having first taken an oath for that purpose, shall proceed to value the same, & if they cannot agree in the value they

shall call in a third person to determine the same: that the report of such persons be returned to Congress so soon as may be, and the value of the stores belonging to Captn. Manly & his crew be thereupon transmitted them.

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PROPOSED CONSTITUTION FOR VIRGINIA <sup>1</sup>

[June, 1776.]

FIRST DRAFT

FAIR COPY

A Bill for new modelling the form of government and for establishing the Fundamental principles of our future Constitution

Whereas George king of Great Britain & Ireland and Elector of Hanover.<sup>2</sup>

[A Bill] for new-modelling the form of Government and for establishing the Fundamental principles thereof in future.

Whereas George Guelf king of Great Britain and Ireland and Elector of

<sup>1</sup> The fair copy is endorsed in Jefferson's handwriting, "A Bill for new modelling the form of government, & for establishing the fundamental principles thereof in future. It is proposed that this bill, after correction by the Convention, shall be referred by them to the people, to be assembled in their respective counties and that the suffrages of two thirds of the counties shall be requisite to establish it." The rough draft has no preamble, though space was left for it. In both copies the erasures and interlineations are indicated. The bracketed portions in Roman are so written by Jefferson. Those in italic are inserted by the editor. For these most important papers I am under obligation to the courtesy of Mr. Cassius F. Lee of Alexandria, Va., and Mr. Worthington Chauncey Ford, of Brooklyn, N. Y., not merely for photographic reproductions, but also for the facts concerning them given at large in the latter's *Jefferson's Constitution for Virginia* (*The Nation*, li., 107). This constitution, though mentioned in several of the histories and other works concerning Virginia, and though seen by Wirt (*Life of Patrick Henry*, p. 196), and by Leigh

<sup>2</sup> This heading is written on a separate sheet, the remainder of the page being left blank.

Hanover, heretofore entrusted with the exercise of the kingly office in this government hath endeavored to pervert the same into a detestable and insupportable tyranny;

by putting his negative on laws the most wholesome & necessary for ye public good;

by denying to his governors

(*Debates of Virginia Convention, 1830, p. 160*), has never yet been printed or even quoted. The history of its production is as follows:

On December 4, 1775, the Continental Congress resolved that if the "Convention of Virginia shall find it necessary to establish a form of government in that Colony, it be recommended to that Convention to call a full and free representation of the people, and that the said representatives, if they think it necessary, establish such forms of government as in their judgment will best produce the happiness of the people." The Convention received this resolution on Dec. 13th, but took no action upon it. In April a new Convention was elected, which met on May 6th, and on May 15th appointed a Committee to prepare a "Declaration of Rights" and a "Form of Government." In the meantime the Continental Congress, on motion of John Adams, May 10, 1776, "recommended to the respective assemblies and conventions of these United Colonies where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular, and America in general." On May 27th the resolutions of the Virginia Convention were laid before the Continental Congress, and between that date and the middle part of June, Jefferson, while attending Congress, drew up this constitution. This he forwarded to Pendleton in the Convention, by George Wythe, who was returning from Congress to Virginia, and the latter wrote him, July 27, 1776:

"When I came here the plan of government had been committed to the whole house. To those who had the chief hand in forming it the one you put into my hands was shewn. Two or three parts of this were, with little alteration, inserted in that: but such was the impatience of sitting long enough to discuss several important points in

permission to pass laws of immediate and pressing importance, unless suspended in their operations for his assent, and, when so suspended, neglecting to attend to them for many years;

by refusing to pass certain other laws, unless the person to be benefited by them would relinquish the

which they differ, and so many other matters were necessary to be dispatched before the adjournment that I was persuaded the revision of a subject the members seemed tired of would at that time have been unsuccessfully proposed." Of it, Jefferson, in 1825, wrote:

"I was then at Philadelphia with Congress; and knowing that the Convention of Virginia was engaged in forming a plan of government, I turned my mind to the same subject, and drew a sketch or outline of a Constitution, with a preamble, which I sent to Mr. Pendleton, president of the convention, on the mere possibility that it might suggest something worth incorporation into that before the Convention. He informed me afterwards by letter, that he received it on the day on which the Committee of the Whole had reported to the House the plan they had agreed to; that that had been so long in hand, so disputed inch by inch, and the subject of so much altercation and debate; that they were worried with the contentions it had produced, and could not, from mere lassitude, have been induced to open the instrument again; but that, being pleased with the Preamble to mine, they adopted it in the House, by way of amendment to the Report of the Committee; and thus my Preamble became tacked to the work of George Mason. The Constitution, with the Preamble, was passed on the 29th of June, and the Committee of Congress had only the day before that reported to that body the draught of the Declaration of Independence. The fact is, that that Preamble was prior in composition to the Declaration; and both having the same object, of justifying our separation from Great Britain, they used necessarily the same materials of justification, and hence their similitude."

Jefferson, both at the time, and afterwards, denied the power of the Virginia Convention to adopt a permanent constitution, on the grounds

inestimable right of representation in the legislature by dissolving legislative assemblies repeatedly and continually for opposing with manly firmness his invasions on the rights of the people;  
when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without

that it was chosen an executive body to carry on the war, and that independence and the establishment of a state government were not before the people when they chose the delegates to it. Edmund Randolph (MS. *History of Virginia*, p. 63) states that:

"Mr. Jefferson, who was in Congress, urged a youthful friend in the convention to oppose a permanent constitution until the people should elect deputies for the special purpose. He denied the power of the body elected (as he conceived them to be agents for the management of the war) to exceed some temporary regimens." The leading members of the Convention, however, according to Randolph, "saw no distinction between the conceded powers to declare independence, and its necessary consequence, the fencing of society by the institution of government."

In pursuance of his opinion, Jefferson's proposed constitution was given the form of a mere act, and much is included which has no place in a constitution. The non-concurrence of the Convention in his view, and even more, the aristocratic limits on the franchise and the unfavorable discrimination against the western counties, that the planter and tide-water representatives secured, which made "no grosser error than to suppose that the Constitution of Virginia was formed in 1776, [for] its two great distinctive features, the *sectional*, and the *aristocratic*, had been given to it a century before" (*Debates of Virginia Convention, 1830*), were the causes for his dislike of the Constitution adopted in 1776, and of his constant attempts to obtain its alteration. His objections are indicated in his *Notes on Virginia* (Query XIII, ¶ 5) as well as in his correspondence, and his preparation of his "Fundamental Constitution" in 1783 and his "Notes for a Constitution" in 1794; both of which form striking examples, in contrast to this, of the democratic development of his mind.

any legislative head;  
 by endeavoring to prevent the  
 population of our country, & for that purpose ob-  
 structing the laws for the  
 naturalization of foreigners  
 & raising the condition  
 [*lacking appro*]priations of  
 lands;  
 [*by keeping among u*]s, in  
 times of peace, standing  
 armies and ships of war;  
 [*lacking*]ing to render the mili-  
 tary independent of & su-  
 perior to the civil power;  
 by combining with others to  
 subject us to a foreign jur-  
 isdiction, giving his assent  
 to their pretended acts of  
 legislation.  
 for quartering large bodies of  
 troops among us;  
 for cutting off our trade with  
 all parts of the world;  
 for imposing taxes on us with-  
 out our consent;  
 for depriving us of the bene-  
 fits of trial by jury;  
 for transporting us beyond  
 seas to be tried for pre-  
 tended offences; and  
 for suspending our own legis-  
 latures & declaring them-  
 selves invested with power  
 to legislate for us in all  
 cases whatsoever;  
 by plundering our seas,

- ravaging our coasts, burning our towns and destroying the lives of our people;  
by inciting insurrections of our fellow subjects with the allurements of forfeiture & confiscation;  
by prompting our negroes to rise in arms among us; those very negroes whom ~~he hath from time to time~~ by an inhuman use of his negative he hath refused permission to exclude by law;  
by endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, & conditions of existence;  
by transporting at this time a large army of foreign mercenaries [*to complete*] the works of death, desolation & tyranny already begun with circum[stances] of cruelty & perfidy so unworthy the head of a civilized nation;  
by answering our repeated petitions for redress with a repetition of injuries;  
and finally by abandoning the helm of government and

declaring us out of his allegiance & protection;  
 by which several acts of misrule the said George Guelf has forfeited the kingly office and has rendered it necessary for the preservation of the people that he should be immediately deposed from the same, and divested of all its privileges powers, & prerogatives:

And forasmuch as the public liberty may be more certainly secured by abolishing an office which all experience hath shewn to be inveterately inimical thereto or which and it will thereupon become further necessary to re-establish such ancient principles as are friendly to the rights of the people and to declare certain others which may co-operate with and fortify the same in future.

Be it therefore enacted by the authority of the people that the said George the third king of Great Britain and elector of Hanover ~~formerly holding & exercising the kingly power office within this colony be & he is, be & he is hereby absolutely divested of~~ deposed from the kingly office & powers within

Be it therefore enacted by the authority of the people that the said, George Guelf be, and he hereby is deposed from the kingly office within this government and absolutely divested of all it's rights, powers, and prerogatives: and that he and his descendants and all persons acting by or through him, and

this colony, within yt government & absolutely divested of all it's rights and powers & that he & his descendants & all persons claiming by or through him & all other persons whatsoever ~~are hereby declared~~, shall be & forever remain incapable of ~~being again appointed to holding~~ the same & further that the sd office shall henceforth cease and be never more erected within this ~~government~~ colony.

And be it further enacted by the authority aforesaid that ~~the in lieu of those which have heretofore taken place~~ the following fundamental laws & principles of government shall henceforth be established.

The Legislative, Executive, & Judicial offices shall be kept for ever separate, & no person exercising the one shall be capable of appointment to the others or to either of them.

Legislation shall be exercised by two separate houses ~~who shall be called the General Assembly of Virginia~~ to wit a house of Representatives and

all other persons whatsoever shall be and forever remain incapable of the same: and that the said office shall henceforth cease and never more either in name or substance be re-established within this colony.

And be it further enacted by the authority aforesaid that the following fundamental laws and principles of government shall henceforth be established.

The Legislative, Executive and Judiciary offices shall be kept forever separate; no person exercising the one shall be capable of appointment to the others, or to either of them.

#### I. LEGISLATIVE

Legislation shall be exercised by two separate houses, to wit a house of Representatives, and a house of Senators, which shall be called the General Assembly of Virginia.

a house of Senators which shall be called the General assembly of Virginia.

The sd house of representatives shall be composed of persons chosen by the people annually on the [ day of December] and shall have power to meet in General Assembly on the [ day of January] following & so from time to time on their own adjournments, or at any other time when summoned by the Administrator, & to continue sitting so long as they shall think the publick service requires.

Vacancies in the sd house by death or disqualification shall be filled up by the electors under a warrant from the Speaker of the house.

~~All persons holding [half~~  
All male persons of full age & sane mind having a freehold estate in [ $\frac{1}{4}$  of an acre] of land in any town, or in [25e] acres of land in the country, & all persons resident in the country colony who shall have paid scot & lot to government the last [three two] years shall have right to vote give their vote in the election of their respective representatives. And all every person so quali-

The sd house of Representatives shall be <sup>Ho. of Re-</sup> composed of per- <sup>representa-</sup> sons chosen by the <sup>tives.</sup> people annually on the [1st day of October] and shall meet in General assembly on the [1st day of November] following and so from time to time on their own adjournments, or at any time when summoned by the Administrator and to shall continue sitting so long as they shall think the publick service requires.

Vacancies in the said house by death or disqualification shall be filled by the electors under a warrant from the Speaker of the said house.

All male persons of full age and sane mind having a freehold estate <sup>Electors.</sup> in [one fourth of an acre] of land in any town, or in [25] acres of land in the country, and all persons resident in the colony who shall have paid scot and lot to government the last [two years] <sup>Elected.</sup> shall have right to give their vote in the election of their respective representatives. And every person

fied to vote elect shall be capable of being elected; provided he shall have given no bribe either directly or indirectly to any elector voting for & and shall take an oath of fidelity to the government before he enters state & of duty in his office on the exercise thereof his office, and shall hold during his continuance therein in the said office he shall hold no public post of profit either himself or by another for his use.

The number of representatives for each county or borough shall be so proportioned to the number of it's qualified electors that the whole number of representatives shall not exceed [300] nor be less than [150] for the present there shall be one representative for every [400] qualified electors in each county or borough; but when ever this or any future proportion shall be likely to exceed or fall short of the limits beforementioned, the proportion shall be again adjusted by the house of representatives.

The house of representatives when met shall be free to act according to their own judgments.

so qualified to elect shall be capable of being elected, provided he shall have given no bribe either directly or indirectly to any elector, and shall take an oath of fidelity to the state and of duty in his office, before he enters on the exercise thereof. During his continuance in the said office he shall hold no public pension nor post of profit, either himself, or by another for his use.

The number of Representatives for each county or borough shall be so proportioned to the numbers of it's qualified electors that the whole number of representatives shall not exceed [300] nor be less than [125.] for the present there shall be one representative for every [ ] qualified electors in each county or borough: but whenever this or any future proportion shall be likely to exceed or fall short of the limits beforementioned, it shall be again adjusted by the house of representatives.

The house of Representatives when met shall be free to act according to their own judgment and conscience.

The Senate shall consist of ~~Senate.~~ [15] not less than [15] nor more than [50] members at the least, who shall be appointed by the house of representatives [for life. Their qualifications shall be an oath of fidelity to government the state & of duty in their office the being of [31] years of age at the least and the having given no bribes directly or indirectly to obtain their appointment: while in the Senatorial office they shall be incapable of holding any public posts of profits either themselves or by others for their use.

~~With the house of Senators]~~ One third of them shall be removed out of office by lot at the end of the first three years & their places be supplied by a new appointment; one other third shall be removed by lot in like manner at the end of the second three years & their places be supplied by a new appointment; after which one third shall be removed annually at the end of every three years according to seniority. When once removed they shall be forever

The Senate shall consist of not less than [15] nor more than [50] ~~Senate.~~ members who shall be appointed by the house of Representatives. One third of them shall be removed out of office by lot at the end of the first [three] years and their places be supplied by a new appointment; one other third shall be removed by lot in like manner at the end of the second [three] years and their places be supplied by a new appointment; after which one third shall be removed annually at the end of every [three] years according to seniority. When once removed, they shall be forever incapable of being re-appointed to that house. Their qualifications shall be an oath of fidelity to the state, and of duty in their office, the being [31] years of age at the least, and the having given no bribe directly or indirectly to obtain their appointment. While in the senatorial office they shall be incapable of holding any public pension or post of profit either themselves, or by others for their use.

<sup>1</sup> This portion in brackets is cancelled by the paragraph following, which is pasted as a flap over it.

incapable of being re-appointed to that house.

The judges of the General court & of the High court of chancery shall have session & deliberative voice but not suffrage in the house of Senators.

The Senate & the house of representatives shall each of them have power to originate & amend bills, save only that money bills shall be originated & amended by the Representatives only; and the assent of both houses shall be requisite to pass a law.

The General assembly shall have no power to pass any law inflicting death for any crime excepting murder & excepting also those offences in the military service for which they shall think punishment of death absolutely necessary; ~~nor shall they have power to prescribe~~ and all capital punishments in other cases are hereby abolished: nor shall they have power to prescribe torture in any case whatever; ~~nor for inflicting torture for in any cause whatever~~ nor shall any law for levying money be in force longer than [ten] years from the time of its commencement.

The judges of the General court and of the High court of Chancery shall have session and deliberative voice, but not suffrage in the house of Senators.

The Senate and the house of representatives shall each of them have power to originate and amend bills; save only that bills for levying money bills shall be originated and amended by the representatives only: the assent of both houses shall be requisite to pass a law.

The General assembly shall have no power to pass any law inflicting death for any crime, excepting murder, & ~~such~~ those offences in the military service for which they shall think punishment by death absolutely necessary: and all capital punishments in other cases are hereby abolished. Nor shall they have power to prescribe torture in any case whatever: nor shall there be power anywhere to pardon crimes or to remit fines or punishments: nor shall any law for levying money be in force longer than [ten years] from the time of its commencement

Two thirds of the members of either house shall be a quorum to proceed to business.

[Two thirds] of the members of either house shall be a Quorum to proceed to business.

Delegates see post.

## II. EXECUTIVE

For The exercise of the executive powers shall be exercised by in manner following one person to be called the [Administrator] who shall be annually appointed by the [house of representatives

] on the second day of their first session, & who after having acted [one] year shall be incapable of being again appointed till to that office until he shall have been out of the said same office [three] years.

Under him shall be appointed by the same house & at the same time a Deputy Administrator to assist his principal in the discharge of his office, & to succeed to the whole powers thereof in case of his death before the year shall have expired, to the whole powers thereof during the residue of the year.

The Administrator shall possess the powers formerly

The executive powers shall be exercised in manner following.

One person to be called the [Administrator] shall be annually appointed by the house of Representatives on the second day of their first session, who after having acted [one] year shall be incapable of being again appointed to that office until he shall have been out of the same [three] years.

Under him shall be appointed by the same house and at the same time, a Deputy-Administrator to assist his principal in the discharge of his office, and to succeed, in case of his death before the year shall have expired, to the whole powers thereof during the residue of the year.

The administrator shall possess the power formerly

held by the king save only that

he shall be bound by acts of legislature tho' not expressly named.

he shall have no negative on the bills of the Legislature.

he shall be liable to action tho' not to personal restraint for private duties or wrongs?

he shall not possess ~~ne~~ the prerogatives ~~of~~

of dissolving, proroguing, or adjourning either house of assembly

of Declaring war or ~~making~~ concluding peace

of issuing letters of marque or reprisal

of raising or introducing armed forces, building armed vessels, forts or strongholds.

of coining monies or regulating their value.

of regulating weights & measures.

of erecting courts, offices, boroughs, corporations, fairs, markets, ports, beacons, lighthouses, sea-marks.

of laying embargoes or prohibiting the exportations of any commodity

held by the king: save only that, he shall be bound by acts of legislature tho' not expressly named;

he shall have no negative on the bills of the Legislature;

he shall be liable to action, tho' not to personal restraint for private duties or wrongs;

he shall not possess the prerogatives;

of dissolving, proroguing or adjourning either house of Assembly;

of declaring war or concluding peace;

of issuing letters of marque or reprisal;

of raising or introducing armed forces, building armed vessels, forts or strongholds;

of coining monies or regulating their values;

of regulating weights and measures;

of erecting courts, offices, boroughs, corporations, fairs, markets, ports, beacons, lighthouses, sea-marks.

of laying embargoes, or prohibiting the exportation of any commodity for a

for a longer space than  
4 days.

of retaining or recalling a  
member of the state but  
by legal process pro delicto vel contractu.

of making denizens.

of pardoning crimes or re-  
mitting fines or punish-  
mts.

of creating dignities or  
granting rights of prece-  
dence.

but these powers shall be  
exercised by the legislature  
alone.

A privy council shall be  
**Privy** annually appoint-  
**Council.** ed by the house of  
Representatives ~~to consist of~~  
~~such number as they shall~~  
whose duty it shall be to give  
advice to the Administrator  
when called on by him. With  
them the Deputy Admr shall  
have session & suffrage

**Delegates** insert here.

longer space than [40]  
days.

of retaining or recalling a  
member of the state but  
by legal process pro delicto vel contractu.

of making denizens.

~~of pardoning crimes, or re-~~  
~~mitting fines or punish-~~  
~~ments.~~

of creating dignities or  
granting rights of prece-  
dence.

but these powers shall be exer-  
cised by the legislature alone.  
and excepting also those  
powers which by these funda-  
mentals are given to others,  
or abolished.

A Privy council shall be an-  
nually appointed **Privy**  
by the house of re- **Council**  
presentatives whose duties it  
shall be to give advice to the  
Administrator when called on  
by him. With them the Dep-  
uty Administrator shall have  
session and suffrage.

Delegates to represent this  
colony in the **Delegates**  
American Congress  
shall be appointed when nec-  
essary by the house of Re-  
presentatives. After serving  
[one] year in that office they  
shall not be capable of being

**Treasurer** A Treasurer &c.  
**Delegates** see below

High Sheriffs and coroners of counties shall be **Sheriffs &c.** annually elected by those qualified to vote for representatives: ~~but officers of the courts of general jurisdiction and [part missing] by their respective courts~~ and no person who shall have served as high sheriff [one] year shall be incapable of being re-elected to the said office in the same county till he shall have been out of office [five] years.

All other officers civil & **Delegates** military shall be ~~see below~~ appointed by the Administrator but such **Other** pointment shall be **officers** subject to the negative of the privy council. Saving however to the legislature a right power of

re-appointed to the same during an interval of [one] year.

A Treasurer shall be appointed by the **Treasurer** house of Representatives who shall issue no money but by authority of both houses.

An Attorney general shall be appointed by the **Attorney** house of Representatives **Genrl.**

High Sheriffs and Coroners of counties shall **High Sher-** be annually elected **iffs, &c.** by those qualified to vote for representatives: and no person who shall have served as high sheriff [one] year shall be capable of being re-elected to the said office in the same county till he shall have been out of office [five] years.

All other Officers civil and military shall be **Other** appointed by the **Officers** Administrator; but such appointment shall be subject to the negative of the Privy council, saving however to the Legislature a power of transferring to any other

~~transferring from the Administrator the right of ye to any other persons appointment of such officers to any persons they may think fit of such offices or any of them.~~

The A Treasurer shall be appointed by the Treasurer house of Representatives, who shall issue no money but by warrant from authority of both houses.

~~Delegates shall be appointed to represent this colony in the American Congress shall be appointed when necessary by the H. of Represves, who shall not be after serving [two] years in that office they shall not be capable of being reappointed to the same during an interval of [two] years.~~

The Judicial powers shall be exercised

First by County courts & other inferior jurisdictions.

Secondly by a General Court & a High Court of Chancery.

Thirdly by a Court of Appeals.

The ~~justices~~ judges of the County County courts & Courts other inferior juris-

persons the appointment of such officers or any of them.

### III. JUDICIARY

The Judiciary powers shall be exercised

First, by County courts and other inferior jurisdictions:

Secondly, by a General court & a High court of Chancery:

Thirdly, by a Court of Appeals.

The judges of the county courts and other County inferior jurisdictions- Courts, &c.

dictions shall be appointed by the Administrator, subject to the negative of the privy council. They shall not be fewer than [five] in number their jurisdiction shall be defined from time to time by the Legislature: & they shall be removable for misbehavior by the court of Appeals.

The judges of the General **Genl Court** court & of the **& Chan-** High court of Chan- **cery** cery shall be appointed by the Administrator and Privy council. If kept united they shall be [5] in number, if separate there shall be [*part lacking*] & [3] for the High Court of Chancery. The appointment shall be made from the faculty of the law and of such persons of that faculty as shall have actually exercised the same at ~~some~~ the bar or bars of some court or courts of record within this colony for [seven] years. They shall hold their commissions during good behavior, for breach of which they shall be removable by the court of Appeals. Their jurisdiction shall be defined from time to time by the Legislature.

The court of Appeals shall

tions shall be appointed by the Administrator, subject to the negative of the privy council. They shall not be fewer than [five] in number. Their jurisdictions shall be defined from time to time by the legislature: and they shall be removable for misbehavior by the court of Appeals.

The Judges of the General court and of **Genl. Court** the High court of **and High** Chancery shall be **Ct. of** appointed by the **Chancery** Administrator and Privy council. If kept united they shall be [5] in number, if separate, there shall be [5] for the General court & [3] for the High court of Chancery. The appointment shall be made from the faculty of the law, and of such persons of that faculty as shall have actually exercised the same at the bar of some court or courts of record within this colony for [seven] years. They shall hold their commissions during good behavior, for breach of which they shall be removable by the court of Appeals. Their jurisdiction shall be defined from time to time by the Legislature.

The Court of Appeals shall

**Court of Appeals** consist of not less than [7] nor more than [11] members to be chosen appointed by the house of Representatives; they shall hold their offices during good behavior, for breach of which they shall be removable by an act of the legislature only. Their jurisdiction shall be to determine finally all causes removed before them from the General court or High court of Chancery on suggestion of error, to remove judges of the General court or High court of Chancery or of the County courts or other inferior jurisdictions for misbehavior: [to try impeachments against of high offenders to be lodged before them by the House of representatives for such crimes as shall be hereafter defined shall hereafter be precisely defined by the Legislature shall hereafter define with precision and *illegible*] and for the punishment of which the sd Legislature shall have previously presented certain & determinate pains. In this court the judges of the Genl Ct., & High Ct. of Chancy shall have session and deliberative voice but no suffrage.

consist of not less than [7] nor more than [11] members, to be appointed by the house of Representatives: they shall hold their offices during good behavior, for breach of which they shall be removable by an act of the legislature only. Their jurisdiction shall be to determine finally all causes removed before them from the General Court or High Court of Chancery, or of the county courts or other inferior jurisdictions for misbehavior: [to try impeachments against high offenders lodged before them by the house of representatives for such crimes as shall hereafter be precisely defined by the Legislature, and for the punishment of which, the said legislature shall have previously prescribed certain and determinate pains.] In this court the judges of the General court and High court of Chancery shall have session and deliberative voice, but no suffrage.

**Court of Appeals**

All facts, in causes, whether  
**Juries** of Chancery, Common, Ecclesiastical  
 or Marine law, shall be tried  
 by a jury upon evidence given  
 viva voce in open court; ~~un-~~  
 less but where witnesses are  
 out of the colony in which  
 case their depositions may be  
 used or unable to attend  
 through by through sickness  
 or other invincible necessity,  
 their depositions may be ~~pro-~~  
 posed submitted to the credit  
 of the jury.

All Fines & Amercements  
**Fines** shall be fixed by  
~~juries and deter-~~  
 mined assessed and terms of  
 imprisonment for Contempts  
~~shall~~ or misdemeanors shall be  
 fixed by the verdict of a jury.

All process original & judi-  
~~Stite of~~ cial ~~process~~ shall  
~~process~~ issue run in the  
 name [*part lacking*] which it  
 issues.

Two thirds of the mem-  
**Quorum** bers of the General  
 Court, High court  
 of Chancery, or Court of Ap-  
 peals shall be a Quorum to  
 proceed to business.

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All facts in causes whether  
 of Chancery, Common, Ec-  
 clesiastical, or Marine law,  
 shall be tried by a  
**Juries** jury upon evidence  
 given vivâ voce, in open court:  
 but where witnesses are out  
 of the colony or unable to at-  
 tend through sickness or other  
 invincible necessity, their de-  
 position may be submitted to  
 the credit of the jury.

All Fines or Amercements  
 shall be assessed,  
**Fines, &c.** & Terms of impris-  
 onment for Contempts & Mis-  
 demeanors shall be fixed by  
 the verdict of a Jury.

All Process Original & Ju-  
 dicial shall run in  
 the name of the  
**Process** court from which it issues.

Two thirds of the mem-  
**Quorum** bers of the General  
 court, High court  
 of Chancery, or Court of Ap-  
 peals shall be a Quorum to  
 proceed to business.

## IV. RIGHTS, PRIVATE AND PUBLIC

Unappropriated or Forfeited lands shall **Lands** be appropriated by the Administrator ~~and~~ with the consent of the privy council.

~~Fifty acres of la~~

Every male person of full age neither owning nor having owned [50] acres of land shall be entitled to an appropriation of [50] acres or to so much as shall make up what he owns or has owned [50] acres in full and absolute dominion. And no other person shall be capable of taking an appropriation.

Lands heretofore holden of the crown in fee simple and those hereafter to be appropriated shall be holden of ~~no superior by him~~ in full and absolute dominion of no superior whatever.

No lands shall be appropriated until purchased of the Indian natives proprietors nor shall any purchases be made of them but on behalf of the public by authority of acts of the General assembly to be made passed for every purchase specially

[part lacking] contained

Unappropriated or Forfeited lands shall **Lands** be appropriated by the Administrator with the consent of the Privy council.

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Lands heretofore holden of the crown in fee simple, and those hereafter to be appropriated shall be holden in full and absolute dominion, of no superior whatever.

No lands shall be appropriated until purchased of the Indian native proprietors; nor shall any purchases be made of them but on behalf of the public, by authority of acts of the General assembly to be passed for every purchase specially.

The territories contained

within the charters erecting the colonies of Maryland, Pennsylvania, North & South Carolina, are hereby ceded & released and forever confirmed to the people of those ~~pre~~ colonies respectively with all the rights of ~~jurisdiction~~ and property, jurisdiction & and government and all other rights whatsoever ~~claimed~~ which might at any time heretofore have been claimed by this colony. The Western and Northern extent of this country shall in all other respects stand as ~~described~~ fixed by the Charter of

until by act of the Legislature ~~any new a territory or one or more territories shall be laid off Westward of the Alleghany mountains for the establishment of any new colony or colonies, which colony or colonies when established shall be free and independent of this & shall~~ shall be established on the same fundamental laws contained in this instrument & shall be free & independent of this colony and of all the world.

Descents shall go according to the laws of Gavelkind, save only that females shall have equal rights with males.

within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, & forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government and all other rights whatsoever which might at any time heretofore have been claimed by this colony. The Western and Northern extent of this country shall in all other respects stand as fixed by the charter of

until by act of the Legislature one or more territories shall be laid off Westward of the Alleghany mountains for new colonies, which colonies shall be established on the same fundamental laws contained in this instrument, and shall be free and independent of this colony and of all the world.

Descents shall go according to the laws Gavelkind, save only that females shall have equal rights with males.

No person hereafter coming  
 into this country  
**Slaves** shall be held in  
 slavery under any pretext  
 whatever.

All persons who by their  
 own oath or affirmation or by  
**Naturaliza-** other testimony  
**tion** shall give satisfac-  
 tory proof to any court of  
 record in this colony that  
 they purpose to reside in the  
 same [7] years at the least and  
 who shall subscribe the fun-  
 damental laws shall be con-  
 sidered as residents & en-  
 titled to all the rights of a  
 persons natural born.

All persons shall have full  
 & free liberty of  
**Religion** religious opinion  
 nor shall any be compelled to  
 frequent or maintain any re-  
 ligious institution. ~~But this  
 shall not be held to justify  
 any seditious preaching or  
 conversation against the au-  
 thority of the civil govern-  
 ment.~~

No freeman shall be de-  
 barred the use of  
**Arms** arms [within his  
 own lands or tenements].

There shall be no standing  
**Standing** army but in time  
**Army** of actual war.

Printing presses shall be

No person hereafter coming  
 into this county  
 shall be held with-  
**Slaves** in the same in slavery under  
 any pretext whatever.

All persons who by their  
 own oath or affirmation, or by  
 other testimony **Naturaliza-**  
 shall give satisfac- **tion**  
 tory proof to any court of  
 record in this colony that they  
 propose to reside in the same  
 [7] years at the least and who  
 shall subscribe the fundamen-  
 tal laws, shall be considered  
 as residents and entitled to all  
 the rights of persons natural  
 born.

All persons shall have full  
 and free liberty of  
 religious opinion; **Religion**  
 nor shall any be compelled to  
 frequent or maintain any re-  
 ligious institution.

No freeman shall be de-  
 barred the use of  
 arms [within his  
**Arms** own lands].

There shall be no standing  
 army but in time **Standing**  
 of actual war. **Armies**

Printing presses shall be

**Free Press** free, except so  
[*part lacking*] of  
private injury they may give  
cause [*part lacking*] action.

All forfeitures heretofore  
**Forfeitures** going to the king  
shall go to the  
state, save only such as the  
legislature may hereafter  
abolish.

The royal claim to Wrecks,  
**Wrecks, &c.** Waifs, Strays,  
Treasure-trove,  
royal mines, royal fish, royal  
birds are declared to have  
been usurpations on the com-  
mon right.

No salaries or perquisites  
**Salaries, &c.** shall be given to  
any officer but by  
act of the legislature. No salar-  
ies shall be given to the Ad-  
ministrator, members of the  
~~house of Representatives,~~  
Legislative houses, judges of  
the court of appeals, ~~justices~~  
~~of the peace,~~ members of the  
~~privy council,~~ judges of the  
County courts or other infe-  
rior jurisdictions, Privy coun-  
sellors, or delegates to the  
American Congress. But the  
reasonable expences of the Ad-  
ministrator, members of the  
house of Representatives,  
judges of the court of Ap-  
peals, ~~members of Privy coun-~~

free, except so far  
as by commission **Free Press**  
of private injury cause may  
be given of private action.

All Forfeitures heretofore  
going to the king,  
**Forfeitures** shall go to the  
state; save only such as the  
legislature may hereafter  
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The royal claim to Wrecks,  
waifs, strays, treas-  
**Wrecks** ure-trove, royal  
mines, royal fish, royal birds,  
are declared to have been  
usurpations on common right.

No Salaries or Perquisites  
shall be given to  
any officer but by **Salaries**  
some future act of the legisla-  
ture. No salaries shall be  
given to the Administrator,  
members of the legislative  
houses, judges of the court of  
Appeals, judges of the County  
courts, or other inferior juris-  
dictions, Privy counsellors, or  
Delegates to the American  
Congress: but the reasonable  
expences of the Administra-  
tor, members of the house of  
representatives, judges of the  
court of Appeals, Privy coun-  
sellors, & Delegates for sub-  
sistence while acting in the  
duties of their office, may be

sellors & Delegates for subsistence while acting in the duties of their office may ~~shall~~ be borne by the public if the Legislature shall so direct.

The Qualifications of all ~~Qualificns of officers~~ officers Civil, military Executive Judicial Civil, military & Ecclesiastical shall be an oath of fidelity to the ~~goveram~~ state and the having given no bribe to obtain their office.

None of these fundamental laws & principles of government shall be repealed or ~~alt~~ or altered but by the personal consent of the people ~~to be on~~ summons to meet in their respective counties on one & the same day by an act of Legislature to be passed for every special occasion: and if in such county meetings the people of two thirds of the counties shall give their suffrage for any particular alteration or repeal referred to them by the said act, the same shall be accordingly repealed or altered ~~or repealed,~~ and such repeal or alteration

borne by the public, if the legislature shall so direct.

No person shall be capable of acting in any of- ~~Qualifica- tions~~ fice Civil, Military [or Ecclesiastical] ~~The Quali- fications of all not otherwise directed, shall be an oath of fidelity to state and the hav- ing given no bribe to obtain their office who shall have given any bribe to obtain such office, or who shall not previously take an oath of fidelity to the state.~~

None of these fundamental laws and principles of government shall be repealed or altered, but by the personal consent of the people on summons to meet in their respective counties on one and the same day by an act of Legislature to be passed for every special occasion: and if in such county meetings the people of two thirds of the counties shall give their suffrage for any particular alteration or repeal referred to them by the said act, the same shall be accordingly repealed or altered, and such repeal or alteration shall take it's place

shall take it's place among these fundamental [*part lacking*] the same footing with them in lieu of the article re- [*part lacking*].

The laws heretofore in force in this colony shall remain still in force except so far as they are altered by the foregoing fundamental laws, or so far as they may be hereafter altered by acts of the legislature.

among these fundamentals and stand on the same footing with them, in lieu of the article repealed or altered.

The laws heretofore in force in this colony shall remain in force, except so far as they are altered by the foregoing fundamental laws, or so far as they may be hereafter altered by acts of the Legislature.

It is proposed that the above bill, after correction by the Convention, shall be referred by them to the people to be assembled in their respective counties: and that the suffrages of two third of the counties shall be requisite to establish it.

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REPORT ON CEDARS CARTEL<sup>1</sup>

c. c.

[June 17, 1776.]

The Committee to whom were re-committed the Cartel between Brigadier General Arnold & captain Forster for the exchange of prisoners & the several papers relating thereto have had the same under

<sup>1</sup> On June 16th Congress referred this matter to Jefferson, Braxton, Paine, and Middleton. They made this report on June 17th, when it was read and laid on the table. On June 24th it was recommitted, and again reported to the Congress on July 10th, when it passed in a much modified form. Cf. *Journals of Congress*, ii., 256.

their consideration and agreed to the following report.

Your committee having proceeded to make enquiry into the facts relating to the agreement entered into at St. Anne's between Brigadier General Arnold & Capt. Forster, find a part of them well authenticated and others not, yet being apprehensive that silence on the part of Congress may be construed by some into a ratification of the said agreement they have thought it best to state the same as they appear at present, with such resolutions as they will justify if found true, reserving final decision till the whole truth shall be accurately enquired into & transmitted to Congress.

Your Committee on the best information they have been able to obtain find:

That on the 24th day of May last a party of the enemy consisting as is said of about 600 men under the command of capt. Forster attacked a post at the Cedars held by a garrison of 350 Con[*tinental for*]ces, then under the command of Major Butterfield.

That the said post was secured by a *Stoc[kade of wood?]* to cover the garrison from the enemy's musquetry, that there were mounted therein two field pieces, & that the enemy had no cannon.

That the said garrison had ammunition & provisions sufficient to have lasted them ten days, that they had reason to expect *immediate* reinforcements *in a few days,*<sup>1</sup> which on a requisition from themselves, was actually on it's way from Montreal, and moreover were so near the main body of the army

<sup>1</sup> Words in italics not in Jefferson's handwriting.

that they could not doubt being joined by detachments from thence sufficient to oblige the enemy to retire.

That the enemy for two days kept up only a scattering fire, by which not a single man of the garrison was killed or wounded, & that on the third day the garrison surrendered themselves prisoners of war having capitulated for the preservation of their own baggage from plunder, & *that their persons should not be deliver'd into the hands of the savages.*<sup>1</sup>

That the enemy broke the capitulation utterly & immediately on their part. Plundering the garrison of their baggage & stripping the cloathes from their backs, & *Delivering the Prisoners into the hands of the Savages.*<sup>1</sup>

That they then proceeded against the reinforcement which was on it's way consisting of about 150 men under the command of Major Sherburne, that Major Sherburne & his party engaged & fought them with bravery; but being at length surrounded by numbers greatly superior and informed that the fort and garrison were already in the hands of the enemy, they were obliged to surrender themselves prisoners of war also; but whether on capitulation or not your committee are not informed.

That after they had put themselves into the hands of the enemy, the said enemy murdered two of them, butchering the one with tomahawks & drowning the other; and left divers others exposed on an island naked and perishing with cold & famine.

That by this time Brigadier General Arnold who

<sup>1</sup> Words in italics not in Jefferson's handwriting.

had been detached by Major General Thomas to relieve the fort at the Cedars, approached & was making dispositions to attack the enemy.

That capt. Forster, thereupon *notified*<sup>1</sup> General Arnold, that if he attacked him, the prisoners, then 500 in number, would every man of them be put to death; & proposing at the same time an exchange of [torn out.]

Arnold was extremely averse to entering on any agreement of that kind, & was at length induced to do it by no other motive than that of saving the prisoners from cruel & inhuman death, threatened in such terms as left no doubt it was to be perpetrated.

That agreement was thereupon entered into between Brigadr. Genl. Arnold & capt. Forster, bearing date at St. Anne's, on the 27th day of May, whereby the *sd* Forster stipulated that he would deliver up all the said prisoners except *such as were*<sup>1</sup> Canadians, to Genl. Arnold; who agreed on the other part that so many of equal rank & condition should be returned to the enemy of those taken by our arms on former occasions. That the prisoners so stipulated to be given up to the enemy were not in the possession of Genl. Arnold, nor under his direction but were at that time distributed through various parts of the continent under the orders of this house.

That capt. Forster in violation of this agreement also detained a considerable number of the prisoners he had thus stipulated to deliver, & sent them into the Indian countries for purposes unknown.

<sup>1</sup> Words in italics not in Jefferson's handwriting.

Whereupon your Committee have come to the following resolutions.

Resolved that it is the opinion of this Committee that plundering the baggage of the garrison at the Cedars, stripping them of their clothes, & *deliverg the Prisonrs into ye hands of the Savages*<sup>1</sup> was a breach of the capitulation on the part of the enemy, for which satisfaction ought to be demanded. Agreed

Resolved that the murder of two of the prisoners of war was a gross and barbarous violation of the laws of nature & nations, for which satisfaction should be made by the enemy by delivering into our hands either captain Forster or the individuals concerned in committing the murder. Agreed

Resolved that the agreement entered into at St. Anne's was a mere sponsion on the part of Brigadr. Genl. Arnold, he not being invested with the powers for the absolute disposal of the Continental prisoners in general; and that therefore it is subject to be ratified or annulled at the discretion of this house, the sole representative of the United *Colonies*.<sup>2</sup> Agreed

Resolved that it is the opinion of this committee that Major Sherburne & his party having fought as men should do, so much of the said sponsion as relates to their exchange should be ratified & confirmed by this house; & that an equal number of captives from the enemy, of the same rank & con-

<sup>1</sup> Words in italics not in Jefferson's handwriting.

<sup>2</sup> Here Jefferson had written "States of America" which has been stricken out by another hand and "Colonies" written in its place.

dition should be restored to them as stipulated by the said sponson.

Resolved that [*torn out*] opinion of this com. [*torn out*] the said sponson as relates to the exchange of Major Butterfield & the garrison surrendering with him, ought not to be ratified: because we should redeem none but those who will fight, and because too the said sponson excepted the Canadian prisoners, & we will in no case admit a distinction of countries among men fighting in the same cause.

Resolved therefore that the said Major Butterfield & garrison should still be considered as prisoners of war, appertaining to the enemy; but as by the actual murder of two of the prisoners & the threats at St. Anne's to put the others to death, the enemy are found capable of destroying their captives, the said prisoners ought not to be put into their hands, but should be permitted to remain in their own country; that in the meantime they shall not bear arms nor otherwise act against the enemy, but are bound to demean themselves in all things in the manner of prisoners of war enlarged on their parole, & to hold themselves subject to be recalled by the enemy whenever proper security shall have been given that their lives shall be safe.

Resolved that previous to the delivery of the prisoners to be returned in lieu of majr. Sherburne & those captivated with him, satisfaction be required from the enemy for the murder of the two prisoners by delivering into our hands capt. Forster, or the individuals concerned in perpetrating that horrid act;

and likewise restitution for the plunder at the Cedars taken contrary to the faith of the capitulation; and that till such satisfaction & restitution be made, the said prisoners be not delivered.

Resolved that it is the opinion of this committee that if the enemy shall put to death, torture, or otherwise ill treat any of the hostages in their hands, or of the Canadian, or other prisoners captivated by them in the service of the United colonies, recourse must be had to retaliation as the sole means of stopping the progress of human butchery, & that for that purpose punishments of the same kind & degree be inflicted on an equal number of their subjects taken by us, till they shall be taught due respect to the violated rights of nations.

Resolved that it is the opinion of this committee, that a copy of this report be transmitted to the Commander in chief of the Continental forces in Canada, to be by him sent to the British commander there; and that he moreover make further & diligent [*torn out*] into the facts therein stated, & such others as may [*torn out*] same subject & rel [*torn out*] same duly authenticated [*torn out*] possible despatch [*torn out*] for their final decision, & that in the meantime the prisoners delivered up by the enemy abstain from bearing arms or otherwise acting against them.<sup>1</sup>

<sup>1</sup> Endorsed: "Report of the Comte. on the capitulation entered into between genl Arnold & capt. Forster. No. 1 brot. in June 17, 1776, read & ordered to lie on the table, recommitted June 24, 1776, passed July 10."

[June 17, 1776.]

The Committee to whom the report from the Committee of the whole house was recommitted, have had the same under their consideration & agreed to the following resolutions.

Resolved that it is the opinion of this Committee that an experienced general be immediately sent into Canada, with power to appoint a deputy adjutant general, a Deputy Quarter-master general, and such other officers as he shall find necessary for the good of the service, and to fill up vacancies in the army in Canada, and notify the same to Congress for their approbation. That he also have power to suspend any officer there till the pleasure of Congress be known, he giving his reasons for so doing in the orders of suspension & transmitting to Congress as soon as possible the charge against such officer. Provided that this power of suspending officers &

<sup>1</sup> On May 23, 1776, Congress appointed Harrison, R. H. Lee, J. Adams, J. Wilson, and Edward Rutledge a committee to confer with Washington, Gates, and Mifflin, "upon the most speedy and effectual means for supporting the American cause in Canada." They reported to Congress the following day, but were directed to confer further with the generals. They reported again May 29th, and on May 30th Congress resolved itself into a committee of the whole to consider the report. It was considered from time to time, a few resolutions being reported, till June 15th, when the committee of the whole reported the results of their deliberations to Congress. On the same day Congress named Jefferson, Braxton, Paine, and Middleton a committee "to digest and arrange the several resolutions agreed to in the committee of the whole." They presented the following report (which is in Jefferson's handwriting) on June 17th, and with some changes it was adopted the same day. Cf. *Journals of Congress*, June 17, 1776, and Ford's *Writings of Washington*, iv., 109.

filling up vacancies shall not be continued beyond the first day of October next.

Resolved that no officer suttle or sell to the soldiers on penalty of being fined one month's pay & dismissed the service with infamy on conviction before a court martial.

Resolved that the baggage of Officers and soldiers be regulated conformably to the rules in the British armies.

Resolved that all sales of arms, ammunition, cloathing and accoutrements made by soldiers be void.

Resolved that no troops employed in Canada, be disbanded there: that all soldiers in Canada ordered to be disbanded, or whose times of enlistment being expired shall refuse to re-enlist, shall be sent under proper officers to Ticonderoga or such other post on the lakes as the General shall direct, where they shall be mustered, and the arms, accoutrements, blankets, & utensils, which they may have belonging to the public shall be delivered up and deposited in the public store.

Resolved that Doctor Potts be employed in the Continenal service in the Canadian department or at Lake George as the General shall think best: & that his pay be           dollars per month. But this appointment is not intended to interfere with the office of Doctr. Stringer.<sup>1</sup>

Resolved that a Deputy Muster Master General be immediately sent into Canada.

Resolved that the local Commissaries and Quarter

<sup>1</sup> This paragraph is stricken out.

masters appointed at the different garrisons or posts shall make weekly returns to the General of the provisions & stores in the places at which they may happen to be stationed.

Resolved that the General to be sent to Canada be directed to view Point au fer and to order a fortress to be erected there if he should think proper.

Resolved that the General officers, Deputy Quarter master general, Local commissaries, Paymaster in Canada, and all other persons there who have received public monies be ordered without delay to render and settle their accounts; on which settlement no General officer shall receive pay as Colonel of a regiment, nor Field officer as Capt. of Company.

Resolved that Commissioners be appointed to settle in Canada the debts due on Certificates given by officers to the Canadians for carriages and other services. & to settle also the accounts for such goods as may have been seized through necessity for the use of the army to be by them finally discharged & that it be given in instruction to them to attend particularly to the case of Mr. Bernard: and also that in settling the certified debts they state carefully the names of all those who have given certificates, the nature of the service, & the time when performed; to return the whole when settled & stated to the board of treasury to be by them finally examined and discharged.<sup>1</sup>

Resolved that the Deputy Paymaster General be directed to transmit to Congress copies of the particulars before mentioned on the original certificates,

<sup>1</sup> This and the succeeding paragraphs are stricken out.

with the report & remarks of the commissioners thereon.

Resolved that General Schuyler be directed to make a good waggon road from Fort Edward to Cheshire's; to clear Wood creek & to construct a Lock at Skenesborough, so as to have a continued navigation for batteaus from Cheshires into Lake Champlain; to erect a grand magazine at Cheshire's & to secure it by a stockaded fort; to erect a saw mill on Schoon creek; to order skilful persons to survey and take the level of the water's falling into Hudson's river near Fort Edward & those which fall into Wood creek & interlock with the former, particularly Jones's run & Half-way brook, the latter of which is said to discharge itself into Wood creek at Cheshire's. That he be directed to have a greater number of boats and hands kept on Hudson's river, at the different stations between Albany & Fort Edward in order to save the expence of waggonage. That he be empowered to appoint proper officers to superintend the carriage by land and transportation by water of provisions, military stores and other things into Canada, that neither waste nor delay may arise therein. That he build with all expedition as many gallies and armed vessels as in the opinion of himself & the General officer to be sent into Canada shall be sufficient to make us indisputably masters of the lakes Champlain & George: for which purpose it is the opinion of this Committee there should be sent to him a master carpenter acquainted with the construction of the gallies used on the Delaware, who should take with him other carpenters, & models also

if requisite. And that it be submitted to General Schuyler whether a temporary fortification or entrenched camp either at Crown point or opposite to Ticonderoga may be necessary.

Resolved that the Commissary general be directed to supply the army in Canada with provisions, and to appoint proper officers under him to receive and issue the same at the several posts taking the directions of the General; that he be empowered to contract with proper persons in Canada for supplying the army there with fresh provisions; that he be directed to purchase a quantity of Albany peas, and to furnish as much biscuit as may be necessary; and that his pay be raised to one hundred & fifty dollars per month.

Resolved that the Quarter-master General be directed to provide & forward such tents, cloathing and untensils as are wanted for the army in Canada, subject to the direction of the Commander in chief.

Resolved that General Washington be directed to send into Canada such small brass or iron field pieces as he can spare: that he be instructed to issue orders that no certificates be given in future by any but Brigadiers, Quarter-masters & their deputies, or a field officer on a march or officer commanding at a detached post.

Resolved that General Washington be directed to order an enquiry to be made into the conduct of the officers heretofore employed in the Canada department; that the said enquiry be made at such times and places as in his judgment shall be most likely to do justice as well to the public

Referr'd to  
18th June

as to the individuals; & that the result of the said enquiry together with the testimonies upon the subject be transmitted to Congress. That moreover all officers accused of cowardice, plundering, embezzlement of public monies & other misdemeanors be immediately brought to trial, and whereas Congress is informed that an opinion has prevailed that officers resigning their commissions are not subject to trial by a Court martial for offences committed previous to such resignation, whereby some have evaded the punishments to which they were liable, it is hereby declared that such opinion is not just.

Resolved that it is the opinion of this Committee that Lieutt. Colonel Burbeck be dismissed from the Continental service for disobedience of orders.<sup>1</sup>

Resolved that it is the opinion of this Committee that General Washington be authorized to fill up vacancies in the army by issuing Commissions to such officers under the rank of field officers as he shall think proper to supply such vacancies; he making a monthly return to Congress of such appointments which, unless disapproved of by Congress on such return, shall stand confirmed; and that blank commissions be sent to the General for that purpose.

Resolved that the pay of such of the soldiers at New York as have been enlisted at five dollars per month be raised to six dollars and two thirds per month.

Resolved that letters be written to the Convention of New Postpon'd

<sup>1</sup> This and the succeeding three paragraphs are stricken out.

Resolved that a bounty of Ten dollars be given to every non-commissioned officer and soldier who will enlist to serve for the term of three years.

**Agreed.** Resolved that letters be written to the Conventions of New Jersey & New York and to the Assembly of Connecticut recommending them to authorize the Commander in chief in the colony of New York, to call to the assistance of that colony (when necessity shall require it) such of the militia of those colonies as may be necessary; and to afford him such other assistance as the situation of affairs may require. And that it be further recommended to the Convention of New York to empower to said Commander in Chief to impress carriages and water craft when necessary for the public service, and also to remove ships and other vessels in Hudson's and in the East rivers for the purpose of securing them from the enemy.

Resolved that General Washington be permitted to employ the Indians whom he may take into the service of the United colonies pursuant to a resolution of Congress of the 25 May last in any place where he shall judge they will be most useful, and that he be authorized to offer them a reward of one hundred dollars for every commissioned officer, & of thirty dollars for every private soldier of the King's troops that they shall take prisoners in the Indian Country or on the frontiers of these colonies.

TO WILLIAM FLEMING <sup>1</sup>

PHILADELPHIA, July 1, 1776.

DEAR FLEMING,—

Yours of 22d June came to hand this morning and gratified me much, as this with your former contains interesting intelligence.

Our affairs in Canada go still retrograde, but I hope they are now nearly at their worst. The fatal sources of these misfortunes have been want of hard money with which to procure provisions, the ravages of the small pox with which one half of our army is still down, and an unlucky choice of some officers. By our last letters, Genl. Sullivan was retired as far as Isle au noix with his dispirited army and Burgoyne pursuing him with one of double or treble his numbers. It gives much concern that he had determined to make a stand there as it exposes to great danger of losing him and his army; and it was the universal sense of his officers that he ought to retire. Gen. Schuyler has sent him positive orders to retire to Crown point but whether they will reach him in time enough to withdraw him from danger is questionable. Here it seems to be the opinion of all the General officers that an effectual stand may be made and the enemy not only prevented access into New York, but by preserving a superiority on the lakes we may renew our attacks on them to advantage as soon as our army is recovered from the small pox and recruited. But recruits, tho long ordered, are very difficult to be procured on account of that dreadful disorder.

<sup>1</sup> From the *Southern Literary Messenger*, iii., 306.

The Conspiracy at New York is not yet thoroughly developed, nor has any thing transpired, the whole being kept secret till the whole is got through. One fact is known of necessity, that one of the General's lifeguards being thoroughly convicted was to be shot last Saturday. General Howe with some ships (we know not how many) is arrived at the Hook, and, as is said, has landed some horse on the Jersey shore. The famous major Rogers is in custody on violent suspicion of being concerned in the conspiracy.

I am glad to hear of the Highlanders carried into Virginia. It does not appear certainly how many of these people we have but I imagine at least six or eight hundred. Each effort should be made to keep up the spirits of the people the succeeding three months; which in the Universal opinion will be the only ones in which our trial can be severe.

I wish you had depended on yourself rather than others for giving me an account of the late nomination of delegates. I have no other state of it but the number of votes for each person. The omission of Harrison and Braxton and my being next to the lag give me some alarm. It is a painful situation to be 300 miles from one's country, and thereby opened to secret assassination without a possibility of self-defence. I am willing to hope nothing of this kind has been done in my case, but yet I cannot be easy. If any doubts has arisen as to me, my country will have my political creed in the form of a "Declaration" &c. which I was lately directed to draw. This will give decisive proof that my own sentiment concurred with the vote they in-

structed me to give. Had the post been to go a day later we might have been at liberty to communicate this whole matter.

July 2. I have kept open my letter till this morning but nothing more new. Adieu.

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DECLARATION OF INDEPENDENCE <sup>1</sup>

July 4, 1776.

FIRST DRAFT	REPORTED DRAFT	ENGROSSED COPY
A Declaration by the Representatives of the United States of America in general Congress assembled.	A Declaration by the Representatives of the UNITED STATES OF AMERICA in General Congress assembled.	In Congress, July 4, 1776. The Unanimous Declaration of the thirteen United States of America.

<sup>1</sup> The text in the first column is from a copy in the handwriting of John Adams, now in the Adams papers at Quincy, for which I am indebted to the courtesy of Mr. Charles Francis Adams and Mr. Theodore F. Dwight. From a comparison of it with the facsimile of Jefferson's rough draft, it is evident that it represents the first phrasing of the paper. The text in the second column is approximately that reported by the committee to Congress, and is taken from Jefferson's rough draft reproduced herein in facsimile from the original in the Department of State. The text in the third column is from the engrossed copy of the Declaration of Independence, also in the Department of State. Another MSS. copy in Jefferson's writing, slightly altered in wording, was inserted by him in his Autobiography, and is printed, *ante*, 1, 35. This is in the Department of State, as is likewise a copy in his handwriting made for Madison in 1783, which is reproduced in facsimile in the *Madison Papers*, vol. iii. Between July 4th-10th, Jefferson made copies of the Declaration, indicating his phrasing and that adopted by the Congress, and sent them to R. H. Lee, Wythe, Page, Pendleton, and Mazzei, and probably others. Lee gave his copy to the American Philosophical Society, where it now is. Those of Wythe, Page, and Pendleton have never been heard of. Mazzei

When in the Course of human Events it becomes necessary for a People to advance from that Subordination, in which they have hitherto remained and to assume among the Powers of the Earth, the equal and independent Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the opinions of Mankind requires that they should declare the Causes, which impell them to the Change.

We hold these Truths to be self evident; that all Men are created equal and independent; that from that equal Creation they derive Rights

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident that all men are created equal; that they are endowed by their creator with inherent & inalienable

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable

gave his to the Countess de Tessie of France, and it has not been traced. A copy in Jefferson's writing is now owned by Dr. Thomas Addis Emmett, and a fragment of another is in the possession of Mrs. Washburn of Boston. Thus at least five copies and a fragment of a sixth are still extant.—*Cf. ante*, vol. i., 35.

A Declaration by the Representatives of the UNITED STATES OF AMERICA, in General Congress assembled.

When in the course of human events it becomes necessary for <sup>one</sup> people to dissolve the political bands which have connected them with another, and to ~~assume a new form of government, that they have a right to~~ <sup>as</sup> assume among the powers of the earth the <sup>separate and equal</sup> station to which the laws of nature & of nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to ~~the~~ <sup>the</sup> separation.

We hold these truths to be <sup>self-evident</sup>, ~~that~~ <sup>and</sup> that all men are created equal & independent; that <sup>they are endowed by their creator with</sup> ~~from that equal creation they derive~~ <sup>certain</sup> inalienable rights, that <sup>these</sup> are ~~the~~ <sup>rights</sup> life, liberty, & the pursuit of happiness; that to secure these <sup>rights</sup>, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government ~~shall~~ becomes destructive of these ends, it is the right of the people to alter or to abolish it, & to institute new government, laying its foundation on such principles & organising its powers in such form, as to them shall seem most likely to effect their safety & happiness. prudence indeed will dictate that governments long established should not be changed for light & transient causes: and accordingly all experience hath shewn that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed but when a long train of abuses & usurpations [begun at a distinguished period, &] pursuing invariably the same object, evinces a design to ~~reduce~~ <sup>Dr. Franklin handwriting</sup> ~~them to~~ <sup>in their absolute Despotism,</sup> ~~abolish~~ <sup>it is their right, it is their duty, to throw off such</sup> government & to provide new guards for their future security such has been the patient sufferance of these colonies, & such is now the necessity which constrains them to <sup>alter</sup> [expunge] their former systems of government the history of <sup>the</sup> present <sup>king of Great Britain</sup> ~~is~~ <sup>repeated</sup> a history of [unmitigated] injuries and usurpations, [among which, <sup>appears no solitary fact</sup> ~~there is not one~~] to contradict the uniform tenor of the rest, <sup>but all</sup> <sup>having</sup> [all of which] <sup>in</sup> direct object the establishment of an absolute tyranny over these states to prove this let facts be submitted to a candid world. [for the truth of which we pledge a faith yet unshaken by falsehood]

inherent and unalienable; among which are the Preservation of Life, and Liberty, and the Pursuit of Happiness; that to secure these Ends, Governments are instituted among Men, deriving their just Powers from the Consent of the governed; that whenever any form of Government, shall become destructive of these ends, it is the Right of the People to alter, or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence indeed will dictate that Governments long established should not change for light and

rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their happiness. Prudence indeed will dictate that governments long established should not be changed for light and transient causes: and accordingly all experience hath shown that

rights, that among these are Life, Liberty, and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. — That whenever any Form of Government becomes destructive of these ends, it is the right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accord-

transient Causes; and accordingly all Experience hath shown, that Mankind are more disposed to Suffer, while Evils are Sufferable, than to right themselves, by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, begun at a distinguish'd Period, and pursuing invariably the same object, evinces a Design to reduce them under absolute Power, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of these Colonies; and such is now the Necessity, which constrains them to expunge their former

mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations begun at a distinguished period and pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to expunge their former systems of government. The history of the present king of Great Britain is

ingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great



Systems of Government. The History of his present Majesty, is a History of unremitting Injuries and Usurpations, among which no one Fact stands Single or Solitary to contradict the uniform Tenor of the rest, all of which have in direct object, the Establishment of an absolute Tyranny over these States. To prove this, let Facts be Submitted to a candid World, for the Truth of which We pledge a Faith, as yet unsullied by falsehood.

He has refused his Assent to Laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing Importance, unless suspended in

a history of unremitting injuries and usurpations, among which appears no solitary fact to contradict the uniform tenor of the rest; but all having in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world, for the truth of which we pledge a faith yet unsullied by falsehood.

He has refused his assent to laws the most wholesome and necessary for the public good:

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their

Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in

their operation, till his Assent should be obtained; and when so suspended he has neglected utterly to attend to them.

He has refused to pass other Laws for the accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them and formidable to Tyrants only.

He has dissolved Representative Houses, repeatedly, and continually,

operation till his assent should be obtained, and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people unless those people would relinquish the right of representation, in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

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He has dissolved Representative Houses repeatedly for opposing with

for opposing with  
manly Firmness his  
Invasions on the  
Rights of the  
People.

He has refused,  
for a long Space of  
Time after such  
Dissolutions, to  
cause others to be  
elected, whereby  
the legislative  
Powers, incapable  
of annihilation,  
have returned  
to the People  
at large for their  
Exercise, the state  
remaining in the  
mean Time, ex-  
posed to all the  
Dangers of Inva-  
sion, from without,  
and Convulsions  
within—

He has endeav-  
oured to prevent  
the Population of  
these States; for  
that purpose ob-  
structing the Laws  
for naturalization  
of foreigners; refus-  
ing to pass others  
to encourage their  
Migrations hither;  
and raising the

for opposing with  
manly firmness his  
invasions on the  
right of the people:

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ple at large for their  
exercise, the state  
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mean time exposed  
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vulsions within:

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pose obstructing  
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ple.

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have returned to  
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ers to encourage  
their migrations  
hither, and raising

Conditions of new Appropriations of Lands.

He has suffered the Administration of Justice totally to cease in some of these Colonies, refusing his Assent to Laws for establishing Judiciary Powers.

He has made our Judges dependent on his Will alone, for the Tenure of their offices, and amount of their Salaries:

He has created a Multitude of new offices by a Self-assumed Power, and sent hither swarms of officers to harass our People and eat out their Substance.

He has kept among us, in Times of Peace, Standing Armies and Ships of War.

He has affected

conditions of new appropriations of lands:

He has suffered the administration of justice totally to cease in some of these states, refusing his assent to laws for establishing judiciary powers:

He has made judges dependant on his will alone, for the tenure of their offices and the amount and payment of their salaries:

He has erected a multitude of new offices by a self assumed power and sent hither swarms of officers to harass our people and eat out their substance:

He has kept among us in times of peace, standing armies and ships of war without the consent of our legislatures:

He has affected

the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected

to render the military, independent of, and Superiour to, the civil Power.

He has combined with others to subject us to a Jurisdiction foreign to our Constitution and unacknowledged by our Laws; giving his Assent to their pretended Acts of legislation; for quartering large Bodies of armed Troops among us; for protecting them by a Mock Tryal from Punishment for any Murders they should commit on the Inhabitants of these States; for cutting off our Tradewith all Parts of the World; for imposing Taxes on us without our Consent; for depriving Us of the Benefits of Trial by Jury; for transporting us beyond Seas to be tried for pretended offenses,

to render the military, independent of and superior to the civil power:

He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws, giving his assent to their acts of pretended legislation, for quartering large bodies of armed troops among us; for protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these states; for cutting off our trade with all parts of the world; for imposing taxes on us without our consent; for depriving us in many cases of the benefits of trial by jury; for transporting us beyond seas to be tried for pretended offences;

to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: —For quartering large bodies of armed troops among us: — For protecting them, by a mock Trial from punishment for any Murders which they should commit on the Inhabitants of these States:—For cutting off our trade with all parts of the world: — For imposing Taxes on us without our Consent:—For depriving us in many cases of the benefits of Trial by jury:—For transporting us beyond

for taking away our Charters, and altering fundamentally the Forms of our Government; for suspending our own Legislatures and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies; for taking away our charters, abolishing our most valuable laws, and fundamentally the forms of our governments, for suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever:

Seas to be tried for pretended offences: — For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:— For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments: — For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, withdrawing his Governors, and

He has abdicated government here, withdrawing his governors, and

He has abdicated Government here by declaring us out of his Protection,



declaring us, out of his Allegiance and Protection.

He has plundered our Seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our People.

He is at this Time transporting large Armies of foreign Mercenaries to complete the Works of death, Desolation, and Tyranny, already begun with Circumstances of Cruelty and Perfidy unworthy the Head of a civilized Nation.

He has endeavoured to bring on the Inhabitants of our Frontiers, the merciless Indian Savages, whose known Rule of Warfare is an undistinguished Destruction of all Ages, Sexes, and

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declaring us out of his allegiance and protection.

He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people:

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation:

He has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and

and waging war against us:—

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, totally unworthy the Head of a civilized nation.

He has excited domestic insurrection among us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished

Conditions of existence.

He has incited treasonable Insurrections of our Fellow Citizens, with the allurements of Forfeiture and Confiscation of our Property.

He has waged cruel War against human Nature itself, violating its most sacred Rights of Life and Liberty in the Persons of a distant People who never offended him, captivating and carrying them into Slavery in another Hemisphere, or to incur miserable Death, in

conditions of existence.

He has incited treasonable insurrections of our fellow-citizens, with the allurements of forfeiture and confiscation of our property:

He has constrained others, taken captive on the high seas to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands:

He has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of distant people, who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their

destruction of all ages, sexes and conditions.

He has constrained our fellow citizens taken Captive on the high Seas, to bear arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

their Transportation thither. This piratical Warfare, the opprobrium of infidel Powers, is the Warfare of the Christian King of Great Britain.

He has prostituted his Negative for Suppressing every legislative Attempt to prohibit or to restrain an execrable Commerce, determined to keep open a Market where Men should be bought and sold, and that this assemblage of Horrors might want no Fact of distinguished Die

He is now exciting those very People to rise in Arms among us, and to purchase their Liberty of which he has deprived them, by murdering the People upon whom he also obtruded them: thus paying off, former

transportation thither. This piratical warfare, the opprobrium of infidel powers, is the warfare of the Christian king of Great Britain. Determined to keep open a market where Men should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce: and that this assemblage of horrors might want no fact of distinguished dye, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them by murdering the people upon whom he also obtruded them; thus paying off former crime committed against

Crimes committed against the Liberties of one People, with Crimes which he urges them to commit against the Lives of another.

In every stage of these oppressions we have petitioned for redress, in the most humble Terms; our repeated Petitions have been answered by repeated Injury. A Prince, whose Character is thus marked by every Act which may define a Tyrant, is unfit to be the Ruler of a People who mean to be free.— future ages will scarce believe, that the Hardiness of one Man, adventured, within the Short Compass of twelve years only, on so many Acts of Tyranny, without a Mask, over a People, fostered and fixed in the Principles of Liberty.

the liberties of one people, with crimes which he urges them to commit against the lives of another.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injuries. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a people who mean to be free. Future ages will scarce believe that the hardiness of one man adventured within the short compass of twelve years only, to build a foundation, so broad and undisguised for tyranny over a people fostered and fixed in the principles of freedom.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injuries.

A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

nor have we been wanting in attentions to our British brethren we have  
 warned them from time to time of attempts by their legislature to extend <sup>an unreasonable</sup> juris-  
 -diction over [these our states] we have reminded them of the circumstances of  
 our emigration & settlement here, [no one of which could warrant so strange a  
 pretension: that these were effected at the expence of our own blood & treasure,  
 unassisted by the wealth or the strength of Great Britain: that in constituting  
 indeed our several forms of government, we had adopted one common King, thereby  
 laying a foundation for perpetual league & amity with them: but that submission to their  
 parliament was no part of our constitution, nor ever in idea if history may be  
 credited: and] we <sup>have</sup> appealed to their native justice & magnanimity [as well as to] the ties  
 of our common kindred to disavow these usurpations which [were likely to] interrupt  
 our <sup>connection &</sup> correspondence & communication. They too have been deaf to the voice of justice &  
 of consanguinity. [When occasions <sup>we must therefore</sup> have been given them, by the regular course of  
 their laws, of removing from their councils the disturbers of our harmony, they  
 have by their free election re-established them in power. at this very time too they  
 are permitting their chief magistrate to send over not only soldiers of our common  
 blood, but Scotch & foreign mercenaries to invade & ~~despoil us~~ <sup>destroy us</sup> these facts D. Franklin  
 have given the last stab to agonizing affection, and manly spirit bids us to re-  
 -nounce for ever these unfeeling brethren we must endeavor to forget our former  
 love for them, and to hold them as we hold the rest of mankind, enemies in war,  
 in peace friends we might have been a free & a great people together, but a commu-  
 -nication of grandeur & of freedom it seems is below their dignity be it so since they  
 will have it: the road to <sup>to glory</sup> happiness, is open to us too, we will <sup>manly tread</sup> ~~obtain~~ it on  
<sup>apart from them</sup> ~~our own~~ <sup>we must therefore</sup> ~~own~~ <sup>and hold them as we hold of</sup> ~~the~~ <sup>rest of mankind</sup> ~~enemies~~ <sup>in war in peace friends</sup>  
 - ~~our~~ <sup>our</sup> ~~own~~ <sup>own</sup> ~~preparation~~ <sup>preparation</sup>!

We therefore the representatives of the United States of America in General Con-  
 -gress assembled, <sup>appealing to the righteous judge of the world for the redress of our wrongs</sup> do in the name & by authority of the good people of these <sup>colonial</sup> states  
 [reject and renounce all allegiance & subjection to the kings of Great Britain a different than reality in order  
 & all others who may hereafter claim by, through, or under them; we utterly  
 dissolve & break off all political connection which may ~~have~~ <sup>have</sup> heretofore sub-  
 -sisted between us & the people or parliament of Great Britain; and finally  
 we do assert and declare these colonies to be free and independant states  
 and that as free & independant states they shall ~~hereafter~~ <sup>full</sup> have power to levy  
 war conclude peace, contract alliances, establish commerce, & to do all other  
 acts and things which independant states may of right do and for the  
 support of this declaration] we mutually pledge to each other our lives, our  
 fortunes, & our sacred honour.

Nor have we been wanting in Attentions to our British Brethren. We have warned them from Time to Time of attempts of their Legislature to extend a Jurisdiction over these our States. We have reminded them of the Circumstances of our Emigration and Settlement here, no one of which could warrant so strange a Pretension. That these were effected at the expense of our own Blood and Treasure, unassisted by the Wealth or the Strength of Great Britain; that in constituting indeed, our Several Forms of Government, we had adopted one common King, thereby laying a Foundation for Perpetual League and Amity with them; but

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over these our states. We have reminded them of the circumstances of our emigration and settlement here, no one of which could warrant so strange a pretension: that these were effected at the expence of our own blood and treasure, unassisted by the wealth or strength of Great Britain: that in constituting indeed our several forms of government, we had adopted a common king, thereby laying a foundation for perpetual league and amity with them: but that submis-

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity and we have conjured them by the ties of our common kindred to disavow these usurpations which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must therefore acquiesce in the necessity which denounces our separation and

that Submission to their Parliament, was no Part of our Constitution, nor ever in Idea, if History may be credited; and we appealed to their Nature, Justice and Magnanimity, as well as to the Ties of our common Kindred to disavow these usurpations, which were likely to interrupt our Correspondence and Connection. They too have been deaf to the Voice of Justice and of Consanguinity, and when occasions have been given them by the regular Course of their Laws of removing from their Councils, the Disturbers of our Harmony, they have by their free Election, re-established them in Power. At this very Time too, they are permitting their Chief

submission to their parliament was no part of our constitution nor ever in idea, if history be credited; and we have appealed to their native justice and magnanimity, as well as to the ties of our common kindred, to disavow these usurpations which were likely to interrupt our connection and correspondence. They too have been deaf to the voice of justice and of consanguinity, and when occasions have been given them, by the regular course of their laws of removing from their councils the disturbers of our harmony, they have by their free elections re-established them in power. At this very time they are permitting their chief

magistrate to send hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

Magistrate to send over not only soldiers of our common Blood, but Scotch and foreign Mercenaries, to invade and deluge us in Blood. These Facts have given the last Stab to agonizing affection, and manly Spirit bids us to renounce forever these unfeeling Brethren. We must endeavour to forget our former Love for them, and to hold them, as we hold the rest of Mankind, enemies in War, in Peace Friends. We might have been a free and a great People together but a Communication of Grandeur and of Freedom it seems is below their Dignity. Be it so, since they will have it : The Road to Happiness and to Glory is open to us too; we will climb it,

over not only soldiers of our own blood, but Scotch and other foreign mercenaries, to invade and destroy us. These facts have given the last stab to agonizing affections, and manly spirit bids us to renounce ever these unfeeling brethren. We must endeavor to forget our former love for them, to hold them as we hold the rest of mankind enemies in war, in peace friends.

We might have been a free and a great people together; but a communication of grandeur and of freedom it seems, is below their dignity. Be it so, since they will have it: the road to happiness and to glory is open to us too; we will climb it apart from them, and

apart from them,  
and acquiesce in  
the Necessity  
which denounces  
our eternal Separation.

We therefore the Representatives of the United States of America, in General Congress assembled, do, in the Name, and by the Authority of the good People of these States, reject and renounce all Allegiance and Subjection to the Kings of Great Britain, and all others, who may hereafter claim by, through, or under them; We utterly dissolve and break off, all political Connection which may have heretofore subsisted between us and the People or Parliament of Great Britain, and finally we do assert and declare these Colonies to be free and in-

acquiesce in the  
necessity which  
denounces our eternal  
separation!

We therefore the representatives of the United States in General Congress assembled in the name and by authority of the good people of these states, reject and renounce all allegiance and subjection to the kings of Great Britain and all others who may hereafter claim by, through, or under them; we utterly dissolve all political connection which may heretofore have subsisted between us and the people or parliament of Great Britain, and finally we do assert and declare these colonies to be free and independant

We, therefore, the Representatives of the United States of America, in General Congress Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, that these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and

dependent States, and that as free and independent States they shall hereafter have Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which independent States may of Right do. And for the Support of this Declaration, we mutually pledge to each other our Lives, our Fortunes, and our Sacred Honour.

states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration we mutually pledge to each other our lives, our fortunes, and our sacred honour.

that as Free and Independent states, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.

And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

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TO RICHARD HENRY LEE <sup>1</sup>

PHILADELPHIA, July 8th, 1776.

DEAR SIR,—For news, I refer you to your brother, who writes on that head. I enclose a copy of the Declaration of Independence, as agreed to by the House, and also as originally framed: you will judge whether it is the better of worse for the critics. I shall return to Virginia after the 11th of August. I

<sup>1</sup> From Lee's *Life of R. H. Lee*, i., 275.

wish my successor may be certain to come before that time: in that case, I shall hope to see you, and not Wythe, in convention, that the business of government, which if of everlasting concern, may receive your aid. Adieu, and believe me to be your friend and servant.

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TO GEORGE WYTHE <sup>1</sup>

[July ? 1776.]

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society, depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislature and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness and attention; their minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men. To these ends they should hold estates for life in their offices, or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law.

For misbehavior, the grand inquest of the colony, the house of representatives, should impeach them before the governor and council, when they should have time and opportunity to make their defence; but if convicted, should be removed from their offi-

<sup>1</sup> A fragment from *The Balance*, ii., 146.

ces, and subjected to such other punishment as shall be thought proper.

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NOTES OF RULES FOR CONTINENTAL CONGRESS.<sup>1</sup> J.MSS

[July, 1776]

No person to read printed papers.

Every colony present, unless divided, to be counted.

No person to vote unless present when question put.

No person to walk while question putting.

Every person to sit while not speaking.

Orders of day at 12 o'clock.

Amendments first proposed to be first put.

Commit. or officers to be named before balot.

Call of the house every morn. absentees to be noted & ret'd to Convent.

No members to be absent without leave of house or written ord. of Conventn on pain of being ret'd to Conventn.

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TO EDMUND PENDLETON<sup>2</sup>

[July, 1776]

I am sorry the situation of my domestic affairs, renders it indispensably necessary that I should

<sup>1</sup> On June 10th, Rutledge, Jefferson, and Paine were appointed a committee to "draw up rules and regulations for the conduct of the house, during debate," and they reported a plan on July 10th, which after consideration and amendment was adopted July 17th. These rough notes though undated, are clearly, from their similarity to the rules so adopted, those used by the committee.

<sup>2</sup> A fragment from Girardin's *History of Virginia*, iv.

solicit the substitution of some other person here in my room. The delicacy of the House will not require me to enter minutely into the private causes which render this necessary. I trust they will be satisfied. I would not urge it again, were it not unavoidable. I shall with cheerfulness continue my duty here till the expiration of our year by which time I hope it will be convenient for my successor to attend.

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RESOLUTION FOR ROTATION OF MEMBERS OF CONTINENTAL CONGRESS<sup>1</sup>

J.MSS.

[July, 1776?]

To prevent every danger which might arise to American freedom by continuing too long in office the members of the Continental Congress, to preserve to that body the confidence of their friends, and to disarm the malignant imputation of their enemies: It is earnestly recommended to the several Provinces, Assemblies or Conventions of the United colonies that in their future elections of delegates to the Continental Congress one half at least of the persons chosen be such as were not of the delegation next preceeding, and the residue be of such as shall not have served in that office longer than two years. And that their deputies be chosen for one year, with power to adjourn themselves from time to time & from place to place as occasions may require, and also

<sup>1</sup> This resolution is not dated, and is apparently not entered in the *Journal of the Continental Congress*. It was probably offered in July, 1776, when Congress was establishing rules for its own guidance, and rejected.

to fix the time & place at which their successors shall meet.

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TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, July 15th, 1776.

Dear Sir,—Yours of the 3rd inst. came to day. I wish I could be better satisfied on the point of Patty's recovery. I had not heard from her at all for two posts before, and no letter from herself now. I wish it were in my power to return by way of the Forest, as you think it will be impracticable for Mrs. Eppes to travel to the mountains. However, it will be late in August before I can get home, and our Convention will call me down early in October. Till that time, therefore, I must defer the hope of seeing Mrs. Eppes and yourself. Admiral Howe is himself arrived at New York, and two or three vessels, supposed to be of his fleet, were coming in. The whole is expected daily.

Washington's numbers are greatly increased, but we do not know them exactly. I imagine he must have from 30 to 35,000 by this time. The enemy the other day ordered two of their men-of-war to hoist anchor and push by our batteries up the Hudson River. Both wind and tide were very fair. They passed all the batteries with ease, and, as far as is known, without receiving material damage; though there was an incessant fire kept up on them. This experiment of theirs, I suppose, is a prelude to the passage of their whole fleet, and seems to indicate an

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 582.

intention of landing above New York. I imagine General Washington, finding he cannot prevent their going up the river, will prepare to amuse them whenever they shall go. Our army from Canada is now at Crown Point, but still one half down with the smallpox. You ask about Arnold's behavior at the Cedars. It was this. The scoundrel, Major Butterfield, having surrendered three hundred and ninety men, in a fort with twenty or thirty days' provision, and ammunition enough, to about forty regulars, one hundred Canadians, and five hundred Indians, before he had lost a single man—and Maj. Sherburne, who was coming to the relief of the fort with one hundred men, having, after bravely engaging the enemy an hour and forty minutes, killing twenty of them and losing twelve of his own, been surrounded by them, and taken prisoners also—Gen. Arnold appeared on the opposite side of the river and prepared to attack them. His numbers I know not, but believe they were about equal to the enemy. Capt. Foster, commander of the king's troops, sent over a flag to him, proposing an exchange of prisoners for as many of the king's in our possession, and, moreover, informed Arnold that if he should attack, the Indians would put every man of the prisoners to death. Arnold refused, called a council of war, and, it being now in the night, it was determined to attack next morning. A second flag came over; he again refused, though in an excruciating situation, as he saw the enemy were in earnest about killing the prisoners. His men, too, began to be importunate for the recovery of their fellow-soldiers. A third

flag came, the men grew more clamorous and Arnold, now almost raving with rage and compassion, was obliged to consent to the exchange and six days suspension of hostilities, Foster declaring he had not boats to deliver them in less time. However, he did deliver them so much sooner as that before the six days were expired, himself and party had fled out of all reach. Arnold then retired to Montreal. You have long before this heard of Gen. Thompson's defeat. The truth of that matter has never appeared till lately. You will see it in the public papers. No men on earth ever behaved better than ours did. The enemy behaved dastardly. Col. Allen (who was in the engagement) assured me this day, that such was the situation of our men, half way up to the thighs in mud for several hours, that five hundred men of spirit must have taken the whole; yet the enemy were repulsed several times, and our people had time to extricate themselves and come off. It is believed the enemy suffered considerably. The above account of Arnold's affair you may rely on, as I was one of a committee appointed to inquire into the whole of that matter, and have it from those who were in the whole transaction, and were taken prisoners.

My sincere affections to Mrs. Eppes, and adieu.

TO THE PENNSYLVANIA CONVENTION<sup>1</sup>

J. MSS.

PHILADA, July 15, 1776.

Sir,—The honble the convention of Virga attending to the inconveniencies which may arise from an unsettled jurisdn in the neighborhood of fort pitt, have instructed us to propose to your honorable house to agree on some temporary boundary which may serve for preservation of the peace in that territory until an amicable and final determination may be had before arbiters mutually chosen. Such temporary settlement will from its nature do predjudice to neither party when at any future day a complete informn of facts shall enable them to submit the doubt to a just & final decision. We can assure you that the colony of Virga does not entertain a wish that one inch should be added to theirs from the territory of a sister colony & we have a perfect confidence that the same just sentiments prevails in your house. Parties thus disposed can scarcely meet with difficulty in adjusting either a temporary or a final settlement. The decision, whatever it be, will not annihilate the lands. They will remain to be occupied by Americans & whether these be counted in the numbers of this or that of the United States will be thought a matter of little moment. We shall be ready to confer on this subject with any gentleman you may please to

<sup>1</sup> This is copied from a rough draft, which has no address but the following note from the Minutes of the Convention, as printed in the *Philadelphia Evening Post* of August 6, 1776, shows to whom it was written: "A letter was read from the Delegates of the state of Virginia, now in Congress, proposing 'a temporary line'; the same being considered, it was ordered 'that further consideration thereof be deferred.'" Nor does the proposition ever seem to have been voted upon.

appoint for that purpose & am Sir, with every sentiment of respect.

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## NOTES ON VIRGINIA-PENNSYLVANIA BOUNDARY J. MSS.

[July, 1776.]

If the Monongahela is the line it will throw 300 Virginia families into Pennsylva. Most of these live below the Yohiogany & Monongahela. Not one third of that number of Pennsylvanians would be thrown on the Virginia side.

If the Laurel hill is the boundary it will place on the Virginia side all the Virginia settlers, & about 200 families of Pennsylvania settlers.

A middle line is thought to be just. Braddock's old road crosses the Yohiogany in the Allegany mountain. Then turns along by the head of the Redstone on the West side of the Yohiogany & crosses the Laurel hill about 6 miles from Stewart's (or Hart's) crossing, then crosses the river at Stewart's crossing, Jacob's creek 4 m above mouth, Swiglie<sup>1</sup> 5 m above mouth, then goes down to the Monongahela about 2 m below the mouth of Yohiogany then recrosses it within a mile & there stopped. A line then run from the mouth of the Turtle cr. to the mouth of the first creek that empties into the Allegany above Croghans.

This would give tolerable satisfaction to Virginia, would throw about 150 Pennsylvas into Virga & about 20 or 30 Virginians into Pennsylvana. The 150 Pennsylvas live in such manner dispersed on the

<sup>1</sup> Sewickly Creek.

Yohiogany and Monongahela that no line will throw them into Pennsylva.

If Braddock's road cannot be established, the Laurel hill & Yohiogany might do without great uneasiness, & so from the mouth of the Turtle as before.

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TO THE GOVERNOR OF VIRGINIA <sup>1</sup>

J. MSS.

(PATRICK HENRY)

[PHILA., July 16, 1776.]

We were informed a few weeks ago that 5000 lb. of lead imported by our colony were landed at Fredsbgh. As it appeared very unlikely it should be wanting in Virga, and the flying camp forming in the Jerseys, in the face of a powerful enemy, are likely to be in distress for this article, we thought we should be wanting to the public cause, which includes that of our own country, had we hesitated to desire it to be brought here. Had the wants of the camp admitted the delay of an application to you we should most certainly have waited an order from you, but their distress is instantaneous. Even this supply is insufficient. The army in Canada, & the army in N. York will want much lead & there seems to be no certain source of supply unless the mine in Virga can be rendered such. We are therefore by direction of Congress to beg further you will be pleased to send them what lead can be spared from Wmburgh, and moreover order 15 or 20 tons to be brought here immediately from the mine.

<sup>1</sup> This and the following letter, printed from rough drafts in Jefferson's handwriting, were evidently intended to be signed by the whole Virginia delegation.

We take the liberty of recommending the lead mines to you as an object of vast importance, We think it impossible they can be worked to too great an extent. Considered as perhaps the sole means of supporting the American cause, they are inestimable. As an article of commerce to our colony, too, they will be valuable; & even the waggonage, if done either by the colony or individuals belonging to it, will carry to it no trifling sum of money. We enclose you a resoln of Congress of the subjects of forts & garrisons on the Ohio.

Several vacancies having happened in our battalions, we are unable to have them filled for want of a list of the officers stating their seniority. We must beg the favor of you to furnish us with one. We received from Colo. R. H. Lee a resolution of Convention recommending us to endeavor that the promotions of the officers be according to seniority without regard to regiments or companies. In one instance indeed the Congress reserved to themselves a right of departing from seniority; that is where a person either out of the line of command, or in an inferior part of it, has displayed eminent talents. Most of the the general officers have been promoted in this way. Without this reservation the whole continent must have been supplied with general officers from the Eastern colonies, where a large army was formed & officered before any other colony had occasion to raise troops at all, & a number of experienced, able & valuable officers must have been lost to the public merely from the locality of their situation.

The resolution of our Convention on the subject of

salt we shall lay before Congress. The Convention of Pennsylvia did not proceed to business yesterday for want of a quorum. As soon as they do we shall lay before them the proposition from our convention on the differences at fort pitt, & communicate to you the result.

We are your Excys.

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TO COL. FIELDING LEWIS

J. MSS.

PHILADELPHIA, July 16, 1776.

We were informed a few weeks ago that 5000 lb. of lead imported on acct, of our colony were landed at Fredsbgh. There appears scarcely a possibility it should be wanting in Virga., more especially when we consider the supplies which may be expected from the mines of that colony. The flying camp now forming in the Jerseys & which will be immediately in the face of a powerful enemy is likely to be in great want of that article. Did their wants admit of delay of an application to the governor we should have applied to him & have not a doubt he would order it hither. But circumstances are too pressing, & we are assured we should incur the censures of our country were we to permit the public cause to suffer essentially while the means of preventing it (tho not under our immediate charge) are within our reach. We therefore take the liberty of desiring you to stop so many of the powder waggons now on their way to Wmsburgh as may be necessary & return them immediately with this lead, & whatever more you can collect sending the powder on by other

waggons. But should the lead have been sent to Wmsburgh the waggons may then proceed on their Journey & the Govr. to whom we have written will take care of the matter.<sup>1</sup>

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TO JOHN PAGE<sup>2</sup>

PHILADELPHIA, July 20, 1776.

DEAR PAGE,—On the receipt of your letter we enquired into the probability of getting your seal done here. We find a drawer and an engraver here both of whom we have reason to believe are excellent in their way. They did great seals for Jamaica and Barbadoes both of which are said to have been well done, and a seal for the Philosophical society here which we are told is excellent. But they are expensive, and will require two months to complete it. The drawing the figures for the engraver will cost about 50 dollars, and the engraving will be still more. Nevertheless as it would be long before we could consult you and receive an answer, as we think you have no such hands, and the expence is never to be incurred a second time we shall order it to be done. I like the device of the first side of the seal much. The second I think is too much crowded, nor is the design so striking. But for god's sake what is the "*Deus nobis haec otia facit*"? It puzzles every body here; if my country really enjoys that *otium*, it is singular, as every other colony seems to be hard

<sup>1</sup> Cf. *Journals of Congress*, 14 July, 1776.

<sup>2</sup> From the *New England Historical and Genealogical Register*, xx., 69.

struggling. I think it was agreed on before Dunmore's flight from Gwyn's island so that it can hardly be referred to the temporary *holiday* that has given you. This device is too ænigmatical, since it puzzles now, it will be absolutely insoluble fifty years hence.

I would not advise that the French gentleman should come here. We have so many of that country and have been so much imposed on, that the Congress begins to be sore on that head. Besides there is no prospect of raising horse this way. But if you approve of the Chevalier de St. Aubin, why not appoint him yourselves, as your troops of horse are Colonial not Continental.

The 8th battalion will no doubt be taken into Continental pay from the date you mention. So also will be the two written for lately to come to the Jerseys. The 7th should have been moved in Congress long e'er now, but the muster roll sent us by Mr. Yates was so miserably defective that it would not have been received, and would have exposed him. We therefore desired him to send one more full, still giving it the same date, and I enclosed him a proper form. If he is diligent we may receive it by next post.

The answer to your public letter we have addressed to the governor.

There is nothing new here. Washington's and Mercer's camps recruit with amazing slowness. Had they been reinforced more readily something might have been attempted on Staten Island. The enemy there are not more than 8, or 10,000 strong. Ld Howe has recd. none of his fleet, unless some High-

landers (about 8, or 10 vessels) were of it. Our army at Tyonderoga is getting out of the small pox. We have about 150 carpenters I suppose got there by now. I hope they will out-build the enemy, so as to keep our force on the lake superior to theirs. There is a mystery in the dereliction of Crown-point. The general officers were unanimous in preferring Tyonderoga, and the Field officers against it. The latter have assigned reasons in their remonstrance which appear unanswerable, yet every one acquainted with the ground pronounce the measure right without answering these reasons.

Having declined serving here the next year, I shall be with you at the first session of our assembly. I purpose to leave this place the 11th of August, having so advised Mrs. Jefferson by last post, and every letter brings me such an account of the state of her health, that it is with great pain I can stay here till then. But Braxton purposing to leave us the day after tomorrow, the colony would be unrepresented were I to go, before the 11th. I hope to see Col. Lee and Mr. Wythe here. Tho' the stay of the latter will I hope be short, as he must not be spared from the important department of the law. Adieu, adieu.

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TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, July 23, 1776.

DEAR SIR,—We have nothing new here now but from the southward. The successes there I hope

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 582.

will prove valuable here, by giving new spirit to our people. The ill successes in Canada had depressed the minds of many; when we shall hear the last of them I know not; everybody had supposed Crown Point would be a certain stand for them, but they have retreated from that to Ticonderoga, against everything which in my eye wears the shape of reason. When I wrote you last, we were deceived in General Washington's numbers. By a return which came to hand a day or two after, he then had but 15,000 effective men. His reinforcements have come in pretty well since. The flying camp in the Jerseys under General Mercer begins to form, but not as fast as exigencies require. The Congress have, therefore, been obliged to send for two of our battalions from Virginia. I hope that country is perfectly safe now; and if it is, it seems hardly right that she should not contribute a man to an army of 40,000 and an army too on which was to depend the decision of all our rights. Lord Howe's fleet has not yet arrived. The first division sailed five days before he did, but report says it was scattered by a storm. This seems probable, as Lord Howe had a long passage. The other two divisions were not sailed when he came away. I do not expect his army will be here and fit for action till the middle or last of August; in the meantime, if Mercer's camp could be formed with the expedition it merits, it might be possible to attack the present force from the Jersey side of Staten Island, and get rid of that beforehand; the militia go in freely, considering they leave their harvest to rot in the field.

I have received no letter this week, which lays me under great anxiety. I shall leave this place about the 11th of next month. Give my love to Mrs. Eppes, and tell her that when both you and Patty fail to write me, I think I shall not be unreasonable in insisting she shall.

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TO JOHN PAGE <sup>1</sup>

PHILADELPHIA, Aug. 5, 1776.

DEAR PAGE,—I am sorry to hear that the Indians have commenced war, but greatly pleased you have been so decisive on that head. Nothing will reduce those wretches so soon as pushing the war into the heart of their country. But I would not stop there. I would never cease pursuing them while one of them remained on this side the Mississippi. So unprovoked an attack & so treacherous a one should never be forgiven while one of them remains near enough to do us injury. The Congress having had reason to suspect the Six nations intended war, instructed their commissioners to declare to them peremptorily that if they chose to go to war with us, they should be at liberty to remove their families out of our settlements, but to remember that they should not only never more return to their dwellings on any terms but that we would never cease pursuing them with war while one remained on the face of the earth; & moreover, to avoid equivocation, to let them know they must recall their young men from

<sup>1</sup> From a copy courteously furnished by Mr. Cassius F. Lee, of Alexandria, Va.

Canada, or we should consider them as acting against us nationally. This decisive declaration produced an equally decisive act on their part; they have recalled their young men, & are stirring themselves with anxiety to keep their people quiet, so that the storm we apprehended to be brewing there it is hoped is blown over. Colo. Lee being unable to attend here till the 20th inst I am under the painful necessity of putting off my departure, notwithstanding the unfavorable situation of Mrs Jefferson's health. We have had hopes till to-day of receiving an authentication of the next year's delegation, but are disappointed. I know not who should have sent it, the Governor, or President of Convention: but certainly somebody should have done it. What will be the consequence I know not. We cannot be admitted to take our seat on any precedent or the spirit of any precedent yet set! According to the standing rules not only an authentic copy will be required, but it must be entered in the journals verbatim that it may there appear we have right to sit. This seems the more necessary as the quorum is then to be reduced. Some of the newspapers indeed mention that on such a day such & such gentlemen were appointed to serve for the next year, but could newspaper evidence be received. They could not furnish the form of the appointment, not yet that quorum is to be admitted.

Ld. Howe is recruiting fast. Forty odd ships arrived the other day, & others at other times. It is questionable whether our recruits come in so speedily as his. Several valuable West Indian men have

been taken & brought in lately, & the spirit of privateering is gaining ground fast. No news from Ticonderoga. I enclose you (to amuse your curiosity) the form of the prayer substituted in the room of the prayer for the King by Mr. Duché, chaplain to the Congress. I think by making it so general as to take in Conventions, assemblies, &c., it might be used instead of that for the parliament. Adieu.

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TO FRANCIS EPPES <sup>1</sup>

PHILADELPHIA, Aug. 9th, 1776.

DEAR SIR,—As Col. Harrison was about to have some things packed, I set out upon the execution of your glass commission, and was surprised to find that the whole glass stores of the city could not make out anything like what you desired. I therefore did what I thought would be best, imagining you wanted the number you mentioned at any event, and that not being able to get them of that form, you would take them of any other. I therefore got 4 pint cans, 10s; 2 quart do. 8s; and six half-pint tumblers, 6s., all of double flint. So that there still remains in my hands £4 16s., Pennsylvia currcy.

Your teckle is not yet come. It seems the man who had promised to sell it to the gentleman I employed to get it, now raises some difficulties either to get off others which he calls the set, or to enhance the price. However, the gentleman still expects it, and I am after him every day for it. Our galleys at

<sup>1</sup> From Randall's *Life of Jefferson*, iii., 584.

New York have had a smart engagement with the men-of-war which went up the river; it is believed the enemy suffered a good deal. The galleys are much injured, though we lost but two men. The commander writes us word he retired, that he might go and give them another drubbing, which in plain English meant, I suppose, that he was obliged to retire. Gen. Washington commends the behavior of the men much. They lay pretty close to the enemy, and two of the galleys were exposed to the broadside of their ships almost the whole time. The damage done them proves they were in a warm situation. Madison (of the college) and one Johnson, of Augusta, were coming passengers in the New York Packet; they were attacked by one of our armed vessels, and nothing but the intervention of night prevented the packet being taken. She is arrived at New York, and they permitted to come. In a letter by them, we have intelligence that the French ministry is changed, the pacific men turned out, and those who are for war, with the Duke de Choiseul at their head, are taken in. We have also the king's speech on the prorogation of parliament, declaring he will see it out with us to the bitter end.

The South Carolina army with Clinton Sr., arrived at Staten Island last week, one of their transports, with 5 companies of Highlanders, having first fallen into General Lee's hands. They now make Lord Howe 12,000 strong. With this force he is preparing to attack. He is embarking his cannon; has launched 8 galleys, and formed his men-of-war into line of battle. From these circumstances, it is be-

lieved the attack of New York will be within three or four days. They expect with the utmost confidence to carry it, and they consider our army but as a rude undisciplined rabble. I hope they will find it a Bunker's Hill rabble. Notwithstanding these appearances of attack, there are some who believe, and with appearance of reason, that these measures are taken by the enemy to secure themselves and not to attack us. A little time will shew. General Arnold (a fine sailor) has undertaken to command our fleet on the lakes. The enemy are fortifying Oswego, and I believe our army there, when recovered from their sickness, will find they have lost a good campaign, though they have had no battle of moment.

My love to Mrs. Eppes. I hope my letter by last post got there time enough to stay Patty with her a while longer. Adieu.

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TO \_\_\_\_\_<sup>1</sup>

PHILADELPHIA, Aug. 13, 1776.

Dear Sir,—Your's of Aug. 3. came to hand yesterday; having had no moment to spare since, I am obliged to set down to answer it at a Committee table while the Committee is collecting. My thoughts therefore on the subject you propose will be merely extempore. The opinion that our lands

<sup>1</sup> From a copy courteously furnished by Dr. J. S. H. Fogg, of Boston. It was purchased by him in the papers of John Taylor of Caroline, but was probably written to Edmund Pendleton, whose papers passed into Taylor's hands.

were allodial possessions is one which I have very long held, and had in my eye during a pretty considerable part of my law reading which I found always strengthened it. It was mentioned in a very hasty production, intended to have been put under a course of severe correction, but produced afterwards to the world in a way with which you are acquainted. This opinion I have thought & still think to prove if ever I should have time to look into books again. But this is only meant with respect to the English law as transplanted here. How far our acts of assembly or acceptance of grants may have converted lands which were allodial into feuds I have never considered. This matter is now become a mere speculative point; & we have it in our power to make it what it ought to be for the public good.

It may be considered in the two points of view 1st. as bringing a revenue into the public treasury. 2d. as a tenure. I have only time to suggest hints on each of these heads. 1. Is it consistent with good policy or free government to establish a perpetual revenue? is it not against the practice of our wise British ancestors? have not the instances in which we have departed from this in Virginia been constantly condemned by the universal voice of our country? is it safe to make the governing power when once seated in office, independent of it's revenue? should we not have in contemplation & prepare for an event (however deprecated) which may happen in the possibility of things; I mean a re-acknowledgment of the British tyrant as our king, & previously strip him of every prejudicial pos-

session? Remember how universally the people run into the idea of recalling Charles the 2d after living many years under a republican government.—As to the second was not the separation of the property from the perpetual use of lands a mere fiction? Is not it's history well known, & the purposes for which it was introduced, to wit, the establishment of a military system of defence?

Was it not afterwards made an engine of immense oppression? Is it wanting with us for the purpose of military defence? May not it's other legal effects (such of them at least as are valuable) be performed in other more simple ways? Has it not been the practice of all other nations to hold their lands as their personal estate in absolute dominion? Are we not the better for what we have hitherto abolished of the feudal system? Has not every restitution of the antient Saxon laws had happy effects? Is it not better now that we return at once into that happy system of our ancestors, the wisest & most perfect ever yet devised by the wit of man, as it stood before the 8th century.

The idea of Congress selling out unlocated lands has been sometimes dropped, but we have always met the hint with such determined opposition that I believe it will never be proposed.—I am against selling the lands at all. The people who will migrate to the Westward whether they form part of the old, or of a new colony will be subject to their proportion of the Continental debt then unpaid. They ought not to be subject to more. They will be a people little able to pay taxes. There is no equity in fixing upon them

the whole burthen of this war, or any other proportion than we bear ourselves. By selling the lands to them, you will disgust them, and cause an avulsion of them from the common union. They will settle the lands in spite of everybody.—I am at the same time clear that they should be appropriated in small quantities. It is said that wealthy foreigners will come in great numbers, & they ought to pay for the liberty we shall have provided for them. True, but make them pay in settlers. A foreigner who brings a settler for every 100, or 200 acres of land to be granted him pays a better price than if he had put into the public treasury 5/ or 5£. That settler will be worth to the public 20 times as much every year, as on our old plan he would have paid in one payment. I have thrown these loose thoughts together only in obedience to your letter, there is not an atom of them which would not have occurred to you on a moment's contemplation of the subject. Charge yourself therefore with the trouble of reading two pages of such undigested stuff.

By Saturday's post the General wrote us that Ld. Howe had got (I think 100) flat bottomed boats alongside, & 30 of them were then loaded with men; by which it was concluded he was preparing to attack, yet this is Tuesday & we hear nothing further. The General has by this last return, 17000 some odd men, of whom near 4000 are sick & near 3000 at out posts in Long Island &c. So you may say he has but 10000 effective men to defend the works of New York. His works however are good & his men in spirits, which I hope will be equal to an addition of many

thousands. He had called for 2000 men from the flying camp which were then embarking to him & would certainly be with him in time even if the attack was immediate. The enemy have (since Clinton & his army joined them) 15,000 men of whom not many are sick. Every influence of Congress has been exerted in vain to double the General's force. It was impossible to prevail on the people to leave their harvest. That is now in, & great numbers are in motion, but they have no chance to be there in time. Should however any disaster befall us at New York they will form a great army on the spot to stop the progress of the enemy. I think there cannot be less than 6 or 8000 men in this city & between it & the flying camp. Our council complain of our calling away two of the Virginia battalions. But is this reasonable. They have no British enemy, & if human reason is of any use to conjecture future events, they will not have one. Their Indian enemy is not to be opposed by their regular battalions. Other colonies of not more than half their military strength have 20 battalions in the field. Think of these things & endeavor to reconcile them not only to this, but to yield greater assistance to the common cause if wanted. I wish every battalion we have was now in New York.—We yesterday received dispatches from the Commissioners at Fort Pitt. I have not read them, but a gentleman who has, tells me they are favorable. The Shawanese & Delewares are disposed to peace. I believe it, for this reason. We had by different advices information from the Shawanese that they should strike us, that this was against their will, but

that they must do what the Senecas bid them. At that time we knew the Senecas meditated war. We directed a declaration to be made to the six nations in general that if they did not take the most decisive measures for the preservation of neutrality we would never cease waging war with them while one was to be found on the face of the earth. They immediately changed their conduct and I doubt not have given corresponding information to the Shawanese and Delewares.

I hope the Cherokees will now be driven beyond the Missisipi & that this in future will be declared to the Indians the invariable consequence of their beginning a war. Our contest with Britain is too serious and too great to permit any possibility of avocation from the Indians. This then is the season for driving them off, & our Southern colonies are happily rid of every other enemy & may exert their whole force in that quarter.

I hope to leave this place sometime this month.

I am Dear Sir, Your affectionate friend

P. S. Mr. Madison of the college & Mr. Johnson of Fredsb'gh are arrived in New York. They say nothing material had happened in England. The French ministry was changed.

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TO JOHN PAGE <sup>1</sup>

PHILADELPHIA, Aug. 20, 1776.

DEAR PAGE,—We have been in hourly expectation of the great decision at New York, but it has not yet

<sup>1</sup> From the original in the possession of the American Antiquarian Society of Worcester.

happened. About three nights ago an attempt was made to burn the two ships which had gone up the river. One of the two fire-rafts prepared for that purpose grappled the Phenix ten minutes, but was cleared away at last. A tender however was burnt. The two ships came down on Sunday evening and passed all our batteries again with impunity. Ld. Dunmore is at Staten isld. His sick he sent to Halifax, his effective men he carried to Staten isld. & the blacks he shipped off to the West Indies. Two gentlemen who had been taken prisoners by the enemy have made their escape. They say they are now 20,000 & that another division of 5,000 foreigners is still expected. They think Ld Howe will not attack these 10 days, but that he does not wait for his last division, being confident of victory without. One of these informants was captain of a continental vessel going for ammunition. The mate & crew rose & took the vessel. They fell in with the division of the Hessians which came with the Hessian general & were brought to. The general learning from the dethroned captain what had happened, immediately threw the piratical mate into irons, & had the captain to dine with him every day till they got to Halifax where he delivered him, vessel &c. over to the English.—A gentleman who lived some time in this city, but since last winter has become a resident of St. Eustatia writes that by a Dutch ship from Amsterdam they have advice that the states of Holland had refused to renew the prohibition on the exportation of powder to the colonies, or to cede to the English the Scotch brigade in their service, or to

furnish them with some men of war asked of them by the British court. This refusal so piqued the ministry that they had been enduced to take several Dutch ships, amongst which he said were two which sailed from that island & were carried to London, another to St. Kitt's. In consequence of this the Dutch have armed 40 ships of war & ordered 60 more to be built & are raising 20,000 land forces. The French governor in chief of their W. Indies has not only refused to permit a capt of a man of war to make prize of our vessels in their ports but forbidden them to come within gun shot of the ports. The enemy's men of war being withdrawn from our whole coast to N. York gives us now fine opportunities of getting in powder. We see the effect here already.

Two Canadians who had been captains in our Canadian regiment & who General Gates writes us are known in the army to be worthy of good credit made their escape from St. John's, & came over to our army from Tyconderoga; & give the following intelligence. The enemy did not fortify any place we abandoned. They had 2000 men at Isle aux noix under Genl. Fraser, 2000 at St. John's under Carleton & some at Montreal. 250 only had been left at Quebec. It was reported that 4000 English troops which were to have been a part of that army had perished at sea which gave great uneasiness. The fleet brot over timber &c for 50 boats which they attempted to transport by land from the mouth of Sorel to St. John's, but could not for want of carriages which had been destroyed. Carleton, therefore, employed Canadians to build batteaux at St.

John's. He has rendered himself very odious to the Canadians by levying contributions on them in general & confiscating the estates of all those who followed our army or who abscond. Great numbers of the Germans desert daily & are anxiously concealed by the inhabitants. 70 Brunswickers disappeared in one day. Their officers are so much afraid of bush-fighting & ambushes that they will not head any parties to pursue the runaways. The men have the same fears, which prevents them from deserting in so great numbers as is supposed they will when once our fleet shall appear cruising on the lake to receive & protect them. Between the 22d & 24th July Carlet on & the other generals abandoned all their posts on this side Sorel except St. John's with as great precipitation as our poor sick army had done, carrying with them their artillery & provisions. This was occasioned by the arrival and mysterious manœuvres of a fleet at Quebec supposed French, hoisting different colours & firing at Tenders sent from the town to enquire who they were. 200 men were left at Isle aux noix to send them intelligence of our operations, who they say will go down the river if we return into Canada. For this event the Canadians are offering up prayers at the shrines of all their saints. Carleton some time ago hearing that we were returning with a considerable reinforcement was so terrified that he would have retired immediately had not some of his spies come in & informed him of the deplorable situation to which the small pox had reduced our army.— They are recovering health and spirits. Genl. Gates writes that he had accounts of the roads being

crowded with militia coming to his assistance. 600 from New Hampshire came in while he was writing his letter, being the first. His fleet had sailed from Tyconderoga to Crown point. Their number and force as follows.

	Guns	Swivels	Men
1 Schooner	12, 4 lbs.	10	50
1 Sloop	12, 4 "	10	50
1 Schooner	4, 4 " 4, 2 lbs.	10	35
1 do	2, 4 " 6, 2 "	8	35
2 Gallies, each	1, 12 " 2, 9 "	8	45
2 do "	3, 9 "	8	45
2 do	not quite rigged.		

Eight more gallies would be ready to join them in a fortnight when they would proceed down the Cape. General Arnold (who is said to be a good sailor) had undertaken the command. We have 200 fine ship carpenters (mostly sent from here) at work. I hope a fleet will soon be exhibited on that lake such as it never bore. The Indians have absolutely refused Carleton in Canada & Butler at Niagara to have any thing to do in this quarrel, & applaud in the highest terms our wisdom & candour for not requiring them to meddle. Some of the most sensible speeches I ever saw of theirs are on this head, not to be spoken to us, but behind our backs in the councils of our enemies. From very good intelligence the Indians of the middle department will be quiet. That treaty is put off till October. Were it not that it interferes with our Assembly I would go to it, as I think something important

might be done there, which could not be so well planned as by going to the spot & seeing its geography. We have great fear that the sending an agent from Virginia to enlist Indians will have ill consequences. It breaks in upon the plan pursued here & destroys that uniformity & consistency of counsels which the Indians have noticed & approved in their speeches. Besides they are a useless, expensive, ungovernable ally.—I forgot to observe that a captain Mesnard of Canada had come to Genl. Gates after the two above mentioned & confirmed their account in almost every article. One of the German deserters travelled with him to within 20 miles of our camp, when he was obliged to halt through fatigue. He passed 3 others of them.—Baron Woedeke is dead, no great loss from his habit of drinking.—The infamous Bedel & Butterfield were ordered by Congress to be tried for their conduct. They have been tried by a Court martial, condemned & broke with infamy. We inclose to you all the Commissions mentioned in the last letter of the delegates, except Innis's to be forwarded to the Eastern shore immediately, & Weedon's & Marshall's who we are informed are on the road hither. Would to God they were in N. York. We wait your recommendation for the 2 vacant majorities. Pray regard militaryment alone. The commissions now sent do not fix the officers to any particular battalion so that the commanding officer will dispose of them. Cannot you make use of any interest with Lee or Lewis to call Innis over to the Western shore. He pants for it, & in my opinion has a right to ask it. Adieu, Adieu.

Davis with the 4000 lb of gun powder & 90 stand of arms for Virgā got into Egg harbour. We have sent waggons for the powder to bring it here, & shall wait your further order. We were obliged to open Van Bibber & Harrison's letter to the Council of safety of Virgā in order to take out the bill of lading without which it would not be delivered.

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RESOLUTION TO ENCOURAGE DESERTIONS OF HESSIAN  
OFFICERS<sup>1</sup>

J. MSS.

Aug. 27. [1776]

The Congress proceeding to take into further consideration the expediency of inviting from the service of his Brittanick majesty such foreigners as by the compulsive authority of their prince may have been engaged therein & sent hither for the purpose of waging war against these states, and expecting that the enlightened minds of the officers having command in those foreign corps will feel more sensibly the agency of the principles urged in our resolution of the 14th instant,<sup>2</sup> principles which be derived from the unalterable laws of God & nature cannot be superseded by any human authority or engagement, and willing to tender to them also, as they had before done to the soldiery of their corps a participation of

<sup>1</sup> Jefferson, Franklin, and Adams were appointed a committee on Aug. 26th to report on a letter of James Wilson, and this resolution with a preamble, and additional resolution, was adopted the following day as the result of their report. This resolution is in Jefferson's handwriting, but the preamble is in that of John Adams.

<sup>2</sup> A plan for encouraging the Hessians and other foreigners to quit the British service.

the blessings of peace, liberty, property & mild government, on their relinquishing the disgraceful office on which they have been sent hither: Resolved that they will give all such of the said foreign officers as shall leave the armies of his Britannic majy in America & chuse to become citizens of these states, unappropriated lands in the following quantities and proportions to them & their heirs in absolute dominion: To a colonel 1,000 acres, to a Lt Col. 800 as. to a Major 600 as. to a Captn 400 as. to an Ensign 200 as. to every non commisd. officer 100 as. & to every other officer or person employed in the sd foreign corps & whose office or employment is not here specifically named, lands in the like proportion to their rank or pay in the sd corps: & moreover that where any officers shall bring with them a number of the sd foreign soldiers, this Congress, besides the lands before promised to the sd officers and soldiers will give to such officers further rewards proportionate to the numbers they shall bring over & suited to the nature of their wants. Provided that such foreign officers or soldiers shall come within over from the sd service before these offers be recalled, or within after a reasonable time.

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RESOLUTIONS ON PEACE PROPOSITIONS<sup>1</sup> J. MSS.

[Aug. 28, 1776]

Resolved that tho' this Congress, during the dependance of these states on the British crown with

<sup>1</sup> These resolutions were apparently moved in the Congress on the arrival of Washington's letter of Aug. 26th, enclosing Lord Drummond's letter to him, and his answer. Cf. Ford's *Writings of Washington*, iv., 350, 369.

unwearied supplications sued for peace & just redress, & tho' they still retain a sincere disposition to peace; yet as his Britannic majesty by an obstinate perseverance in injury & a callous indifference to the sufferings & the complaints of these states, has driven them to the necessity of declaring themselves independent, this Congress bound by the voice of their constituents, which coincides with their own sentiments, have no power to enter into conference or to receive any propositions on the subject of peace which do not as a preliminary acknowledge these states to be sovereign & independant: & that whenever this shall have been authoritatively admitted on the part of Great Britain they shall at all times & with that earnestness which the love of peace and justice inspires, be ready to enter into conference or treaty for the purpose of stopping the effusion of so much kindred blood.

Resolved that the reproof given by Genl. Washington to Ld Drummond for breach of his parole, & his refusal to give him a pass thro' the states on so idle an errand and after a conduct so dishonourable, be approved by this house & let it be submitted to the General to take such measures as his prudence will suggest to prevent any evil which may happen to these states by Lord Drummond's further continuing communication with their enemies.

Resolved that the articles enclosed by Ld Drummond to Ld Howe whereby it is proposed "that it shall be ascertained by calculation what supply towards the general exigency of the state each separate colony shall furnish, to be increased or lessened in

proportion to the growth or decline of such colony, & to be vested in the king by a perpetual grant, in consideration whereof Great Britain should relinquish only her claim to taxation over these colonies," which the sd Ld Drummond suggests "the colonies were disposed not many months ago to have made the basis of a reconciliation with Gr. Britain," were the unauthorized, officious & groundless suggestions of a person who seems totally unacquainted with either reasonings or the facts which have attended this great controversy; since from its first origin to this day there never was a time when these states intimated a disposition to give away in perpetuum their essential right of judging whether they should give or withhold their money for what purposes they should make the gift, and what should be its continuance.

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TO THE PRESIDENT OF THE CONTINENTAL CONGRESS<sup>1</sup>  
(JOHN HANCOCK) C. C.

WILLIAMSBURGH, Octob. 11, 1776.

Honorable Sir,—Your favor of the 30th together with the resolutions of Congress of the 26th Ult came safe to hand. It would argue great insensibility in me could I receive with indifference so confidential an appointment from your body. My thanks are a poor return for the partiality they have been pleased to entertain for me. No cares for my own person, nor yet for my private affairs would have induced one moment's hesitation to accept the charge. But

<sup>1</sup> A reply to a notification of his election as a Commissioner to France.

circumstances very peculiar in the situation of my family, such as neither permit me to leave nor to carry it, compel me to ask leave to decline a service so honorable & at the same time so important to the American cause. The necessity under which I labor & the conflict I have undergone for three days, during which I could not determine to dismiss your messenger, will I hope plead my pardon with Congress, and I am sure there are too many of that body, to whom they may with better hopes confide this charge, to leave them under a moment's difficulty in making a new choice. I am, Sir, with the most sincere attachment to your honorable body & and the great cause they support, their and your most obedient humble servt.

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 NOTES ON RELIGION :

J. MSS.

[Oct. 1776?]

Sabellians. X<sup>n</sup> heretics. That there is but one person in the Godhead. That the 'Word' & holy spirit are only virtues, emanations or functions of the deity.

Sorcinians. X<sup>n</sup> heretics. That the Father is the one only god. That the Word is no more than an expression of y<sup>e</sup> godhead & had not existed from all eternity; that Jes. Christ was god no otherwise than by his superiority above all creatures who were put in

<sup>1</sup> These are endorsed by Jefferson: "scraps early in the revolution." They were probably materials and notes for his speeches in the House of Delegates on the petitions for the disestablishment of the Episcopal church. Owing to the rebinding it is practically impossible to say if any order was intended.

subjection to him by the father. That he was not a mediator, but sent to be a pattern of conduct to men. That the punishments of hell are n<sup>t</sup> eternal.

Arminians. They think with the Romish church (ag<sup>t</sup> the Calvinists) that there is an universal grace given to all men, & that man is always *free & at liberty* to receive or reject grace. That God creates men free, that his justice would not permit him to punish men for crimes they are predestinated to commit. They admit the presence of god, but distinguish between fore-knowing & predestinating. All the fathers before St. Austin were of this opinion. The church of Engld founded her article of predestination on his authority.

Arians. X<sup>n</sup> heretics. They avow there was a time when the Son was not, that he was created in time mutable in nature, & like the angels liable to sin; they deny the three persons in the trinity to be of the same essence. Erasmus and Grotius were Arians.

Apollinarians. X<sup>n</sup> heretics. They affirm there was but one nature in Christ, that his body as well as soul was impassive & immortal, & that his birth, death, & resurrection was only in appearance.

Macedonians. X<sup>n</sup> heretics. They teach that the Holy ghost was a meer creature, but superior in excellence to the Angels. See *Broughton*, verbo 'Heretics,' an enumeration of 48. sects of Christians pronounced Heretics.

Locke's system of Christianity is this: Adam was created happy & immortal; but his happiness was to have been *Earthly & Earthly* immortality. By *sin* he lost this—so that he became subject to total death

(like that of brutes) to the crosses & unhappiness of this life. At the intercession however of the son of god this sentence was in part remitted. A life conformable to the law was to restore them again to immortality. And moreover to them who *believed* their *faith* was to be counted for righteousness. Not that faith without works was to save them; St. James. c. 2. sais expressly the contrary; & all make the fundamental pillars of X<sup>ty</sup> to be faith & *repentance*. So that a reformation of life (included under *repentance*) was essential, & defects in this would be made up by their *faith*; i. e. their faith should be counted for righteousness. As to that part of mankind who never had the gospel preached to them, they are 1. Jews.—2. Pagans, or Gentiles. The Jews had the law of works revealed to them. By this therefore they were to be saved: & a lively faith in god's promises to send the Messiah would supply small defects. 2. The Gentiles. St. Pa. sais—Rom. 2. 13. 'the Gentiles have the law written in their hearts, i. e. the law of nature: to which adding a *faith* in God's & his attributes that on their repentance he would pardon them, they also would be justified. This then explains the text 'there is no other *name* under heaven by which a man may be saved,' i. e. the defects in good works shall not be supplied by a faith in Mahomet Foe, [?] or any other except Christ.

The fundamentals of X<sup>ty</sup> as found in the gospels are 1. Faith, 2. Repentance. That faith is every [where?] explained to be a belief that Jesus was the Messiah who had been promised. Repentance was to be proved sincerely by good works. The

advantages accruing to mankind from our Saviour's mission are these.

1. The knolege of one god only.
2. A clear knolege of their duty, or system of morality, delivered on such authority as to give it sanction.
3. The outward forms of religious worship wanted to be purged of that farcical pomp & nonsense with which they were loaded.
4. An inducement to a pious life, by revealing clearly a future existence in bliss, & that it was to be the reward of the virtuous.

The Epistles were written to persons *already Christians*. A person might be a X<sup>n</sup> then before they were written. Consequently the fundamentals of X<sup>ty</sup> were to be found in the preaching of our Saviour, which is related in the gospels. These fundamentals are to be found in the epistles dropped here & there, & promiscuously mixed with other truths. But these other truths are not to be made fundamentals. They serve for edification indeed & explaining to us matters in worship & morality, but being written occasionally it will readily be seen that their explanations are adpated to the notions & customs of the people they were written to. But yet every sentence in them (tho the writers were inspired) must not be taken up & made a fundamental, without assent to which a man is not to be admitted a member of the X<sup>n</sup> church here, or to his kingdom hereafter. The Apostles creed was by them taken to contain all things necessary to salvation, & consequently to a communion.

Shaftesbury *Charact.* As the Antients tolerated visionaries & enthusiasts of all kinds so they permitted a free scope to philosophy as a balance. As the Pythagoreans & latter Platonists joined with the superstition of their times the Epicureans & Academics were allowed all the use of wit & railery against it. Thus matters were balanced; reason had play & science flourished. These contrarieties produced harmony. Superstition & enthusiasm thus let alone never raged to bloodshed, persecution &c. But now a new sort of policy, which considers the future lives & happiness of men rather than the present, has taught to distress one another, & raised an antipathy which if temporal interests could ever do now *uniformity* of opn, a hopeful project! is looked on as the only remedy agt. this evil & is made the very object of gov'm't itself. If magistracy had vouchsafed to interpose thus in other sciences, we should have as bad logic, mathematics & philosophy as we have divinity in countries where the law settles orthodoxy.

Suppose the state should take into head that there should be an uniformity of countenance. Men would be obliged to put an artificial bump or swelling here, a patch there &c. but this would be merely hypocritical, or if the alternative was given of wearing a mask,  $\frac{1}{100}$  this must immediately mask. Would this add to the beauty of nature? Why otherwise in opinions? In the middle ages of X<sup>ty</sup> opposition to the State opins was hushed. The consequence was, X<sup>ty</sup> became loaded with all the Romish follies. Nothing but free argument, railery & even ridicule will preserve the purity of religion. 2 Cor. 1. 24.

the apostles declare they had no dominion over the faith.

A heretic is an impugner of fundamentals. What are fundamentals? The protestants will say those doctrines which are clearly & precisely delivered in the holy Scriptures. Dr. Vaterland would say the Trinity. But how far this character of being clearly delivered will suit the doctrine of the trinity I leave others to determine. It is nowhere expressly declared by any of the earliest fathers, & was never affirmed or taught by the Church before the Council of Nice (*Chillingas Pref.* § 18. 33.) Iranæus sais 'who are the clean? those who go on firmly, believing in the Father & in the Son.' The fundamental doctrine or the firmness of the X<sup>n</sup> faith in this early age then was to believe in the *Father & Son*. Constantine wrote to Arius & Alexr treating the question "as vain foolish & impertinent as a dispute of words without sense which none could explain nor any comprehend &c.' This line is commended by Eusebius (*Vit. Constant* 1. r. c. 64 &c.) and Socrates (*Hist. Eccles.* 1. i. c. 7) as excellent admirable & full of wisdom. 2 *Middleton*. 115. remarks on the story of St. John & [illegible] "Le saint concil (de Nièce anno 630) ayant defini que le fils de dieu est de meme substance que son pere & qu'il est eternel comme lui, composa une Simbole (the Nicene creed) ou il explique la divinite du *pere et du fils* et qu'il finit par ces paroles 'dont le regne n'aura point de fin.' car la doctrine que regarde le *Saint Esprit* ne fut ajoutée que dans la seconde concile tenu contre les erreurs de Macedoniens, ou ces questions furent agitées." *Zonaras*

par Coussin. Ann. 330. The second council meant by Zonaras was that of Constantinople ann. 381. *D'hist. Prim. Xty.* pref. xxxviii. 2d app. to pref. 49. The Council of Antioch ann [ ] expressly affirms of our Saviour *οὐκ ἔστιν ὁμοουσιος* that he was not consubstantial to the father. The Council of Nice affirmed the direct contrary. *D'hist. Prim. Xty. Pref.* cxxv.

Episcopcy. Gr. *Επισκοπος*. Lat. Episcopus. Ital. Vescovo. Fr. Evesque. Saxon, Byscop. Bishop (overseer). The epistles of Paul to Timothy & Titus are relied on (together with Tradition) for the Apostolic institution of bishops.

As to tradition, if we are Protestants we reject all tradition, & rely on the scripture alone, for that is the essence & common principle of all the protestant churches. As to Scripture 1. Tim. 3. 2. 'a bishop must be blameless &c. *Επισκοπος*.' v. 8.; 'likewise must the deacons be grave &c. *Διακονος*' (ministers). C. 5. v. 6, he calls Timothy a 'minister, *Διακονος*;' C. 4. v. 14. 'neglect not the gift that is in thee, which was given thee by prophecy with the laying on the hands of the presbytery, *πρεσβυτεριου*'; C. 5. 'rebuke not an elder; *Πρεσβυτεροι*.' 5:17;—'let the elders that rule well, &c. *Πρεσβυτεροι*.' 5:19; 'against an elder (*Πρεσβυτερος*) receive not an accusn.' 5:22. 'lay hands suddenly on no man, *χειρας ἐπιτιθει*.' 6:11. He calls Timothy man of God *ἄνθρωπε τοῦ θεοῦ*, 2. Tim. 1. 6. 'stir up the gift of god, which is in thee, by the putting on of my hands *ἐπιθεσεως των χειρων*' but ante c. 4. v. 14, he said it was by the hands of the presbytery. This imposition of hands then was some cere-

mony or custom frequently repeated, & certainly is a good proof that Timothy was ordained by the elders (& consequently that they might ordain) as that it was by Paul. 1. 11. Paul calls himself 'a preacher,' 'an apostle,' 'a teacher.' 'κηρυξ, και αποστολος και διδασκαλος.' Here he designates himself by several synonyms as he had before done Timothy. Does this prove that every synonym authorizes a different order of ecclesiastics. 4. 5. 'do the work of an Evangelist, make full proof of thy ministry' *εργον ποιησον ευαγγελιστου, την διακονιαν σου πληροφορεισον.* Timothy then is called 'επισκοπος, διακονος, ευαγγελιστος.' ανθρωπος θεου.' 4. 11. He tells Tim. to bring Mark with him, for 'he is profitable to me for the ministry.' *διακονιαν.* Epist. to Titus. 1. 1, he calls himself 'a servant of god' *δουλος θεου.* 1. 5. 'for this cause left I thee in Crete that thou shouldst set in order the things that are wanting, and ordain (*καταστησης*) *elders* in every city, as I had appointed thee.' If any be blameless, the husband of one wife, having faithful children, not accused of riot or unruly, for a *bishop* must be blameless as the steward of god &c. Here then it appears that as the elders appointed the bishops, so the bishops appointed the elders, i. e., they are synonyms. Again when telling Titus to appoint *elders* in every city he tells him what kind of men they must be, for said he a bishop must be &c., so that in the same sentence he calls elders bishops. 3. 10 'a man that is an *heretic* after the first & second admonition, reject,' *αιρετικον.* James 5. 14. 'is any sick among you? Let him call for the elders (*πρεσβυτερος*) of the church, & let them

pray over him, anointing him with oil in the name of the lord.'

Another plea for Episcopal government in Religion in England is it's similarity to the political governmt by a king. No bishop, no king. This then with us is a plea for government by a presbytery which resembles republican government.

The clergy have ever seen this. The bishops were always mere tools of the crown.

The Presbyterian spirit is known to be so congenial with friendly liberty, that the patriots after the restoration finding that the humour of people was running too strongly to exalt the prerogative of the crown promoted the dissenting interest as a check and balance, & thus was produced the Toleration Act.

St. Peter gave the title of *clergy* to all god's people till Pope Higinus & y<sup>e</sup> succeeding prelates took it from them & appropriated it to priests only. 1 Milt. 230.

Origen, being yet a layman, expounded the scrip- chures publickly & was therein defended by Alexander of Jerusalem & Theodotn of Cæsarea producing in his behalf divers examples that the privilege of teaching was antiently permitted to laymen. The first Nicene council called in the assistance of many learned lay brethren. . ib. 230.

Bishops were elected by the hands of the whole church. Ignatius (the most an<sup>t</sup> of the extant fathers) writing to the Philadelphians sais 'that it belongs to them as to the church of god to chuse a bishop.' Camden in his description of Scotl<sup>d</sup> sais 'that over all the world bps had no certain dioces till pope Diony-

sius about the year 268 did cut them out, & that the bps of Scotl<sup>d</sup> extd their function in what place soever they came, indifferently till temp Malcolm 3. 1070.'

Cyprian, epist. 68. sais 'the people chiefly hath power either of chusing worthy or refusing unworthy bps the council of Nice contrary to the African churches exorts them to chuse orthodox bps in the place of the dead.' 1 Milt. 254.

Nicephorus Phocas the Greek emperor Ann. 1000 first enacted that no bps sh<sup>d</sup> be chozen without his will. Ignatius in his epistle to those of Tra [mutilated] confesseth that the presbyters are his fellow-sellers & fellow henchers & Cyprian in the 6. 4. 52. epst. calls the presbyters, 'his com-presbyters' yet he was a bps.—A modern bps to be moulded into a primitive one must be elected by the people, un-diocest, unrevenued, unlorded. 1 Milt. 255. From the dissensions among sects themselves arises necessarily a right of chusing & necessity of deliberating to which we will conform, but if we chuse for ourselves, we must allow others to chuse also, & to reciprocally. This establishes religious liberty.

Why require those things in order to eccliaistical communion which Christ does not require in order to life eternal? How can that be the church of Christ which excludes such persons from its communion as he will one day receive into the kingdom of heaven.

The arms of a religious society or church are exhortations, admonitions & advice, & ultimately expulsion or excommunication. This last is the utmost limit of power.

How far does the duty of toleration extend?

1. No church is bound by the duty of toleration to retain within her bosom obstinate offenders against her laws.
2. We have no right to prejudice another in his *civil* enjoiments because he is of another church. If any man err from the right way, it is his own misfortune, no injury to thee; nor therefore art thou to punish him in the things of this life because thou supposeth he will be miserable in that which is to come—on the contrary accdg to the spirit of the gospel, charity, bounty, liberality is due to him.

Each church being free, no one can have jurisdn over another one, not even when the civil magistrate joins it. It neither acquires the right of the sword by the magistrate's coming to it, nor does it lose the rights of instruction or excommunicn by his going from it. It cannot by the accession of any new member acquire jurisdn over those who do not accede. He brings only himself, having no power to bring others. Suppose for instance two churches, one of Arminians another of Calvinists in Constantinople, has either any right over the other? Will it be said the orthodox one has? Every church is to itself orthodox; to *others* erroneous or heretical.

No man complains of his neighbor for ill management of his affairs, for an error in sowing his land, or marrying his daughter, for consuming his substance in taverns, pulling down building &c in all these he has his liberty: but if he do not frequent the church or there conform to ceremonies, there is an immediate uproar.

The care of every man's soul belongs to himself. But what if he neglect the care of it? Well what if he neglect the care of his health or estate, which more nearly relate to the state. Will the magistrate make a law that he shall not be poor or sick? Laws provide against injury from others; but not from ourselves. God himself will not save men against their wills.

If I be marching on with my utmost vigour in that way which according to the sacred geography leads to Jerusalem straight, why am I beaten & ill used by others because my hair is not of the right cut; because I have not been drest right, bec. I eat flesh on the road, bec. I avoid certain by-ways which seem to lead into briars, bec. among several paths I take that which seems shortest & cleanest, bec. I avoid travellers less grave & keep company with others who are more sour & austere, or bec. I follow a guide crowned with a mitre & clothed in white, yet these are the frivolous things which keep X<sup>ns</sup> at war.

If the magistrate command me to bring my commodity to a publick store house I bring it because he can indemnify me if he erred & I thereby lose it; but what indemnification can he give one for the kdom of heaven?

I cannot give up my guidance to the magistrates, bec. he knows no more of the way to heaven than I do, & is less concerned to direct me right than I am to go right. If the Jews had followed their Kings, among so many, what number would have led them to idolatry? Consider the vicissitudes among the Emperors, Arians, Athana &c. or among our princes.

H. 8. E. 6. Mary. Elizabeth. *Locke's Works* 2d vol.

Why persecute for diff<sup>ce</sup> in relig<sup>s</sup> opinion?

1. For love to the person.

2. Because of tendency of these opns to dis[illegible].

1. When I see them persecute their nearest connection & acquaintance for gross vices, I shall believe it may proceed from love. Till they do this I appeal to their own consciences if they will examine, wh. y<sup>e</sup> do nt find some other principle.

2. Because of tendency. Why not then level persecution at the crimes you fear will be introduced? Burn or hang the adulterer, cheat &c. Or exclude them from offices. Strange should be so zealous against things which tend to produce immorality & yet so indulgent to the immorality when produced. These moral vices all men acknowledge to be diametrically against X. & obstructive of salvation of souls, but the fantastical points for which we generally persecute are often very questionable; as we may be assured by the very different conclusions of people. Our Savior chose not to propagate his religion by temporal punmts or civil incapacitation, if he had, it was in his almighty power. But he chose to extend it by it's influence on reason, there by shewing to others how they should proceed.

The commonwealth is 'a Society of men constituted for protecting their civil interests.'

*Civil interests* are 'life, health, indolency of body, liberty and property.' That the magistrate's jurisdn extends only to civil rights appears from these considns.

1. The magistrate has no power but w<sup>t</sup> y<sup>e</sup> people gave.

The people h<sup>ve</sup> n<sup>t</sup> giv<sup>n</sup> h<sup>m</sup> the care of souls bec. y<sup>e</sup> c<sup>d</sup> not, y<sup>e</sup> c<sup>d</sup> not, because no man h<sup>s</sup> *right* to abandon y<sup>e</sup> care of his salvation to another.

No man has *power* to let another prescribe his faith. Faith is not faith with<sup>t</sup> believing. No man can conform his faith to the dictates of another. The life & essence of religion consists in the internal persuasion or belief of the mind. External forms of worship, when against our belief are hypocrisy & impiety. Rom. 14. 23. "he that doubteth is damned, if he eat, because he eateth not of faith: for whatsoever is not of faith, is sin?"

2. If it be said the magistrate may make use of arguments & so draw the heterodox to truth, I answer, every man has a commission to admonish, exhort, convince another of error.

12. A church is 'a *voluntary* society of men, joining themselves together of their own accord, in order to the public worshipping of god in such a manner as they judge acceptable to him & effectual to the salvation of their souls.' It is *voluntary* bec. no man is *by nature* bound to any church. The hope of salvation is the cause of his entering into it. If he find anything wrong in it, he should be as free to go out as he was to come in.

13. What is the power of that church. As it is a society it must have some laws for it's regulation. Time & place of meeting. Admitting & excluding members &c. Must be regulat<sup>n</sup> but as it was a spontaneous joining of members, it follows that it's laws

extend to it's own members only, not to those of any other voluntary society, for then by the same rule some other voluntary society might usurp power over them.

Christ has said 'wheresoever 2 or 3 are gather<sup>d</sup> togeth in his name he will be in the midst of them.' This is his definition of a society. He does not make it essential that a bishop or presbyter govern them. Without them it suffices for the salvation of souls.

Compulsion in religion is distinguished peculiarly from compulsion in every other thing. I may grow rich by art I am compelled to follow, I may recover health by medicines I am compelled to take ag<sup>t</sup> my own judgment, but I cannot be saved by a worship I disbelieve & abhor.

Whatsoever is lawful in the Commonwealth, or permitted to the subject in the ordinary way, cannot be forbidden to him for religious uses: & whatsoever is prejudicial to the Commonwealth in their ordinary uses & therefore prohibited by the laws, ought not to be permitted to churches in their sacred rites. For instance it is unlawful in the ordinary course of things or in a private house to murder a child. It should not be permitted any sect then to sacrifice children: it is ordinarily lawful (or temporarily lawful) to kill calves or lambs. They may therefore be religiously sacrificed, but if the good of the state required a temporary suspension of killing lambs, as during a siege, sacrifices of them may then be rightfully suspended also. This is the true extent of toleration.

Truth will do well enough if left to shift for herself.

She seldom has received much aid from the power of great men to whom she is rarely known & seldom welcome. She has no need of force to procure entrance into the minds of men. Error indeed has often prevailed by the assistance of power or force. Truth is the proper & sufficient antagonist to error. If anything pass in a religious meeting seditiously and contrary to the public peace, let it be punished in the same manner & no otherwise than as if it had happened in a fair or market. These meetings ought not to be sanctuaries for faction & flagitiousness.

Locke denies toleration to those who entertain opns contrary to those moral rules necessary for the preservation of society; as for instance, that faith is not to be kept with those of another persuasion, that Kings excommunicated forfeit their crowns, that dominion is founded in grace, or that obedience is due to some foreign prince, or who will not own & teach the duty of tolerating all men in matters of religion, or who deny the existence of a god (it was a great thing to go so far—as he himself sais of the parl. who framed the act of tolern but where he stopped short we may go on.)<sup>1</sup>

He sais 'neither Pagan nor Mahomedan nor Jew ought to be excluded from the civil rights of the Commonwealth because of his religion.' Shall we suffer a Pagan to deal with us and not suffer him to pray to

<sup>1</sup> "Will not his own excellent rule be sufficient here too; to punish these as civil offences. e. gr. to assert that a foreign prince has power within this Commonwealth is a misdemeanor. The other opns may be despised. Perhaps the single thing & which may be required to others before toleration to them would be an oath that they would allow toleration to others."—*T. J.*

his god? Why have X<sup>ns</sup> been distinguished above all people who have ever lived, for persecutions? Is it because it is the genius of their religion? No, it's genius is the reverse. It is the refusing *toleration* to those of a different opn which has produced all the bustles and wars on account of religion. It was the misfortune of mankind that during the darker centuries the X<sup>n</sup> priests following their ambition and avarice combining with the magistrate to divide the spoils of the people, could establish the notion that schismatics might be ousted of their possessions & destroyed. This notion we have not yet cleared ourselves from. In this case no wonder the oppressed should rebel, & they will continue to rebel & raise disturbance until their civil rights are fully restored to them & all partial distinctions, exclusions & incapacitations removed.

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DRAFT OF BILL TO ABOLISH ENTAILS.<sup>1</sup> V. S. A.

[Oct. 14, 1776.]

*A Bill to enable tenants in tail to convey their lands in fee-simple.* Whereas the perpetuation of property

<sup>1</sup> On Oct. 12, 1776, leave was granted to introduce this bill, and Jefferson, Starke, and Bullitt were named a committee to draft it. Jefferson reported this draft Oct. 14th. It was considered and amended in the Committee of the Whole on Oct. 17th and 18th, was passed by the lower house on Oct. 23d, and concurred in by the Senate, Nov. 1st. It was the first great blow at the aristocratic or landed class of Virginia, and is noticed by Jefferson in his *Autobiography*; *ante*, i, 58. This is the draft of the bill, in Jefferson's handwriting, the bill as finally adopted being in the *Session Acts for 1776*, p. 37; *A Collection of the Public Acts of Va.*, 1785, p. 45; and in *Hening*, ix., 226.

in certain families by means of gifts made to them in fee-simple is contrary to good policy, tends to deceive fair traders who give credit on the visible possession of such estates, discourages the holder thereof from taking care & improving the same, and sometime does injury to the morals of youth by rendering them independent of, and disobedient to, their parents; and whereas the former method of docking such estates tail by special act of assembly formed for every particular case employed very much time of the legislature, was burthensome to the public, and also to the individual who made application for such acts:

Be it therefore enacted by <sup>1</sup>

and it is hereby enacted by authority of the same that any person who now hath, or hereafter may have any estate in fee tail general or special in any lands or slaves in possession, or in the use or trust of any lands or slaves in possession, or who now is or hereafter may be entitled to any such estate tail in reversion or remainder after the determination of any estate for life or lives or of any lesser estate, whether such estate hath been or shall be created by deed, will, act of assembly, or any other ways or means shall have full power to pass, convey, or assure in fee-simple or for any lesser estate the said lands or slaves, or use in lands or slaves or such reversion or remainder therein, or any part or parcel thereof, to any person or persons whatsoever by deed or deeds of feoffment, gift, grant,

<sup>1</sup> As this was one of the first bills passed by the Assembly as formed under the Constitution adopted in this year, the enacting clause was not yet definitely settled, and is left blank in the draft.

exchange, partition, lease, release, bargain, and sale, covenant to stand seized to uses, deed to lead uses, or by his last will and testament, or by any other mode or form of conveyance or assurance by which such lands or slaves, or use in lands or slaves, or such reversion or remainder therein might have been passed, conveyed or assured had the same been held in fee-simple by the person so passing, conveying or assuring the same: and such deed, will or other conveyance shall be good and effectual to bar the issue in tail & those in remainder and reverter as to such estate or estates so passed, conveyed, or assured by such deed will or other conveyance.

Provided nevertheless that such deed, will, or other conveyance shall be executed, acknowledged, or proved, and recorded in like manner as, and in all cases where, the same should have been done, had the person or persons so conveying or assuring held the said lands or slaves, or use of lands and slaves or such reversion or remainder in fee-simple.

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*Amendments to Bill to Abolish Entails*<sup>1</sup>

[Oct. 18]

Line 18. omit 'have &c. to the end of the bill, & insert 'from henceforth, or from the commencement of such estate tail, stand ipso facto seized, possessed, or entitled of, in, or to, such lands or slaves or use in lands or slaves so held or to be held as aforesaid in

<sup>1</sup> These amendments were proposed by Jefferson himself, and are taken from the original in his handwriting, in the Virginia archives.

possession, reversion, or remainder in full & absolute fee-simple, in like manner as if such deed, will, act of assembly, or other instrument had conveyed the same to him in fee-simple; any words, limitations, or conditions in the said deed, will, act of assembly, or other instrument to the contrary notwithstanding.

Saving to all & every person & persons, bodies politic and corporate, other than the issue in tail & those in reversion & remainder, all such right title, interest & estate claim & demand, as they, every, or any of them could or might claim, if this act had never been made: and Saving also to such issue in tail & to those in reversion & remainder any right or title which they may have acquired by their own contract for good & valuable consideration actually & bona fide paid or performed.

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DRAFT OF A BILL TO REMOVE SEAT OF GOVERNMENT<sup>1</sup>  
J. MSS.

[October 14, 1776.]

Whereas great numbers of the inhabitants of this commonwealth must frequently & of necessity resort to the seat of government where general assemblies

<sup>1</sup> On Oct. 14th the House of Delegates "ordered, That leave be given to bring in a bill for the removal of the seat of government, and that Mr. Jefferson, Mr. Adams and Mr. Starke do prepare and bring in the same." On the same day Jefferson introduced this bill, which was read for a first time, and "on the question put that the said bill be read a second time, it passed in the negative." *Journal for 1776*, p. 51. See Jefferson's *Autobiography*, ante, i, 64. A bill for this purpose, with the preamble of the above, was introduced by Harvey on May 28, 1779, and passed. It is printed in *A Collection of the Public Acts of Virginia*, 1785, p. 100; and in *Hening*, x., 85.

are convened, Superior courts are held & the Governor & Council usually transact the executive business of government; & the equal rights of all the sd inhabitants require that such seat of government should be as nearly central to all as may be, having regard only to navigation, the benefits of which are necessary for promoting the growth of a town sufficient for the accommodation of those who resort thereto, and able to aid the operations of government: and it has been also found inconvenient in the course of the present war where seats of government have been so situated as to be exposed to the insults & injuries of the public enemy; which dangers may be avoided and equal justice done to all the Citizens of this commonwealth by removing the seat of government to the town of \_\_\_\_\_ in the county of \_\_\_\_\_ which is more safe & central than any other town situated on navigable water:

Be it therefore enacted by the general Assembly that six whole squares of ground surrounded each of them by four streets & containing all the ground within such streets situate \_\_\_\_\_ in the said town of \_\_\_\_\_ and on an open & airy part thereof shall be appropriated to the use & purpose of public buildings. On one of the sd squares shall be erected one house for the use of the General Assembly to be called the Capitol, which said Capitol shall contain two apartments for the use of the Senate & their clerk, two others for the use of the house of delegates & their clerk, and others for the purposes of Conferences, Committees, & a Lobby, of such forms & dimensions as shall be adapted to their

respective purposes. On one other of the sd squares shall be erected another building to be called the Halls [sic] of justice which shall contain two apartments for the use of the court of Appeals & it's clerk, two others for the use of the High court of Chancery & it's clerk, two others for the General court & it's clerk, two others for the use of the Court of Admiralty & it's clerk, & others for the uses of grand & petty juries, of such forms & dimensions as shall be adapted to their respective purposes; and on the same square last mentioned shall be built a public jail with few apartments for the present but so planned as to admit of addition hereafter. One other of the sd squares shall be reserved for the purpose of building thereon hereafter a house for the several executive boards and offices to be held in. Two others with the intervening street shall be reserved for the use of the governor of this commonwealth for the time being to be built on hereafter. And the remaining square shall be appropriated to the use of a public Market. The said houses shall be built in a handsome manner with walls of brick, or stone & Porticos where the same may be convenient or ornamental, and with pillars & pavements of stone.

There shall be appointed by joint ballot of both houses of assembly five persons to be called the directors of the public buildings, who, or any three of them shall have power to make choice of such squares of ground situate as before directed, as shall be most proper & convenient for the sd public purposes, to agree on plans for the said buildings, to employ proper workmen to erect the same, to superintend

them, to procure necessary materials by themselves or by the board of trade, & to draw on the Treasurer of this commonwealth from time to time for such sums of money as shall be wanting; the plans & estimates of which shall be submitted to the two houses of assembly whensoever called for by their joint vote, & shall be subjected to their controul.

And that reasonable satisfaction may be paid & allowed for all such lots of ground as by virtue of this act may be taken & appropriated to the uses aforesaid, the clerk of the county of \_\_\_\_\_ is hereby empowered & required on requisition from the s<sup>d</sup> directors to issue a writ in nature of a writ of Ad quod damnum to be directed to the sheriff of the s<sup>d</sup> county commanding him to summon & impanel twelve able & discreet freeholders of the vicinage no ways concerned in interest in the sd lots of land nor related to the owners or proprietors thereof to meet on the sd lots on a certain day to be named in the sd writ not under five nor more than ten days from the date thereof, of which notice shall be given by the sheriff to the proprietors and tenants of the sd lots of land if they be to be found within the county, & if not, then to their agents therein if any they have, which freeholders taking nothing, on pain of being discharged from the inquest & immediately imprisoned by the sheriff, either of meat or drink from any person whatever from the time they come to the sd place until their inquest, seated shall be charged by the sd sheriff impartially & to the best of their skill & judgment to value the sd lots of ground in so many several & distinct parcels as shall be owned & held by several

& distinct owners & tenants & according to their respective interests & estates therein, & if the sd valuation cannot be completed in one day then the sd sheriff shall adjourn the sd jurors from day to day until the same be completed; & after such valuation made the sd sheriff shall forthwith return the same under the hands & seals of the sd jurors to the clerk's office of the sd county, and the right & property of the sd owners & tenants in the sd lots of land shall be immediately divested & be transferred to this commonwealth in full & absolute dominion, any want of consent or disability to consent in the sd owners & tenants notwithstanding.

The costs of the sd inquest & the several sums at which the rights of the owners & tenants are valued shall be paid by the Treasurer to the sd owners, tenants & others entitled respectively on warrant from the Auditors.<sup>1</sup>

And whereas it may be expedient to enlarge the sd town of \_\_\_\_\_ by laying off a number of lots to be added, thereto, & it may also happen that some of the lands adjacent to the sd town may be more convenient for the public uses; be it therefore enacted that the sd directors cause two hundred additional lots or half acres, with necessary streets to be laid off adjacent to such parts of the sd town as to them shall seem most convenient and they shall also be at liberty to appropriate the six squares aforesd or any part of them either from among the lots now in the sd town, or those to be laid off as before directed, or of the

<sup>1</sup> This clause, which is stricken out, follows: "The sd directors shall work at the public expense for the act."

lands adjacent to the sd former or latter lots; and the sd six squares & two hundred lots shall thenceforth be a part of the sd town, and the sd directors shall return into the clerk's office of the sd county of

there to be recorded, a full & distinct report under their hands and seals of the lots and squares of land added by them to the sd town or appropriated to the public uses, together with a plan thereof, the rights of the several owners & tenants of the lots of land so to be added to the town & not appropriated to the public uses are nevertheless saved to them.

And be it further enacted that from & after the last day of December which shall be in the year of our Lord 1780 the sd Court of Appeals, High Court of Chancery, General Court & Court of Admiralty shall hold their sessions in the apartments prepared for them by the sd directors in the sd Halls of justice; that the first meeting of general assembly after the same day shall be in the said Capitol, that the clerks of the two houses of Assembly and of the several courts before mentioned, shall previously cause to be removed thither at the public expense the records, papers, and other things belonging to their respective offices, and that the keeper of the public jail shall in like manner cause all prisoners in his custody to be removed to the public jail to be built as before directed, which shall thenceforward be deemed and used as the public jail spoken of by the laws whether heretofore or hereafter passed.

DRAFT OF A BILL FOR RAISING SIX ADDITIONAL BATTALIONS OF INFANTRY ON THE CONTINENTAL ESTABLISHMENT<sup>1</sup>

J. MSS.

[October 28, 1776.]

Whereas it has been thought necessary by the American Congress that the armies of the United States should be augmented to eighty eight battalions to be enlisted to serve during the continuance of the present war unless sooner discharged, & that fifteen of the said battalions should be furnished by this Commonwealth; and the said Congress by their resolutions have engaged to give to every noncommissioned officer & private soldier a present bounty of twenty dollars (an annual bounty of a suit of clothes, to consist for the present year of two linen hunting shirts, two pr of overalls, a leathern or woollen waistcoat with sleeves, one pr of breeches, a hat or leathern cap, 2 shirts, 2 pr of hose, & 2 pr of shoes, amounting in the whole to the value of 20 dollars or that sum to be paid to each soldier who shall procure those articles for themselves) & to provide the following portions of lands to be given at the close of the war, or whensoever discharged to the officers and soldiers who shall engage in the said service, or to their representatives if slain by the enemy; to wit, to every noncommissioned officer or soldier one hundred acres, to every ensign one hundred and fifty

<sup>1</sup> On October 15, 1776, the House of Delegates appointed Mr. Treasurer (R. C. Nicholas), Nelson, Bullitt, Jefferson, and Smith to prepare this bill. On Oct. 24th, they added to these, Jones, Fleming, Henry, and Read. The bill was reported by Jefferson on Oct. 28th, and read the first time. Read the second time on the following day, and passed on Nov. 2d. This is printed from the original draft in Jefferson's handwriting. The act as adopted is given in *Hening*, ix., 179.

acres, to every Lieutenant two hundred acres, to every captain three hundred acres, to every Major four hundred acres, to every Lieutt. Colonel four hundred & fifty acres & to every Colonel five hundred acres.

And whereas there are already in the Continental service eight battalions of regulars raised in this Commonwealth who were enlisted to serve for certain terms only, and one other battalion, formerly in the same service & dissolved by the expiration of the time of their enlistment, has been ordered to be reestablished by new levies; which nine battalions are to be taken as part of the fifteen from this commonwealth provided they shall re-enlist for the continuance of the war: and there are also in the service of this commonwealth (nine companies of marines &) five companies of land forces stationed at different posts on the river Ohio whom it may be expedient to engage in the six new battalions now necessary to be raised to complete the said number of fifteen battalions.

Be it therefore enacted by the General Assembly of the Commonwealth of Virginia that <sup>1</sup> it shall & may be lawful for the governor with the advice of his privy council & he & they are hereby required to take such measures as to them shall seem most expedient for engaging the said nine battalions & also so many (of the sd Marines &) of the companies

<sup>1</sup> Then follows this clause, which is stricken out: "a committee of three persons to be chosen by joint ballot of both houses shall proceed immediately." And Jefferson has written: "Govt. to re-enlist 9 former battalions, marines & Ohio garrisons. T. Nelson, R. H. Lee, etc."

stationed on the Ohio as shall be willing to be of the Armies of the United States on the new establishment before recited; & for that purpose to give recruiting Powers to the officers commanding the same, or to send special Commissioners if that measure shall appear more effectual, or to adopt any other ways or means most likely to procure their speedy enlistment.

[<sup>1</sup> And whereas it will be necessary, in order to augment & form the said Marines into one complete battalion, that an additional company or companies should be raised for that purpose, but the numbers which may be wanting of officers & men being now unknown, the appointing & raising the same cannot be precisely directed, be it therefore enacted that it shall & may be lawful for the governor by warrant under his hand to authorize such of the County committees as he shall think proper to appoint such & so many captains & other inferior officers as may be wanting completely to officer the said battalion, who shall immediately proceed to raise their quotas of men: & in case any officers of the Marines engaging in the sd service shall fail to raise the quota of men hereafter prescribed for his office before the

day of next

it shall be lawful for the governor with the advice of the privy council either to appoint another in his stead or to continue him as shall appear most likely to expedite the raising his said quota.

And be it farther enacted that the Committees for

<sup>1</sup> "Govr. to direct commees shall No. companies to compleat Battalions of marines."—*T. J.*

the counties of Fincastle, Botetourt, East-Augusta, & Hampshire shall each of them appoint one captain, 2 Lieutenants, one Ensign & four sergeants to be added to the officers of the five companies stationed on the Ohio or to such of them as shall be willing to engage as aforesaid in the Continental service & shall with them be formed into one battalion; provided that if all or any of the officers of the sd five companies stationed on the Ohio shall refuse to enter into the sd service it shall be lawful for the Committee of the county from which such officer or officers received his or their appointment to appoint others in their room.]<sup>1</sup>

And for raising the sd six additional battalions be it further enacted that the committee for the district of West Augusta shall have power to appoint ten captains, twenty Lieutenants & ten Ensigns & the committees for the other counties in this commonwealth to appoint the following officers respectively  
to wit, the Commee for the county of

- Accomack (1208 militia).<sup>2</sup>  
 90 Albemarle (1254 militia) + 70 minte. — 54  
     officers = 1270 [100] 95. 130  
 82 Amelia (abt. 1150) [90] 85  
 46 Amhurst (abt. 650, [91] 48

<sup>1</sup> The paragraphs in brackets are stricken out.

<sup>2</sup> In the bill as passed, from one to three officers are assigned to each county, and it is thus apparent that this list was merely an approximation of the probable recruits from each county, the figures to the right having been first written, and then struck out, those to the left representing the ultimate conclusion of the Committee.

- 142 Augusta 1. Captain, 2 Lieutenants, & 1 Ensign & 4 serjeants (abt. 2000) [167] 149
- 100 Bedford (abt. 1400) [119] 104
- 124 Botetourt 1. Captain, 2 Lieutenants, & 1 Ensign & 4 serjeants (abt. 1600) [126] 119
- 85 Brunswick (abt. 1200, [95] 90
- 46 Buckingham (600 exclude officers) + 50 [51] 40
- 85 Berkeley (abt. 1200 Mr Wood) [95] 90
70. Caroline (983) [77] 72
25. Charles City (350) [27] 26
58. Charlotte (812 militia) [64] 61
68. Chesterfield (abt. 960) [74] 70
100. Culpepper (abt. 1400) [110] 104
71. Cumberland (abt. 1000 militia) [79] 75
50. Dinwiddie (abt. 700 Mr. Tazew.) [55] 52
57. Dunmore (abt. 800 nt more yn 500 besides menonists &c., [63] 61
11. Eliz. City (120) + 90 [12] 12
32. Essex (abt. 450) [35] 33
71. Fairfax (abt. 1000) [79] 76
78. Fauquier (abt. 1000) + 100 [87] 82
90. Frederick (1264 militia) [100] 95
142. Fincastle 1. Captain, 2 Lieutenants, & 1 Ensign & 4 serjeants (2000) [157] 149
64. Gloster (abt. 900) [71] 67
37. Goochland (520) [41] 39
71. Halifax (abt. 1000) [79] 75
50. Hampshire 1. Captain, 2 Lieutenants, & 1 Ensign (abt. 700 rank & file) [55] 52
64. Hanover (abt. 800) + 100 min [71] 67
35. Henrico (abt. 500) [40] 30

14. James City (190) [15] 14  
 51. Isle of Wight (abt. 650) + 75 [57] 54  
 32. K. George (abt. 400) + 50 [35] 32  
 42. K & Queen (600) [47] 44  
 35. K. Wm. (abt. 500. Mr. Colman. Colo  
     Brooke) [40] 38  
 14. Lancaster (abt. 200) [16] 15  
 114. Loudoun (abt. 1600 besides Quakers) [126]  
     119  
 42. Louisa (550 militia abt) + 50 minute men  
     [47] 44  
 42. Lunenburgh (563 militia.) + 30 minte. [46]  
     43  
 21. Middlesx (abt 300) [24] 23  
 60. Muhlenburgh (850) [67] 63  
 57. Nansemd. (abt. 800) [63] 60  
 32. N. Kent (448—r & f.) [35] 30  
 71. Norfolk (900) + 100 [79] 75  
     Northampton  
 50. Northumbld. (700) [55] 90  
 38. Orange (above 500) + 50 [43] 41  
 110. Pittsylva. (1550) [122] 119  
 38. Pr. Edwd. (abt 550 militia) [43] 41  
 32. Pr George (abt 450) [65] 33  
 32. Prss. Anne (abt 450) [35] 33  
 71. Pr. Wm. (917 militia) + 75 = 100 [79] 75  
 33. Richmond (abt 470) [37] 34  
 53. Southampton (750) [59] 16  
 35. Spotsylve (500) [40] 28  
 35. Stafford (abt 400) + 100 by Mr. Brent) [40]  
     38  
 25. Surry (abt 350) [27] 26

- 47 Sussex (abt 660) [50] 49  
 7 Warwick (100) [8] 7  
 50 Westmld. (627) + 70 = 700 [55] 90  
 21 York (abt 260) + 40 free negroes [24] 22  
 14 Wmsburgh 200 [16] 15

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which several officers so to be appointed shall immediately proceed to enlist the several quotas of men following, that is to say, every Captain shall enlist 28 men, every first Lieutent. 20, every sd. Lieutt. 16, & every ensign 10 & shall be at liberty to do the same as well within their respective counties as without.

And if any officer shall fail to recruit his quota of men before mentioned on or before the day of next the

**Officers failing to enlist quota**

Commee of the county by whom such officer was appointed may either appoint another in his stead, or may continue him if it shall appear to them that the quota of such officer may be sooner completed by his continuance. But if he or the officer appointed in his stead shall further fail to raise the sd quota before the day of next, then the commee of the county who appointed such officer shall make report of the whole matter to the Governor, who with the advice of the privy council shall take such measures thereon as shall seem most likely to expedite the raising the said quota, whether it be by continuing the same officer, or by making a new appointment; and wheresoever any new appointment shall be made on failure of any officer or officers to

raise their quota, the men enlisted by such officer or officers so failing shall be delivered over to the officer appointed to succeed him, he refunding to the officer who enlisted the same such recruiting expenses as the committee shall judge reasonable.

And be it further enacted, that to each of the sd six additional battalions 1 Colonel, one Lieutenant Colonel & one Major shall be appointed by joint ballot of both houses of assembly and one chaplain & one Surgeon by the field officers & captains of each battalion respectively, & that all Chaplains, & Surgeons as well of the sd six battalions as of the nine battalions now in Continental service shall at all times be removeable, and others appointed in their steads by the sd field officers & Captains of their respective battalions for good cause to them shewn: and the Surgeon's Mates shall be appointed by the Surgeon himself with the approbation of the Commanding officer of the battalion & the Adjutant, Regimental Quarter Master, Serg<sup>t</sup> Major, Quarter Master Sergeant & Drum Major by the said commanding officer of the battalion.

And be it further enacted that the Quotas of men raised by the officers to be appointed by the Commee of *West Augusta* shall be formed into distinct companies by the sd Commee which companies shall constitute one of the sd six additional battalions: & the Quotas raised by the officers to be appointed by any other Commees shall by the same Commee be formed into one or more companies or parts of a company according to the nature & number of the Quotas: &

How to be  
formed into  
companies  
& battal-  
ions.

the said companies & parts of companies shall be formed into battalions of ten companies each by the governor or in his absence by the President who shall Allot to each battalion such of the field officers to be appointed by the two houses of assembly as he shall judge best suited to the same, and shall deliver to the Continental Commander in this Colony a roll of each battalion as soon as the same shall be so embodied and officered.

And whereas it is apprehended that sufficient care and attention hath not been always had by officers to the cleanliness, to the health & to the comfort of the soldiers entrusted to their command be it therefore enacted that so long as any troops from this commonwealth shall be in any service to the Northward thereof it shall & may be lawful for our delegates in Congress & they are hereby required from time to time to enquire into the state & condition of the troops & the conduct of the officers commanding & where any troops raised in this commonwealth are upon duty within the same or any where to the Southward there the Gov<sup>r</sup> & Council are required to make similar enquiry by such ways or means as shall be in their power; & whensoever it shall be found that any officer appointed by this commonwealth shall have been guilty of negligence or want of fatherly care of the soldiers under his command they are hereby respectively required to report to this assembly the whole truth of the case who hereby reserve to themselves a power of removing such officer: & whenever they shall find that such troops shall have suffered thro' the negligence or inattention of any officer of

Continental Appointment they are in like manner to make report thereof to this assembly whose duty it will be to represent the same to Congress: and they are further respectively required from time to time to procure & lay before this assembly exact returns of the numbers & condition of such their troops.

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DRAFT OF A BILL ESTABLISHING COUNTY COURTS: v. s. a.

[Nov. 4, 1776.]

For fixing the places of holding courts for the counties of Pittsylvania & Henry. Be it enacted by the General assembly of the Commonwealth of Virginia that it shall & may be lawful for the freeholders of the said county of Pittsylvania qualified by law to vote for representatives in general assembly, & they are hereby required to meet at the house of Richard Faithing in the said county on the        day of next, then & there to chuse the most convenient place (having due regard as well to the extent of the said county as to the populousness of its several parts) for holding courts for the said county in future.

And be it further enacted that notice shall be given

<sup>1</sup> On Oct. 25th, leave was granted to introduce this bill, and Jefferson, Williams, Bullitt, and Terry were named to do it. On Nov. 4th, it was read for the first time and on the 5th, it was read a second time and committed to the Committee of the Whole. On Nov. 21st, it was sent back to the drafting committee, to which the members from Pittsylvania were added. It was reported again on Dec. 2d, and passed on the 5th. It is difficult to discover the cause for dissatisfaction with Jefferson's draft, which led to its recommittal, for a comparison with the act as passed gives no indication of it, but it undoubtedly was intended to aid the western counties in the struggle to obtain equal privileges with those on the tide-waters.

to the freeholders of the said county of Pittsylvania by the Sheriff, ministers & readers, in the same manner & under the like penalties as are directed for giving notice of an election of representatives to serve in General assembly & that the election shall be held by the said Sheriff in the same manner as such election of representatives to serve in General assembly, writing down the names of the places voted for, every one in a separate column of his poll, & the names of every freeholder voting under the place for which he votes: & the place for which the most votes shall be given shall thenceforth be the place for holding courts for the said county: & after the election shall be made the sheriff shall return the original poll, attested by himself, to the clerk's office of the said county, by whom the same shall be recorded.

And be it further enacted that the same rules & proceedings shall be observed in every article relating to the said election & all persons failing to do their respective duties shall incur the same and be subject to the same actions as are prescribed by law in case of an election of representatives to serve in General assembly.

And be it further enacted that it shall and may be lawful for the freeholders of the said county of Henry qualified by law to vote for representatives to serve in General assembly, & they are hereby required, at the time & place to make their first choice of representatives (which place is hereby declared to be the plantation of John Rolands) to make choice also of the most convenient place for holding courts for the said county of Henry in future having due regard as

well to the extent of the said county as to the populousness of it's several parts, which election shall be notified & held, & in all circumstances to be conducted by the same rules & proceedings, & all persons failing to do their respective duties shall incur the like penalties & be subject to the same action as before directed for the county of Pittsylvania.

Provided that if the freeholders of either of the said counties of Pittsylvania or Henry shall be prevented by rain snow or accidental rise of watercourses from assembling at the places of election on either of the days beforementioned that then it shall & may be lawful for the Sheriff & he is hereby required to postpone the election so prevented until that day week, & so in like manner from week to week so often as the case shall happen.

And whereas by the usual course of the law sheriffs can not be qualified for their offices but by the justices of the peace in open court at the court-house of their counties; and no court can be held for the qualification of a sheriff for the said county of Henry until a place for holding the same is fixed on as before directed; be therefore that the sheriff for the county of Pittsylvania shall have authority & power & he is hereby required to notify & hold the sd election for the county of Henry as well of a place for holding courts as aforesaid as for making their first choice of representatives to serve in General assembly, in like manner & subject to the same penalties & actions as are before presented in the case of the election for the county of Pittsylvania.

DRAFT OF A BILL FOR ALTERING RATES OF COPPER  
COIN <sup>1</sup>

V. S. A.

[Nov. 7, 1776.]

For rendering the half penny pieces of copper coin of this commonwealth of more convenient value & by that means introducing them into more general circulation; be it enacted by the General Assembly of the commonwealth of Virginia that from and after the passing of this act the said pieces of copper coin shall pass in all payments for one penny each of current money of Virginia. Provided nevertheless as was heretofore provided by the laws that no person shall be obliged to take above one shilling of the said copper coin in any one payment of twenty shillings or under, nor more than two shillings & six pence of the said coin in any one payment of a greater sum than twenty shillings.

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 REPORT ON UPSHUR <sup>2</sup>

In the HOUSE OF DELEGATES,  
Thursday, Nov. 28, 1776.

Mr. Jefferson, from the Committee of Privileges and Elections, reported that the committee had, according to order, had under their consideration the petition of ARTHUR UPSHUR, to them referred, and had agreed to the following report and resolution thereupon; which he read in his place, and afterwards

<sup>1</sup> On Nov. 7th, the House of Delegates gave leave for the introduction of this bill, and named Jefferson and Fleming to "propose the same" which was done the same day. On Nov. 8th, it was read for a second time, and on Nov. 21st, was rejected.

<sup>2</sup> From the *Virginia Gazette*, Dec. 13, 1776.

delivered in at the clerk's table, where the same were again twice read, and agreed to. Your committee find that the said ARTHUR UPSHUR having several vessels on the stocks, cleared one of them out for the British West Indies on the 20th day of July, 1775, but that the said vessel was not launched until the 26th day of August; that on the 2d day of September, when the storm happened, the said vessel had no part of her loading on board; that the said vessel sailed after the 10th day of September to one of the foreign West India Islands, with a load of Indian corn; that on the 2d day of October following the Committee of the county of Accomack proceeded to inquire into the matter, and on such inquiry declared the said UPSHUR had violated the continental association by sending out the said vessel and ordered his case to be published in the *Virginia Gazette*; that after the return of the said vessel, the said UPSHUR (as appears by the minutes of the said committee) denying that he had intentionally violated the said association, voluntarily submitted the matter again to the determination of the committee, who, at a session held on the 8th day of January, 1776, upon farther enquiry, were of the opinion that he had violated the said association ignorantly, but that, having behaved obstinately, and ill afterwards, he ought to be fined, and they accordingly fined him 100£, which sum the said UPSHUR deposited with a member of the Committee. Your committee farther find, that the said petitioner hath conducted himself, both before and since the said transaction, as a friend to the American cause.

Resolved, that though the committee of Accomack were actuated by the best of motives, yet they erred in proceeding to impose the fine upon the petitioner and that therefore the said fine ought to be restored to the said petitioner by the person with whom it was deposited.

Resolved, that the said petitioner having violated the association through ignorance, and having in other respects conducted himself as a friend to the American cause, ought to be restored to the rights of dealing and intercourse with his country.

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A BILL FOR THE TRIAL OF OFFENCES COMMITTED OUT  
OF THIS COMMONWEALTH. V. S. A.

[Dec. 5, 1776.]

For the punishment of Treasons, misprisions of treason or concealment of treasons, felonies, robberies, murders & confederacies hereafter to be committed out of this Commonwealth.

Be it enacted by the General Assembly of the Commonwealth of Virginia that all treasons, misprisions of treasons, concealments of treasons, felonies, robberies, murders & confederacies hereafter to be committed in or upon the sea, or in any haven, river creek or other place by land or by water not within the body of any county of this Commonwealth, shall be enquired, tried, heard, determined & judged in such counties and places in this Commonwealth as shall be limited by the Governor's commission or commissions to be directed for the same in like form & condition as if any such offence or offences had been

committed or done in or upon land: and such commission shall be had under the seal of the Commonwealth directed to any three or more judges of the General Court, from time to time and as oft as need shall require to hear & determine in such offences after the common course of the laws of this commonwealth, used for treasons, misprisions of treasons, concealments of treasons, felonies, murthers, robberies, & confederacies of the same, done and committed upon the land within this Commonwealth.

And be it enacted by the authority aforesaid that such persons to whom such commission or commissions shall be directed, or two of them at the least, shall have full power & authority to enquire of such offences & of every of them, by the oaths of twelve good & lawful inhabitants in the county limited in their commission in such like manner & form, as if such offences had been committed upon the land within the said county; and that every indictment found and presented before such commissioners, of any treasons, misprisions of treasons, concealments of treasons, felonies, robberies, murthers, man-slaughters, or such other offences, being committed or done in and upon the seas, or in or upon any haven, river, creek or other places by land or by water not being in the body of any county of this Commonwealth, shall be good and effectual in the law; and if any person or persons happen to be indicted for any such offence done or hereafter to be done upon the seas, or in any other place above limited, that then such order, process, judgement, & execution shall be used, had, done & made, to & against every such person and persons

so being indicted as against Traytors, felons, murderers and other offenders aforesaid for treason, misprision of treason, concealment of treason, felony, robbery, murther, or other such offences done upon the land, as by the laws of this Commonwealth is accustomed; & that the trial of such offence or offences if it be denied by the offender or offenders, shall be had by twelve lawful men inhabited in the county limited within such commission, which shall be directed as is aforesaid, & no challenge or challenges to be had for the county; & such as shall be convicted of any such offence or offences by verdict, confession or process, by authority of any such commission, shall have & suffer such pains of death, losses of lands, goods & chattels, as if they had been attainted & convicted of any treasons, misprisions of treasons, concealments of treasons, felonies, robberies, or other the said offences done upon the lands.

And be it enacted by authority afore said, that for treasons, misprisions of treasons, concealments of treasons, felonies, murthers & confederacies done upon the sea or seas, or in or upon any haven, river or creek of this Commonwealth, the offenders shall not be admitted to have the benefit of his or their clergy, but be utterly excluded thereof & from the same.

Provided alway, that this act extend not to be prejudicial or hurtfull to any person or persons, for taking any victual, cables, ropes, anchors, or sails, which any such person or persons (compelled by necessity) taketh of or in any ship which may conveniently spare the same, so that the same person or persons pay out of hand for the same victual, cables,

ropes, anchors, or sales, money or money-worth, to the value of the thing so taken, or do deliver for the same a sufficient bill obligatory to be paid within months next ensuing the making of such bills, & that the makers of such bills well and truly pay the same debt at the day to be limited within the said bills.

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DRAFT OF A BILL FOR SUSPENDING EXECUTIONS FOR  
DEBT<sup>1</sup> V. S. A.

[Dec. 6, 1776.]

Whereas by the expiration of the act for the regulating and collecting certain officers fees, and by the troubles which have since subsisted in this country, the administration of justice hath been in a great measure suspended; and altho it is thought proper to revive and establish the courts of justice for the purpose of securing & preserving internal peace & good order, of determining disputed rights and titles and of ascertaining just debts and unsettled demands

<sup>1</sup> The system of mortgaging crops in Virginia; the non-exportation association of the Continental Congress; the interruption of all trade by the restraining acts; and the outbreak of actual war, threatened to force bankruptcy on the larger part of the planter interest in that State. This class therefore united in opposing the establishment of courts of justice under the new Constitution. In hopes of lessening this serious opposition, leave was given by the Burgesses, Dec. 5th, for the introduction of this bill, and Mason, Jefferson, T. Adams, Bullitt, Nicholas, and Braxton were named a committee to do so. On Dec. 6th, it was introduced by Mason, and read the first time. On the 9th, it was read for a second time and committed to the Committee of the Whole. In the meantime, the planters, not satisfied with this sop, had succeeded in deferring the bills organizing the courts, till the next session; so those opposed to them united and deferred this bill also. It was never again introduced. The draft is in Jefferson's handwriting.

which might otherwise be lost by the death of witnesses or insolvency of debtors; yet nevertheless it may produce great oppression and ruin to debtors to suffer executions to be levied on decrees to be enforced, during the present limited and uncertain state of our trade, for debts heretofore contracted: Be it therefore enacted by the General Assembly of the Commonwealth of Virginia that when judgement shall be entered or decree passed in any court of record for the recovery of money due from the defendant or defendants before the passing of this act, if such defendant or defendants shall *give to the said court good & sufficient security* for payment of the money whensoever by a restoration of trade or from other circumstances it shall appear proper to the General assembly to pass an act for levying executions or enforcing decrees for money then such court shall order execution of the sd judgement or process for enforcing the said decree to be stayed, *entering of record the recognisance of such security*, so that if the money be not paid when directed by such future act of assembly, a scire facias may issue thereon, without the necessity of commencing a new suit.

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DRAFT OF A BILL FOR PROVIDING AGAINST INVASIONS  
AND INSURRECTIONS<sup>1</sup> V. S. A.

[May 10, 1777.]

For making provision against invasions & insurrections & laying the burthen thereof equally on all

<sup>1</sup> The House of Delegates gave leave May 9, 1777, to introduce this bill and named Jefferson, Fleming, and Braxton to draw it. The

be it enacted by the General assembly of the *Commonwealth of Virginia* that the division of the militia of each county into ten parts directed by a *former ordinance* shall be completed & kept up in the following manner. The commanding officer of every county within one month after every general muster shall enroll under some captain such persons not before enrolled as ought to make a part of the militia, who together with those before enrolled & not yet formed into tenths & *with such Quakers & Menonists as are not formed into tenths* shall by such captain at his first muster after receiving the same be divided into equal parts as nearly as may be, each part to be distinguished by fair and equal lot by numbers from one to ten, & when so distinguished to be added to, and make part of the division of the militia of such county already distinguished by the same number.

And where any person subject to such allotment shall not attend, or shall refuse to draw for himself, the captain shall cause his lot to be drawn for him by some other in presence of the company.

When any officer of the militia shall receive notice of any invasion or insurrection within his own county, he shall immediately give intelligence thereof to the commanding officer of the county & if the urgency of the case requires it he shall forthwith raise the

former reported it on May 10th, when it was read for the first time. On May 16th and 18th, it was considered in the Committee of the Whole, and ordered to be engrossed, and on May 21st, it was passed. This is printed from the draft in Jefferson's handwriting, and varies considerably from the Act as printed in the *Session Acts for May, 1777*, p. 13; *The Report of the Revisers*, p. 6; *A Collection of the Public Acts of Virginia*, 1785, p. 52; and *Hening*, x., 294.

militia under his special command & proceed to oppose the enemy or insurgents: the commanding officer of the county on receiving notice thereof shall immediately if the case will admit delay or be greater than the force of his own militia may encounter, communicate the same to the Governor, by express, for which purpose he may impress boats, men & horses, & may also notify to any militia officer of the adjacent counties to be by him forwarded to his commanding officer & in the meantime if it be urging shall raise such part of his own militia as the case shall require & admit. The commanding officer of any adjacent county receiving the notice so forwarded, shall immediately raise such part of his militia, not exceeding two thirds, as the circumstances of the case may require & order them to the assistance of such adjacent county: but any of the commanding officers, if he think the case of too small consequence to require these proceedings may call a council of war to consist of a majority of his field officers & captains & take their advice whether any & what force shall be raised or sent or whether they may await the governor's orders.

The governor on receiving such intelligence may, with the advice of the council of state cause to be embodied & marched to oppose such invasion or insurrection, such members of the militia as may be needful and from such counties as will suit the exigencies of the case; & if the corps consist of three or more battalions, may appoint a General officer to take command thereof.

The several divisions of the militia of any county

shall be called into duty by regular rotation from the first to the tenth, & every person failing to attend when called on, or to send an able bodied man in his room, shall, unless there be good excuse, be considered as a deserter & suffer accordingly.

Any able bodied volunteers who will enter into the service shall be accepted instead of so many of the divisions of militia called for but if the invasion or insurrection be so near & pressing as not to allow the delay of calling for the division or divisions next in turn, the commanding officer may call on such part of the militia as shall be most convenient, to continue in duty till such division or divisions can come to supply their places.

The soldiers of such militia if not well armed & provided with ammunition shall be furnished with the arms & ammunition of the county & any deficiency in these may be supplied from the public magazines, or, if the case admit not the delay, by impressing arms & ammunition of private property, which ammunition so far as not used, & arms, shall be duly returned as soon as they may be spared & any person embezzling any such public or private arms, or not delivering them up when required by his commanding officer shall on his warrant be committed to prison without bail or mainprise there to remain till he deliver or make full satisfaction for the same.

The commanding officer shall appoint such officers of the militia as he shall think most proper to command the men called out by divisions in the following proportions: if there be called into duty not more than 15 men he shall appoint one ensign & one ser-

jeant to command them: if not more than 25 men a lieutenant an ensign and two serjeants; if not more than 40 men, a captain, lieutenant ensign & three serjeants; if 50 men, a captain two lieutenants an ensign & four serjeants; & so in proportion for every greater number; adding, if there be several companies, such field officers as may be requisite. A distinct list of the names & numbers of officers & soldiers sent on duty, with the time they served, attested on oath by the officer commanding such party shall be certified by the commanding officer of the county to the *next General assembly*.

Any officer resigning his commission on being called into duty by the Governor or his commanding officer, shall be *ordered into the ranks*, & shall moreover suffer punishment as for disobedience of command.

The commanding officer of the corps marching to oppose any invasion or insurrection, or any commissioned officer by warrant under the hand of such commander, may, for the necessary use of such corps or for the transportation of them across waters, or of their baggage by land or water, impress provisions, vessels with their furniture, hands, wagons, carts, horses, oxen, utensils for intrenching, smiths, wheelwrights, carpenters or other artificers, & arms in the case before directed, such necessaries or the use of them by the day shall be previously appraised by two persons chosen the one by such officer & the other by the person interested, or both by the officer if the person interested shall refuse to name one and duly sworn by the said officer who is hereby empow-

ered to administer the oath. Such officer shall give a receipt or a certificate of every particular impressed, of its appraised value, & of the purposes for which it was impressed: and if any article impressed shall receive damage while in public service such damage shall be enquired of & estimated by two men chosen & sworn in the same manner & shall be *made good by the public*.

All persons drawn into actual service by virtue of this act shall be exempted in their persons & property from civil process, & all proceedings against them in civil courts shall be stayed during their continuance in service.

Where any corps or detachment of militia shall be on duty with any corps or detachment of *Colonial regulars or Continental troops*, or both of them the Continental officers shall take command of *the Colonial regulars* of the same rank, & these again of militia officers of the same rank.

The commanding officer of each of the counties of Elizabeth City, Princess Anne, Northampton & Accomack, with permission from the Governor, may appoint any number of men not exceeding six in each county to keep a constant lookout to seaward by night & by day; who discovering any vessels appearing to belong to an enemy & to propose landing or hostility, shall immediately give notice thereof to some militia officer of the county, whereon such course shall be pursued as is before directed in case of an invasion or insurrection.

The pay of all officers and soldiers of the militia, from the time they leave their homes, by order of their

commanding officer till they return to them again, & of all lookouts shall be the same as shall have been allowed by the last regulations of General assembly to *Colonial* regulars of the same rank or degree. Messengers shall be allowed by the auditors of public accounts according to the nature of their service.

Any militia officer receiving notice of an invasion or the approach of any vessel with hostile purpose, & not forwarding the same to his commanding officer shall forfeit, if a field officer one hundred pounds, if a captain or subaltern fifty pounds; any commanding officer of a county receiving such notice & not raising part of his militia nor taking the advice of his council of war two hundred pounds, recoverable with costs by action of debt in the name of the *Commonwealth* before any court of record, & appropriated to the same uses as the fines imposed by the courtmartial of his county.

Any officer or soldier, guilty of mutiny, desertion, disobedience of command, absence from duty or quarters, neglect of guard, or cowardice, shall be punished at the discretion of a courtmartial by degrading, cashiering, drumming out of the army, *whipping not exceeding 20 lashes*, fine not exceeding two months, or imprisonment not exceeding one month.

Such courtmartial shall be constituted of militia officers only, of the rank of Captains or higher, & shall consist of 7 members at the least whereof one shall be a county lieutenant or field officer, each of whom shall take the following oath: 'I —— do swear that I will well & truly try & impartially determine the cause of the prisoner now to be tried, according to the act of assembly for providing against

invasions & insurrections so help me god,' which oath shall be administered to the presiding officer by the next in command, & then by such presiding officer to the other members. The said court shall also appoint a clerk to enter and preserve their proceedings, to whom the president shall administer an oath truly and faithfully to execute the duties of his office. All persons called to give evidence shall take the usual oath of evidence, to be administered by the clerk of the court. If in any case the offender be not arrested before the corps of militia on duty be discharged, or cannot be tried for want of members sufficient to make a court, he shall be subject to be tried afterwards by the courtmartial of his county.

All other acts & ordinances so far as they make provisions against invasions & insurrections are hereby repealed.

This act shall be read to every company of the militia by order of the captain or next commanding officer twice in every year, that is to say, at their first muster next succeeding every general muster in his county on penalty of five pounds for every omission.

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DRAFT OF A BILL FOR REGULATING THE APPOINTMENT OF  
DELEGATES TO GENERAL CONGRESS<sup>1</sup> V. S. A.

[May 12, 1777.]

Be it enacted by the General assembly of the Commonwealth of Virginia that there shall be annually

<sup>1</sup> The delegation of Virginia in the Continental Congress was the origin of in tense factional struggle and intrigue in both the Congress and in the House of Delegates. John Adams states (*Works*, iii., 31): "Jealousies and divisions appeared among the delegates of no State,

chosen five delegates to act the part of this Commonwealth in General Congress any three of whom shall

more remarkably than among those of Virginia." In the Virginia Assembly, R. H. Lee had antagonized the planter interest, by his course on the accounts of Treasurer Robinson, and that class had set up Benjamin Harrison as their representative. In 1776, by the influence and votes of the Lee party, Harrison and Braxton were left out of the delegation, by means which a member of the neutral party (Pendleton) claimed to be "disgraceful." The former on his return to Virginia secured an election to the vacancy caused by the resignation of Jefferson; but on Wythe's retirement, the Lees succeeded in filling his seat with one of their own interest, Mann Page. In turn, the Harrison faction began a counter attack on R. H. Lee, but apparently first attempted to veil it under a general act of the assembly. For this purpose, May 12, 1777, they ordered the preparation of a bill regulating the appointment of delegates, and named Jefferson alone to draft it—the only case I have discovered of a single individual being so selected. He was already pledged, by his resolution offered in the Continental Congress (*ante*, p. 220), to a limited term of two years for this office; and a bill prepared on these lines would legislate Lee out of office. On May 12th, he reported this draft of a bill, and after a severe struggle, it was committed to the Committee of the Whole by a vote of only 42 to 40. It was here discussed and amended on the 14th and 15th, and on the 16th, was passed by the Delegates. In the Senate, it was amended and returned; on May 21st, the Delegates amended the Senate amendments, which were concurred in by the Senate, and it became a law. Lee, though "it was impossible . . . to avoid feeling the immediate ill treatment that I had received" "from a wicked industry, the most false and most malicious that the deceitful heart of man ever produced," seemed to have felt no ill-will toward Jefferson for his part in the affair. He returned to Virginia to secure an election to the House of Delegates, "was left out of the last chosen convention, but . . . harangued the people of the back Country, in the field & bought off one of their representatives to decline, payed his fine, to procure His return in his stead. Returned to the convention, His Brothers, with threats & Cabals, procured his appointment to General Congress."—(*Stevens MSS.* No. 277.) At the same session of the legislature, he secured the introduction of a new bill dealing with this question, of which apparently Jefferson was likewise the drafter, and which is printed in the *Session Acts* for 1778, p. 20, and in the *Report of the Revisers*, p. 9. Cf. *The Bland Papers*, i., 57. The text of the present bill as amended and adopted is given in the *Session Acts* for 1777, p. 17, and in *Hening*, x., 383.

have power to sit & vote. The delegates to be chosen in this present session of assembly shall continue in office till the day of \_\_\_\_\_ and those hereafter to be chosen at the said annual election shall enter on the exercise of their office on the day of \_\_\_\_\_ next succeeding their election & shall continue in the same one year, unless sooner recalled or permitted to resign by General assembly; in which case another shall be chosen to serve till the end of the year in the stead of any one so recalled, or permitted to resign.

No person who shall have served two years in Congress shall be capable of serving therein again till he shall have been out of the same one whole year.

Each of the said delegates for every day he shall attend in Congress shall receive [eight] dollars, and also [fifteen pence] per mile going and the same returning together with his ferriages, to be paid wherever Congress shall be sitting by the Treasurer of this Commonwealth out of any public monies which shall be in his hands.

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TO JOHN ADAMS <sup>1</sup>

WILLIAMSBURGH, 16 May, 1777.

Matters in our part of the continent are too much in quiet to send you news from hence. Our battalions for the continental service were some time ago so far filled as rendered the recommendation of a draught from the militia hardly requisite, and the more so as in this country it ever was the most un-

<sup>1</sup> From the *Works of John Adams*, ix., 465.

popular and impracticable thing that could be attempted. Our people, even under the monarchical government, had learnt to consider it as the last of all oppressions. I learn from our delegates that the confederation is again on the carpet, a great and a necessary work, but I fear almost desperate. The point of representation is what most alarms me, as I fear the great and small colonies are bitterly determined not to cede. Will you be so good as to collect the proposition I formerly made you in private, and try if you can work it into some good to save our union? It was, that any proposition might be negatived by the representatives of a majority of the people of America, or of a majority of the colonies of America. The former secures the larger, the latter, the smaller colonies. I have mentioned it to many here. The good whigs, I think, will so far cede their opinions for the sake of the Union, and others we care little for.

The journals of Congress not being printed earlier, gives more uneasiness than I would wish ever to see produced by any act of that body, from whom alone I know our salvation can proceed. In our Assembly, even the best affected think it an indignity to free-men to be voted away, life and fortune, in the dark. Our House have lately written for a manuscript copy of your journals, not meaning to desire a communication of any thing ordered to be kept secret. I wish the regulation of the post-office, adopted by Congress last September, could be put in practice. It was for the travel night and day, and to go their several stages three times a week. The speedy and frequent communication of intelligence is really of

great consequence. So many falsehoods have been propagated that nothing now is believed unless coming from Congress or camp. Our people, merely for want of intelligence which they may rely on, are become lethargic and insensible of the state they are in. Had you ever a leisure moment, I should ask a letter from you sometimes, directed to the care of Mr. Dick, Fredericksburgh; but having nothing to give in return, it would be a tax on your charity as well as your time. The esteem I have for you privately, as well as for your public importance, will always render assurances of your health and happiness agreeable. I am, dear sir, your friend and servant.

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TO BENJAMIN FRANKLIN <sup>1</sup>

VIRGINIA, August 13, 1777.

HONORABLE SIR,—I forbear to write you news, as the time of Mr. Short's departure being uncertain, it might be old before you receive it, and he can, in person, possess you of all we have. With respect to the State of Virginia in particular, the people seem to have laid aside the monarchical, and taken up the republican government, with as much ease as would have attended their throwing off an old, and putting on a new suit of clothes. Not a single throe has attended this important transformation. A half-dozen aristocratical gentlemen, agonizing under the loss of pre-eminence, have sometimes ventured their sarcasms on our political metamorphosis. They have been thought fitter objects of pity, than of

<sup>1</sup> From Washington's edition of Jefferson's Writings.

punishment. We are, at present, in the complete and quiet exercise of well-organized government, save only that our courts of justice do not open till the fall. I think nothing can bring the security of our continent and its cause into danger, if we can support the credit of our paper. To do that, I apprehend, one of two steps must be taken. Either to procure free trade by alliance with some naval power able to protect it; or, if we find there is no prospect of that, to shut our ports totally, to all the world, and turn our colonies into manufactories. The former would be most eligible, because most conformable to the habits and wishes of our people. Were the British Court to return to their senses in time to seize the little advantage which still remains within their reach, from this quarter, I judge, that, on acknowledging our absolute independence and sovereignty, a commercial treaty beneficial to them, and perhaps even a league of mutual offence and defence, might, not seeing the expense or consequences of such a measure, be approved by our people, if nothing, in the mean time, done on your part, should prevent it. But they will continue to grasp at their desperate sovereignty, till every benefit short of that is forever out of their reach. I wish my domestic situation had rendered it possible for me to join you in the very honorable charge confided to you. Residence in a polite Court, society of literati of the first order, a just cause and an approving God, will add length to a life for which all men pray, and none more than your most obedient and humble servant.

TO JOHN ADAMS

ALBEMARLE IN VIRGA, AUG. 21, 1777.

DEAR SIR,—Your favor of May 26 came safely to hand. I wish it were in my power to suggest any remedy for the evil you complain of, tho' did any occur I should propose it to you with great diffidence after knowing you had thought on the subject yourself. There is indeed a fact which may not have come to your knolege out of which perhaps some little good may be drawn. The borrowing money in Europe (or obtaining credit there for necessaries) has already probably been essayed & it is supposed with some degree of success. But I expect your applications have as yet been only to France, Holland, or such other states as are of principal note. There is however a small power, well disposed to our cause, &, as I am informed, possessed of abilities to assist us in this way. I speak of the Grand Duke of Tuscany. The little states of Italy you know have had long peace, & shew no disposition to interrupt that peace shortly. The Grand Duke being somewhat avaricious in his nature has availed himself of the opportunity of collecting & hoarding what money he has been able to gather. I am informed from good authority (an officer who was concerned in the business of his treasury <sup>1</sup>) that about three years ago he had ten millions of crowns, lying dead in his coffers. Of this it is thought possible as much might be borrowed as would amount to a million of pounds lawful money. At any rate

<sup>1</sup> Mazzei.

the attempt might be worth making. Perhaps an application from Dr. Franklin who has some acquaintance in that court might be sufficient, or, as it might be prudent to sound well before the application, in order to prevent the discredit of a rebuff, perhaps Congress would think it worth while to send a special agent there to negotiate the matter. I think we have a gentleman here who would do it with dexterity & fidelity. He is a native of that Duchy; well connected there, conversant in courts of great understanding & equal zeal in our cause. He came over not long since to introduce the cultivation of vines, olives, &c among us. Should you think the matter worth a further thought, either of the Cols. Lees to whom he is known can acquaint you more fully of his character. If the money can be obtained in specie it may be applied to reduce the quantity of circulating paper & be so managed as to help the credit of that which will remain in circulation. If credit alone can be obtained for the manufactures of the country, it will still help to clothe our armies or to increase at market the necessaries our people want.

What upon earth can Howe mean by the manœuvre he is now practicing? There seems to me no object in this country which can be either of utility or reputation to his cause. I hope it will prove of a piece with all the other follies they have committed. The forming a junction with the Northern army up the Hudson's river, or taking possession of Philadelphia might have been a feather in his cap, & given them a little reputation in Europe.

The former as being the design with which they came, the latter as being a place of the first reputation abroad & the residence of Congress. Here he may destroy the little hamlet of Wmsbgh, steal a few slaves, & lose half his army among the fens & marshes of our lower country or by the heat of the climate. I am, dear sir, yours, &c.

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#### FIRST REPORT OF CONFERENCE COMMITTEE <sup>1</sup>

Thursday, Dec. 4, 1777.

Mr. Jefferson reported, from the Committee appointed to draw up what is proper to be offered at the conference proposed with the Senate, on the subject matter of their amendments to the resolution of this House for paying to Thomas Johnson the sum of 15£ 5s 6d. that the committee had accordingly drawn up what they think would be proper to be offered at the said conference, which they had directed him to report to the said House; he read the report in his place, and afterwards delivered it in at the clerks table, where the same was read and is as followeth, viz:

The House of Delegates has desired this conference, in order to preserve that harmony and friendly correspondence with the Senate, which is necessary for the discharge of their joint duties of legislation, and to prevent, both now and in future, the delay of public business, and injury which may accrue to

<sup>1</sup> This and the following paper are from the *Journal of the House of Delegates*.

individuals, should the two Houses differ in opinion as to the distinct office of each.

Though during the course of the last two, and also of the present session of Assembly, they have acquiesced, under some amendments made by the Senate to votes for allowing public claims and demands, yet they are of opinion that an adherence to fundamental principles is the most likely way to save both time and disagreement; and a departure from them may at some time or other be drawn into precedent for dangerous innovations, and that therefore it is better for both Houses, and for those by whom they are entrusted, to correct the error while new, and before it becomes inveterate by habit and custom.

The constitution having declared that "money bills shall in no instance be altered by the Senate, but wholly approved or rejected," the delegates are of opinion the Senate had no authority to amend their late vote for allowing to Thomas Johnson the sum of fifteen pounds five shillings and six pence; and should the term "money bills" in the constitution not immediately convey the precise idea which the framers of that act intended to express, it is supposed that its explanation should be sought for in the institutions of that people, among whom alone a distinction between money bills and other acts of legislation is supposed to have been made, and from whom we, and others, emigrating from them, have indisputably copied it.

By the law and usage of their parliament then, all those are understood to be "money bills" which

raise money in any way, or which dispose of it, and which regulate those circumstances of matter, method and time, which attend as of consequence on the right of giving and disposing. Again the law and customs of their parliament, which include the usage as to "money bills" are a part of the law of their land; our ancestors adopted their system of law in the general, making from time to time such alterations as local diversities required; but that part of their law which relates to the matter now in question, was never altered by our legislature, in any period of its history; but on the contrary, the two Houses of Assembly, both under our regal and republican governments, have ever done business on the constant admission that the law of parliament was their law. When the delegates, therefore, vote that fifteen pounds five shillings and six pence, whether raised or to be raised on the people shall be disposed of in payment to Thomas Johnson for losses sustained by him on the public behalf, this is a vote for the disposal of money, which the Senate are at liberty to approve or reject in the whole, but cannot amend by altering the sum.

The delegates, therefore, hope that the Senate will concur with them in a strict and mutual observance of those laws by which both houses are bound, and they are well assured, that this subject being properly stated to the Senate, they will forbear in future, to exercise a practice which seems not authorised, but, if there should be found any difference of opinion on this point, the delegates will be ready to join in any regular proposition for defining

with precision, the subject of their difference, so as to prevent all doubts and delays in future.

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SECOND REPORT OF CONFERENCE COMMITTEE

Friday, Jan. 9, 1778.

Mr. Jefferson reported from the Committee, appointed to prepare reasons to be offered to the Senate, at the conference to be desired of them on the subject of the last conference; that the committee had accordingly prepared, what they thought would be proper to be offered at the said conference; and he read the same in his place, and afterwards delivered it in at the clerk's table, where the same was read, and is as followeth, viz:

Reasons, to be offered at the conference to be desired of the Senate, in answer to their reasons delivered at the last conference:

The House of Delegates, not being satisfied with the reasons urged by the Senate, in support of their amendments to the resolution for allowing Thomas Johnson the sum of 15£ 5s. 6d., have desired this second conference to shew the insufficiency of the said reasons, and to propose that some expedient may be adopted by the two Houses, for reconciling their difference of opinion.

The resemblance between the constituent parts of our legislature, and that of Great Britain, is supposed by the Senate, so faint, that no ground remains for those jealousies, which have prompted the Commons of Great Britain against their House of

Lords. This might have been, and doubtless was, urged, at the time our constitution was formed, as a reason why the Senate and Delegates should have equal powers of money bills. But the argument having been overruled, and the powers of the Senate, as to this point, being fixed, by the constitution, on the same restricted footing, with those of the Lords in the British legislature, it is conceived not to be the proper question of this day, whether the resemblance between them, in general, be faint or strong, well or ill-grounded, but, whether the constitution has not made them, to resemble in this point.

Had those who framed the constitution, as soon as they had completed that work, been asked, man by man, what a money bill was, it is supposed that man by man, they would have referred for answer to the well known laws and usages of Parliament, or, would have formed their answer, on the Parliamentary idea of that term. Its import, at this day, must be the same as it was then. And it would be unreasonable, now, to send us to seek its definition in the subsequent proceedings of that body, as it would have been for them, at that day, to have referred us to such proceedings before they had come into existence. The meaning of the term, must be supposed complete, at the time they use it; and to be sought for, in those resources only, which existed at the time. Constructions, which do not result from the words of the legislator, but lie hidden in his breast, till called forth, *ex post facto*, by subsequent occasions, are dangerous, and not to be justified by ordinary emergencies.

Nor do we, by this, set up the Parliament of England, as the expositor of our constitution, but the law of Parliament, as it existed, and was evidenced by usage, at the time the term in question was inserted in our instrument of government; a law coeval with the common law itself, and no more liable, as adopted by us, to subsequent change, from that body, than their common or statute law, which we have in like manner adopted. To suppose this branch of law, not existing in our code, would shake the foundation of our whole legal system; since every legislative proposition which has been passed or rejected since the first establishment of a legislature in this country, has been determined to be law, or not law, by the forms of Parliamentary proceeding.

With as little justice may it be said, that this is referring for the definition of a term, to multiplied disputes, which have for ages agitated the Parliament of England, and which no time will decide; that it is proving what is clear, by what is very obscure; and unsettling what is fixed: since we conceive that researches into Parliamentary history, will decisively shew, that their practice in this matter has been clear, fixed, and ancient; and, that for ages past, it has produced no agitation, unless we call by that name some groundless assertions of the Lords in the course of the last century. Yet, these assertions they departed from in practice, at the very time they advanced them: and at all times after, they stand contradicted by the declarations of the Commons, and the constant usage of both Houses; which, agreeing together, are supposed to

form the strongest evidence what the law of Parliament is on this point.

To prove this right, as uniformly claimed and exercised by the Commons, and assented to in practice by the Lords, the Delegates will subjoin some proceedings of Parliament, in addition to the passage cited by the Senate.

That a bill, for raising money by way of taxes, is a money bill, is admitted by the Senate, and need not therefore be proved.

That bills, for raising money by rates, and impositions on merchandise, are also considered as money bills, will appear, on recurring to the Parliamentary proceedings of 1671, in which it is affirmed, "that there is a fundamental right in the House of Commons alone, in bills of rates and impositions on merchandise, as to the matter, the measure, and the time;" and also, by their declaration of 1689, "that the Commons have always taken it for their undoubted privilege (of which they have been tender and jealous) that, in all aids given to the King by the Commons, the rate or tax ought not to be any way altered by the Lords," which is supposed to be the passage cited by the Senate, as of the year 1671.

That bills, for applying forfeitures in aid of the public revenue are not amendable by the Lords, appears by the proceedings of 1700, on the bill "for applying Irish forfeitures to the use of the public," to which the Lords were not permitted to make any amendments.

The right of levying money, in whatever way, being thus exercised by the Commons, as their ex-

clusive office, it follows, as a necessary consequence, that they may also exclusively direct its application. "Cujus est dare, ejus est disponere," is an elementary principle, both of law and of reason: That he who gives, may direct the application of the gift: or, in other words, may dispose of it: that if he may give absolutely, he may also carve out the conditions, limitations, purposes, and measure of the gift, seems as evidently true, as, that the greater power contains the lesser.

Parliamentary usage, has accordingly, approved this reasoning.

In July, 1678, the Commons resolved, "that it is their undoubted and sole right, to direct, limit, and appoint, in all aids and supplies granted to the King, the ends, purposes, considerations, limitations, and qualifications, of such grants; which ought not to be changed by the House of Lords."

In December of the same year, the Commons having directed the payment of money, and the Lords proposed an amendment thereto, the former declared "that their Lordships never before changed any such disposition made on a supply granted by the Commons."

In 1701, the Lords having amended a bill, "for stating and examining the public accounts," by inserting a clause for allowing a particular debt, the Commons disagreed to the amendment; and declared for a reason, "that the disposition, as well as granting, of money by act of Parliament, hath ever been in the House of Commons; and, that the amendment relating to the disposal of money, does

entrench upon that right." And, to a bill of the same nature, the year following, the Lords having proposed an amendment, and declared "That their right in granting, limiting, and disposing public aids, being the main hinge of the controversy, they thought it of the highest concern that it should be cleared and settled." They then go on to prove the usage, by precedents, and declarations, and, from these conclude, "That the limitation, disposition, and manner of account, belong only to them."

In reply, the Lords said, "They declined all arguments concerning the rights of the Commons in granting, limiting and disposing public aids; and, therefore, forbore to answer any arguments of that kind"; but proceeded to insist that the business then depending was of quite another nature. And, at some subsequent conferences between the two Houses, during the same session, it was repeatedly declared, "That the Lords could not supply any deficiency, or apply any surplusage of the public money, and in case any should be found." And this declaration does not appear to have been contradicted by the Lords, either then or at any time after.

The precedents are supposed to prove, not only that the disposal or application of public money is, equally with the raising of it, the exclusive office of the Commons, but also, that it makes no difference whether it be of money then actually in the treasury, or yet to be raised on the people; nor whether the raising and disposing be in the same or in separate bills.

Though the precedents referred to by the Senate, in the proceedings of the Council and House of Burgesses, in the years 1771, 1772, and 1773, (the first of which, however, we suppose to be mistaken for 1772) might perhaps be well accounted for from their particular nature, from the history of the times, or from other causes; and though the delegates might produce, from the same records, proofs, much more decisive in their favor, yet they decline resting the matter on that bottom: because, they are of opinion, that the present determination ought not to be influenced by the practice of those who have themselves only copied from the same original. Their practice, and our opinions, must be proved by the same common rule,—the law and practice of Parliament. Their acknowledgment of the rule, proves their submission to it, and that their practice should be tried by the law, and not the law by their practice.

How dangerous it is to appeal to other authorities from the Parliamentary records, the true text of decision, will appear also by examining the whole passage, of which a part only was cited from the Commentaries of Judge Blackstone; a writer, celebrated indeed; but, whether most for his attachment to the prerogatives of the crown, or to the rights of the people, would be worthy of consideration, where the question is on one of those rights, which have been of the greatest value to the people—the right of giving and disposing of their own money. That writer, after the definition cited from his book by the Senate, goes on to quote a passage

from Judge Hale's treatise on the jurisdiction of Parliament, which is to be found more at large in Broke's Abridgement, under the title "Parliament, Pl. 4:" there it appears to be a saying of Kerbie, a clerk of the Parliament, who lays down in express terms, or by direct implication, these following positions, as of the law of Parliament:—

1st. That the Lords may amend a bill for granting aids.

2nd. That, if the amendment be by shortening the duration of the grant, they need not return the bill to the Commons for their concurrence.

3rd. That the King may alter a bill.

Broke indeed adds a quere to the case; but that Judge Blackstone, disapproved of it, cannot be inferred from his words. It is therefore submitted to the consideration of the Senate, whether they would set up as an arbiter of Parliamentary law, a writer who can cite or refer to such positions, whether condemning them, in decisive and unequivocal terms; for that part of his book, too, which the Senate quote and rely on, he cites no authority whatever. Are we then to take it upon his affirmation, when contradicted by the uniform current of Parliamentary usage? But, waiving further examination of the legality of his opinion, it suffices to observe, as a full answer to it, that the judges of the common law can take no cognizance of the law of Parliament. It can never come judicially in question before them. Their sayings or opinions on the subject, must be ever extra-judicial; and they have accordingly always disclaimed a right to give judgment on them.

Definitions therefore, of Parliamentary law, by any other court, by a member of court, or by a private individual, must be rejected as inauthoritative in a Parliamentary disquisition.

For these reasons, the delegates still think, that the Senate have no authority to amend the vote in question. But open to conviction, if it can be shown they are wrong, and actuated by a strong desire to promote the public service, as well as to preserve the Constitution entire, they propose to the Senate, if they should still adhere to their former opinions, that a select committee may be appointed by each House, to meet together in full conference, and endeavor to define the office of the two Houses in bills, clauses, and votes, relating to money, and that such definition, if approved by both Houses, may be confirmed by act of Assembly.

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DRAFT OF A BILL GIVING CERTAIN POWERS TO  
THE EXECUTIVE<sup>1</sup> V. S. A.

[Jan. 13, 1778.]

Whereas the present war between America & Great Britain was undertaken for defence of the common rights of the American states, & it is therefore just that each of them, when in danger, should be aided by the joint exertions of all; and as on any invasion of this Commonwealth in particular, we

<sup>1</sup> Reported by William Fleming, Jan. 13, 1778, and read the first time. Read the second time and committed to the Committee of the Whole, Jan. 14th. Passed on Jan. 22d. Printed from the draft in Jefferson's handwriting.

should hope for, & expect, necessary aids of militia from our neighboring sister states, so it is incumbent on us to yield the same assistance to them, under the like *circumstances*; & the laws heretofore empowering the Governor & council to send aids of militia to such states, will expire at the end of this present session of assembly.

Be it therefore enacted by the General assembly that on the invasion of any *adjacent or neighboring* state, & application from Congress, or from the legislative or executive powers of such state for aids of militia, it shall be lawful for the Governor, with the advice of the council of state, to order to their assistance such corps of the militia from any of the counties of this commonwealth as the exigence of the case may require or admit; having regard in such orders to the convenience & vicinity of such counties to the place invaded, their internal security & the imminence of the danger: and moreover to appoint such general, field & staff officers as may be requisite to command, attend, & provide for the same; to have them furnished with necessaries for travelling & camp uses, & such arms, ammunition and accoutrements as may be called for if the same can be procured & spared from this Commonwealth.

And to answer the expenses hereof in the first instance, the Governor is empowered to draw for any sums of money necessary to carry these purposes into effect on the Treasurer for this commonwealth, who is hereby authorized to pay the same out of any public money in his hands, keeping a separate & distinct account thereof, in order that

the same may be reimbursed to the Commonwealth.

Such militia while on duty shall be subject to the Continental rules & articles of discipline & government, save only that all courtsmartial, whether general or regimental, which shall be holden on any of them, shall consist of their own officers only.

This act shall be in force until the end of the next session of General assembly & no longer.

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DRAFT OF BILL DESIGNATING PLACES FOR HOLDING  
COURTS OF CHANCERY AND GENERAL COURT<sup>1</sup>

[Jan. 20, 1778.]

Whereas by the acts constituting the High court of Chancery & General court, the said courts are to be holden at such place as the legislature shall direct, & no place hath as yet been appointed for that purpose:

Be it therefore enacted by the General assembly that for the term of one year after the end of this present session of assembly, & from thence to the end of the session next ensuing, the said courts shall be holden in the Capitol in the city of Williamsburgh.

And be it further enacted that it shall be lawful for the said High court of Chancery to appoint from time to time their own Serjeant at arms who shall be attendant on the sd court to perform the duties of his office; for which he shall receive such fees as shall be allowed by law.

<sup>1</sup> In drawing the bills establishing these two courts, the place of holding had been purposely omitted, as the "western" party hoped to remove them, with the capitol, to Richmond. This was therefore merely a temporary measure.

A BILL GRANTING FREE PARDON TO CERTAIN  
OFFENDERS<sup>1</sup>

V. S. A.

[May 14, 1778.]

Whereas the American Congress by their resolution passed on the 23d day of April last past, reciting that persuasion & influence, the example of the deluded or wicked, the fear of danger or the calamities of war, may have induced some of the subjects of these states to join, aid, or abet the British forces in America, and who, tho' now desirous of returning to their country, may be deterred by the fear of punishment: and that the people of these states are ever more ready to reclaim than to abandon, to mitigate than to increase the horrors of war, to pardon than to punish offenders: did recommend to the legislatures of the several states to pass laws, or to the executive authority of each state, if invested with sufficient power, to issue proclamations, offering pardon, with such exceptions, and under such limitations and restrictions, as they shall think expedient, to such of their inhabitants or subjects, as have levied war against any of these states, or adhered to, aided or abetted the enemy, and shall surrender themselves to any civil or military officer of any of these states, & shall return to the state to which they may belong before the 10th day of June next: and did further recommend to the good &

<sup>1</sup> On May 13th, leave was given to Jefferson, Page, Lawson, and Meriwether Smith to prepare this bill, which was introduced by Jefferson, and read for the first and second times on May 14th. It was read for the third time and passed by the House of Delegates on May 18th, but was thrown out in the Senate. It is printed from the draft in Jefferson's handwriting.

faithful citizens of these states to receive such returning penitents with compassion and mercy, & to forgive & bury in oblivion their past failings and transgressions.

Be it therefore enacted by the General assembly that full and free pardon is hereby granted to all such persons without any exception who shall surrender themselves as aforesaid, and shall take the oath of fidelity to this Commonwealth within one month after their return thereto.

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A BILL FOR THE SPEEDY RECOVERY OF DEBTS DUE THE  
UNITED STATES<sup>1</sup>

V. S. A.

[May 19, 1778.]

Whereas divers persons receiving money of the United States of America for publick uses, apply it to different purposes, and when called on refuse or neglect to repay the same; others enter into contracts for supplying the army & navy of the United states with provision and other necessaries, & fail or refuse to comply therewith; and whereas in like cases respecting this commonwealth in particular, speedy remedy was given by an act of general assembly passed in the year 1777, intituled "an act to establish a mode for the speedy and summary recovery of such sums of money as are or may become

<sup>1</sup> On May 18th, the House of Delegates adopted a resolution for the preparation of this bill, and appointed Carter, Parker, and Jefferson to prepare it. It was introduced by Parker, May 19th, when it was read for the first time. It was adopted May 21st. This is printed from the original in Jefferson's handwriting, the act as adopted being in *Hening*, ix., 462.

due, & for enforcing all contracts entered into with government" and it is expedient that the same speedy remedy be given in like cases respecting the United states: Be it therefore enacted by the general assembly that where in any case a remedy is by the sd act given to this commonwealth, or any of its agents or contractors, in a like case the same remedy shall be given to the United States, their agents & contractors; and where by the sd act such proceedings are directed to be instituted by the Treasurer in the name of the Governor for the time being, in a like case respecting the United states the proceedings shall be instituted by their deputy paymaster general within this commonwealth and in the name of the President of Congress for the time being.

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DRAFT OF A BILL FOR PROVIDING A SUPPLY FOR THE  
PUBLIC EXIGENCIES<sup>1</sup> V. S. A.

[May 20, 1778.]

Whereas in order to carry into effect the several acts passed at this present session of General assembly for raising a regiment of horse, for raising a battalion of infantry for garrison duty, for raising volunteers to join the grand army

3.

<sup>1</sup> A committee was appointed May 16, 1778, to prepare this bill; and it was reported by Carter to the House of Delegates May 20th, and read for a first time. The next day R. C. Nicholas and John Page were given permission to bring in a new bill, in the shape of an amendment to this, which they did the following day, and the second bill was accepted and passed on May 23d. This is the first bill and is taken from the draft in Jefferson's handwriting.

4 And as it will be necessary to make a further emission of treasury notes and to provide for the redemption thereof; be it enacted by the General assembly that it shall be lawful for the Treasurer to issue treasury notes in dollars or parts of a dollar for any sum which may be requisite for the purposes aforesaid in addition to the sums issu-

able by former acts of assembly, so as the  
10. sd sum to be issued by authority of this act do not exceed hundred thousand dollars. And he shall cause the sd to be engraved & printed in such manner & on such paper as he shall judge most likely to secure the same from being counterfeited, and shall appoint proper persons to overlook the press, & to number and sign the notes upon the best terms on which he can procure them.

and whereas there is reason to believe that  
14. the taxes imposed by an act passed at the last session of General assembly for raising a supply of money for publick exigencies will be more than sufficient to answer the purposes expressed in the sd act; be it further enacted that after the taxes which shall be levied by authority of the sd act shall have effected the purposes to which they are appropriated by the sd act, so much of what shall remain as shall be sufficient for the redemption of the notes to be issued by authority of this present act, shall be applied to that purpose, and if so much as shall be sufficient shall not remain, further provision shall be made by law for making good the deficiency and redeeming the whole before the first day of December which shall be in the year of our lord 1785.

Amendments to the supply of exigencies

3. For recruiting the Continental army & other purposes therein mentioned.

4. Insert the resolutions of the 29th May, 1778, for making good the losses of certain sufferers in the town of Norfolk.

10. Fill up the blank with the word "six."

14. × [Inclosure]

× If any person shall counterfeit any of the treasury notes issued by authority of this act, or shall be accessory thereto, or shall pass any such counterfeited note knowing the same to be counterfeit, he shall on conviction thereof suffer death without benefit of clergy.

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A BILL TO AMEND AN ACT INTITLED "AN ACT FOR  
RAISING A SUPPLY OF MONEY FOR PUBLIC  
EXIGENCIES " <sup>1</sup> V. S. A.

[May 21, 1778.]

Whereas, by an act of the last session of the General Assembly entitled an act for raising a supply of money for public exigencies it was enacted that a tax or rate of ten shillings for every hundred pounds value should be paid among other things upon all slaves by the owner or proprietor; and that the value of such slaves should be estimated by assessors

<sup>1</sup> On May 21st, Nicholas and Page were appointed to prepare this bill, which they introduced on the same day, and it was read for the first time. On May 22d, it was read for a second time and committed to a committee of the whole house. They reported it back, with amendments, on May 26th, and it was adopted May 29th. This is printed from the draft in Jefferson's handwriting. The bill as passed is in the *Session Acts for 1778*, and *Hening*, ix., 456.

to be appointed in every hundred: and it hath been already seen that such valuation will be very unequal, slaves of the same value being estimated at three or four times more in some places than in others, insomuch that the sd tax on this particular is like to be very heavy on some citizens of this commonwealth and light on others which is unequal and unjust and it is believed that if one certain rate by the head be fixed on, all slaves bearing the same proportion to their average value as the said pound rate bore to their respective values, it will be more equal in the whole, it being supposed that in most parcels of slaves there will be nearly the same proportion of valuable & of indifferent.

Be it therefore enacted by the General assembly that as well for the present as the remaining years of the term during which the sd act is to continue in force a tax of fifteen shillings by the head shall be paid on all slaves of whatever age or sex, in lieu of the sd rate of ten shillings in every hundred pounds value; and in like manner the double of the sd tax by those who by the sd act were to pay a double rate. And when the assessors shall have noted therein the number of slaves for which they shall have assessed a pound rate on the proprietor the commissioners shall extend against such proprietor the tax aforesd in lieu of the pound rate on the sd slaves extended by the assessors; and where they shall not have so noted the number of slaves they shall be required by the sd Commissioners forthwith to do it. And if any person shall have paid such pound rate before notice of this act if the same were greater

than the tax hereby imposed he may require the sheriff to refund the difference or overplus and on failure may recover the same before any justice if the sum be under twenty-five shillings, and if it amount to that sum then on motion before any court giving such sheriff ten days notice thereof: and if the pound rate so paid were less than the tax hereby imposed, then the sheriff shall collect the difference or deficiency in like manner as by the sd act he was authorized to collect the sd pound rate. And doubts having arisen where slaves are hired whether the sd pound rate should be paid by the owner or hirer, and as a like doubt may arise as to the tax hereby imposed, it is declared that the sd tax is payable by the owner, unless otherwise settled by contract between the parties.

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DRAFT OF BILL OF ATTAINDER AGAINST JOSIAH PHILIPS<sup>1</sup>

V. S. A.

[May 28, 1778.]

Whereas a certain Josiah Philips, labourer, of the parish of Lynhaven and county of Princess Anne

<sup>1</sup> This bill, printed from the draft in Jefferson's handwriting, was introduced and read for the first time May 28th; read a second time and passed on the next day. It was a violation of article 8 of the Virginia Declaration of Rights and was afterwards cited by Edmund Randolph (Debates, Virginia Convention of 1788, *Elliot*, iii., 66) as such, in the following words: "There is one example of this violation in Virginia, of a most striking and shocking nature,—an example so horrid, that, if I conceived my country would passively permit a repetition of it, dear as it is to me, I would seek means of expatriating myself from it. A man who was then a citizen, was deprived of his life thus: from a mere reliance on general reports, a gentleman in the House of Delegates informed the house that a certain man (Josiah Philips) had

together with divers other inhabitants of the counties of Princess Anne & Norfolk and citizens of this commonwealth contrary to their fidelity associating and confederating together have levied war against this Commonwealth, within the same, committing

committed several crimes, and was running at large perpetrating other crimes. He therefore moved leave to attaint him; he obtained that leave instantly; no sooner did he obtain it, than he drew from his pocket a bill ready written for that effect; it was read three times in one day and carried to the Senate. I will not say that it passed the same day through the Senate; but he was attainted very speedily and precipitately, without any proof better than these vague reports. Without being confronted with his accusers and witnesses, without the privilege of calling evidence on his behalf, he was sentenced to death, and was afterwards actually executed." To this Henry replied (*Elliot*, iii., 140): "The honorable member has given you an elaborate account of what he judges tyrannical legislation, and an *ex post facto law*, (in the case of Josiah Philips). He has misrepresented the facts. That man was not executed by a tyrannical stroke of power. Nor was he a Socrates. He was a fugitive murderer and an outlaw—a man who commanded an infamous banditti, and at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name. Those who declare war against the human race may be struck out of existence as soon as they are apprehended. He was not executed according to those beautiful legal ceremonies which are pointed out by the laws in criminal cases. The enormity of his crimes did not entitle him to it. I am truly a friend to legal forms and methods; but, sir, the occasion warranted the measure. A pirate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations."

Jefferson's attention was first called to these statements in reading the proof sheets of Girardin's *History of Virginia*. He at once wrote to Girardin (March 12, 1815):

"I return the three Cativers, which I have perused with the usual satisfaction. You will find a few pencilled notes merely verbal.

"But in one place I have taken a greater liberty than I ever took before, or ever indeed had occasion to take. It is in the case of Josiah Philips, which I find strangely represented by Judge Tucker and Mr. Edmund Randolph, and very negligently vindicated by Mr. Henry. That case is personally known to me, because I was of the legislature at the time, was one of those consulted by Mr. Henry, and had my share

murders, burning houses, wasting farms and still continue to exercise the same enormities on the good people of this commonwealth: and whereas the delays which would attend the proceeding to outlaw the said

in the passage of the bill. I never before saw the observations of those gentlemen, which you quote on this case, and will now therefore briefly make some strictures on them.

“Judge Tucker, instead of a definition of the functions of bills of attainder, has given a diatribe against their abuse. The occasion and proper office of a bill of attainder is thus: When a person charged with a crime withdraws from justice, or resists it by force, either in his own or a foreign country, no other means of bringing him to trial or punishment being practicable, a special act is passed by the legislature adapted to the particular case. This prescribes to him a sufficient time to appear and submit to a trial by his peers; declares that his refusal to appear shall be taken as a confession of guilt, as in the ordinary case of an offender at the bar refusing to plead, and pronounces the sentence which would have been rendered on his confession or conviction in a court of law. No doubt that these acts of attainder have been abused in England as instruments of vengeance by a successful over a defeated party. But what institution is insusceptible of abuse in wicked hands?

“Again, the judge says ‘the court refused to pass sentence of execution pursuant to the direction of the act.’ The court could not refuse this, because it was never proposed to them; and my authority for this assertion shall be presently given.

“For the perversion of a fact so intimately known to himself, Mr. Randolph can be excused only by our indulgence for orators who, pressed by a powerful adversary, lose sight, in the ardor of conflict of the rigorous accuracies of fact, and permit their imagination to distort and color them to the views of the moment. He was Attorney-General at the time, and told me himself, the first time I saw him after the trial of Philips, that when taken and delivered up to justice, he had thought it best to make no use of the act of attainder, and to take no measure under it; that he had indicted him at the common law either for murder or robbery (I forgot which and whether for both); that he was tried on this indictment in the ordinary way, found guilty by the jury, sentenced and executed under the common law; a course which every one approves, because the first object of the act of attainder was to bring him to fair trial. Whether Mr. Randolph was right in this information to me, or when in the debate with Mr. Henry, he represents this atrocious offender as sentenced and executed under the act of attainder, let the record of the case decide.

offenders according to the usual forms and procedures of the courts of law, would leave the said good people for a long time exposed to murder & devastation.

Be it therefore enacted by the General Assembly that if the said Josiah Philips his associates and con-

“ ‘Without being confronted with his accusers and witnesses, without the privilege of calling for evidence in his behalf, he was sentenced to death, and afterwards actually executed.’ I appeal to the universe to produce one single instance from the first establishment of government in this State to the present day, where, in a trial at bar, a criminal has been refused confrontation with his accusers and witnesses, or denied the privilege of calling for evidence in his behalf; had it been done in this case, I would have asked of the Attorney-General why he proposed or permitted it. But without having seen the record, I will venture on the character of our courts, to deny that it was done. But if Mr. Randolph meant only that Philips had not these advantages on the passage of the bill of attainder, how idle to charge the legislature with omitting to confront the culprit with his witnesses, when he was standing out in arms and in defiance of their authority, and their sentence was to take effect only on his own refusal to come in and be confronted. We must either therefore consider this as a mere hyperbolism of imagination in the heat of debate, or what I should rather believe, a defective statement by the reporter of Mr. Randolph’s argument. I suspect this last the rather because this point in the charge of Mr. Randolph is equally omitted in the defence of Mr. Henry. This gentleman must have known that Philips was tried and executed under the common law, and yet, according to his report, he rests his defence on a justification of the attainder only. But all who knew Mr. Henry, know that when at ease in argument, he was sometimes careless, not giving himself the trouble of ransacking either his memory or imagination for all the topics of his subject or his audience that of hearing them. No man on earth knew better when he had said enough for his hearers.

“Mr. Randolph charges us with having read the bill three times in the same day. I do not remember the fact, nor whether this was enforced on us by the urgency of the ravages of Philips, or of the time at which the bill was introduced. I have some idea it was at or near the close of the session; the journals, which I have not, will ascertain the fact.

“After the particular strictures I will proceed to propose, 1st, that the word ‘substantially,’ page 92, l. 8., be changed for ‘which has been charged with’ (subjoining a note of reference. 1. Tucker’s Blackst. Append., 292. Debates of Virginia Convention).

federates shall not on or before the            day of June in this present year render themselves to the Govern- or or to some member of the privy council, judge of the General court, justice of the peace or commis- sioned officer of the regular troops, navy, or militia

"2. That the whole of the quotations from Tucker, Randolph and Henry, be struck out, and instead of the text beginning page 92 l. 12, with the words 'bills of attainder, &c.,' to the words 'so often merited,' page 95 l. 4, be inserted the following, to-wit:

" 'This was passed on the following occasion. A certain Joshua Philips, laborer of the parish of Lynhaven, in the county of Princess Anne, a man of daring and ferocious disposition, associating with other individuals of a similar cast, spread terror and desolation through the lower country, committing murders, burning houses, wasting farms, and perpetrating other enormities, at the bare mention of which humanity shudders. Every effort to apprehend him proved abortive. Strong in the number of his ruffian associates, or where force would have failed resorting to stratagem and ambush, striking the deadly blow or applying the fatal torch at the midnight hour, and in those places which their insulated situation left almost unprotected, he retired with impunity to his secret haunts, reeking with blood and loaded with plunder. [So far the text of Mr. Girardin is preserved.] The inhabitants of the counties which were the theatre of his crimes, never secure a moment by day or by night, in their fields or their beds, sent representations of their distresses to the governor, claiming the public protection. He consulted with some members of the legislature then sitting, on the best method of proceeding against the atrocious offender. Too powerful to be arrested by the sheriff and his *posse comitatus*, it was not doubted but an armed force might be sent to hunt and destroy him and his accomplices in their morasses and fastness wherever found. But the proceeding concluded to be most consonant with the forms and principles of our government, was that the legislature should pass an act giving him a reasonable but limited day to surrender himself to justice, and to submit to a trial by his peers. According to the laws of the land, to consider a refusal as a confession of guilt, and divesting him as an outlaw of the character of citizen, to pass on him the sentence prescribed by the law; and the public officer being defied, to make every one his deputy, and especially those whose safety hourly depended on his destruction. The case was laid before the legislature, the proofs were ample, his outrages as notorious as those of the public enemy, and well known to the members of both houses from those counties. No one pretended then that the perpetrator of crimes who

of this commonwealth in order to their trials for the treasons, murders & other felonies by them committed, that then such of them the said Josiah Philips his associates and confederates as shall not so render him or themselves, shall stand and be convicted and attainted of high treason, and shall suffer

could successfully resist the officers of justice, should be protected in the continuance of them, by the privileges of his citizenship, and that baffling ordinary process, nothing extraordinary could be rightfully adopted to protect the citizens against him. No one doubted that society had a right to erase from the role of its members any one who rendered his own existence inconsistent with theirs; to withdraw from him the protection of their laws, and to remove him from among them by exile, or even by death if necessary. An enemy in lawful war, putting to death in cold blood the prisoner he has taken, authorizes retaliation, which would be inflicted with peculiar justice on the individual guilty of the deed, were it to happen that he should be taken. And could the murders and robberies of a pirate or outlaw entitle him to more tenderness? They passed the law, therefore, and without opposition. He did not come in before the day prescribed; continued his lawless outrages; was afterwards taken in arms, but delivered over to the ordinary justice of the county. The Attorney-General for the commonwealth, the immediate agent of the government, waiving all appeal to the act of attainder, indicted him at the common law as a murderer and robber. He was arraigned on that indictment in the usual forms, before a jury of his vicinage, and no use whatever made of the act of attainder in any part of the proceedings. He pleaded that he was a British subject, authorized to bear arms by a commission from Lord Dunmore; that he was therefore a mere prisoner of war, and under the protection of the law of nations. The court being of opinion that a commission from an enemy could not protect a citizen in deeds of murder and robbery, over-ruled his plea; he was found guilty by his jury, sentenced by the court, and executed by the ordinary officer of justice, and all according to the forms and rules of the common law.'

"I recommend an examination of the records for ascertaining the facts of this case, for although my memory assures me of the leading ones, I am not so certain in my recollection of the details. I am not sure of the character of the particular crimes committed by Philips, or charged in his indictment, whether his plea of alien enemy was formally put in and over-ruled, what were the specific provisions of the act of attainder, the urgency which caused it to be read three times in one day, if the fact were, &c., &c."

the pains of death, and incur all forfeitures, penalties & disabilities prescribed by the law against those convicted & attainted of High-treason: and that execution of this sentence of attainder shall be done by order of the General Court to be entered so soon as may be conveniently after notice that any of the said offenders are in custody of the keeper of the public gaol, and if any person committed to the custody of the keeper of the public gaol, as an associate or confederate of the sd Josiah Philips shall alledge that he hath not been of his associates or confederates at any time after the      day of      in the year of our lord      at which time the sd murders & devastations were begun, a petty jury shall be summoned & charged according to the forms of the law to try in presence of the said court the fact so alledged; and if it be found against the defendant, execution of this act shall be done as before directed.

And that the good people of this commonwealth may not in the mean-time be subject to the unrestrained hostilities of the said insurgents, be it further enacted that from and after the passing of this act it shall be lawful for any person with or without orders, to pursue and slay the said Josiah Philips and any others who have been his associates or confederates at any time after the sd day of      afore-said and shall not have previously rendered him or themselves to any of the officers civil or military before described, or otherwise to take and deliver them to justice to be dealt with according to law.

Provided that the person so slain be in arms at the time or endeavoring to escape being taken.

TO RICHARD HENRY LEE <sup>1</sup>

WILLIAMSBURG, June 5, 1778.

DEAR SIR,—I am now to acknowledge the receipt of two of your favors, during the session of Assembly, but there being little to communicate to you, and that, being a busy time with me, has prevented my doing it sooner. The Assembly rose on Monday last; their only act which can shortly aid our army, was one for raising a regiment of horse, which, I think, will be raised as fast as it can be accoutred. Another act they passed, will also produce aid to our army, I hope, but it will be some [delay?] first; it was for giving great encouragement to soldiers, and appointing recruiting officers all over the country, to attend all publick places. By a third act, they foolishly repeated the experiment of raising volunteers; the first attempt was pardonable, because its ill-success could not be foreseen; the second is worse than ridiculous, because it may deceive our friends; I am satisfied there will not be a company raised. I wish Congress would commute a good part of the infantry required from us, for an equivalent force in horse. This service opens us a new fund of young men, who have not yet stepped forth; I mean those whose indolence or education, has unfitted them for foot service; this may be worth your thinking of. We passed the bill of pardon, recommended by Congress, but the Senate rejected it. Your letter, about enlarging your powers over the confederation, was not proceeded on, because the nature of the enlargement was not chalked out

<sup>1</sup> From Lee's *Life of R. H. Lee*, ii., 187.

by you so intelligibly as enabled the house to do anything, unless they had given a carteblanche. Indeed, I believe, that, had the alterations proposed been specified unless they had been mere form indeed, it might have been difficult to obtain their consent. A Frenchman arrived here a week ago, with a vast cargo of woolens, made and unmade, stockings, shoes, &c. fit for the army, fifty thousand weight of powder, and other articles; the master had once sold the whole cargo, to the governor and council, for 5s 3p the livre, first cost; but, on suggestions from some of our forestallers, and those from Maryland, he flew off. Our bay is clear of the enemy. Nothing new here. I set out for Albemarle, within a day or two. Mr. Harvie will be with you in about three weeks. My complements to your brethren of the delegation, and am, dear sir, Your friend and servant,

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TO ———

J. MSS.

WILLIAMSBURG IN VIRGINIA, June 8, 1778.

SIR,—Your letter of Sep. 15. 1777 from Paris comes safe to hand. We have not however had the pleasure of seeing Mr. De Cenis, the bearer of it in this country, as he joined the army in Pennsylvania as soon as he arrived. I should have taken particular pleasure in serving him on your recommendation. From the kind anxiety expressed in your letter as well as from other sources of information we discover that our enemies have filled Europe with

Thrasonic accounts of victories they had never won and conquests they were fated never to make. While these accounts alarmed our friends in Europe they afforded us diversion. We have long been out of all fear for the event of the war. I enclose you a list of the killed, wounded, and captives of the enemy from the commencement of hostilities at Lexington in April, 1775, until November, 1777, since which there has been no event of any consequence. This is the best history of the war which can be brought within the compass of a letter. I believe the account to be near the truth, tho' it is difficult to get at the numbers lost by an enemy with absolute precision. Many of the articles have been communicated to us from England as taken from the official returns made by their General. I wish it were in my power to send you as just an account of our loss. But this cannot be done without an application to the war office which being in another county is at this time out of my reach. I think that upon the whole it has been about one half the number lost by them, in some instances more, but in others less. This difference is ascribed to our superiority in taking aim when we fire; every soldier in our army having been intimate with his gun from his infancy. If there could have been a doubt before as to the event of the war it is now totally removed by the interposition of France, & the generous alliance she has entered into with us. Tho' much of my time is employed in the councils of America I have yet a little leisure to indulge my fondness for philosophical studies. I could wish to

correspond with you on subjects of that kind. It might not be unacceptable to you to be informed for instance of the true power of our climate as discoverable from the thermometer, from the force & direction of the winds, the quantity of rain, the plants which grow without shelter in winter &c. On the other hand we should be much pleased with cotemporary observations on the same particulars in your country, which will give us a comparative view of the two climates. Farenheit's thermometer is the only one in use with us, I make my daily observations as early as possible in the morning & again about 4 o'clock in the afternoon, these generally showing the maxima of cold & heat in the course of 24 hours. I wish I could gratify your Botanical taste; but I am acquainted with nothing more than the first principles of that science; yet myself & my friends may furnish you with any Botanical subjects which this country affords, and are not to be had with you; and I shall take pleasure in procuring them when pointed out by you. The greatest difficulty will be the means of conveyance during the continuance of the war.

If there is a gratification which I envy any people in this world, it is to your country its music. This is the favorite passion of my soul, & fortune has cast my lot in a country where it is in a state of deplorable barbarism. From the line of life in which we conjecture you to be, I have for some time lost the hope of seeing you here. Should the event prove so, I shall ask your assistance in procuring a substitute, who may be a proficient in singing,

& on the Harpsichord. I should be contented to receive such an one two or three years hence, when it is hoped he may come more safely and find here a greater plenty of those useful things which commerce alone can furnish. The bounds of an American fortune will not admit the indulgence of a domestic band of musicians, yet I have thought that a passion for music might be reconciled with that economy which we are obliged to observe. I retain for instance among my domestic servants a gardener (Ortolans), a weaver (Tessitore di lino e lin), a cabinet maker (Stipeltaio) and a stone cutter (Scalpellino laborante in piano) to which I would add a vigneron. In a country where like yours music is cultivated and practised by every class of men I suppose there might be found persons of those trades who could perform on the French horn, clarinet or hautboy & bassoon, so that one might have a band of two French horns, two clarinets, & hautboys & a bassoon, without enlarging their domestic expenses. A certainty of employment for a half dozen years, and at the end of that time to find them if they choose a conveyance to their own country might induce them to come here on reasonable wages. Without meaning to give you trouble, perhaps it might be practicable for you in [your] ordinary intercourse with your people, to find out such men disposed to come to America. Sobriety and good nature would be desirable parts of their characters. If you think such a plan practicable, and will be so kind as to inform me what will be necessary to be done on my part I will take care

that it shall be done. The necessary expenses, when informed of them, I can remit before they are wanting, to any port in France, with which country alone we have safe correspondence. I am Sir with much esteem your humble servant.

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RESOLUTIONS CONCERNING PEACE WITH ENGLAND †

J. MSS.

[June ?, 1778.]

Resolved unanimously that a proposition from the Enemy to all or any of these United States for Peace or truce separate from their Allies is insidious and inadmissible.

Resolved unanimously that a proposition from the enemy for treating with any Assembly or Body of men in America other than the Congress of these United States is insidious and inadmissible.

Resolved unanimously that this Assembly will not listen to any Proposition nor suffer any Negotiation inconsistent with their National Faith and federal union.

Resolved unanimously that this assembly will exert the utmost Power of the State to carry on the War with vigour and effect until Peace shall be obtained in a manner consistent with our National Faith and Federal Union.

† This is endorsed in the handwriting of Edmund Pendleton: "Virginia v. Comr: Carlton [Carlisle] Caveat agt Treaty—I believe, but am not certain, these were the work of Mr. Jefferson in Spring 1778." No such resolutions appear on the *Journal of the House of Delegates*.

TO REV. SAMUEL HENLEY <sup>1</sup>

WILLIAMSBURGH, June 9, 1778.

REVEREND SIR,—Mr. Madison I believe informed you by letter written some time ago that one of your boxes of books left in his care burst open in removing it from the college to the president's house for greater security. This accident discovered them to be in a state of ruin. They had contracted a dampness & stuck together in large blocks, insomuch that they could not sometimes be separated without tearing the cover. I happened to be in town & was of opinion with Mr. Madison that it was necessary to overhaul them and give them air. Indeed we both thought—I think it would be for your interest to have them sold, as books are now in considerable demand here, and, packed as they are in boxes, they must sustain injury. There are many of them which I would be glad to take myself at their stirling cost and would remit you the money by the way of France. That cost might be fixed either by note from yourself, informing me what they cost you, or by the estimate of anybody here in whom you trust. Upon a presumption that you could not but approve of the proposal to have them disposed of & the money remitted, for the reasons before given & others which you may apprehend but would be improper for me to explain, I have taken the liberty of laying apart many of them for myself, leaving with Mr. Madison a catalogue of them, and ready to return them to him if

<sup>1</sup> From a copy courteously furnished by Hon. John Boyd Thacher, of Albany.

you shall direct it. I shall be glad of your answer as soon as possible, and will gladly serve you in the care of any interest you may have left here. The reasons are obvious which restrain this letter to matters of business. As soon as the obstacles to friendly correspondence are removed I shall be glad at all times to hear from you. I am Reverend Sir  
Your friend & servant

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TO DAVID RITTENHOUSE <sup>1</sup>

MONTICELLO IN ALBEMARLE, VIRGINIA,  
July 19. 1778.

DEAR SIR,—I sincerely congratulate you on the recovery of Philadelphia, and wish it may be found uninjured by the enemy—how far the interests of literature may have suffered by the injury or removal of the Orrery (as it is miscalled) the publick libraries, your papers & implements, are doubts which still excite anxiety. We were much disappointed in Virginia generally on the day of the great eclipse, which proved to be cloudy. In Williamsburgh, where it was total, I understand only the beginning was seen. At this place which is in Lat. 38°-8' and Longitude West from Williamsburgh about 1°-45' as is conjectured, eleven digits only were supposed to be covered, as it was not seen at all till the moon had advanced nearly one third over the sun's disc. Afterwards it was seen at intervals

<sup>1</sup> From the original in the possession of the Historical Society of Pennsylvania.

through the whole. The egress particularly was visible. It proved however of little use to me for want of a time piece that could be depended on; which circumstance, together with the subsequent restoration of Philadelphia to you, has induced me to trouble you with this letter to remind you of your kind promise of making me an accurate clock; which being intended for astronomical purposes only, I would have divested of all apparatus for striking or for any other purpose, which by increasing it's complication might disturb it's accuracy. A companion to it, for keeping seconds, and which might be moved easily, would greatly add to it's value. The theodolite, for which I spoke to you also, I can now dispense with, having since purchased a most excellent one.

Writing to a philosopher, I may hope to be pardoned for intruding some thoughts of my own tho' they relate to him personally. Your time for two years past has, I believe, been principally employed in the civil government of your country. Tho' I have been aware of the authority our cause would acquire with the world from it's being known that yourself & Doct<sup>r</sup> Franklin were zealous friends to it and am myself duly impressed with a sense of the arduousness of government, and the obligation those are under who are able to conduct it, yet I am also satisfied there is an order of geniusses above that obligation, & therefore exempted from it, nobody can conceive that nature ever intended to throw away a Newton upon the occupations of a crown. It would have been a prodigality for which even the conduct

of providence might have been arraigned, had he been by birth annexed to what was so far below him. Cooperating with nature in her ordinary economy we should dispose of and employ the geniusses of men according to their several orders and degrees. I doubt not there are in your country many persons equal to the task of conducting government: but you should consider that the world has but one Ryttenhouse, & that it never had one before. The amazing mechanical representation of the solar system which you conceived & executed, has never been surpassed by any but the work of which it is a copy. Are those powers then, which being intended for the erudition of the world are, like air and light, the world's common property, to be taken from their proper pursuit to do the commonplace drudgery of governing a single state, a work which may be executed by men of an ordinary stature, such as are always & everywhere to be found? Without having ascended mount Sinai for inspiration, I can pronounce that the precept, in the decalogue of the vulgar, that they shall not make to themselves "the likeness of anything that is in the heavens above" is reversed for you, and that you will fulfill the highest purposes of your creation by employing yourself in the perpetual breach of that inhibition. For my own country in particular you must remember something like a promise that it should be adorned with one of them. The taking of your city by the enemy has hitherto prevented the proposition from being made & approved by our legislature. The zeal of a true whig in science must

excuse the hazarding these free thoughts, which flow from a desire of promoting the diffusion of knowledge & of your fame, and from one who can assure you truly that he is with much sincerity & esteem Your most obed<sup>t</sup> & most humble serv<sup>t</sup>

P. S. If you can spare as much time as to give me notice of the receipt of this, & what hope I may form of my clocks, it will oblige me. If sent to Fredericksburgh it will come safe to hand.

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A BILL FOR GIVING THE MEMBERS OF THE ASSEMBLY AN  
ADEQUATE ALLOWANCE: V. S. A.

[Dec. 12, 1778.]

Whereas it is just that members of General assembly, delegated by the people to transact for them the legislative business, should, while attending that business, have their reasonable sustenance defrayed, dedicating to the public service their time and labors freely & without account: and it is also expedient that the public councils should not be deprived of the aid of good & able men, who might be deterred from entering into them by the insufficiency of their private fortunes to be the extraordinary expences they must necessarily incur:

And it being inconsistent with the principles of civil liberty, & contrary to the natural rights of the

<sup>1</sup> Dec. 8th, Jefferson, Nelson, G. Mason, T. Mason, Nicholas, and Page were ordered to prepare this bill, and G. Mason introduced it Dec. 12th. It was read for the second time on Dec. 14th, and ordered engrossed and printed on Dec. 18th. It was not adopted. This is printed from the draft in Jefferson's handwriting.

other members of the society, that any body of men therein should have authority to enlarge their own powers, prerogatives, or emoluments without restraint the sd General assembly cannot at their own will increase the allowance which their members are to draw from the public treasury for their expences while in assembly; but to enable them so to do an application to the body of the people has become necessary:

And such application having been accordingly made to the freeholders of the several counties, & they having thereupon consented that the sd allowance shall be enlarged, and authorised & instructed their members to enlarge the same for themselves & the members of all future assemblies, to pounds of nett tobacco by the day for attendance on assembly, & to lbs of like tobacco for every mile they must necessarily travel going to or from the same, together with their ferriages, to be paid in money out of the public treasury at such rate as shall be estimated by the court of appeals at their session next before the meeting of every session of assembly, governing themselves in the said estimate by the worth of the sd tobacco, & the competence of the same to defray the necessary expences of travelling & attendance:

Be it therefore enacted by the General assembly by express authority & instruction from the body of the people that the allowance to the several members of the present & of all future assemblies shall be of pounds of tobacco by the day for attendance on the sd assemblies, lbs of the like

tobacco for every mile they must necessarily travel going to or from the same, together with their ferriages; to be paid to them in money out of the public treasury at such rate as shall be estimated by the court of appeals at their session next before the meeting of each respective session of assembly, governing themselves in the said estimate by the worth of the sd tobacco & the competence of the same to defray the necessary expences of travelling & attendance.

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TO GEORGE WYTHE

J. MSS.

FOREST, March 1, 1779.

DEAR SIR,—Since I left you I have reflected on the bill regulating the practising of attornies, & of our omitting to continue the practitioners at the County & General Courts separate. I think the bar of the General Court a proper & an excellent nursery for future judges if it be so regulated as that science may be encouraged & may live there. But this can never be if an inundation of insects is permitted to come from the county courts & consume the harvest. These people traversing the counties seeing the clients frequently at their own courts, or, perhaps at their own houses must of necessity pick up all the business. The convenience of frequently seeing their counsel without going from home cannot be withstood by the country people. Men of science then (if there were to be any) would only be employed as auxiliary counsel in difficult cases. But can they live by that? Certainly not. The present

members of that kind therefore must turn marauders in the county courts; & in future none will have leisure to acquire science. I should therefore be for excluding the county court attorneys, or rather for taking the general court lawyers from the incessant drudgery of the county courts & confining them to their studies that they may qualify themselves as well to support their clients as to become worthy successors to the bench. I hope to see the time when the election of Judges of the Supreme Courts shall be restrained to the bars of the General Court & High Court of Chancery, for when I speak of the former above, I mean to include the latter. I should even in our present bills have no objections to inserting such a restriction to take place seven or fourteen years hence. Adieu.

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TO THE GOVERNOR OF VIRGINIA.

J. MSS.

(PATRICK HENRY)

ALBEMARLE, March 27, 1779.

SIR,—A report prevailing here, that in consequence of some powers from Congress, the Governor and Council have it in contemplation to remove the Convention troops, either wholly or in part, from their present situation, I take the liberty of troubling you with some observations on that subject. The reputation and interest of our country, in general, may be affected by such a measure: it would, therefore, hardly be deemed an indecent liberty in the most private citizen, to offer his thoughts to the consideration of the Executive. The locality of my

situation, particularly in the neighborhood of the present barracks, and the public relation in which I stand to the people among whom they are situated, together with a confidence which a personal knowledge of the members of the Executive gives me, that they will be glad of information from any quarter, on a subject interesting to the public, induce me to hope that they will acquit me of impropriety in the present representation.

By an article in the Convention of Saratoga, it is stipulated, on the part of the United States, that the officers shall not be separated from their men. I suppose the term officers, includes *general* as well as *regimental* officers. As there are general officers who command all the troops, no part of them can be separated from these officers without a violation of the article: they cannot, of course, be separated from one another, unless the same general officer could be in different places at the same time. It is true, the article adds the words, "as far as circumstances will admit." This was a necessary qualification; because, in no place in America, I suppose, could there have been found quarters for both officers and men together; those for the officers to be according to their rank. So far, then, as the circumstances of the place where they should be quartered, should render a separation necessary, in order to procure quarters for the officers, according to their rank, the article admits that separation. And these are the circumstances which must have been under the contemplation of the parties; both of whom, and all the world beside (who are ultimate judges in the case),

would still understand that they were to be as near in the environs of the camp, as convenient quarters could be procured; and not that the qualification of the article destroyed the article itself, and laid it wholly at our discretion. Congress, indeed, have admitted of this separation; but are they so far lords of right and wrong as that our consciences may be quiet with their dispensation? Or is the case amended by saying they leave it optional in the Governor and Council to separate the troops or not? At the same time that it exculpates not them, it is drawing the Governor and Council into a participation in the breach of faith. If indeed it is only proposed, that a separation of the troops shall be referred to the consent of their officers; that is a very different matter. Having carefully avoided conversation with them on public subjects, I cannot say, of my own knowledge, how they would relish such a proposition. I have heard from others, that they will choose to undergo anything together, rather than to be separated, and that they will remonstrate against it in the strongest terms. The Executive, therefore, if voluntary agents in this measure, must be drawn into a paper war with them, the more disagreeable, as it seems that faith and reason will be on the other side. As an American, I cannot help feeling a thorough mortification, that our Congress should have permitted an infraction of our public honor; as a citizen of Virginia, I cannot help hoping and confiding, that our Supreme Executive, whose acts will be considered as the acts of the Commonwealth, estimate that honor too highly to

make its infraction their own act. I may be permitted to hope, then, that if any removal takes place, it will be a general one; and, as it is said to be left to the Governor and Council to determine on this, I am satisfied that, suppressing every other consideration, and weighing the matter dispassionately, they will determine upon this sole question, Is it for the benefit of those for whom they act, that the Convention troops should be removed from among them? Under the head of interest, these circumstances, viz., the expense of building barracks, said to have been £25,000, and of removing the troops backwards and forwards, amounting to, I know not how much, are not to be permitted, merely because they are Continental expenses; for we are a part of the Continent; we must pay a shilling of every dollar wasted. But the sums of money which, by these troops, or on their account, are brought into, and expended in this State, are a great and local advantage. This can require no proof. If, at the conclusion of the war, for instance, our share of the Continental debt should be twenty millions of dollars, or say that we are called on to furnish an annual quota of two millions four hundred thousand dollars, to Congress, to be raised by tax, it is obvious that we should raise these given sums with greater or less ease, in proportion to the greater or less quantity of money found in circulation among us. I expect that our circulating money is [increased?], by the presence of these troops, at the rate of \$30,000 a week, at the least. I have heard, indeed, that an objection arises to their being kept within this State,

from the information of the commissary that they cannot be subsisted here. In attending to the information of that officer, it should be borne in mind that the county of King William and its vicinities are one thing, the territory of Virginia another. If the troops could be fed upon long letters, I believe the gentleman at the head of that department in this country, would be the best commissary upon earth. But till I see him determined to act, not to write; to sacrifice his domestic ease to the duties of his appointment, and apply to the resources of this country, wheresoever they are to be had, I must entertain a different opinion of him. I am mistaken if, for the animal subsistence of the troops hitherto, we are not principally indebted to the genius and exertions of Hawkins, during the very short time he lived after his appointment to that department, by your board. His eye immediately pervaded the whole State, it was reduced at once to a regular machine, to a system, and the whole put into movement and animation by the fiat of a comprehensive mind. If the Commonwealth of Virginia cannot furnish these troops with bread, I would ask of the commissariat, which of the thirteen is now become the grain colony? If we are in danger of famine from the addition of four thousand mouths, what is become of that surplus of bread, the exportation of which used to feed the West Indies and Eastern States, and fill the colony with hard money? When I urge the sufficiency of this State, however, to subsist these troops, I beg to be understood, as having in contemplation the quantity of provisions necessary

for their real use, and not as calculating what is to be lost by the wanton waste, mismanagement, and carelessness of those employed about it. If magazines of beef and pork are suffered to rot by slovenly butchering, or for want of timely provision and sale; if quantities of flour are exposed, by the commissaries entrusted with the keeping it, to pillage and destruction; and if, when laid up in the Continental stores, it is still to be embezzled and sold, the land of Egypt itself would be insufficient for their supply, and their removal would be necessary, not to a more plentiful country, but to more able and honest commissaries. Perhaps the magnitude of this question, and its relation to the whole State, may render it worth while to await the opinion of the National Council, which is now to meet within a few weeks. There is no danger of distress in the meantime, as the commissaries affirm they have a great sufficiency of provisions for some time to come. Should the measure of removing them into another State be adopted, and carried into execution, before the meeting of Assembly, no disapprobation of theirs will bring them back, because they will then be in the power of others, who will hardly give them up.

Want of information as to what may be the precise measure proposed by the Governor and Council, obliges me to shift my ground, and take up the subject in every possible form. Perhaps, they have not thought to remove the troops out of this State altogether, but to some other part of it. Here, the objections arising from the expenses of removal, and of building new barracks, recur. As to animal food,

it may be driven to one part of the country as easily as to another: that circumstance, therefore, may be thrown out of the question. As to bread, I suppose they will require about forty or forty-five thousand bushels of grain a year. The place to which it is to be brought to them, is about the centre of the State. Besides, that the country round about is fertile, all the grain made in the counties adjacent to any kind of navigation, may be brought by water to within twelve miles of the spot. For these twelve miles, wagons must be employed; I suppose half a dozen will be a plenty. Perhaps, this part of the expense might have been saved, had the barracks been built on the water; but it is not sufficient to justify their being abandoned now they are built. Wagonage, indeed, seems to the commissariat an article not worth economizing. The most wanton and studied circuitry of transportation has been practised: to mention only one act, they have bought quantities of flour for these troops in Cumberland, have ordered it to be wagoned down to Manchester, and wagoned thence up to the barracks. This fact happened to fall within my own knowledge. I doubt not there are many more such, in order either to produce their total removal, or to run up the expenses of the present situation, and satisfy Congress that the nearer they are brought to the commissary's own bed, the cheaper they will be subsisted. The grain made in the western counties may be brought partly in wagons, as conveniently to this as to any other place; perhaps more so, on account of its vicinity to one of the best passes through the Blue Ridge; and

partly by water, as it is near to James river, to the navigation of which, ten counties are adjacent above the falls. When I said that the grain might be brought hither from all the counties of the State adjacent to navigation, I did not mean to say it would be proper to bring it from all. On the contrary, I think the commissary should be instructed, after the next harvest, not to send one bushel of grain to the barracks from below the falls of the rivers, or from the northern counties. The counties on tide water are accessible to the calls for our own army. Their supplies ought, therefore, to be husbanded for them. The counties in the northwestern parts of the State are not only within reach for our own grand army, but peculiarly necessary for the support of Macintosh's army; or for the support of any other northwestern expedition, which the uncertain conduct of the Indians should render necessary; insomuch, that if the supplies of that quarter should be misapplied to any other purpose, it would destroy, in embryo, every exertion, either for particular or general safety there. The counties above tide water, in the middle and southern and western parts of the country, are not accessible to calls for either of those purposes, but at such an expense of transportation as the article would not bear. Here, then, is a great field, whose supplies of bread cannot be carried to our army, or rather, which will raise no supplies of bread, because there is nobody to eat them. Was it not, then, wise in Congress to remove to that field four thousand idle mouths, who must otherwise have interfered with the pasture of our

own troops? And, if they are removed to any other part of the country, will it not defeat this wise purpose? The mills on the waters of James river, above the falls, open to canoe navigation, are very many. Some of them are of great note, as manufacturers. The barracks are surrounded by mills. There are five or six round about Charlottesville. Any two or three of the whole might, in the course of the winter, manufacture flour sufficient for the year. To say the worst, then, of this situation, it is but twelve miles wrong. The safe custody of these troops is another circumstance worthy consideration. Equally removed from the access of an eastern or western enemy; central to the whole State, so that should they attempt an irruption in any direction, they must pass through a great extent of hostile country; in a neighborhood thickly inhabited by a robust and hardy people zealous in the American cause, acquainted with the use of arms, and the defiles and passes by which they must issue: it would seem, that in this point of view, no place could have been better chosen.

Their health is also of importance. I would not endeavor to show that their lives are valuable to us, because it would suppose a possibility, that humanity was kicked out of doors in America, and interest only attended to. The barracks occupy the top and brow of a very high hill, (you have been untruly told they were in a bottom.) They are free from bog, have four springs which seem to be plentiful, one within twenty yards of the piquet, two within fifty yards, and another within two hundred and

fifty, and they propose to sink wells within the piquet. Of four thousand people, it should be expected, according to the ordinary calculations, that one should die every day. Yet, in the space of near three months, there have been but four deaths among them; two infants under three weeks old, and two others by apoplexy. The officers tell me, the troops were never before so healthy since they were embodied.

But is an enemy so execrable, that, though in captivity, his wishes and comforts are to be disregarded and even crossed? I think not. It is for the benefit of mankind to mitigate the horrors of war as much as possible. The practice, therefore, of modern nations, of treating captive enemies with politeness and generosity, is not only delightful in contemplation, but really interesting to all the world, friends, foes, and neutrals. Let us apply this: the officers, after considerable hardships, have all procured quarters, comfortable and satisfactory to them. In order to do this, they were obliged, in many instances, to hire houses for a year certain, and at such exorbitant rents, as were sufficient to tempt independent owners to go out of them, and shift as they could. These houses, in most cases, were much out of repair. They have repaired them at a considerable expense. One of the general officers has taken a place for two years, advanced the rent for the whole time, and been obliged, moreover, to erect additional buildings for the accommodation of part of his family, for which there was not room in the house rented. Independent of the brick work, for

the carpentry of these additional buildings, I know he is to pay fifteen hundred dollars. The same gentleman, to my knowledge, has paid to one person three thousand six hundred and seventy dollars for different articles to fix himself commodiously. They have generally laid in their stocks of grain and other provisions, for it is well known that officers do not live on their rations. They have purchased cows, sheep, &c., set in to farming, prepared their gardens, and have a prospect of comfort and quiet before them. To turn to the soldiers: the environs of the barracks are delightful, the ground cleared, laid off in hundreds of gardens, each enclosed in its separate paling; these well prepared, and exhibiting a fine appearance. General Riedezel alone laid out upwards of two hundred pounds in garden seeds for the German troops only. Judge what an extent of ground these seeds would cover. There is little doubt that their own gardens will furnish them a great abundance of vegetables through the year. Their poultry, pigeons and other preparations of that kind, present to the mind, the idea of a company of farmers, rather than a camp of soldiers. In addition to the barracks built for them by the public, and now very comfortable, they have built great numbers for themselves, in such messes as fancied each other; and the whole corps, both officers and men, seem now happy and satisfied with their situation. Having thus found the art of rendering captivity itself comfortable, and carried it into execution, at their own great expense and labor, their spirits sustained by the prospect of gratifications rising

before their eyes, does not every sentiment of humanity revolt against the proposition of stripping them of all this, and removing them into new situations, where, from the advanced season of the year, no preparations can be made for carrying themselves comfortably through the heats of summer; and when it is known that the necessary advances for the conveniences already provided, have exhausted their funds and left them unable to make the like exertions anew. Again, review this matter, as it may regard appearances. A body of troops, after staying a twelvemonth at Boston, are ordered to take a march of seven hundred miles to Virginia, where, it is said, they may be plentifully subsisted. As soon as they are there, they are ordered on some other march, because, in Virginia, it is said, they cannot be subsisted. Indifferent nations will charge this either to ignorance, or to whim and caprice; the parties interested, to cruelty. They now view the proposition in that light, and it is said, there is a general and firm persuasion among them, that they were marched from Boston with no other purpose than to harass and destroy them with eternal marches. Perseverance in object, though not by the most direct way, is often more laudable than perpetual changes, as often as the object shifts light. A character of steadiness in our councils, is worth more than the subsistence of four thousand people.

There could not have been a more unlucky concurrence of circumstances than when these troops first came. The barracks were unfinished for want of laborers, the spell of weather the worst ever

known within the memory of man, no stores of bread laid in, the roads, by the weather and number of wagons, soon rendered impassable: not only the troops themselves were greatly disappointed, but the people in the neighborhood were alarmed at the consequences which a total failure of provisions might produce. In this worst state of things, their situation was seen by many and disseminated through the country, so as to occasion a general dissatisfaction, which even seized the minds of reasonable men, who, if not affected by the contagion, must have foreseen that the prospect must brighten, and that great advantages to the people must necessarily arise. It has, accordingly, so happened. The planters, being more generally sellers than buyers, have felt the benefit of their presence in the most vital part about them, their purses, and are now sensible of its source. I have too good an opinion of their love of order to believe that a removal of these troops would produce any irregular proofs of their disapprobation, but I am well assured it would be extremely odious to them.

To conclude. The separation of these troops would be a breach of public faith, therefore I suppose it is impossible; if they are removed to another State, it is the fault of the commissaries; if they are removed to any other part of the State, it is the fault of the commissaries; and in both cases, the public interest and public security suffer, the comfortable and plentiful subsistence of our own army is lessened, the health of the troops neglected, their wishes crossed, and their comforts torn from them,

the character of whim and caprice, or, what is worse, of cruelty, fixed on us as a nation, and, to crown the whole, our own people disgusted with such a proceeding.

I have thus taken the liberty of representing to you the facts and the reasons, which seem to militate against the separation or removal of these troops. I am sensible, however, that the same subject may appear to different persons, in very different lights. What I have urged as reasons, may, to sounder minds, be apparent fallacies. I hope they will appear, at least, so plausible, as to excuse the interposition of

Your Excellency's most obedient and most humble servant.

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TO RICHARD HENRY LEE <sup>1</sup>

MONTICELLO, April 21, 1779.

DEAR SIR,—Among the convention prisoners in this neighborhood is a Baron de Geismar of the Germans, brigade major to Genl. Gall, whose situation I would wish to make you acquainted with. He is the only son of a German nobleman, and has I believe an only sister; his father, now 70 years of age, if living; and excessively anxious to see him before his death. His Patrimonial expectations in danger of being transferred to others in the weak state of his father, or perhaps plundered in the case of his death; the footing on which he stands with

<sup>1</sup> From the original in the possession of Dr. Thomas Addis Emmet, of New York.

his prince such as might give him reason to hope for protection were he on the spot, but everything of that kind certain of passing by him as long as he is absent. Under the circumstances, captivity is peculiarly injurious to him, & he petitions Congress to exchange him if possible, or otherwise permit him to return home on any parole they will describe. I am satisfied he will carry with him no disposition to injure us; and his personal merit, with which I am become intimately acquainted, entitles him to every indulgence consistent with the indispensable rules of Congress. I take the liberty of recommending his request to your sollicitations, as from a knowledge of the man I am become interested in his happiness. Whatever you can do for him will be considered as a peculiar obligation on Dr. Sir, Your friend & serv't.

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TO GABRIEL JONES <sup>1</sup>

MONTICELLO, April 29, 1779.

DEAR SIR,—By Mrs. Harvey I inclose to you the principle and interest of the money you were so

<sup>1</sup> From *The Balance*, ii., p. 194, 1803. On this matter was founded a very bitter attack on Jefferson. This loan was made in 1773. On Jones pressing for payment in 1779, Jefferson tendered him Continental currency, depreciated to an extent which made this tender less than one quarter of the amount originally received. Jones preferred to refuse it entirely (though under the law the tender constituted payment) on the ground that in a personal debt such pretended payment was dishonorable and fictitious. Jefferson never replied to Jones's protest, but when in France, several years later, his agent made payment in full. The affair was first made public by J. F. Callender, in *The Recorder* of Dec. 8, 1802. This led to considerable controversy, and finally induced Jones to write a narrative of the transaction, which is

kind as to lend me some years ago. It furnishes me also with an occasion of acknowledging, with this, the many other obligations under which you have laid me, of which I shall always be proud to shew a due sense, whenever opportunities shall offer. I am, dear sir, with much esteem, your friend and servant.

A BILL CONCERNING ESCHEATS AND FORFEITURES FROM  
BRITISH SUBJECTS<sup>2</sup>

V. S. A.

[May 27, 1779.]

Whereas during the connection which subsisted between the now United States of America and the other parts of the British empire, & their subjection to one common prince the inhabitants of either part had all the rights of natural born subjects in the

in *The Recorder* of June 4, 1803. In the *National Intelligencer* of July 1, 1803 is a piece signed "Timoleon," in defence of Jefferson which was undoubtedly inspired, if not written, by Jefferson. A broadside, signed "Veritas," was written and circulated by Philip Grymes, entitled *Letter to Gabriel Jones*, a copy of which is in the Library of Congress among the Jefferson pamphlets; and this produced a pamphlet entitled: *A Refutation of the Charges Made by a Writer under the Signature of "Veritas," against the Character of Gabriel Jones—the Lately Acknowledged Author being the Honorable Philip Grymes, Member of the Council of State,—in Which Every Charge or Insinuation against Him in that Libel is Fully and Clearly Refuted.* Winchester: Printed by Richard Bowen, [1803].

<sup>2</sup> On May 27, 1779, Jefferson was appointed to prepare this bill, and reported it the same day, when it was read for the first time. On the next day, it was read for a second time, and committed to the Committee of the Courts of Justice. They reported it back with amendments on June 11th, when it was ordered engrossed, and passed. This is printed from the draft in Jefferson's handwriting, the act as adopted being in the *Sessions Acts* for May, 1779, and in *Hening*, x., 66. Another bill dealing with this matter is in the *Report of the Revisors*, p. 22.

other, & so might lawfully take & hold real property, and transmit the same by descent to their heirs in fee simple, which could not be done by mere aliens; and the inhabitants on each part had accordingly acquired real property in the other: and in like manner had acquired personal property which by their common laws might be possessed by any other than an alien enemy & transmitted to executors & administrators: but when by the tyrannies of that prince, & the open hostilities committed by his armies & subjects inhabitants of the other parts of his dominions on the good people of the sd United States they are obliged to wage war in defense of their rights & finally to separate themselves from the rest of the British empire, to renounce all subjection to their common prince, and to become sovereign & independent states, the sd inhabitants of the other parts of the British empire become aliens & enemies to the sd states, & as such, incapable of holding the property real or personal so acquired therein & so much thereof as was within this commonwealth became by the laws vested in the commonwealth.

Nevertheless the General assembly, tho' provoked by the example of their enemies to a departure from that generosity which so honourably distinguishes the civilized nations of the present age, yet desirous to conduct themselves with moderation & temper, by an act passed at their session in the year 1777 took measures for preventing what had been the property of British subjects within this commonwealth from waste & destruction, by putting the same

into the hands & under the management of commissioners appointed for that purpose, that so it might be in their power, if reasonable at a future day, to restore to the former proprietors the full value thereof:

And whereas it is found that the sd property is liable to be lost, wasted & impaired without greater attention in the officers of government than is consistent with the discharge of their public duties and that from the advanced price at which the same would now sell, it may be most for the benefit of the former owners if the same should be restored to them hereafter, or to the public if not so restored, that the sale thereof should take place at this time, & the proceeds be lodged in the public treasury.

Be it therefore enacted by the General assembly that so much of the act before mentioned as may be supposed to have suspended the operation of the law of escheats & forfeitures shall be hereby repealed & that all the property, real & personal within this commonwealth belonging at this time to any British subject, or which did belong to any British subject at the time such escheat or forfeiture may have taken place, shall be deemed to be vested in the commonwealth, the sd real estate by way of escheat & the said personal estate by forfeiture.

The Governor with the advice of council so far as their information will enable them, & the commissioners of the tax within their several counties aided by their assessors shall forthwith institute proper proceedings of escheat & forfeiture for all such

property real & personal in which they shall be advised and assisted by the several attorneys for the commonwealth.

Where any office in the cases before mentioned shall be found for the commonwealth & returned to the General court, it shall remain there but one month for the claim of any pretending right to the estate, and if within that time no such claim be made, or being made if it be found & discussed for the commonwealth, the title of the owner to such estate real or personal shall be forever barred, but may be afterwards asserted as to the money proceeding from the sale thereof with equal force & advantage as might have been to the thing itself; and such further proceedings shall be had for making sale, of the lands so found, in parcels not greater than 400 acres (to be described by the commissioners hereafter mentioned and measured & marked by metes & bounds by a surveyor where they shall think necessary) and of the other property, as in the cases of escheat & forfeiture; save only that the Governor with advice of council, for every such sale shall appoint two commissioners to superintend & control the proceedings of the sd escheators, which commissioners shall be sworn to use their best endeavors to have the estate to which their trust extends sold to the best advantage. The sd sales shall be for ready money to be paid to the Escheator, who shall retain thereof five per centum for his trouble. His certificate of such payment in the case of lands, and of the person purchasing, to the register of the land office, shall entitle the purchaser to a

grant of the sd lands, if the sd Escheator shall fail to pay the sd money into the hands of the Treasurer within a reasonable time after any such sale (which reasonable time shall be accounted one day for every 20 miles such sale was distant from the public treasury and        days of grace in addition thereto) he shall pay interest thereon from the time of the sd sale at the rate of 20 per centum per annum; & moreover it shall be lawful for the Auditors on the last day but one of any General court, or at any court to be held for the county wherein such property was sold, after the expiration of the time allowed for paiment to obtain judgment on motion against such Escheator his heirs executors & administrators for the principal sum and such interest, together with costs. And for the information of the Auditors, the commissioners of the sale shall immediately on such sale certify to whom & for how much such sale was made & transmit such certificate by some safe & early conveyance to the Auditors; which certificate shall be legal evidence against such Escheator. The Auditors shall allow the commissioners so appointed the expences of the surveys by them directed & made, & other their reasonable expenses; and such compensation for their trouble as to them shall seem proper. Where the commissioners shall be of opinion that it will be more to the interest of the owner or public that possession of such property real or personal should be retained for finishing & removing a crop or other purpose, it shall be lawful for them to stay the possession as it is now until the        day of        next, giving

notice of such their intentions at the time of sale.

And for preventing doubt who shall be deemed British subjects within the meaning of this act, it is hereby declared & enacted that (1) all persons, subjects of his Britannic majesty, who on the day of April in the year 1775, when hostilities were commenced at Lexington between the United States of America & the other parts of the British empire, were resident or following their vocations in any part of the world other than the sd United states, and have not since either entered into public employment of the sd states, or joined the same and by overt act adhered to them; and (2.) all such subjects inhabitants of any of the sd United States, as were out of the sd states on the same day, & have since by overt act adhered to the enemies of the sd states; and (3) all inhabitants of the sd states who after the sd day and before the commencement of the act of the General assembly intituled 'an act declaring what shall be treason' departed from the sd states & joined the subjects of his Britannic majesty of their own free will, or who by any county court within this commonwealth were declared to be British subjects within the meaning & operation of the resolution of the General assembly of and the Governor's proclamation founded thereon; shall be deemed British subjects within the intention of this act.

But this act shall not extend to debts due to British subjects & payable into the loan office according to the act of General assembly for sequestering

British property; nor take effect on the property of such British subjects as are infants, *femes couvertes*, or insane mind, who within one year after their disability removed and hostilities suspended between his Britannic majesty and the United states shall become citizens of any of the sd states; nor on any lots of land within the town of Richmond as the limits of sd town now are, or shall be at the time of the inquest found, which by the directors of the public buildings shall be included within the squares appropriated for such buildings further than that an office shall be found as to such lots of land and the estimated value thereof be disposed of hereafter as the price would have been by this act had they been exposed to public sale; nor on any other such lots within the same town as shall by the sd directors be declared proper for the public use until buildings be erected on the squares before mentioned, & so long as they shall be applied to such public use.

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SPEECH TO GENERAL ASSEMBLY <sup>1</sup>

Wednesday, June 2, 1779.

GENTLEMEN,—The honor which the General assembly have been pleased to confer on me, by calling me to the high office of Governor of this Commonwealth, demands my most grateful acknowledgments, which I desire, through you, gentlemen, to tender to them with the utmost respect. In a vir-

<sup>1</sup> From the *Journal of the House of Delegates*. Jefferson had just been elected Governor of Virginia.

tuous and free State no rewards can be so pleasing to sensible minds, as those which include the approbation of our fellow-citizens. My great pain is, lest my poor endeavors should fall short of the kind expectations of my country. So far as impartiality, assiduous attention, and sincere affection to the great American cause, shall enable me to fulfil the duties of my appointment, so far I may with confidence undertake; for all beyond, I must rely on the wise counsels of the General assembly, and of those whom they have appointed for my aid in those duties.

To you, gentlemen, I return my particular thanks for the polite terms in which you have been pleased to notify the will of the General assembly.

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TO JOHN PAGE <sup>1</sup>

J. MSS.

[June, 1779.]

DEAR PAGE,—I received your letter <sup>2</sup> by Mr. Jamieson. It had given me much pain, that the zeal of our respective friends should ever have placed you and me in the situation of competitors. I was comforted, however, with the reflection, that it was their competition, not ours, and that the difference of the numbers which decided between us, was too insignificant to give you a pain, or me a

<sup>1</sup> This letter was dated in the Randolph and Washington editions as Jan. 22, 1779.

<sup>2</sup> Dated June 2d, and congratulated him on his election as Governor of Virginia. The first vote was: Jefferson, 55; Nelson, 32; and Page, 38. The second was Jefferson, 67; Page, 61. Cf. *Journal of the House of Delegates* for 1779, p. 29.

pleasure, had our dispositions towards each other been such as to admit those sensations. I know you too well to need an apology for anything you do, and hope you will forever be assured of this; and as to the constructions of the world, they would only have added one to the many sins for which they are to go to the devil. As this is the first, I hope it will be the last, instance of ceremony between us. A desire to see my family, which is in Charles City, carries me thither to-morrow, and I shall not return till Monday. Mrs. Jefferson I believe will not come shortly to town. When she does however she has too much value for Mrs. Page not to consider her acquaintance as a principal among those circumstances which are to reconcile her to her situation. A knowledge of her sentiments on this subject renders it safe in undertaking that she shall do her part in cultivating a friendly intercourse. Be pleased to present my compliments to Mrs. Page, and add this to the assurances I have ever given you, that I am, dear Page, your affectionate friend.

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TO WILLIAM FLEMING <sup>1</sup>

WILLIAMSBURGH, June 8, 1779.

DEAR FLEMING,—I received your letter and have now to thank you for it. Some resolutions of Congress came to hand yesterday desiring an authentic state to be sent them of the cruelties said to have

<sup>1</sup> From the *Southern Literary Messenger*, iii., 306.

been committed by the enemy during their late invasion. The council had already taken measures to obtain such a state. Tho' so near the scene where these barbarities are said to have been committed I am not able yet to decide within myself whether they were such or not. The testimony on both sides is such as if heard separately could not admit a moment's suspension of our faith.

We have lately been extremely disturbed to find a pretty general opinion prevailing that peace and the independence of the thirteen states are now within our power, and that Congress have hesitations on the subject, and delay entering on the consideration. It has even been said that their conduct on this head has been so dissatisfactory to the French minister that he thinks of returning to his own country, ostensibly for better health, but in truth through disgust. Such an event would be deplored here as the most dreadful calamity. It is in contemplation of some gentlemen who conferred on the subject to propose the re-establishment of our committees of correspondence; others thought this too slow for the emergency and that plenipotentiary deputies should be sent to satisfy the mind of the French minister, and to set on foot proper measures for procuring the genuine sense of the several states. The whole however subsided on a supposition that the information might not be true, and that our delegates in Congress would think no obligations of secrecy under which they may have been laid sufficient to restrain them from informing their constituents of any proceedings which may involve the fate

of their freedom and independence. It would surely be better to carry on a ten years' war some time hence than to continue the present an unnecessary moment.

Our land office I think will be opened; the sale of British property take place, and our tax bill put on a better footing. These measures I hope will put our finances into a better way and enable us to cooperate with our sister states in reducing the enormous sums of money in circulation. Every other remedy is nonsensical quackery. The house of delegates have passed a bill for removing the seat of government to Richmond. It hesitates with the Senate. We have established a board of war and a board of trade. I hear from your quarter that Genl. Sullivan is marching with a large army against the Indians. If he succeeds it will be the first instance of a great army doing anything against Indians and his laurels will be greater. We have ever found that chosen corps of men fit for the service of the woods, going against them with rapidity, and by surprize, have been most successful. I believe that our Colo. Clarke if we could properly reinforce him, would be more likely to succeed against those within his reach than Genl. Macintosh's regular method of proceeding. I shall hope to hear from you often. I put no name to this letter, because letters have miscarried, and if it goes safely you know the hand.

TO THEODORICK BLAND, JR.<sup>1</sup>

WILLIAMSBURG, June 8th, 1779.

SIR,—Your letter to Governor Henry, of the 1st instant, came to hand yesterday, and I immediately laid it before the council. It gave them pain to hesitate on any request from General Phillips, whose polite conduct has disposed them to every indulgence consistent with the duties of their appointment. The indiscriminate murder of men, women and children, with the horrid circumstances of barbarity practised by the Indian savages, was the particular task of Governor Hamilton's employment; and if anything could have aggravated the acceptance of such an office, and have made him personally answerable in a high degree, it was that eager spirit with which he is said to have executed it, and which, if the representations before the council are to be credited, seems to have shown that his own feelings and disposition were in unison with his employment. The truth of these representations will be the subject of their inquiry shortly, and the treatment of Governor Hamilton will be mild or otherwise, as his conduct shall appear to merit, upon a more intimate examination. We trust it must furnish a contemplation highly pleasing to the generous soldier, to see honorable bravery respected, even by those against whom it happens to be enlisted, and discriminated from the cruel and cowardly warfare of the savage, whose object in war is to extinguish human nature.

<sup>1</sup> From *The Bland Papers*, i., 133.

By a letter dated May 27th, you were desired to discharge the militia under your command as soon as you judged it proper; lest that letter should have miscarried, I now enclose you a copy. Colonel Finnie informs me he has written to you to apply for clothes at Winchester, for the use of your regiment of guards, and of the horse now with you. He yesterday showed me a letter from the continental board of war, giving the same directions; he says also that he had lately written to you on the subject of the articles desired for your particular use, and that he is not enabled to procure them more fully.

As to putting the horse now with you on the same pay-roll with the regiment of guards, the council are of opinion that either your own powers are competent to it, or at least that it may be done in concert with the continental paymaster. The regiment of guards is recognized as continental; the duty they are jointly engaged in is continental; they therefore wish that this matter should go into the continental line altogether, rather than be controlled by their interference, where it is not absolutely necessary. I am your most obedient servant, &c.

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TO RICHARD HENRY LEE <sup>1</sup>

WILLIAMSBURG, June 17, 1779.

DEAR SIR,—I received your letter, and kind congratulations, for which I return you my thanks. In

<sup>1</sup> From Lee's *Life of R. H. Lee*, ii., 189.

a virtuous government, and more especially in times like these, public offices are, what they should be, burthens to those appointed to them, which it would be wrong to decline, though foreseen to bring with them intense labour, and great private loss. I am, also, still to thank you for a former favour, enclosing a song and receipt. We have little new here. Colonel Clarke's expedition against St Vincents you know of; his prisoners are arrived at Chesterfield, and three of them brought to this place to be severely dealt with; the enclosed paper will explain that matter. We have 300 men, under Colonel Bowman, in the Shawnee county, of whom we hope to receive good accounts: the destruction of the villages of the Cherokees, at Chuchamogga, and taking their goods, &c., has brought them to sue for peace; but the happiest stroke was the burning twenty-thousand bushels of corn, collected there for the use of the expeditions, which were to have been adopted at the great council. Governor Hamilton had called at the mouth of the Tanissee, as mentioned in the within paper. It is a cruel thought, that, when we feel ourselves standing on the firmest ground, in every respect, the cursed art of our secret enemies, combining with other causes, should effect, by depreciating our money, what the open arms of a powerful enemy could not. What is to be done? Taxation is become of no account, for it is foreseen, that, notwithstanding its increased amount, there will still be a greater deficiency than ever. I own I see no assured hope, but in peace, or a plentiful loan of hard money.

I shall be obliged by your letters, when convenient to you to write. I never was a punctual correspondent to any person, as I must own to my shame; perhaps my present office will put it more out of my power; however as it may sometimes furnish me with matter which may induce me to hope my letters may be worth sending, I may venture to say, you shall hear from me whenever I can get over the two-fold difficulty of many letters of absolute necessity, to write, and an innate aversion to that kind of business.

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TO THEODORICK BLAND, JR.<sup>1</sup>

WILLIAMSBURGH, June 18th, 1779.

SIR,—Yours of the 14th instant came to hand this day. \* \* \* With respect to Col. Finnie, as a continental officer, [we decline med]dling with his conduct; being yourself in the continental service, [we] take it for granted, that if he fails in his duty you will [put] him under a proper train of enquiry? His assurances to us are fair; one thing only I am to inform you, that however true it may be that he is without money, it is no just excuse for failing to do anything for the public service, because that was never permitted by the executive here, to be on sufferance for want of money. He never applied in vain, and we still are, as we ever have been, ready to lend him (as a continental officer) any monies, which the due discharge of his office may call [for] \* \* \* and politeness at the [least] hardly permits

<sup>1</sup> From *The Bland Papers*, i., 138.

them to suppose the duties of the [post can be as] well discharged by any other, as by yourself. But your health for that very reason is the more to be taken care of. You will please to permit Capt. Bertling and Lieutenant Campbell to pass by land to the lower ferry of the Chickahominy, [where the Flag] lies, and finally settle the business, on which he came, according [to the rules] usual in their service. I enclose you the reasons, which have induced the council to [act] with such rigor with Governor Hamilton and the others there. It is impossible for any generous man to disapprove his sentence. I am, sir, with much [respect,] your most obedient and most humble servant, &c.

## REPORT OF THE REVISORS



## REPORT OF THE REVISORS

1779

In 1776, as Jefferson states in his *Autobiography*, (i., 66), he introduced a bill in the General Assembly, creating a committee to revise and codify the laws of the state. The committee, consisting of Jefferson, Pendleton, Wythe, George Mason, and Thomas L. Lee, met at Fredericksburg, Jan. 13, 1777, and outlined a plan (partly printed in Rowland's *Life of Mason*, i., 276) settling certain details, and apportioning the work among the revisors. Both Mason and Lee resigned before the code was fairly commenced; but the remaining three worked on the revisal for over two years, finally meeting again at Williamsburg in Feb., 1779, where, Jefferson states (*Autobiography*), they "examined critically our several parts, sentence by sentence, scrutinizing and amending until we had agreed on the whole. We then returned home, [and] had fair copies made of our several parts." A letter of Pendleton, however, gives a different version of this (*Pendleton to Jefferson*, May 11, 1779):

"I immediately wrote to our friend W. to be informed if anything had happen'd, or passed between you & him, which made it necessary for me to

attend further to the work of Revisal, contrary to what had been agreed to between Us, that you should settle our diversity of Opinions upon the Bills he had prepared, as well as mine, which he chose to consider by himself, & Point out for your Examination any alterations he judged proper, & then they were to be fairly transcribed as well as yours, which we had before gone through & reported. I let him know that I was ready to attend him at any time, if such Occurrences had made it necessary; he answered that no Alteration was made in that plan & I was satisfied."

Finally they reported the results of their work to the Assembly in the following letter:

WILLIAMSBURG, JUNE 18, 1779.

SIR,—The committee appointed in pursuance of an act of General Assembly, passed in 1776 intituled "An act for the revision of the laws," have according to the requisitions of the said act, gone through that work, and prepared 126 bills, the titles of which are stated in the enclosed catalogue. Some of these bills have been presented to the House of Delegates in the course of the present session, two or three of them delivered to members of that House at their request to be presented, the rest are in the two bundles which accompany this; these we take the liberty through you of presenting to the General Assembly.

In the course of this work we were unfortunately deprived of the assistance and abilities of our ASSO-

ciates appointed by the General Assembly, of the one by death, of the other by resignation. As the plan of the work had been settled, and agreeable to that plan it was in a considerable degree carried into execution before that loss, we did not exercise the powers given us by the act, of filling up the places by new appointment, being desirous that the plan agreed on by members who were specially appointed by the Assembly, might not be liable to alteration from others who might not equally possess their confidence, it has therefore been executed by the three remaining members, one of whom being prevented from putting his signature hereto, by the great distance of his residence from this city, has by letter authorized us to declare his concurrence in the report.

We have the honor to be with the utmost respect,  
sir, your most obedient and most humble servants,

T. JEFFERSON,

G. WYTHE.

For some reason the Assembly neglected the *Report of the Revisors* for some years; but finally, in 1784, Madison succeeded in getting 500 copies of it printed, and at the sessions of 1785 and 1786, fifty-six out of the one hundred and twenty-six bills, which constituted the collection, were, after amendment, made laws (see *Hening*, xii.).

The part assigned to Jefferson in this work was "to undertake the first part ('the first period in the division of the statutes to end with 25th, H. 8th') with the law of descents."

After consideration, the editor has concluded to print only the most notable of the bills Jefferson drafted for this Revisal, as many are of a merely formal and routine character, and he himself wrote of the collection (to *Hogendorp*, Oct. 13, 1785):

“If you had formed any considerable expectations from our revised code of laws you will be much disappointed. It contains not more than three or four laws which could strike the attention of a foreigner. Had it been a digest of all our laws, it would not have been comprehensible or instructive but to a native. But it is still less so, as it digests only the British statutes & our own acts of assembly, which are but a supplementary part of our law. The great basis of it is anterior to the date of the Magna charta, which is the oldest statute extant. The only merit of this work is that it may remove from our book shelves about twenty folio volumes of our statutes, retaining all the parts of them which either their own merit or the established system of our laws required.”

For further information concerning this *Report of the Revisors*, see Jefferson's *Autobiography*, i., 66-78; *Notes on Virginia*, Query xiv., in vol. iv.; *Letters to Madison*, Feb. 20, Apr. 25, 1784; *Hening*, xii., 8, 409; Rowland's *Life of Mason*, i., 276; and *Letters of James Madison*, i., 199, 203, 207, 212, 260, 268, 270, 273, 366; iii., 532, 580, 583, 612.

## A BILL FOR WITHHOLDING BRITISH PROPERTY

(CHAPTER XXXVI <sup>1</sup>)

SECTION I. For securing to the citizens of this commonwealth an indemnification out of the property of British subjects here, in case the sovereign of the latter should confiscate the property of the former in his dominions, as well as to prevent that accession of strength which the enemy might derive by withdrawing their property from hence: Be it enacted by the General Assembly, that the lands, slaves, flocks, implements of husbandry, and other estate except what is otherwise hereinafter provided for, within this commonwealth, of British subjects, shall be sequestered, and remain in possession of the commissioners heretofore for that purpose appointed, or be put into the possession of such as shall be from time to time, appointed, by the Governor, with advice of the Council of State. The said commissioners shall have power, and are required, to place, and keep the said estates under any management

<sup>1</sup> This bill varies slightly from that actually enacted (*Hening*, ix., 377) which was also drawn by Jefferson. (*Journal of the House of Delegates*, 1777, pp. 113, 119, 125-6; W. C. Ford's *Letters of Joseph Jones*, 138.) Even as early as 1779 the Assembly acknowledged its injustice, and it proved eventually a boomerang, the Courts holding that payments under it did not liquidate the debts, and compelling a true payment to the British debtors. Among those to suffer the most was Jefferson, who had paid into the loan-office moneys due by him to John Randolph, Kippen & Co., and William Jones.

and direction of proper agents, stewards, or overseers, and dispose of the produce thereof, and to demand, receive, and, by actions in the names of the proprietors, recover monies and other things which are and shall become due to them, and, after defraying the expenses incurred in the management of the said estates, and applying so much of the profits thereof, as the Governor, with the advice aforesaid, shall judge reasonable and direct to be allowed, towards maintaining the wives and children, if any there be residing here, of the proprietors, and pay the balances of such profits and receipts into the loan-office of this commonwealth, taking certificates in the proprietors names, and delivering the certificates, and annually rendering accounts of their respective transactions to the Governor, who, with the advice aforesaid, may cause the said accounts to be adjusted, and, in the names of the proprietors, recover any arrears from the commissioners, and pay the same into the said loan-office.

SECT. II. A citizen of the commonwealth, who is debtor to a British subject, may lodge the money due, or any part thereof, in the said loan-office, accounting sixteen pence of the lawful money of the commonwealth, or two-thirds of a dollar in bills of credit there current, equal to twelve pence of any such debt payable in the debtor's name, signed by the commissioner of the office, and delivering the same to the Governor, whose receipt shall discharge the debt, wholly or partly as the case may be. A state of all which matters shall be laid before the General Assembly, whenever they shall require it. If a

citizen of the commonwealth, being a coparcener, join-tenant, or tenant in common, with a British subject, bring a writ de partitione facienda in the General Court, or a suit for a partition by bill in equity, if that be the proper remedy in the High Court of Chancery, service of the process, against the tenant or defendant, upon the commissioner, for his estate, personally shall be deemed equivalent to service upon the party himself, and be as effectual to all purposes, save that if the partition thereupon made be without title, or unequal, which the commissioner shall endeavor to prevent, entering into the defence, or answering, and contesting the matter, for the tenant or defendant, and at his costs, the tenant or defendant shall not be concluded by the partition, unless the purparty assigned or allotted to the demandant or plaintiff shall be afterwards sold to a purchaser for valuable consideration, bonafide paid or agreed to be paid, in which case the tenant or defendant shall have redress against the demandant or plaintiff, or his representatives, when the General Assembly shall hereafter allow suit to be brought for that purpose.

SECT. III. Suits between British subjects only, demandants or plaintiffs and citizens of the commonwealth, tenants or defendants, which have not been, or shall not be, discontinued by acts of the parties, or abated by death, shall stand continued in the same condition as they were in on the twelfth day of April, in the year of our Lord one thousand seven hundred and seventy four; and in suits between subjects and citizens, joint demandants or plaintiffs,

and citizens, tenants or defendants, execution, as to the parts recovered on behalf of the subjects, shall be suspended, until further provision be made in the cases of both those classes: And in suits between such citizens only, or citizens and subjects jointly, tenants or defendants, the benefit of new trials or re-hearings, with future Legislative permission and direction, if it be then judged reasonable, shall be saved to the latter.

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#### A BILL CONCERNING SLAVES

##### (CHAPTER LI<sup>1</sup>)

SECTION I. Be it enacted by the General Assembly, that no persons shall, henceforth, be slaves within this commonwealth, except such as were so on the first day of this present session of Assembly, and the descendants of the females of them.

SECT. II. Negroes and mulattoes which shall hereafter be brought into this commonwealth and kept therein one whole year, together, or so long at different times as shall amount to one year, shall be free. But if they shall not depart the commonwealth within one year thereafter they shall be out of the protection of the laws.

SECT. III. Those which shall come into this commonwealth of their own accord shall be out of the protection of the laws; save only such as being seafaring persons and navigating vessels hither, shall

<sup>1</sup> For the intention of the revisors in regard to this bill, see *Notes on Virginia*, Query XIV., vol. iv.; and Jefferson's *Autobiography*, i., 75.

not leave the same while here more than twenty four hours together.

SECT. IV. It shall not be lawful for any person to emancipate a slave but by deed executed, proved and recorded as is required by law in the case of a conveyance of goods and chattels, on consideration not deemed valuable in law, or by last will and testament, and with the free consent of such slave, expressed in presence of the court of the county wherein he resides. And if such slave, so emancipated, shall not within one year thereafter, depart the commonwealth, he shall be out of the protection of the laws. All conditions, restrictions and limitations annexed to any act of emancipation shall be void from the time such emancipation is to take place.

SECT. V. If any white woman shall have a child by a negro or mulatto, she and her child shall depart the commonwealth within one year thereafter. If they shall fail so to do, the woman shall be out of the protection of the laws, and the child shall be bound out by the Aldermen of the county, in like manner as poor orphans are by law directed to be, and within one year after its term of service expired shall depart the commonwealth, or on failure so to do, shall be out of the protection of the laws.

SECT. VI. Where any of the persons before described shall be disabled from departing the commonwealth by grievous sickness, the protection of the law shall be continued to him until such disability be removed: And if the county shall in the meantime, incur any expense in taking care of him, as of other county poor, the Aldermen shall be intitled to

recover the same from his master, if he had one, his heirs, executors and administrators.

SECT. VII. No negro or mulatto shall be a witness except in pleas of the commonwealth against negroes or mulattoes, or in civil pleas wherein negroes or mulattoes alone shall be parties.

SECT. VIII. No slave shall go from the tenements of his master, or other person with whom he lives, without a pass, or some letter or token whereby it may appear that he is proceeding by authority from his master, employer, or overseer: If he does, it shall be lawful for any person to apprehend and carry him before a Justice of the Peace, to be by his order punished with stripes, or not, in his discretion.

SECT. IX. No slave shall keep any arms whatever, nor pass, unless with written orders from his master or employer, or in his company, with arms from one place to another. Arms in possession of a slave contrary to this prohibition shall be forfeited to him who will seize them.

SECT. X. Riots, routs, unlawful assemblies, trespasses and seditious speeches by a negro or mulatto shall be punished with stripes at the discretion of a Justice of the Peace; and he who will may apprehend and carry him before such Justice.

A BILL FOR PROPORTIONING CRIMES AND PUNISHMENTS

(CHAPTER LXIV <sup>1</sup>)

SECTION I. Whereas it frequently happens that wicked and dissolute men, resigning themselves to the dominion of inordinate passions, commit violations on the lives, liberties, and property of others,

<sup>1</sup> The text of this act is printed from that in the *Report of the Revisors*, but Jefferson's notes are printed from a MS. copy in his handwriting, now in the Department of State, the text of which differs however materially from the bill as here printed, and which will be found in Washington's edition, i., 147. Of this bill, he wrote to Wythe:

"MONTICELLO, November 1st, 1778.

"DEAR SIR,—I have got through the bill for 'proportioning crimes and punishments in cases heretofore capital,' and now enclose it to you with a request that you will be so good, as scrupulously to examine and correct it, that it may be presented to our committee with as few defects as possible. In its style, I have aimed at accuracy, brevity, and simplicity, preserving, however, the very words of the established law, wherever their meaning had been sanctioned by judicial decisions, or rendered technical by usage. The same matter, if couched in the modern statutory language, with all its tautologies, redundancies, and circumlocutions, would have spread itself over many pages, and been unintelligible to those whom it most concerns. Indeed, I wished to exhibit a sample of reformation in the barbarous style into which modern statutes have degenerated from their ancient simplicity. And I must pray you to be as watchful over what I have not said, as what is said; for the omissions of this bill have all their positive meaning. I have thought it better to drop, in silence, the laws we mean to discontinue, and let them be swept away by the general negative words of this, than to detail them in clauses of express repeal. By the side of the text I have written the notes I made, as I went along, for the benefit of my own memory. They may serve to draw your attention to questions, to which the expressions or the omissions of the text may give rise. The extracts from the Anglo-Saxon laws, the sources of the Common law, I wrote in their original, for my own satisfaction; but I have added Latin, or liberal English translations. From the time of Canute to that of the Magna Charta, you know, the text of our statutes is preserved to us in Latin only, and some old French.

"I have strictly observed the scale of punishments settled by the

and the secure enjoyment of these having principally induced men to enter into society, government would be defective in its principal purpose, were it not to restrain such criminal acts by inflicting due punishments on those who perpetrate them; but it appears at the same time equally deducible from the purposes of society, that a member thereof, committing an inferior injury, does not wholly forfeit the protection of his fellow citizens, but after suffering a punishment in proportion to his offence, is entitled to their protection from all greater pain, so that it becomes a duty in the Legislature to arrange in a proper scale the crimes which it may be necessary for them to repress, and to adjust there a corresponding gradation of punishments. And whereas the reformation of offenders, though an object worthy the attention of the laws, is not effected at all by capital punishments which exterminate instead of reforming, and should be the last melancholy resource against those whose existence is become inconsistent with the safety of their fellow citizens; which also weaken the State by cutting off so many,

Committee, without being entirely satisfied with it. The *Lex Talionis*, although a restitution of the Common law, to the simplicity of which we have generally found it so advantageous to return, will be revolting to the humanized feelings of modern times. An eye for an eye, and a hand for a hand, will exhibit spectacles in execution whose moral effect would be questionable; and even the *membrum pro membro* of Bracton, or the punishment of the offending member, although long authorized by our law, for the same offence in a slave has, you know, been not long since repealed in conformity with public sentiment. This needs reconsideration."

The Saxon character in which a part of his notes are written is here given in Roman. Cf. Jefferson's *Autobiography*, i., 70; and *Notes on Virginia*, Query XIV., vol. iv.

who, if reformed, might be restored sound members to society, who, even under a course of correction, might be rendered useful in various labours for the public, and would be living and long-continued spectacles to deter others from committing the like offences. And forasmuch as the experience of all ages and countries hath shewn, that cruel and sanguinary laws defeat their own purpose, by engaging the benevolence of mankind to withhold prosecutions, to smother testimony, or to listen to it with bias; and by producing in many instances a total dispensation and impunity under the names of pardon and privilege of clergy; when, if the punishment were only proportioned to the injury, men would feel it their inclination, as well as their duty, to see the laws observed; and the power of dispensation, so dangerous and mischievous, which produces crimes by holding up a hope of impunity, might totally be abolished, so that men while contemplating to perpetrate a crime would see their punishment ensuing as necessarily as effects follow their causes<sup>1</sup>; for rendering crimes and punishments, therefore, more proportionate to each other.

SECT. II. Be it enacted by the General Assembly, that no crime shall be henceforth punished by the deprivation of life or limb,<sup>2</sup> except those herein after ordained to be so punished.

<sup>1</sup> From the word "observed" in this sentence, to this point, is omitted in the MS. copy before mentioned.

<sup>2</sup> This takes away the punishment of cutting off the hand of a person striking another, or drawing his sword in one of the superior courts of justice. *Stamf. P. C.* 38. 33. *H. 8. c.* 12. In an earlier stage of the Common law, it was death. *Gif hwa gefehte on Cyninges huse sy*

SECT. III. ' If a man do levy war ' against the Commonwealth [*in the same*], or be adherent to the enemies of the Commonwealth [*within the same*],<sup>3</sup> giving to them aid or comfort in the Commonwealth, or elsewhere, and thereof be convicted, of open deed, by the evidence of two sufficient and lawful witnesses, or his own voluntary confession, the said cases, and no <sup>4</sup> others, shall be adjudged treasons

he scyldig ealles his yrfes, and sy on Cyninges dome hwæther he lif age de nage; si quis in regis domo pugnet, perdat omnem suam hæreditatem, et in regis sit arbitrio, possideat vitam an non possideat. Ll. Inae. 6. Gif hwa on Cyninges healle gefeohte, oththe his wæpne gebrede, and hine mon gefo, sy thæt on Cyninges dome swa death, swa lif, swa he him forgyfan wille: si quis in aula regia pugnet, vel arma sua extrahat et capiat, sit in regis arbitrio tam mors quam vita, sicut ei condonare voluerit. Ll. Alfr. 7. Gif hwa on Cyninges hirede gefeohte tholige thæt lifes, buton se Cyning him gearian wille: si quis in regia dimicat, perdat vitam, nisi rex hoc illi condonare velit. Ll. Cnuti. 56. 4. Bl. 125.—*T. J.*

<sup>1</sup> 25. E. 3. st. 5. c. 2. 7. W. 3. c. 3. § 2.—*T. J.*

<sup>2</sup> Though the crime of an accomplice in treason is not here described, yet, Lord Coke says, the partaking and maintaining a treason herein described, makes him a principal in that treason: it being a rule that in treason all are principals. 3 Inst. 138. 2 Inst. 590. 1 H. 6. 5.—*T. J.*

<sup>3</sup> The words in brackets are inserted by Jefferson in the MS. copy already alluded to. The following explanation is added:

"These words in the English statute narrow its operation. A man adhering to the enemies of the Commonwealth, in a foreign country, would certainly not be guilty of treason with us, if these words be retained. The convictions of treason of that kind in England have been under that branch of the statute which makes the compassing the king's death treason. Foster 196, 197. But as we omit that branch, we must by other means reach this flagrant case."—*T. J.*

<sup>4</sup> The stat. 25. E. 3. directs all other cases of treasons to await the opinion of Parliament. This has the effect of negative words, excluding all other treasons. As we drop that part of the statute, we must, by negative words, prevent an inundation of common law treasons: I strike out the word "it," therefore, and insert "the said cases, and no others." Quære, how far those negative words may effect the case of accomplices above mentioned? Though if their case was within the statute, so as that it needed not await the opinion of Parliament,

which extend to the commonwealth, and the person so convicted shall suffer death, by hanging,<sup>1</sup> and shall forfeit his lands and goods to the commonwealth.

SECT. IV. If any person commit petty treason, or a husband murder his wife, a parent<sup>2</sup> his child,

it should seem to be also within our act, so as not be ousted by the negative words.—*T. J.*

<sup>1</sup> This implies "by the neck." See 2 Hawk. 544 notes n. o.—*T. J.*

<sup>2</sup> By the stat. 21. Jac. 1. c. 27. and Act Ass. 1170. c. 12. concealment by the mother of the death of a bastard child is made murder. In justification of this, it is said, that shame is a feeling which operates so strongly on the mind, as frequently to induce the mother of such a child to murder it, in order to conceal her disgrace. The act of concealment, therefore, proves she was influenced by shame, and that influence produces a presumption that she murdered the child. The effect of this law then is, to make what, in its nature, is only presumptive evidence of a murder conclusive of that fact. To this I answer, 1. So many children die before or soon after birth, that to presume all those murdered who are found dead, is a presumption which will lead us oftener wrong than right, and consequently would shed more blood than it would save. 2. If the child were born dead, the mother would naturally choose rather to conceal it, in hopes of still keeping a good character in the neighborhood. So that the act of concealment is far from proving the guilt of murder on the mother. 3. If shame be a powerful affection of the mind, is not parental love also? Is it not the strongest affection known? Is it not greater than even that of self-preservation? While we draw presumptions from shame, one affection of the mind against the life of the prisoner, should we not give some weight to presumptions from parental love, an affection at least as strong, in favor of life? If concealment of the fact is a presumptive evidence of murder, so strong as to overbalance all other evidence that may possibly be produced to take away the presumption, why not trust the force of this incontestable presumption to the jury, who are, in a regular course, to hear presumptive, as well as positive testimony? If the presumption arising from the act of concealment, may be destroyed by proof positive of circumstantial to the contrary, why should the legislature preclude that contrary proof? Objection. The crime is difficult to prove, being usually committed in secret. Answer. But circumstantial proof will do; for example, marks of violence, the behavior, countenance, &c. of the prisoner, &c. And if conclusive proof be difficult to be obtained, shall we therefore fasten irremovably upon

or a child his parent, he shall suffer death, by hanging, and his body be delivered to Anatomists to be dissected.

SECT. V. Whosoever committeth murder by poisoning, shall suffer death by poison.

SECT. VI. Whosoever committeth murder by way of duel, shall suffer death by hanging; and if he were the challenger, his body, after death, shall be gibbeted.<sup>1</sup> He who removeth it from the gibbet shall be guilty of a misdemeanor, and the officer shall see that it be replaced.

SECT. VII. Whosoever shall commit murder in any other way shall suffer death by hanging.

SECT. VIII. And in all cases of Petty treason and murder, one half of the lands and goods of the offender shall be forfeited to the next of kin to the person killed, and the other half descend and go to his own representatives. Save only, where one shall slay the challenger in a duel,<sup>2</sup> in which case, no part of his lands or goods shall be forfeited to the kindred of the party slain, but instead thereof, a moiety shall go to the commonwealth.

equivocal proof? Can we change the nature of what is contestable and make it incontestable? Can we make that conclusive which God and nature have made inconclusive? Solon made no law against parricide, supposing it impossible that any one could be guilty of it; and the Persians, from the same opinion, adjudged all who killed their reputed parents to be bastards; and although parental be yet stronger than filial affection, we admit saticide proved on the most equivocal testimony, whilst they rejected all proof of an act certainly not more repugnant to nature, as of a thing impossible, unprovable. See Beccaria, § 31.—*T. J.*

<sup>1</sup> 25. G. 2. c. 37.—*T. J.*

<sup>2</sup> Quære, if the estates of both parties in a duel, should not be forfeited? The deceased is equally guilty with a suicide.—*T. J.*

SECT. IX. The same evidence <sup>1</sup> shall suffice, and order and course <sup>2</sup> of trial be observed in cases of Petty treason as in those of other <sup>3</sup> murders.

SECT. X. Whosoever shall be guilty of manslaughter,<sup>4</sup> shall, for the first offence, be condemned to hard <sup>5</sup> labour for seven years in the public works; shall forfeit one half of his lands and goods to the next of kin to the person slain; the other half to be sequestered during such term, in the hands, and to the use, of the commonwealth, allowing a

<sup>1</sup> Quære, if these words may not be omitted? By the Common law. one witness in treason was sufficient. Foster 233. Plowd. 8. a. Mirror c. 3. § 34. Waterhouse on Fortesc. de laud. 252. Carth. 144. per Holt. But Lord Coke, contra 3 inst. 26. The stat. 1. E. 6. c. 12. & 5. E. 6. c. 11. first required two witnesses in treason. The clause against high treason supra, does the same as to high treason; but it seems if 1st and 5th E. 6. are dropped, Petty treason will be tried and proved, as at Common law, by one witness. But quære, Lord Coke being contra, whose opinion it is ever dangerous to neglect.—*T. J.*

<sup>2</sup> These words are intended to take away the peremptory challenge of thirty-five jurors. The same words being used 1. 2. Ph. & M. c. 10. are deemed to have restored the peremptory challenge in high treason; and consequently are sufficient to take it away. Foster 237.—*T. J.*

<sup>3</sup> Petty treason is considered in law only as an aggravated murder. Foster 107. 323. A pardon of all murders, pardons Petty treason. 1 Hale P. C. 378. see 2 H. P. C. 340. 342. It is also included in the word "felony," so that a pardon of all felonies, pardons Petty treason.—*T. J.*

<sup>4</sup> Manslaughter is punishable at law, by burning in the hands, and forfeiture of chattels.—*T. J.*

<sup>5</sup> It is best, in this act, to lay down principles only, in order that it may not forever be undergoing change; and, to carry into effect the minuter parts of it, frame a bill "for the employment and government of felons, or malefactors, condemned to labor for the Commonwealth," which may serve as an Appendix to this, and in which all the particulars requisite may be directed; and as experience will, from time to time, be pointing out amendments, these may be made without touching this fundamental act. See More's Utopia p. 50. for some good

reasonable part of the profits for the support of his family. The second offence shall be deemed murder.

SECT. XI. And where persons meaning to commit a trespass <sup>1</sup> only, or larceny, or other unlawful deed, and doing an act from which involuntary homicide hath ensued, have heretofore been adjudged guilty of manslaughter or of murder, by transferring such their unlawful intention to an act, much more penal than they could have in probable contemplation; no such case shall hereafter be deemed manslaughter unless manslaughter was intended, nor murder, unless murder was intended.

SECT. XII. In other cases of homicide the law will not add to the miseries of the party, by punishments or forfeitures.<sup>2</sup>

hints. Fugitives might, in such a bill, be obliged to work two days for every one they absent themselves.—*T. J.*

<sup>1</sup> The shooting at a wild fowl, and killing a man, is homicide by misadventure. Shooting at a pullet, without any design to take it away, is manslaughter; and with a design to take it away, is murder. 6 Sta. tr. 222. To shoot at the poultry of another, and thereby set fire to his house, is arson, in the opinion of some. Dalt. c. 116. 1. Hale's P. C. 569. c. contra.—*T. J.*

<sup>2</sup> Beccaria. § 32. Suicide. Homicides are, 1. Justifiable. 2. Excusable. 3. Felonious. For the last, punishments have been already provided. The first are held to be totally without guilt, or rather commendable. The second are in some cases not quite unblamable. These should subject the party to marks of contrition; viz., the killing of a man in defence of property; so also in defence of one's person, which is a species of excusable homicide; because, although cases may happen where these also are commendable, yet most frequently they are done on too slight appearance of danger; as in return for a blow, kick, filip, &c.; or on a person's getting into a house, not animo furandi, but perhaps veneris causa, &c. Bracton says, "si quis furem nocturnum occident, ita demum impune foret, si parcere ei sine periculo suo non potuit, si autem potuit, aliter

SECT. XIII. Whenever sentence of death shall have been pronounced against any person for treason or murder, execution thereof shall be done on the

erit." "Item erit si quis hamsokne quæ dicitur invasio domus contra pacem domini regis in domo sua se defenderit, et invasor occisus fuerit; impersecutus et insultus remanebit, si ille quem invasit aliter se defendere non potuit; dicitur enim quod non est dignus habere pacem qui non vult observare eam." L. 3. c. 23. § 3. "Qui latronem occiderit, non tenetur, nocturnum vel diurnum, si aliter periculum evadere non possit; tenetur tamen si possit. Item non tenetur si per inadvertentiam, et non animo et voluntate occidendi, nec dolus, nec culpa ejus inveniat." L. 3. c. 36. § 1. The stat. 24. H. 8. c. 5. is therefore merely declaratory of the Common law. See on the general subject Puffend. 2. 5. § 10. 11. 12. 16. 17. Excusable homicides are by misadventure, or in self-defence. It is the opinion of some lawyers, that the Common law punished these with death, and that the statute of Marlbridge c. 26. and Gloucester, c. 9. first took away this by giving them title to a pardon, as matter of right, and a writ of restitution of their goods. See 2. Inst. 148. 315. 3. Inst. 55. Bracton L. 3. c. 4. § 2. Fleta L. 1. c. 23. § 14. 15. 21. E. 3. 23. But it is believed never to have been capital. 1. H. P. C. 425. 1 Hawk. 75. Foster, 282. 4. Bl. 188. It seems doubtful also, whether at Common law, the party forfeited all his chattels in this case, or only paid a weregild. Foster, ubi supra, doubts, and thinks it of no consequence, as the statute of Gloucester entitles the party to Royal grace, which goes as well to forfeiture as life. To me there seems no reason for calling these excusable homicides, and the killing a man in defence of property, a justifiable homicide. The latter is less guiltless than misadventure or self-defence.

Suicide is by law punishable by forfeiture of chattels. This bill exempts it from forfeiture. The suicide injures the State less than he who leaves it with his effects. If the latter then be not punished, the former should not. As to the example, we need not fear its influence. Men are too much attached to life, to exhibit frequent instances of depriving themselves of it. At any rate, the quasi-punishment of confiscation will not prevent it. For if one be found who can calmly determine to renounce life, who is so weary of his existence here, as rather to make experiment of what is beyond the grave, can we suppose him, in such a state of mind, susceptible of influence from the losses to his family from confiscation? That men in general, too, disapprove of this severity, is apparent from the constant practice of juries finding the suicide in a state of insanity; because they have no other way of saving the forfeiture. Let it then be done away.—  
T. J.

next day but one, after such sentence, unless it be Sunday, and then on the Monday following.<sup>1</sup>

SECT. XIV. Whosoever shall be guilty of rape,<sup>2</sup>

<sup>1</sup> Beccaria. § 19. 25. G. 2. c. 37.—*T. J.*

<sup>2</sup> 13. E. 1. c. 34. Forcible abduction of a woman having substance is felony by 3. H. 7. c. 2. 3 Inst. 61. 4 Bl. 208. If goods be taken, it will be felony as to them, without this statute; and as to the abduction of the woman, quære if not better to leave that, and also kidnapping, 4. Bl. 219. to the Common law remedies, viz., fine, imprisonment, and pillory, Raym. 474. 2 Show. 221. Skin. 47. Comb. 10. the writs of *Homine replegiando*, *Capias in Withernam*, *Habeas corpus*, and the action of trespass? Rape was felony at the Common law. 3. Inst. 60. but see 2. Inst. 181. further—for its definition see 2. Inst. 180. Bracton, L. 3. c. 28. § 1. says the punishment of rape is "*amissio membrorum, ut sit membrum pro membro, quia virgo, cum corrumpitur, membrum amittit, et ideo corruptor puniatur in eo in quo deliquit; oculus igitur amittat propter aspectum decoris quo virginem concupivit; amittat et testiculos qui calorem stupri induxerunt. Olim quidem corruptores virginitatis et castitatis suspendebantur et eorum fautores, &c. Modernis tamen temporibus aliter observatur,*" &c. And Fleta, "*solet justiciarius pro quolibet mahemio ad amissionem testiculorum vel oculorum convictum condemnare, sed non sine errore, eo quod id iudicium nisi in corruptione virginum tantum competeat; nam pro virginitatis corruptione solebant abscidi et merito iudicari ut sic pro membro quod abstulit, membrum per quod deliquit amitteret, viz., testiculos, qui calorem stupri induxerunt,*" &c. Fleta, L. 1. c. 40. § 4. "*Gif theow man theowne to nydhed genyde, gabte mid his eowende:*" *Si servus servam ad stuprum coegerit, compenset hoc virga sua virili. Si quis puellam,*" &c. Ll. Aelfridi. 25. "*Hi purgist femme per force forfait ad les membres.*" Ll. Gul. conq. 19. In Dyer, 305, a man was indicted, and found guilty of a rape on a girl of seven years old. The court "*doubted of the rape of so tender a girl; but if she had been nine years old, it would have been otherwise.*" 14. Eliz. Therefore the statute 18. Eliz. c. 6. says, "*For plain declaration of law, be it enacted, that if any person shall unlawfully and carnally know and abuse any woman child, under the age of ten years, &c., he shall suffer as a felon, without allowance of clergy.*" Lord Hale, however, 1. P. C. 630. thinks it rape independent of that statute, to know carnally, a girl under twelve, the age of consent. Yet 4. Bl. 212. seems to neglect this opinion; and as it was founded on the words of 3. E. 1. c. 13. and this is with us omitted, the offence of carnally knowing a girl under twelve, or ten years of age, will not be distinguished from that of any other.—*T. J.*

[*polygamy*,<sup>1</sup>] or sodomy<sup>2</sup> with man or woman, shall be punished; if a man, by castration,<sup>3</sup> if a woman, by boring<sup>4</sup> through the cartilage of her nose a hole of one half inch in diameter at the least.

SECT. XV. Whosoever on purpose,<sup>5</sup> shall disfig-

<sup>1</sup> This word was not in the *Report of the Revisors*, but was inserted by Jefferson in the MS. copy already alluded to. He adds as notes to it: "1. Jac. 1. c. 11. Polygamy was not penal until the statute 1. Jac. The law contented itself with the nullity of the act. 4. Bl. 163. 3. Inst. 88."

"But no one shall be punished for Polygamy, who shall have married after probable information of the death of his or her husband or wife, or after his or her husband or wife, hath absented him or herself, so that no notice of his or her being alive hath reached such person for seven years together, or hath suffered the punishments before prescribed for rape, polygamy, or sodomy."

<sup>2</sup> § 25. H. 8. c. 6. Buggery is twofold. 1. With mankind, 2. with beasts. Buggery is the Genus, of which Sodomy and Bestiality, are the species. 12. Co. 37. says, "note that Sodomy is with mankind." But Finch's L. B. 3. c. 24. "Sodomary is a carnal copulation against nature, to wit, of man or woman in the same sex, or of either of them with beasts." 12. Co. 36. says, "it appears by the ancient authorities of the law that this was felony." Yet the 25. H. 8. declares it felony, as if supposed not to be so. Britton, c. 9. says, that Sodomites are to be burnt. F. N. B. 269. b. Fleta, L. 1. c. 37. says, "pecorantes et Sodomitæ in terra vivi confodiantur." The Mirror makes it treason. Bestiality can never make any progress; it cannot therefore be injurious to society in any great degree, which is the true measure of criminality in foro civili, and will ever be properly and severely punished, by universal derision. It may, therefore, be omitted. It was anciently punished with death, as it has been latterly. Ll. Aelfrid. 31. and 25. H. 8. c. 6. see Beccaria. § 31. Montesq.—*T. J.*

<sup>3</sup> Bracton, Fleta, &c.—*T. J.*

<sup>4</sup> Altered to "cutting" in MS. copy.

<sup>5</sup> In the MS. copy, the words "and of malice forethought shall maim another, or" are added here, and a note on this is:

"22. 23. Car. 2. c. 1. Maiming was felony at the Common law. Britton, c. 25. 'Mahemium autem dici poteri, aubia aliquis in aliqua parte sui corporis lesionem acceperit, per quam affectus sit inutilis ad pugnandum: ut si manus amputetur, vel pes, oculus privetur, vel scerda de osse capitis laveter, vel si quis dentes præcisores amiserit, vel castratus fuerit, et talis pro mahemiato poterit adjudicari.' Fleta L.

ure another, by cutting out or disabling the tongue, slitting or cutting off a nose, lip, or ear, branding, or otherwise, shall be maimed, or disfigured in like sort; or if that cannot be, for want of the same part, then as nearly as may be, in some other part of at least equal value and estimation, in the opinion of a jury, and moreover, shall forfeit one half of his land and goods to the sufferer.

SECT. XVI. Whosoever shall counterfeit<sup>2</sup> any

1. c. 40. 'Et volons que nul maheme ne soit tenu forsque de membre tollet dount home es plus feble a combatre, sicome del oyl, ou de la mayn, ou del pie, on de la tete debruse, ou de les dentz devant.' Britton, c. 25. For further definitions, see Bracton, L. 3. c. 24 § 3. 4. Finch L. B. 3. c. 12. Co. L. 126. a. b. 288. a. 3. Bl. 121. 4. Bl. 205. Stamf. P. C. L. 1. c. 41. I do not find any of these definitions confine the offence to wilful and malicious perpetrations of it. 22. 23. Car. 2. c. 1. called the Coventry act, has the words 'on purpose and of malice forethought.' Nor does the Common law prescribe the same punishment for disfiguring, as for maiming."—*T. J.*

<sup>1</sup> The punishment was by retaliation. "Et come ascun appele serra de tele felonie atteint et attende jugement, si soit le jugement tiel que il perde autriel membre come il avera tollet al pleintyfe. Et sy la pleynte soi faite de femme que avera tollet a home ses membres, en tiel cas perdra la femme la une meyn par jugement, come le membre dount ele axera trespasse." Britton, c. 25. Fleta, B. 1. c. 40. Ll. Ælfr. 19. 40.—*T. J.*

<sup>2</sup> 25. E. 3. st. 5 c. 2. 5. El. c. 11. 18. El. c. 1. 8. 9. W. 3. c. 26. 15. 16. G. 2. c. 28. 7. Ann. c. 25. By the laws of Æthelstan and Canute, this was punished by cutting off the hand. "Gif se mynetera ful wurthe slea man tha hand of, the he that ful mid worthe and sette uppon tha mynet smiththan." In English characters and words "if the minter foul [criminal] wert, slay the hand off, that he the foul [crime] with wrought, and set upon the mint-smithery." Ll. Aethelst. 14. "Et si quis praeter hanc, falsam fecerit, perdat manum quacum falsam confecit." Ll. Cnuti. 8. It had been death by the Ll Æthelredi sub fine. By those of H. 1. "si quis cum falso denario inventus fuerit—fiat justitia mea, saltem de dextro pugno et de testiculis." Anno 1108. Operæ pretium vero est audire quam severus rex fuerit in pravos. Monetarios enim fere omnes totius Angliæ fecit ementulari, et manus dextras abscindi, quia monetam furtive corruperant. Wilkins ib. et anno 1125. When the Common law became settled, it appears

coin current by law within this commonwealth, or any paper bills issued in the nature of money, or of certificates of loan, on the credit of this commonwealth, or of all or any of the United States of America, or any Inspectors' notes for tobacco, or shall pass any such counterfeited coin, paper bills, or notes, knowing them to be counterfeit; or, for the sake of lucre, shall diminish <sup>1</sup> each, or any such coin, shall be condemned to hard labour six years in the public works, and shall forfeit all his lands and goods to the commonwealth.

SECT. XVII. The making false any such paper bill, or note, shall be deemed counterfeiting.

SECT. XVIII.<sup>2</sup> Whosoever committeth arson, shall be condemned to hard labour five years in the public works, and shall make good the loss of the sufferers threefold.<sup>3</sup>

to have been punishable by death. "Est aliud genus criminis quod sub nomine falsi continetur, et tangit coronam domini regis, et ultimum inducit supplicium, sicut de illis qui falsam fabricant monetam et qui de re non reprobata, faciunt reprobam; sicut sunt retonsores denariorum. Bract. L. 3. c. § 2. Fleta, L. 1. c. 22. § 4. Lord Hale thinks it was deemed petty treason at common law. 1. H. P. C. 220. 224. The bringing in false money with *intent* to merchandize, and make payment of it, is treason, by 25. E. 3. But the best proof of the intention, is the act of passing it, and why not leave room for repentance here, as in other cases of felonies intended? 1. H. P. C. 229.—T. J.

<sup>1</sup> Clipping, filing, rounding, impairing, scaling, lightening, (the words in the statutes) are included in "diminishing"; gilding, in the word "casing"; coloring in the word "washing"; and falsifying, or making is "counterfeiting."—T. J.

<sup>2</sup> 43 L. c. 13. confined to four counties. 22. 23. Car. 2. c. 7. 9. G. 1. c. 22. 9. G. 3. c. 29.—T. J.

<sup>3</sup> Arson was a felony at Common law—3. Inst. 66; punished by a fine, Ll. Aethelst. 6. But Ll. Cnuti, 61. make it a "scelus inexpressible." "Hus brec and bænet and open thyfth æberemorth and hlaford swice

SECT. XIX. If any person shall, within this Commonwealth, or, being a citizen thereof, shall without the same, wilfully destroy<sup>1</sup> or run<sup>2</sup> away with any sea-vessel, or goods laden on board thereof, or plunder or pilfer any wreck, he shall be condemned to hard labour five years in the public works, and shall make good the loss of the sufferers threefold.

SECT. XX. Whosoever committeth a robbery,<sup>3</sup> æfter woruld laga is botleds." Word for word, "house break and burnt, and open theft, and manifest murther, and lord-treachery, afterworld's law is bootless." Bracton says it was punished by death. "Si quis turbida seditione incendium fecerit nequiter et in feloniam, vel ob inimicitias, vel praedandi causa, capitali puniatur poena vel sententia." Bract. L. 3. 27. He defines it as commissible by burning "aedes alienas." Ib. Britton, c. 9. "Ausi soit enquis de ceux que felonisement en temps de pees eient autre *blees* ou autre *mesons* ars, et ceux que serrount de ceo atteyntz, soient ars issint que eux soient punys par mesme cele chose dount ilz pecherent." Fleta, L. 1. c. 37. is a copy of Bracton. The Mirror c. 1. § 8. says, "Ardours sont que ardent cite, ville, maison home, maison beast, ou auters chatelx, de lour felonie en temps de pace pour haine ou vengeance." Again, c. 2. § 11. pointing out the words of the appellor "jeo dise que Sebright, &c., entiel meason ou *biens* mist de feu." Coke 3. Inst. 67. says, "the ancient authors extended this felony further than houses, viz., to sacks of corn, waynes or carts of coal, wood or other goods." He denies it as commissible, not only on the inset houses, parcel of the mansion house, but the outset also, as barn, stable, cowhouse, sheep house, dairy house, mill house, and the like, parcel of the mansion house. But "burning of a barn, being no parcel of a mansion house, is no felony," unless there be corn or hay within it. Ib. The 22. 23. Car. 2. and 9. G. 1. are the principal statutes against arson. They extend the offence beyond the Common law.—T. J.

<sup>1</sup> 1. Ann. st. 2. c. 9. 12. Ann. c. 18. 4. G. 1. c. 12. 26. G. 2. c. 19.—T. J.

<sup>2</sup> 11. 12. W. 3. c. 7.

<sup>3</sup> Robbery was a felony at Common law. 3 Inst. 68. "Scelus inextinguibile," by the Ll. Cnuti. 61. [See before in "Arson."] It was punished with death. Britt. c. 15, "de robbours et de larouns et de semblables mesfesours, soit ausi ententivement enquis—et tauntost soient ceux robbours juges a la mort." Fleta says, "si quis convictus fuerit de bonis viri robbatis vel asportatis ad sectam regis judicium capitale subibit. L. 1. c. 39. See also Bract. L. 3. c. 32. § 1.—T. J.

shall be condemned to hard labour four years in the public works, and shall make double reparation to the persons injured.

SECT. XXI. Whatsoever act, if committed on any mansion-house, would be deemed a burglary,<sup>1</sup> shall be burglary, if committed on any other house; and he who is guilty of burglary, shall be condemned to hard labour four years in the public works, and shall make double reparation to the persons injured.

<sup>1</sup> Burglary was felony at the Common law. 3 Inst. 63. It was not distinguished by ancient authors, except the Mirror, from Simple House-breaking, ib. 65. Burglary and House-breaking were called "Hamsocne diximus etiam de pacis violatione et de immunitatibus domus, si quis hoc in posterum fecerit ut perdat omne quod habet, et sit in regis arbitrio utrum vitam habeat. Eac we quædon be mund-bryce and be ham socnum, sethe hit ofer this do thæt he dolie ealles thæs the age, and sy on Cyninges dome hwæther he life age; and we quoth of mound-breach, and of home-seeking he who it after this do, that he dole all that he owe [owns], and is in king's doom whether he life owes [owns.]" Ll. Eadmundi. c. 6. and see Ll. Cnuti. 61. "hus brec," in notes on Arson. *ante*. A Burglar was also called a Burgessor. "Et soit enquis de Burgessours et sunt tenus Burgessours trestous ceux que felonisement en temps de pees debrusont esglises ou auter mesons, ou murs ou portes de nos cytes, ou de nos Burghes." Britt. c. 10. "Burglaria est nocturna diruptio habitaculi alicujus, vel ecclesie, etiam murorum, partarumve civitatis aut burgi, ad feloniam aliquam perpetranda. *Noctanter* dico, recentiores secutus; veteres enim hoc non adjungunt." Spelm. gloss. verb. Burglaria. It was punished with death. Ib. citn. from the office of a Coroner. It may be committed in the outset houses, as well as inset. 3 Inst. 65. though not under the same roof or contiguous, provided they be within the Curtilage or Homestall. 4 Bl. 225. As by the Common law, all felonies were clerigible, the stat. 23 H. 8. c. 1. 5. E. 6. c. 9. and 18 El. c. 7. first distinguished them, by taking the clerical privilege of impunity from the principals, and 3. 4. W. M. c. 9. from accessories before the fact. No *statute* defines what Burglary is. The 12 Ann. c. 7. decides the doubt whether, where breaking is subsequent to entry, it is Burglary. Bacon's Elements had affirmed, and 1 H. P. C. 554. had denied it. Our bill must distinguish them by different degrees of punishment.—T. J.

SECT. XXII. Whatsoever act, if committed in the night time, shall constitute the crime of burglary, shall, if committed in the day, be deemed house-breaking<sup>1</sup>; and whoever is guilty thereof, shall be condemned to hard labour three years in the public works, and shall make reparation to the persons injured.

SECT. XXIII. Whosoever shall be guilty of horse-stealing,<sup>2</sup> shall be condemned to hard labour three years in the public works, and shall make reparation to the person injured.

SECT. XXIV. Grand larceny<sup>3</sup> shall be where the

<sup>1</sup> At the Common law, the offence of Housebreaking was not distinguished from Burglary, and neither of them from any other larceny. The statutes at first took away clergy from Burglary, which made a leading distinction between the two offences. Later statutes, however, have taken clergy from so many cases of Housebreaking, as nearly to bring the offences together again. These are 23 H. 8. c. 1. 1 E. 6. c. 12. 5 and 6 E. 6. c. 9. 3 and 4 W. M. c. 9. 39 El. c. 15. 10 and 11 W. 3 c. 23. 12 Ann. c. 7. See Barr. 428. 4 Bl. 240. The circumstances which in these statutes characterize the offence, seem to have been occasional and unsystematical. The houses on which Burglary may be committed, and the circumstances which constitute that crime being ascertained, it will be better to define Housebreaking by the same subjects and circumstances, and let the crimes be distinguished only by the hour at which they are committed, and the degree of punishment.—*T. J.*

<sup>2</sup> The offence of Horse-stealing seems properly distinguishable from other larcenies, here, where these animals generally run at large, the temptation being so great and frequent, and the facility of commission so remarkable. See 1 E. 6. c. 12. 23 E. 6. c. 33. 31 El. c. 12.—*T. J.*

<sup>3</sup> The distinction between grand and petty larceny, is very ancient. At first 8d. was the sum which constituted grand larceny. *Li. Æthelst.* c. 1. "Ne parcatur ulli furi, qui furtum manutenens captus sit, supra 12. annos nato, et supra 8. denarios." Afterwards in the same king's reign it was raised to 12d. "non parcatur alicui furi ultra 12 denarios, et ultra 12 annos nato—ut occidemus illum et capiamus omne quod possidet, et imprimis sumamus rei furto ablatae pretium ab haerede, ac dividatur postea reliquum in duas partes, una pars

goods stolen are of the value of five dollars; and whosoever shall be guilty thereof, shall be forthwith put in the pillory for one half hour, shall be condemned to hard labour<sup>1</sup> two years in the public works, and shall make reparation to the person injured.

SECT. XXV. Petty larceny shall be, where the goods stolen are of less value than five dollars; who-

uxori, si munda, et facinoris conscia non sit; et residuum in duo, dimidium capiat rex, dimidium societas." Ll. Aethelst. Wilkins, p. 65.—*T. J.*

<sup>1</sup> Ll. Inae. c. 7. "Si quis furetur ita ut uxor ejus et infans ipsius nesciant, solvat 60. solidos poenae loco. Si autem furetur testantibus omnibus hæredibus suis, abeant omnes in servitum." Ina was king of the West-Saxons, and began to reign A. C. 688. After the union of the Heptarchy, i. e. temp. Æthelst. inter 924 and 940, we find it punishable with death as above. So it was inter 1017 and 1035, i. e. temp. Cnuti. Ll. Cnuti. 61. cited in notes on Arson. In the time of William the conqueror, it seems to have been made punishable by fine only. Ll. Gul. conq. apud Wilk. p. 218, 220. This commutation, however, was taken away by Ll. H. 1. anno 1108. "Si quis in furto vel latrocinio deprehensus fuisset, suspenderetur; sublata wirgildorum, id est, pecuniaræ redemptionis lege." Larceny is the felonious taking and carrying away of the personal goods of another. 1. as to the taking, the 3. 4. W. M. c. 9. § 5. is not additional to the Common law, but declaratory of it; because where only the care or use, and not the possession, of things is delivered, to take them was larceny at the Common law. The 33 H. 6. c. 1. and 21, H. 8. c. 7. indeed, have added to the Common law, by making it larceny in a servant to convert things of his master's. But quære, if they should be imitated more than as to other breaches of trust in general. 2. As to the subject of larceny, 4 G. 2. c. 32. 6 G. 3. c. 36. 48. 45. El. c. 7. 15 Car. 2. c. 2. 23 G. 2. c. 26. 31 G. 2. c. 35. 9 G. 3. c. 41. 25 G. 2. c. 10. have extended larceny to things of various sorts either real, or fixed to the reality. But the enumeration is unsystematical, and in this country, where the produce of the earth is so spontaneous, as to have rendered things of this kind scarcely a breach of civility or good manners, in the eyes of the people, quære, if it would not too much enlarge the field of Criminal law? The same may be questioned of 9 G. 1. c. 22. 13 Car. 2. c. 10. 10 G. 2. c. 32. 5 G. 3. c. 14. 22 and 23 Car. 2. c. 25. 37 E. 3. c. 19. making it felony to steal animals feræ naturæ.—*T. J.*

soever shall be guilty thereof, shall be forthwith put in the pillory for a quarter of an hour, shall be condemned to hard labour for one year in the public works, and shall make reparation to the persons injured.

SECT. XXVI. Robbery<sup>1</sup> or larceny of bonds, bills obligatory, bills of exchange, or promissory notes, for the payment of money or tobacco, lottery tickets, paper bills issued in the nature of money, or certificates of loan on the credit of this commonwealth, or of all or any of the United States of America, or inspectors notes for tobacco, shall be punished in the same manner as robbery or larceny of the money or tobacco due on, or represented by such papers.

SECT. XXVII. Buyers<sup>2</sup> and receivers of goods taken by way of robbery or larceny, knowing them to have been so taken, shall be deemed accessaries to such robbery or larceny after the fact.

SECT. XXVIII. Prison-breakers,<sup>3</sup> also, shall be deemed accessaries after the fact, to traitors or felons whom they enlarge from prison.<sup>4</sup>

<sup>1</sup> 2 G. 2. c. 25 § 3. 7 G. 3. c. 50.—*T. J.*

<sup>2</sup> 3. 4. W. M. c. 9. § 4. 5 Ann. c. 31. § 5. 4 G. 1. c. 11. § 1.—*T. J.*

<sup>3</sup> 1 E. 2.—*T. J.*

<sup>4</sup> Breach of prison at the Common law was capital, without regard to the crime for which the party was committed. "Cum pro criminis qualitate in carcerem recepti fuerint, conspiraverint (ut ruptis vinculis aut fracto carcere) evadant, amplius (quam causa pro qua recepti sunt exposit) puniendi sunt, videlicet ultimo supplicio, quamvis ex eo crimine innocentes inveniantur, propter quod inducti sunt in carcerem et imparcati." Bracton L. 3. c. 9. § 4. Britt. c. 11. Fleta, L. 1. c. 26. § 4. Yet in the *Y. B. Hill. 1. H. 7. 2.* Hussey says, that by the opinion of Billing and Coke, and all the justices, it was a felony in strangers only, but not in the prisoner himself. *S. C. Fitz. Abr. Coron. 48.* They are the principal felons, not accessaries. *ib.* Whether it was felony in the prisoner at Common law, is doubted. *Stam. P. C. 30. b.*

SECT. XXIX. All attempts to delude the people, or to abuse their understanding by exercise of the pretended arts of witchcraft, conjuration, enchantment, or sorcery, or by pretended prophecies, shall be punished by ducking and whipping, at the discretion of a jury, not exceeding fifteen stripes.<sup>1</sup>

The Mirror c. 5. § 1, says, "abusio est a tener escape de prisoner, ou de bruserie del gaole pur peche mortell, car cel usage nest garrant per nul ley, ne in nul part est use forsque in cest realme, et en France, eins [mais] est leu garrantie de ceo faire per la ley de nature." 2 Inst. 589. The stat. 1. E. 2. de fraugentibus prisonam, restrained the judgment of life and limb for prison breaking, to cases where the offence of the prisoner required such judgment.

It is not only vain, but wicked, in a legislator to frame laws in opposition to the laws of nature, and to arm them with the terrors of death. This is truly creating crimes in order to punish them. The law of nature impels every one to escape from confinement; it should not, therefore, be subjected to punishment. Let the legislator restrain his criminal by walls, not by parchment. As to strangers breaking prison to enlarge an offender, they should, and may be fairly considered as accessaries after the fact. This bill says nothing of the prisoner releasing himself by breach of jail, he will have the benefit of the first section of the bill, which repeals the judgment of life and death at the common law.—*T. J.*

<sup>1</sup> Gif wiccan owwe wigleras nansworan, owwe morthwyrhtan owwe fule afylede æbere horcwenan ahwhar on lande wurthan agytene, thonne fyrsie man of earde and clænsie tha theode, owwe on earde forfare hi mid ealle, buton hi geswican and the deoper gebetan: if witches, or weirds, man-swearers, murther-wroughters, or foul, defiled, open whore-queens, anywhere in the land were gotten, then force them off the earth, and cleanse the nation, or in earth forth-fare them withal, but on they beseech, and deeply better. *Ll. Ed. et Guthr. c. 11.* "Sagæ, mulieres barbara, factitantes sacrificia, aut pestiferi, si cui mortem intulerint, neque id inficiari poterint, capitis poena esto." *Ll. Æthelst. c. 6. apud Lambard. Ll. Aelfr. 30. Ll. Cnuti. c. 4.* "Mesme cel jugement (d'etears) eyent sorcers, et sorceresses, &c. ut supra. *Fleta ut et ubi supra. 3. Inst. 44.* Trial of witches before Hale in 1664. The statutes 33 H. 8. c. 8. 5 El. c. 16 and 1 Jac. 1. c. 12. seem to be only in confirmation of the Common law. 9 G. 2. c. 25. punishes them with pillory, and a year's imprisonment. 3 E. 6. c. 15. 5 El. c. 15. punish fond, fantastical and false prophecies, by fine and imprisonment.—*T. J.*

SECT. XXX. If the principal offenders be fled,<sup>1</sup> or secreted from justice, in any case not touching life or member, the accessaries may, notwithstanding, be prosecuted as if their principal were convicted.<sup>2</sup>

SECT. XXXI. If any offender stand mute of obstinacy,<sup>3</sup> or challenge peremptorily more of the jurors than by law he may, being first warned of the consequence thereof, the court shall proceed as if he had confessed the charge.<sup>4</sup>

SECT. XXXII. Pardon and privilege of clergy, shall henceforth be abolished, that none may be induced to injure through hope of impunity. But if the verdict be against the defendant, and the court, before whom the offence is heard and determined, shall doubt that it may be untrue for default of testimony, or other cause, they may direct a new trial to be had.<sup>5</sup>

<sup>1</sup> 1 Ann. c. 9. § 2.—*T. J.*

<sup>2</sup> As every treason includes within it a misprision of treason, so every felony includes a misprision, or misdemeanor. 1 Hale P. C. 652. 708. "Licet fuerit felonia, tamen in eo continetur misprisio." 2 R. 3. 10. Both principal and accessory, therefore, may be proceeded against in any case, either for felony or misprision, at the Common law. Capital cases not being mentioned here, accessaries to them will of course be triable for misprisions, if the offender flies.—*T. J.*

<sup>3</sup> E. 1. c. 12.—*T. J.*

<sup>4</sup> Whether the judgment of penance lay at Common law. See 2 Inst. 178. 2 H. P. C. 321. 4 Bl. 322. It was given on standing mute; but on challenging more than the legal number, whether that sentence, or sentence of death is to be given, seems doubtful. 2 H. P. C. 316. *Quære*, whether it would not be better to consider the supernumerary challenge as merely void, and to proceed in the trial? *Quære* too, in case of silence?—*T. J.*

<sup>5</sup> "Cum Clericus sic de crimine convictus degradetur non sequitur alia poena pro uno delicto, vel pluribus ante degradationem perpetratis. Satis enim sufficit ei pro poena degradatio, quæ est magna capitis

SECT. XXXIII. No attainder shall work corruption of blood in any case.

SECT. XXXIV. In all cases of forfeiture, the widow's dower shall be saved to her, during her

*diminutio, nisi forte convictus fuerit de apostatia, quia hinc primo degradetur, et postea per manum laicalem comburetur, secundum quod accidit in concilio Oxoni celebrato a bonæ memoriæ S. Cantuanen. Archiepiscopo de quodam diacono, qui se apostatavit pro quadam Judææ; qui cum esset per episcopum degradatus, statim fuit igni traditus per manum laicalem.*" Bract. L. 3. c. 9 § 2. "Et mesme cel jugement (i. e. qui ils soient ars eyent) sorcers et sorceresses, et sodomites et mescreauntz apertement atteyntz." Britt. c. 9. "Christiani autem Apostatæ, sortilegii, et hujusmodi detractari debent et comburi." Fleta, L. 1. c. 37. § 2 see 3. Inst. 39. 12. Rep. 92. 1 H. P. C. 393. The extent of the clerical privilege at the Common law. 1. As to the crimes, seems very obscure and uncertain. It extended to no case where the judgment was not of life, or limb. Note in 2. H. P. C. 326. This therefore excluded it in trespass, petty larceny, or killing *se defendendo*. In high treason against the person of the King, it seems not to have been allowed. Note 1. H. P. C. 185. Treasons, therefore, not against the King's person immediately, petty treasons and felonies, seem to have been the cases where it was allowed; and even of those, not for *insidiatio varium, depopulatio agrorum, or combustio domorum*. The statute de Clero, 25 E. 3. st. 3. c. 4. settled the law on this head. 2. As to the persons, it extended to all clerks, always, and *toties quoties*. 2 H. P. C. 374. To nuns also. Fitz. Abr. Corone. 461. 22. E. 3. The clerical habit and tonsure were considered as evidence of the person being clerical. 26. Assiz. 19. 20. E. 2. Fitz. Corone. 233. By the 9 E. 4. 28. b. 34. H. 6. 49 a. b. a simple reading became the evidence. This extended impunity to a great number of laymen, and *toties quoties*. The stat. 4 H. 7. c. 13. directed that real clerks should, upon a second arraignment, produce their orders, and all others to be burnt in the hand with M. or T. on the first allowance of clergy, and not to be admitted to it a second time. A heretic, Jew, or Turk (as being incapable of orders) could not have clergy. 11. Co. Rep. 29 b. But a Greek, or other alien, reading in a book of his own country, might. Bro. Clergie. 20. So a blind man, if he could speak Latin. Ib. 21. qu. 11. Rep. 29. b. The orders entitling the party, were bishops, priests, deacons and subdeacons, the inferior being reckoned *Clerici in minoribus*. 2. H. P. C. 373. Quære, however, if this distinction is not founded on the stat. 23 H. 8. c. 1. 25 H. 8. c. 32. By merely dropping all the statutes, it should seem that none but clerks would be entitled to this privilege, and that they would, *toties quoties*.—T. J.

title thereto; after which it shall be disposed of as if no such saving had been.

SECT. XXXV. The aid of Counsel,<sup>1</sup> and examination of their witnesses on oath, shall be allowed to defendants in criminal prosecutions.

SECT. XXXVI. Slaves guilty of any offence<sup>2</sup> punishable in others by labour in the public works, shall be transported to such parts in the West-Indies, South-America, or Africa, as the Governor shall direct, there to be continued in slavery.

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A BILL FOR THE MORE GENERAL DIFFUSION OF  
KNOWLEDGE

(CHAPTER LXXIX)

SECTION I. Whereas it appeareth that however certain forms of government are better calculated than others to protect individuals in the free exercise of their natural rights, and are at the same time themselves better guarded against degeneracy, yet experience hath shewn, that even under the best forms, those entrusted with power have, in time, and by slow operations, perverted it into tyranny; and it is believed that the most effectual means of preventing this would be, to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge of those facts, which history exhibiteth, that, possessed thereby of

<sup>1</sup> 1 Ann. c. 9.—*T. J.*

<sup>2</sup> Manslaughter, counterfeiting, arson, asportation of vessels, robbery burglary, house-breaking, horse-stealing, larceny.—*T. J.*

the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes; And whereas it is generally true that that people will be happiest whose laws are best, and are best administered, and that laws will be wisely formed, and honestly administered, in proportion as those who form and administer them are wise and honest; whence it becomes expedient for promoting the publick happiness that those persons, whom nature hath endowed with genius and virtue, should be rendered by liberal education worthy to receive, and able to guard the sacred deposit of the rights and liberties of their fellow citizens, and that they should be called to that charge without regard to wealth, birth or other accidental condition or circumstance; but the indigence of the greater number disabling them from so educating, at their own expence, those of their children whom nature hath fitly formed and disposed to become useful instruments for the public, it is better that such should be sought for and educated at the common expence of all, than that the happiness of all should be confined to the weak or wicked:

SECT. II. Be it therefore enacted by the General Assembly, that in every county within this commonwealth, there shall be chosen annually, by the electors qualified to vote for Delegates, three of the most honest and able men of their county, to be called the Alderman of the county; and that the election of the said Aldermen shall be held at the same time and place, before the same persons, and notified and

conducted in the same manner as by law is directed, for the annual election of Delegates for the county.

SECT. III. The person before whom such election is holden shall certify to the court of the said county the names of the Aldermen chosen, in order that the same may be entered of record, and shall give notice of their election to the said Aldermen within a fortnight after such election.

SECT. IV. The said Aldermen on the first Monday in October, if it be fair, and if not, then on the next fair day, excluding Sunday, shall meet at the court-house of their county, and proceed to divide their said county into hundreds, bounding the same by water courses, mountains, or limits, to be run and marked, if they think necessary, by the county surveyor, and at the county expence, regulating the size of the said hundreds, according to the best of their discretion, so as that they may contain a convenient number of children to make up a school, and be of such convenient size that all the children within each hundred may daily attend the school to be established therein, and distinguishing each hundred by a particular name; which division, with the names of the several hundreds, shall be returned to the court of the county and be entered of record, and shall remain unaltered until the increase or decrease of inhabitants shall render an alteration necessary, in the opinion of any succeeding Alderman, and also in the opinion of the court of the county.

SECT. V. The electors aforesaid residing within every hundred shall meet on the third Monday in October after the first election of Aldermen, at such

place, within their hundred, as the said Aldermen shall direct, notice thereof being previously given to them by such person residing within the hundred as the said Aldermen shall require who is hereby enjoined to obey such requisition, on pain of being punished by amercement and imprisonment. The electors being so assembled shall choose the most convenient place within their hundred for building a school-house. If two or more places, having a greater number of votes than any others, shall yet be equal between themselves, the Aldermen, or such of them as are not of the same hundred, on information thereof, shall decide between them. The said Aldermen shall forthwith proceed to have a school-house built at the said place, and shall see that the same shall be kept in repair, and, when necessary, that it be rebuilt; but whenever they shall think necessary that it be rebuilt, they shall give notice as before directed, to the electors of the hundred to meet at the said school-house on such a day as they shall appoint, to determine by vote, in the manner before directed, whether it shall be rebuilt at the same, or what other place in the hundred.

SECT. VI. At every of those schools shall be taught reading, writing, and common arithmetick, and the books which shall be used therein for instructing the children to read shall be such as will at the same time make them acquainted with Græcian, Roman, English, and American history. At these schools all the free children, male and female, resident within the respective hundred, shall be intitled to receive tuition gratis, for the term of

three years, and as much longer, at their private expence, as their parents, guardians, or friends shall think proper.

SECT. VII. Over every ten of these schools (or such other number nearest thereto, as the number of hundreds in the county will admit, without fractional divisions) an overseer shall be appointed annually by the aldermen at their first meeting, eminent for his learning, integrity, and fidelity to the commonwealth, whose business and duty it shall be, from time to time, to appoint a teacher to each school, who shall give assurance of fidelity to the commonwealth, and to remove him as he shall see cause; to visit every school once in every half year at the least; to examine the scholars; see that any general plan of reading and instruction recommended by the visitors of William and Mary College shall be observed; and to superintend the conduct of the teacher in everything relative to his school.

SECT. VIII. Every teacher shall receive a salary of ——— by the year, which, with the expences of building and repairing the school-houses, shall be provided in such manner as other county expences are by law directed to be provided and shall also have his diet, lodging, and washing found him, to be levied in like manner, save only that such levy shall be on the inhabitants of each hundred for the board of their own teacher only.

SECT. IX. And in order that grammer schools may be rendered convenient to the youth in every part of the commonwealth, be it therefore enacted, that on the first Monday in November, after the

first appointment of overseers for the hundred schools, if fair, and if not, then on the next fair day, excluding Sunday, after the hour of one in the afternoon, the said overseers appointed for the schools in the counties of Princess Ann, Norfolk, Nansemond and Isle-of-Wight, shall meet at Nansemond court-house; those for the counties of Southampton, Sussex, Surry and Prince George, shall meet at Sussex court-house; those for the counties of Brunswick, Mecklenburg and Lunenburg, shall meet at Lunenburg court-house; those for the counties of Dinwiddie, Amelia and Chesterfield, shall meet at Chesterfield court-house; those for the counties of Powhatan, Cumberland, Goochland, Henrico and Hanover, shall meet at Henrico court-house; those for the counties of Prince Edward, Charlotte and Halifax, shall meet at Charlotte court-house; those for the counties of Henry, Pittsylvania and Bedford, shall meet at Pittsylvania court-house; those for the counties of Buckingham, Amherst, Albemarle and Fluvanna, shall meet at Albemarle court-house; those for the counties of Botetourt, Rockbridge, Montgomery, Washington and Kentucky, shall meet at Botetourt court-house; those for the counties of Augusta, Rockingham and Greenbriar, shall meet at Augusta court-house; those for the counties of Accomack and Northampton, shall meet at Accomack court-house; those for the counties of Elizabeth City, Warwick, York, Gloucester, James City, Charles City and New-Kent, shall meet at James City court-house; those for the counties of Middlesex, Essex, King and Queen, King William and Caroline, shall

meet at King and Queen court-house; those for the counties of Lancaster, Northumberland, Richmond and Westmoreland, shall meet at Richmond court-house; those for the counties of King George, Stafford, Spotsylvania, Prince William and Fairfax, shall meet at Spotsylvania court-house; those for the counties of Loudoun and Fauquier, shall meet at Loudoun court-house; those for the counties of Culpeper, Orange and Louisa, shall meet at Orange court-house; those for the county of Shenandoah and Frederick, shall meet at Frederick court-house; those for the counties of Hampshire and Berkeley, shall meet at Berkeley court-house; and those for the counties of Yohogania, Monongalia, and Ohio, shall meet at the Monongalia court-house; and shall fix on such place in some one of the counties in their district as shall be most proper for situating a grammar school-house, endeavoring that the situation be as central as may be to the inhabitants of the said counties, that it be furnished with good water, convenient to plentiful supplies of provision and fuel, and more than all things that it be healthy. And if a majority of the overseers present should not concur in their choice of any one place proposed, the method of determining shall be as follows: If two places only were proposed, and the votes be divided, they shall decide between them by fair and equal lot; if more than two places were proposed, the question shall be put on those two which on the first division had the greater number of votes; or if no two places had a greater number of votes than the others, then it shall be decided by fair and equal

lot (unless it can be agreed by a majority of votes) which of the places having equal numbers shall be thrown out of the competition, so that the question shall be put on the remaining two, and if on this ultimate question the votes shall be equally divided, it shall then be decided finally by lot.

SECT. X. The said overseers having determined the place at which the grammar school for their district shall be built, shall forthwith (unless they can otherwise agree with the proprietors of the circumjacent lands as to location and price) make application to the clerk of the county in which the said house is to be situated, who shall thereupon issue a writ, in the nature of a writ of *ad quod damnum*, directed to the sheriff of the said county commanding him to summon and impanel twelve fit persons to meet at the place, so destined for the grammar school-house, on a certain day, to be named in the said writ, not less than five, nor more than ten, days from the date thereof; and also to give notice of the same to the proprietors and tenants of the lands to be viewed if they be found within the county, and if not, then to their agents therein if any they have. Which freeholders shall be charged by the said sheriff impartially, and to the best of their skill and judgment to view the lands round about the said place and to locate and circumscribe, by certain meets and bounds, one hundred acres thereof, having regard therein principally to the benefit and convenience of the said school, but respecting in some measure also the convenience of the said proprietors, and to value and appraise the same in so many several and dis-

tinct parcels as shall be owned or held by several and distinct owners or tenants, and according to their respective interests and estates therein. And after such location and appraisement so made, the said sheriff shall forthwith return the same under the hands and seals of the said jurors, together with the writ, to the clerk's office of the said county and the right and property of the said proprietors and tenants in the said lands so circumscribed shall be immediately divested and be transferred to the commonwealth for the use of the said grammar school, in full and absolute dominion, any want of consent or disability to consent in the said owners or tenants notwithstanding. But it shall not be lawful for the said overseers so to situate the grammar school-house, nor to the said jurors so to locate the said lands, as to include the mansion-house of the proprietor of the lands, nor the offices, curtilage, or garden, thereunto immediately belonging.

SECT. XI. The said overseers shall forthwith proceed to have a house of brick or stone, for the said grammar school, with necessary offices, built on the said lands, which grammar school-house shall contain a room for the school, a hall to dine in, four rooms for a master and usher, and ten or twelve lodging rooms for the scholars.

SECT. XII. To each of the said grammar schools shall be allowed out of the public treasury, the sum of \_\_\_\_\_ pounds, out of which shall be paid by the Treasurer, on warrant from the Auditors, to the proprietors or tenants of the lands located, the value of their several interests as fixed by the jury,

and the balance thereof shall be delivered to the said overseers to defray the expense of the said buildings.

SECT. XIII. In either of these grammar schools shall be taught the Latin and Greek languages, English Grammar, geography, and the higher part of numerical arithmetick, to wit, vulgar and decimal fractions, and the extrication of the square and cube roots.

SECT. XIV. A visiter from each county constituting the district shall be appointed, by the overseers, for the county, in the month of October annually, either from their own body or from their county at large, which visitors, or the greater part of them, meeting together at the said grammar school on the first Monday in November, if fair, and if not, then on the next fair day, excluding Sunday, shall have power to choose their own Rector, who shall call and preside at future meetings, to employ from time to time a master, and if necessary, an usher, for the said school, to remove them at their will, and to settle the price of tuition to be paid by the scholars. They shall also visit the school twice in every year at the least, either together or separately at their discretion, examine the scholars, and see that any general plan of instruction recommended by the visitors, of William and Mary College shall be observed. The said masters and ushers, before they enter on the execution of their office, shall give assurance of fidelity to the commonwealth.

SECT. XV. A steward shall be employed, and removed at will by the master, on such wages as the visitors shall direct; which steward shall see to the

procuring provisions, fuel, servants for cooking, waiting, house cleaning, washing, mending, and gardening on the most reasonable terms; the expence of which, together with the steward's wages, shall be divided equally among all the scholars boarding either on the public or private expence. And the part of those who are on private expence, and also the price of their tuitions due to the master or usher, shall be paid quarterly by the respective scholars, their parents, or guardians, and shall be recoverable, if withheld, together with costs, on motion in any Court of Record, ten days notice thereof being previously given to the party, and a jury impannelled to try the issue joined, or enquire of the damages. The said steward shall also, under the direction of the visiters, see that the houses be kept in repair, and necessary enclosures be made and repaired, the accounts for which, shall, from time to time, be submitted to the Auditors, and on their warrant paid by the Treasurer.

SECT. XVI. Every overseer of the hundred schools shall, in the month of September annually, after the most diligent and impartial examination and inquiry, appoint from among the boys who shall have been two years at the least at some one of the schools under his superintendance, and whose parents are too poor to give them farther education, some one of the best and most promising genius and disposition, to proceed to the grammer school of his district; which appointment shall be made in the court-house of the county, and on the court day for that month if fair, and if not, then on the next fair

day, excluding Sunday, in the presence of the Aldermen, or two of them at the least, assembled on the bench for that purpose, the said overseer being previously sworn by them to make such appointment, without favor or affection, according to the best of his skill and judgment, and being interrogated by the said Aldermen, either on their own motion, or on suggestions from their parents, guardians, friends, or teachers of the children, competitors for such appointment; which teachers the parents shall attend for the information of the Aldermen. On which interrogatories the said Aldermen, if they be not satisfied with the appointment proposed, shall have right to negative it; whereupon the said visiter may proceed to make a new appointment, and the said Aldermen again to interrogate and negative, and so toties quoties until an appointment be approved.

SECT. XVII. Every boy so appointed shall be authorized to proceed to the grammer school of his district, there to be educated and boarded during such time as is hereafter limited; and his quota of the expences of the house together with a compensation to the master or usher for his tuition, at the rate of twenty dollars by the year, shall be paid by the Treasurer quarterly on warrant from the Auditors.

SECT. XVIII. A visitation shall be held, for the purpose of probation, annually at the said grammer school on the last Monday in September, if fair, and if not, then on the next fair day, excluding Sunday, at which one third of the boys sent thither by appointment of the said overseers, and who shall have been there one year only, shall be discontinued as

public foundationers, being those who, on the most diligent examination and enquiry, shall be thought to be the least promising genius and disposition; and of those who shall have been there two years, all shall be discontinued save one only the best in genius and disposition, who shall be at liberty to continue there four years longer on the public foundation, and shall thence forward be deemed a senior.

SECT. XIX. The visiters for the districts which, or any part of which, be southward and westward of James river, as known by that name, or by the names of Fluvanna and Jackson's river, in every other year, to wit, at the probation meetings held in the years, distinguished in the Christian computation by odd numbers, and the visiters for all the other districts at their said meetings to be held in those years, distinguished by even numbers, after diligent examination and enquiry as before directed, shall chuse one among the said seniors, of the best learning and most hopeful genius and disposition, who shall be authorized by them to proceed to William and Mary College; there to be educated, boarded, and clothed, three years; the expence of which annually shall be paid by the Treasurer on warrant from the Auditors.

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A BILL FOR THE AMENDING THE CONSTITUTION OF THE  
COLLEGE OF WILLIAM AND MARY

(CHAPTER LXXX)

SECTION I. Whereas a scheme for cultivating and disseminating useful knowledge in this country,

which had been proposed by some of its liberal minded inhabitants, before the year 1690 of the Christian epocha, was approved, adopted, and cherished, by the General Assembly, upon whose petition King William and Queen Mary of England, to the crown whereof the people here at that time acknowledged themselves, as a colony, to be subject, by their charter bearing date the seventh day of February, in the fourth year of their reign, gave license, in due form, to Francis Nicholson, Esquire, Lieutenant Governor of the colony, and seventeen other trustees, particularly named, to found a place of universal study, or perpetual college, in such part of the country as the General Assembly should think fit, consisting of a President, six Professors, and an hundred scholars, more or less; enabled the trustees, and their survivors, to take and hold lands, tenements, and hereditaments, to the yearly value of two thousand pounds, with intention, and in confidence, that, after application of the profits thereof, with such donations as by themselves and others might be made for that purpose, to the erecting, founding, and adorning the college, they should transfer the same to the President and Professors; appointed James Blair, clerk, the first President, and empowered the trustees, and their successors, to elect the succeeding President, and the Professors; willed the college after it should be founded, to be called the College of William and Mary in Virginia; and incorporated the President and masters, enabling them and their successors to take and hold lands, tenements, hereditaments, goods and chattels,

to the yearly value of two thousand pounds, of lawful money of England; appointed the trustees and their successors, to be elected in the manner therein prescribed, so as not to be less than eighteen, visitors of the College, with power to nominate one of themselves a rector annually and to ordain statutes for the government of the College, not contrary to the royal prerogative, the laws of England or Virginia, or the canons of the Church of England; willed that the President and Professors should have a Chancellor, to be nominated, every seventh year, in the manner therein prescribed; granted to the trustees a sum of money, then in the hands of William Byrd, Esquire, the Auditor, received for quitrents, to be applied towards erecting, founding and adorning the College; and also granted to the trustees, to be transferred to the President and Professors, in like manner as before directed, part of the then royal revenue, arising from the duty on tobacco exported; and also granted to the said trustees the office of surveyor general of Virginia, with intention, and in confidence, that they and their successors, or the longest livers of them, should receive the profits thereof, until the foundation of the College, and when that should be affected, account for and pay the same or the surplus above what should have been expended in that work, to the President and Professors; and that thereafter the said office should be held by the said President and Professors. And the said King and Queen, by their said charter, granted to the said trustees ten thousand acres of land, on the south side of the Blackwater swamp, and also other ten

thousand acres of land in Pamunkey neck, between the forks or branches of the York river, with this intention, and in confidence, that the said trustees, or the longest liver of them, should transfer the said twenty thousand acres of land, after the foundation of the College, to the President and Professors; as by the said charter, among other things, relation being thereupon had, may more fully appear. And whereas voluntary contributions towards forwarding this beneficial scheme, the sum whereof exceeded two thousand pounds, sterling, was received by the said trustees, with one thousand pounds, sterling, out of the money arising from the quitrents granted to the use of said College by Queen Anne, part whereof was applied to the purchase of three hundred and thirty acres of land at the middle plantation, being the same place where the General Assembly, by their act, passed in the year 1693, had directed the said College to be built, and whereon the same was accordingly built, and the General Assembly, by one other act, passed in the same year 1693, intituled an Act for laying an imposition upon skins and furs, for the better support of the College of William and Mary in Virginia, endowed the said College with certain duties on skins and furs therein specified, which duties were afterwards enlarged and confirmed to the use of the said College, and made payable to the President and Professors by divers other acts of General Assembly. And by one other act passed in the year 1718, the said College was further endowed by the General Assembly with the sum of one thousand pounds, out

of the public funds, in the hands of the Treasurer, which was directed to be laid out for the maintaining and educating scholars, and to be accounted for to the General Assembly, from time to time, when required: Which sum was accordingly paid to the said visiters and by them invested in the purchase of two thousand one hundred and nineteen acres of land, on both sides of the Nottoway river, in the counties of Prince George, Surrey, and Brunswick, and seventeen negro slaves, to be employed in tilling and manuring the same, and certain scholarships were accordingly established on the said funds; and the General Assembly, by their act, passed in the year 1726, and entitled an Act for laying a duty on liquors, further endowed the said College with an annual revenue of two hundred pounds, for twenty-one years, to be paid out of certain duties thereon imposed on liquors, and by one other act passed in the year 1734, endowed it with the whole of the said duties, during the residue of the said term then unexpired, a part or the whole thereof to be expended in purchasing a library for the said College: And by divers other acts, passed at subsequent times, the Assemblies, for the time being, having continued to the said College the whole of the annual revenues, arising from the said duties, until the first of June, which shall be in the year 1780, to be applied to the funding scholarships, and other good uses, for the support of the said College, and to be accounted for to the General Assembly; and the General Assembly by \_\_\_\_\_ of \_\_\_\_\_ in the year \_\_\_\_\_ gave a further donation to the said College of \_\_\_\_\_ to

be laid out in purchasing a mathematical apparatus for the said College, which was accordingly purchased. And the said trustees, in pursuance of the trust reposed in them, proceeded to erect the said College, and established one school of sacred theology, with two professorships therein, to wit, one for teaching the Hebrew tongue, and expounding the holy scriptures; and the other for explaining the common places of divinity, and controversies with heretics; one other school for philosophy, with two professorships therein, to wit, one for the study of rhetoric, logic, and ethics, and the other of physics, metaphysics, and mathematics; one other school for teaching the Latin and Greek tongues; and one other for teaching Indian boys reading, writing, vulgar arithmetic, the catechism and the principles of the Christian religion; which last school was founded on the private donation of the honorable Robert Boyle, of the kingdom of England, and, by authority from his executors, submitted to the direction of the Earl of Burlington, one of the said executors, of the bishop of London, for the time being, and in default thereof, to the said trustees, and over the whole they appointed one president as supervisor.

SECT. II. And whereas the experience of near an hundred years hath proved, that the said College, thus amply endowed by the public, hath not answered their expectations, and there is reason to hope, that it would become more useful, if certain articles in its constitution were altered and amended, which being fixed, as before recited, by the original charters, cannot be reformed by the said trustees

whose powers are created and circumscribed by the said charters, and the said College being erected and constituted on the requisition of the General Assembly, by the Chief Magistrate of the state, their legal fiduciary for such purposes, being founded and endowed with the lands and revenues of the public, and intended for the sole use and improvement, and no wise in nature of a private grant, the same is of right subject to the public direction, and may by them be altered and amended, until such form be devised as will render the institution publicly advantageous, in proportion as it is publicly expensive; and the late change in the form of our government, as well as the contest of arms in which we are at present engaged, calling for extraordinary abilities both in council and field, it becomes the peculiar duty of the Legislature, at this time, to aid and improve that seminary, in which those who are to be the future guardians of the rights and liberties of their country may be endowed with science and virtue, to watch and preserve the sacred deposit; Be it therefore enacted by the General Assembly, that, instead of eighteen visiters or governors of the said College, there shall in future be five only, who shall be appointed by joint ballot of both houses of Assembly, annually, to enter on the duties of their office on the new year's day ensuing their appointment, having previously given assurance of fidelity to the commonwealth, before any Justice of the Peace; and to continue in office until those next appointed shall be qualified, but those who shall be first appointed after the passing of this act, and all others appointed,

during the course of any year to fill up vacancies happening by death, resignation, or removal out of the commonwealth, shall enter on duty immediately on such appointment; any four of the said visiters may proceed to business; they shall chuse their own Rector, at their first meeting, in every year, and shall be deemed the lawful successors of the first trustees, and invested with all the rights, powers, and capacities given to them, save only so far as the same shall be abridged by this act, nor shall they be restrained in their legislation, by the royal prerogative, or the laws of the kingdom of England; of the canons or the constitution of the English Church, as enjoined in the said charter. There shall be three Chancellors, in like manner appointed by joint ballot of both houses, from among the Judges of the High Court of Chancery, or of the General Court, to enter on that office immediately on such appointment, and to continue therein so long as they remain in either of the said courts; any two of whom may proceed to business; to them shall belong solely the power of removing the Professors, for breach or neglect of duty, immorality, severity, contumacy, or other good cause, and the judiciary powers in all disputes, which shall arise on the statutes of the College, being called on for that purpose by the Rector, or by the corporation of President and Professors, a copy of their sentence of deprivation, being delivered to the sheriff of the county wherein the College is, he shall forthwith cause the Professor deprived to be ousted of his chambers, and other freehold appertaining to the said College, and the

remaining Professors to be reseized thereof, in like manner and form, and subject, on failure to the like fines by the said Chancellors, as in cases of writs of habere facias seisinam issued from Courts of Record. But no person shall be capable of being both visiter and Chancellor at the same time; nor shall any Professor be capable of being at the same time, either visiter or Chancellor. Instead of the President and six Professors, licensed by the said charter, and established by the former visiters, there shall be eight Professors, one of whom, shall also be appointed President, with an additional salary of one hundred pounds a year, before they enter on the execution of their office, they shall give assurance of fidelity to the commonwealth, before some justice of the Peace. These shall be deemed the lawful successors of the President and Professors appointed under the said charter, and shall have all their rights, powers and capabilities, not otherwise disposed of by this act; to them shall belong the ordinary government of the College, and administration of its revenues, taking the advice of the visiters on all matters of great concern. There shall, in like manner, be eight Professorships, to wit, one of moral philosophy, and the laws of nature and of nations, and of the fine arts; one of law and police; one of history, civil and ecclesiastical; one of mathematics; one of anatomy and medicine; one of natural philosophy and natural history; one of the ancient languages, oriental and northern; and one of modern languages. The said Professors shall likewise appoint, from time to time, a missionary, of approved veracity, to the

several tribes of Indians, whose business shall be to investigate their laws, customs, religions, traditions, and more particularly their languages, constructing grammars thereof, as well as may be, and copious vocabularies, and, on oath to communicate, from time to time, to the said President and Professors the materials he collects, to be by them laid up and preserved in their library; for which trouble the said missionary shall be allowed a salary at the discretion of the visitors, out of the revenues of the College. And forasmuch as the revenue, arising from the duties on skins and furs, and those on liquors, with which the said College was endowed, by several acts of General Assembly, is subject to great fluctuations, from circumstances unforeseen, insomuch that no calculation of foresight can enable the said visitors or Professors to square thereto the expenditures of the said College, which being regular and permanent should depend on stable funds; Be it therefore enacted, that the revenue arising from the said duties, shall be henceforth transferred to the use of the public, to be applied towards supporting the contingent charges of government, and that, in lieu thereof, the said College shall be endowed with an impost of five pounds of tobacco, on every hogshead of tobacco, to be exported from this commonwealth, by land or by water, to be paid to the inspectors accounted for, on oath, to the said President and Professors on or before the 10th day of October, in every year, with an allowance of six per centum for their trouble; and if the said tobacco be not carried to any public ware-house then the said impost shall

be paid, collected and accounted for to the said President and Professors, by the same persons, at the same times, in and under the like manner, penalties and conditions, as prescribed by the laws, which shall be in force at the time, for collecting the duties imposed on exported tobacco, towards raising supplies of money for the public exigencies. And that this commonwealth may not be without so great an ornament, nor its youth such an help towards attaining astronomical science, as the mechanical representation, or model of the solar system, conceived and executed by that greatest of astronomers, David Ryttenhouse; Be it further enacted, that the visitors, first appointed under this act, and their successors, shall be authorized to engage the said David Ryttenhouse, on the part of this commonwealth, to make and erect in the said College of William and Mary, and for its use, one of the said models, to be called by the name of the Ryttenhouse, the cost and expence of making, transporting and erecting whereof shall, according to the agreement or allowance of the said visitors, be paid by the Treasurer of this commonwealth, on warrant from the Auditors.

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A BILL FOR ESTABLISHING A PUBLIC LIBRARY

(CHAPTER LXXXI)

SECTION I. Be it enacted by the General Assembly, that on the first day of January, in every year, there shall be paid out of the treasury the sum of two thousand pounds, to be laid out in such books

and maps as may be proper to be preserved in a public library, and in defraying the expences necessary for the care and preservation thereof; which library shall be established at the town of Richmond.

SECT. II. The two houses of Assembly shall appoint three persons of learning and attention to literary matters, to be visiters of the said library, and shall remove them, and fill any vacancies, from time to time, as they shall think fit; which visiters shall have power to receive the annual sums before-mentioned, and therewith to procure such books and maps as aforesaid, and shall superintend the preservation thereof. Whensoever a keeper shall be found necessary they shall appoint such keeper, from time to time, at their will, on such annual salary (not exceeding one hundred pounds) as they shall think reasonable.

SECT. III. If during the time of war the importation of books and maps shall be hazardous, or if the rate of exchange between this commonwealth and any state from which such articles are wanted, shall from any cause be such that they cannot be imported to such advantage as may be hoped at a future day, the visiters shall place the annual sums, as they become due, in the public loan office, if any there be, for the benefit of interest, or otherwise shall suffer them to remain in the treasury until fit occasions shall occur of employing them.

SECT. IV. It shall not be lawful for the said keeper, or the visiters themselves, or any other person to remove any book or map out of the said library, unless it be for the necessary repair thereof;

but the same be made useful by indulging the researches of the learned and curious, within the said library, without fee or reward, and under such rules for preserving them safe and in good order and condition as the visiters shall constitute.

SECT. V. The visiters shall annually settle their accounts with the Auditors and leave with them the vouchers for the expenditure of the monies put into their hands.

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A BILL FOR ESTABLISHING RELIGIOUS FREEDOM<sup>1</sup>

(CHAPTER LXXXII)

SECTION I. Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of

<sup>1</sup> This bill was Jefferson's particular pride, and ranked in his mind with the Declaration of Independence. It was originally introduced to the Assembly June 13, 1779, and was promptly the subject of memorials, both *pro* and *con*, to that body. Evidently the majority of the members agreed with one of these memorials, which styled it a "diabolical scheme," for it was laid over from session to session till 1786, when, by the foolish attempt of the "state-church" party to obtain a general assessment, the Assembly re-acted, and passed this bill into law, after first partially substituting a clause of the Virginia Declaration of Rights in place of Jefferson's original wording. Jefferson, then in Paris, promptly had an edition printed with the title:

*An Act for establishing Religious Freedom, | passed by the assembly of Virginia in the beginning | of the year 1786.* [Paris: 1786.] 8vo, pp. 4.

In the same year it was again printed in Paris as:

*Acte de la République de Virginie, | qui établit la liberté de Religion.* [Paris: Ph. D. Pierres, 1786.] 8vo, pp. 4.

It was again printed as:

*Republican Notes on Religion; And An Act Establishing Religions*

restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet choose not to propagate it by coercions on either, as was in his Almighty power to do, but to exalt it by its influence on reason alone; that the impious presumption of legislature and ruler, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose

*Freedom, passed in the Assembly of Virginia, in the year 1786. By Thomas Jefferson, Esquire, President of the United States. Danbury: Printed by Thomas Row. 1803. 8vo. pp. 11.*

The Act was criticised by Pelatiah Webster in:

*Considerations | on an | Act | of the | Legislature | of | Virginia, | entitled, | an act for the establishment of | Religious Freedom. | By a Citizen of Philadelphia. | Philadelphia: | Printed and sold by Robert Aitken, at Pope's-head, in | Market Street. | M.DCC. LXXXVI. 8vo. pp. 26.*

As finally adopted it is in *Hening*, xii., 84. Cf. *Jefferson's Autobiography*, i., 70; and *Letters of Madison*, i., 208, 213.

powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependance on our religious opinions, any more than our opinions in physics or geometry; and therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust or emolument, unless he profess or renounce this or that religious opinion, is depriving him injudiciously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminals who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous falacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or

suffer from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

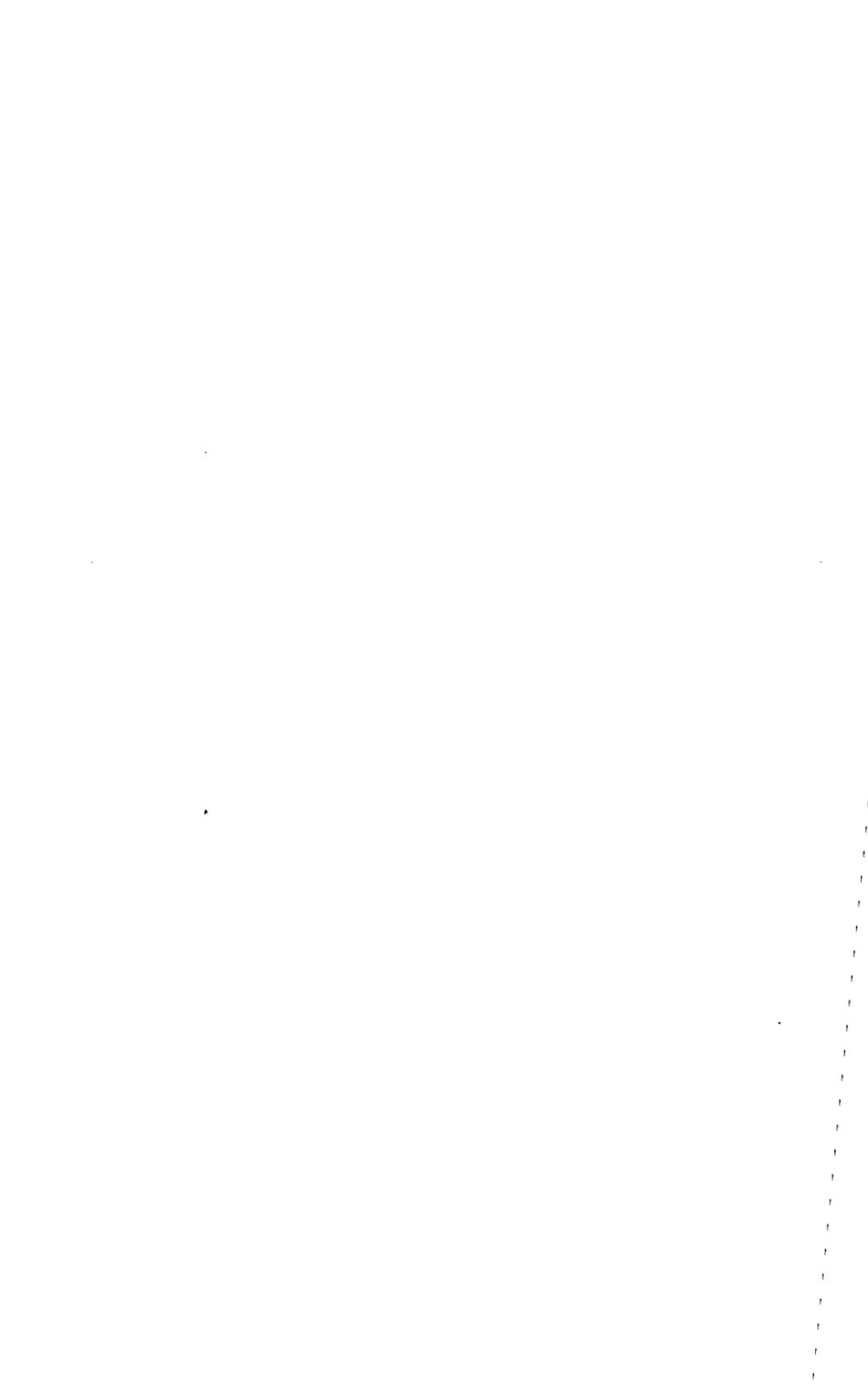
SECT. II. We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, or shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

SECT. III. And though we well know that this Assembly, elected by the people for their ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operations, such act will be an infringement of natural right.



**CORRESPONDENCE AND MISCELLANEOUS  
WRITINGS**

**1779-1781**



CORRESPONDENCE  
AND  
MISCELLANEOUS WRITINGS  
1779-1781

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TO GENERAL WASHINGTON

J. MSS.

WILLIAMSBURG, June 19th, 1779.

SIR,—I have the pleasure to enclose you the particulars of Colo. Clarke's success against St. Vincenne as stated in his letter but lately received, the messenger with his first letter having been killed.<sup>1</sup> I fear it will be impossible for Colo. Clarke to be so strengthened as to enable him to do what he desires. Indeed the express who brought this letter gives us reason to fear St. Vincenne is in danger from a large body of Indians collected to attack it and said when he came from Kaskaskias to be within 30 leagues of the place. I also enclose you a letter from Colo. Shelby stating the effect of his success against the seceding Cherokees and Chuccamogga. The damage done them was killing half a dozen, burning 11 Towns, 20,000 bushels of Corn collected probably to forward the

<sup>1</sup> Dated April 29, 1779. It relates to George Rogers Clarke's famous western expedition, and is printed in the Randolph and Washington editions of Jefferson.

expeditions which were to have been planned at the Council which was to meet Governor Hamilton at the mouth of Tennessee, and taking as many goods as sold for £25,000. I hope these two blows coming together and the depriving them of their head will in some measure effect the quiet of our frontiers this summer. We have intelligence also that Colo. Bowman from Kentucky is in the midst of the Shawnee county with 300 men & hope to hear a good account of him. The enclosed order being in its nature important and generally interesting, I think it proper to transmit it to you with the reasons supporting it. It will add much to our satisfaction to know it meets your approbation.<sup>1</sup>

I have the honor to be with every sentiment of private respect & public gratitude, Sir, your most obedient & most hbl. servant.

P. S. The distance of our northern and western counties from the scene of Southern service and the necessity of strengthening our Western quarter have induced the Council to direct the new levies from the Counties of Yohogania, Ohio, Monongalia, Frederick Hampshire, Berkley, Rockingham and Greenbrier amounting to somewhat less than 300 men to enter into the 9th Regiment at Pittsburg. The aid they may give there will be so immediate & important and what they could do to the Southward would be so late as I hope will apologise for their interference.

<sup>1</sup> Proceedings of Council in case of Governor Hamilton, *cf.* p. 452.

TO THE PRESIDENT OF CONGRESS

c.c.

(JOHN JAY)

WILLIAMSBURGH, JUNE 19. 1779.

SIR,—Our delegates by the last post informed us that we might now obtain blank letters of marque for want of which our people have long & exceedingly suffered. I have taken the liberty therefore of desiring them to apply for fifty, & transmit them by a safe conveyance.

The inclosed order being in it's nature important and generally interesting, I thought it my duty to lay it before Congress as early as possible, with the reasons supporting it; nothing doubting but it will meet with their approbation; it's justice seems to have been confirmed by the general sense of the people here.

Before the receipt of your letter desiring a state to be made out of the ravages & enormities unjustifiable by the usage of civilized nations committed by the enemy on their late invasion near Portsmouth, I had taken measures for the same purpose meaning to transmit them to you. They are not yet returned to me. I have given the same orders with respect to their still later proceedings in the county of Northumberland.

Our trade has never been so distressed since the time of Lord Dunmore as it is at present by a parcel of trifling privateers under the countenance of two or three larger vessels who keep our little naval force from doing anything. The uniform train of events which during the whole course of this war we are to

suppose has rendered it improper that the American fleet or any part of it should ever come to relieve or countenance the trade of certain places, while the same train of events has as uniformly rendered it proper to confine them to the protection of certain other parts of the continent is a lamentable arrangement of fortune for us. The same ill luck has attended us as to the disposition of the prizes taken by our navy, which tho' sometimes taken just off our capes, it has always been expedient to carry elsewhere. A British prize would be a more rare phenomenon here than a comet, because the one has been seen, but the other never was. \* \* \*

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PROCLAMATION CONCERNING ESCHEATS J. MSS.

WILLIAMSBURG, July 1, 1779.

By his Excellency Thomas Jefferson, esquire, Governor or Chief Magistrate of the Commonwealth of Virginia

*A Proclamation*

Whereas the General Assembly, by their act passed at their last session, entitled "an act concerning escheats and forfeitures from British Subjects" did declare "that (1) all persons subjects of his Britannick majesty, who on the nineteenth day of April in the year 1775, when hostilities were commenced at *Lexington*, between the United States of America, and the other parts of the British empire, were resident, or following their vocations in any

part of the world other than the said United States, and have not since either entered into public employment of the said states, or joined the same, and by overt act adhered to them; (2) all such subjects, inhabitants of the said United States, as were out of the said States on the same day and have since by overt act adhered to the enemies of the said states; and (3) all inhabitants of the said States, who after the same day, and before the commencement of the act of General Assembly in titled, Act declaring what shall be treason, ' departed from the said States, and joined the Subjects of his Britannick Majesty of their own free will; or (4) who by any County Court, within this Commonwealth were declared to be British Subjects within the meaning and operation of the resolution of the General Assembly, of the 19th day of December, 1776, for enforcing the Statute Staple, should be deemed British Subjects," and by their resolution of the twenty sixth day of the last month, they "required that all the persons so described, and now resident within this Commonwealth should be banished from the same, and the proper measures should be taken to prevent their return, as also to exclude thereout all others so described, and not now resident within this commonwealth" I have therefore thought fit, by and with the advice of the Council of State, to issue this my proclamation, hereby strictly charging and commanding all persons coming under any one of the descriptions in the said Act, and now being within this Commonwealth, to be, and appear before me in Council at Williamsburg, on or before the seventeenth

day of August in this present year, in readiness to depart the Commonwealth in such manner as shall then be prescribed to them, as they will answer the contrary at their utmost peril: And I do moreover charge and enjoin all officers civil and military, and all other the good citizens of this Commonwealth, to apprehend and carry securely to the commanding officer of the militia of some county within this Commonwealth, all such persons, whom after the said day, they shall find lurking or being therein: And the commanding officers of the several counties are in like manner charged and required to receive the said persons, and all others so described, whom by the strictest diligence they shall be able to discover and take, to convey them in safe custody to the public jail in the city of Williamsburg, and to make report of such their proceedings to me. And I do further prohibit all persons so described from entering into this Commonwealth during the continuance of the present war with their prince, under colour of any commission, passport, licence, or other pretence whatsoever; and do publish and make known to such of them as shall presume to violate this prohibition, that they shall be deemed and dealt with as Spies, wheresoever they be taken.

Given at Williamsburg on the first day of July, in the Year of our Lord One thousand, seven hundred and seventy nine.

TO GENERAL BARON DE RIEDESEL <sup>1</sup>

FORREST, July 4, 1779.

SIR,—Your kind letter of June 19 I received on the 2d inst. It is now some time since Colo. Bland wrote for leave to grant Permits to capt. Bartling & Lt. Campbell to come to the Argyle flag. Leave was immediately given by letter to Col. Bland. Sometime after I received another letter from him, accompanied with one from General Phillips informing me that Lt. Campbell was come as far as Richmond, & waited for a permit to proceed. A permit was instantly made out and dispatched. Capt. Bartling was not mentioned on that occasion & therefore no permit was made out for him. The 3d inst. was fixed for Lt. Campbell to be at the flag to do his business, and it was only on the day before that your letter came to me by post. I shall instantly write to capt. Bartling giving him license to proceed, if his business remains still to be done, by a conveyance which occurs tomorrow. I thought it necessary to give you this detail of circumstances that any delays which may happen might be ascribed to those accidents which may have caused them.

I thank you for your kind congratulations; tho' condolations would be better suited to the occasion not only on account of the labours of the office to which I am called, and its withdrawing me from retirement, but also the loss of the agreeable society I have left of which Mad'me de Riedesel and yourself

<sup>1</sup> From the original in the possession of Dr. Thomas Addis Emmet, of New York. Riedesel commanded the Hessians in Burgoyne's army, and was now a "convention" prisoner at Charlottesville.

were an important part. Mrs. Jefferson in this particular sympathizes with me, and especially on her separation from Mad'me de Riedesel. We are told you set out for the Berkely springs about the middle of month. We fear that this excursion, necessary for your amusement to diversify the scenes of discomfort, may deprive us of the pleasure of seeing you when we come to Monticello the last of this month. We shall stay there about a month. Mrs. Jefferson joins me in compliments to yourself & Mad'me de Riedesel, I shall be able to execute her commission as to the spoons and bring them up with me.

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TO GENERAL WASHINGTON

W. MSS.

WMSBURG, July 17, 1779.

SIR,—I some time ago enclosed to you a printed Copy of an order of Council, by which Governor Hamilton was to be confined in Irons in close Jail. This has occasioned a letter from General Phillips of which the inclosed is a Copy. The General seems to suppose that a prisoner on capitulation cannot be put into close confinement tho' his Capitulation shall not have provided against it. My idea was that all persons taken in war were to be deemed prisoners of war. That those who surrender on capitulation (or convention) are prisoners of war also, subject to the same treatment with those who surrender at discretion, except only so far as the terms of their capitulation or convention shall have guarded them. In the Capitulation of Governor Hamilton (a Copy of which

I inclose) no stipulation is made as to the treatment of himself or those taken with him. The Governor, indeed when he signs, adds a flourish of reasons inducing him to capitulate, one of which is the generosity of his Enemy. Generosity on a large and comprehensive Scale seems to dictate the making a signal example of this gentleman; but waiving that, these are only private motives inducing him to surrender, and do not enter into the Contract of Colonel Clarke. I have the highest idea of the sacredness of those Contracts which take place between nation and nation at war, and would be the last on earth who should do anything in violation of them. I can find nothing in those Books usually recurred to as testimonials of the Laws & usages of nature and nations which convicts the opinions, I have above expressed, of error. Yet there may be such an usage as General Phillips seems to suppose, tho' not taken notice of by these writers. I am obliged to trouble your Excellency on this occasion, by asking of you information on this point. There is no other person whose decision will so authoritatively decide this point in the public mind, and none with which I am disposed so implicitly to comply. If you shall be of opinion that the bare existence of a Capitulation in the case of Governor Hamilton privileges him from confinement, tho' there be no article to that Effect in the capitulation, justice shall most assuredly be done him. The importance of this question in a public view, & my own anxiety under a charge of violation of national faith by the Executive of this Commonwealth will I hope apologise for

my adding this to the many, many troubles with which I know you to be burthened. I have the honor to be with the most profound respect & esteem

Yr Excellency's mo obedt & mo hble Servt.

P. S. I have just received a Letter from Colo. Bland containing information of numerous desertions from the Convention Troops (not less than 400 in the last fortnight). He thinks he has reason to believe it is with the connivance of some of their officers. Some of these have been taken, all of them going northwardly. They had armed themselves with forged passports, and with Certificates of having taken the oath of fidelity to the State; some of them forged, others really given by weak magistrates. I mention this to your Excellency as perhaps it may be in your power to have such of them intercepted as shall be passing through Pennsylvania & Jersey.

Your letter inclosing the opinion of the board of officers in the case between Allison & Lee is come safe to hand after a long passage. It shall be answered by next post.

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TO THE GOVERNOR OF CANADA

V. S. A.

(SIR GUY CARLETON)

WMSBURG, July 22d, 1779.

SIR,—Your letter on the subject of Lieutenant Governor Hamilton's confinement came safely to hand. I shall with great cheerfulness explain to you the reasons on which the advice of Council was founded, since after the satisfaction of doing what is

right, the greatest is that of having what we do approved by those whose opinions deserve esteem.

We think ourselves justified in Governor Hamilton's strict confinement on the general principle of National retaliation. To state to you the particular facts of British cruelty to American prisoners, would be to give a melancholy history from the capture of Colo. Ethan Allen, at the beginning of the war to the present day, a history which I will avoid, as equally disagreeable to you and to me. I with pleasure do you the justice to say that I believe these facts to be very many unknown to you, as Canada has been the only scene of your service in America, and, in that quarter, we have reason to believe that Sir Guy Carleton, and the three officers commanding there, have treated our prisoners (since the instance of Colo. Allen) with considerable lenity. What has been done in England, and what in New York & Philadelphia, you are probably uninformed; as it would hardly be made the subject of epistolary correspondence. I will only observe to you, Sir, that the confinement and treatment of our officers, soldiers and seamen, have been so rigorous and cruel, as that a very great portion of the whole of those captured in the course of this war, & carried to Philadelphia while in possession of the British army and to New York, have perished miserably from that cause only; and that this fact is as well established with us, as any historical fact which has happened in the course of the war. A Gentleman of this Commonwealth in public office, and of known and established character, who was taken on the sea, carried to New York and

exchanged, has given us lately a particular information of the treatment of our prisoners there. Officers taken by land, it seems, are permitted to go on parole within certain limits of Long Island, till suggestions shall be made to their prejudice by some Tory<sup>s</sup> refugee, or other equally worthless person, when they are hurried to the Provot in New York, without enquiring "whether they be founded upon positive facts, be matter of hearsay, or taken from the reports of interested men." The example of enquiring into the truth of charges of this nature according to legal principles of evidence, has surely not been set us by our enemies. We enquired what these Provots were and were told they were the common miserable jails, built for the confinement of malefactors. Officers and men taken by sea were kept in prison ships infe[sted] with [ ] ught on by the crowd [*Parts of one line and all of another at bottom of the page lacking*] from five to ten a day. When therefore we are desired to the possible consequence of treating prisoners with rigour, I need only ask when did those rigours begin? not with us assuredly. I think you, Sir, who have had as good opportunities as any British officer of learning in what manner we treat those whom the fortune of war has put in our hands can clear us from the charge of rigour as far as your knowledge or information has extended. I can assert that Governor Hamilton's is the first instance which has occurred in my own country, and, if there has been another in any of the United States, it is unknown to me; these instances must have been extremely rare, if they have ever

existed at all, or they could not have been altogether unheard of by me, when a uniform exercise of kindness to prisoners on our part has been returned by as uniform severity on the part of our enemies. You must excuse me for saying it is high time, by other lessons, to teach respect to the dictates of humanity, in such a case retaliation becomes an act of humanity.

But suppose, Sir, we were willing still longer to decline the drudgery of general retaliation, yet Governor Hamilton's conduct has been such as to call for exemplary punishment on him personally. In saying this I have not so much in view his particular cruelties to our Citizens, prisoners with him (which tho' they have been great, were of necessity confined to a small scale) as the general nature of the service he undertook at Detroit and the extensive exercise of cruelties which they involved. Those who act together in war are answerable for each other. No distinction can be made between principal and ally by those against whom the war is waged. He who employs another to do a deed makes the deed his own. If he calls in the hand of the assassin or murderer, himself becomes the assassin or murderer. The known rule of warfare of the Indian Savages is an indiscriminate butchery of men, women & children. These savages, under this well known character, are employed by the British Nation as allies in the war against the Americans. Governor Hamilton undertakes to be the conductor of the war. In the execution of that undertaking, he associates small parties of the whites under his immediate command with large parties of the

savages, and sends them to act, sometimes jointly, and sometimes separately, not against our forts or Armies in the Field, but the farming settlements on our frontiers. Governor Hamilton is himself the butcher of men, women & children. I will not say to what length the fair rules of war would extend the right of punishment against him; but I am sure that confinement under its strictest circumstances, for Indian devastation and massacre must be deemed lenity. I apprehend you had not sufficiently adverted to the expression in the advice of the Council when you suppose the proclamation there alluded to, to be the one addressed to the Inhabitants of the Illinois afterwards printed in the public papers & to be affirmed to contain

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Proclamation, there alluded to, contained nothing more than an invitation to our officers and soldiers to join British arms against those whom he is pleased to call Rebels and Traitors. In order to introduce these among our people, they were put into the hands of the Indians; and in every house, where they murdered or carried away the family, they left one of these proclamations, some of them were found sticking on the breasts of the persons murdered, one under the hand & seal of Governor Hamilton came to our hands. The Indians being the bearers of proclamations under the hand and seal of Governor Hamilton (no matter what was the subject of them) there can be no doubt they were acting under his direction, and, as including this proof, the fact was cited in the advice of the Council.

But if you will be so good as to recur to the address of the Illinois, which you refer to, you will find that, tho' it does not in express terms threaten vengeance, blood & massacre, yet it proves that the Governor had made for us the most ample provision of all these Calamities. He there gives in detail the horrid catalogue of savage nations, extending from South to North whom he had leagued with himself to wage combined war on our frontiers; and it is well known that that war would of course be made up of blood and general Massacres of men, women and children. Other papers of Governor Hamilton's have come to our hands containing instructions to officers going out with scalping parties of Indians & Whites, and proving that kind of war was waged under his express orders; further proofs in abundance might be adduced, but I suppose the fact is too notorious to need them.

Your letter seems to admit an inference that, whatever may have been the general conduct of our enemies towards their prisoners, or whatever the personal conduct of Governor Hamilton, yet, as a prisoner by capitulation, you consider him as privileged from strict confinement. I do not pretend to an intimate knowledge of this subject. My idea is that the term "prisoners of war" is a generic one, the specification of which is—1st Prisoner at discretion; & 2d prisoners on convention or capitulation. Thus in the debate of the house of Commons of the 27th November last, on the address, the minister, speaking of General Burgoyne (and in his presence) says he is "a prisoner," and General Burgoyne calls himself "a

prisoner under the terms of the Convention of Saratoga," intimating that tho' a prisoner, he is a prisoner of a particular species entitled to certain terms. The treatment of the first class ought to be such as to be approved by the usage of polished nations; gentle and humain unless a contrary conduct in an enemy or individual, render a stricter treatment necessary. The prisoners of the 2d Class have nothing to exempt them from a like treatment with those of the first except so far as they shall have been able to make better terms by articles of Capitulation. So far then as these shall have provided for an exemption from strict treatment so prisoners on Capitulation have a right to be distinguished from those at discretion. [*Two lines at bottom of the page gone.*] certain causes antecedent thereto, tho' such instances might be produced, from English history too, and in one case where the King himself commanded in person. Marshal Boufflers after the taking of the castle Namur was arrested and detained prisoner of war by King William tho' by an article of capitulation it was stipulated that the officers and soldiers of the garrison in general, and Marshal Boufflers by name should be at Liberty. However we waive reasoning on this head because no article in the Capitulation of Governor Hamilton is violated by his confinement. Perhaps not having seen the Capitulation, you were led to suppose it a thing of course that being able to obtain terms of surrender, they would first provide for their own treatment. I enclose you a copy of the Capitulation, by which you will see that 2d Article declares them prisoners of

war; and nothing is said as to the treatment they were to be entitled to. When Governor Hamilton signs indeed he adds a flourish, containing the motives inducing him to capitulate, one of which was confidence in a generous enemy. He should have reflected that generosity on a large scale would take side against him. However these were only his private motives and did not enter into the contract with Colo. Clarke. Being prisoners of war then, with only such privileges as their Capitulation had provided, and that having provided nothing on the subject of their treatment, they are liable to be treated as other prisoners. We have not extended our order, as we might justifiably have done to the whole of this corps. Governor Hamilton & Capn. Lamothe alone, as leading offenders, are in confinement. The other officers and men are treated as if they had been taken in justifiable war; the officers being at large on their parole, and the men also having their liberty to a certain extent. Dejean was not included in the Capitulation, being taken 8 days after on the Wabache 150 miles from St. Vincennes.

I hope, Sir, that being made more fully acquainted with the facts on which the advice of Council was grounded, and exercising your own good sense in cool and candid deliberation on these facts, and the consequences deducible from them according to the usages and sentiments of civilized nations, you will see the transaction in a very different light from that in which it appeared at the time of writing your Letter, and ascribe the advice of the Council, not to want of attention to the sacred nature of public

conventions, of which I hope we shall never, in any circumstances, lose sight, but to a desire of stopping the effusion of ye unoffending blood of women and children, and the unjustifiable severities exercised on our captive officers and soldiers in general, by proper severities on our part. I have the honor to be with much personal respect, Sir, your most obt & most hmble Servt.

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TO COL. WILLIAM FLEMING <sup>1</sup>

ALBEMARLE, Aug. 7, 1779.

SIR,—The enclosed order will explain to you the general plan adopted for regimenting, officering & stationing the two Western battalions. We are in hopes you will so far proceed in concert with the other commissioners as that the chain of posts to be recommended may form a complete Western defence, leaving no chasm in the middle. We wish you, when you report the stations proposed, to advise us also to what particular station it will be best for the men of each county respectively to go. As it will not be long before the men ought to be raised according to the directions of the law, and it will be proper for the Executive to pay immediate attention to the procuring arms and camp utensils for them. I should therefore be glad if you will be so good as to lay before them a state of the arms in your possession or at any other convenient station: also for your opinion what proportion of the men should be

<sup>1</sup> From the original in the possession of Dr. Thomas Addis Emmet, of New York.

furnished with rifles, where rifles are to be had and on what terms.

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TO THE COUNTY LIEUTENANT OF HAMPSHIRE <sup>1</sup>

August 17, 1779.

SIR,—You are desired to call together your Field Officers and in conjunction with them to recommend to the Executive a Captain and Lieutenant to take command in one of the battalions to be raised for the defence of the Western frontier, under an act of the late Assembly entitled an act for raising a body of troops for the defence of the Commonwealth. The men to be raised in your County under the same act, and the Officers to be recommended by you, are to hold themselves in readiness on the shortest warning to proceed to such Western rendezvous as shall be notified to them by the Executive or the Field Officer who shall be directed to take command of them.

Be pleased to transmit your recommendations to the Executive in Williamsburgh by the earliest opportunity you can, and also to report to them from time to time your progress in raising your men.

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TO THE PRESIDENT OF CONGRESS

c. c.

(JOHN JAY)

WILLIAMSBURG, Sept. 25, 1779.

SIR,—The various calamities which during the present year have befallen our crops of wheat, have

<sup>1</sup> From a copy courteously furnished by Hon. Elliot Danforth, of Albany, N. Y.

reduced them so very low as to leave us little more than seed for the ensuing year, were it to be solely applied to that purpose. This country is therefore unable to furnish the necessary supplies of flour for the convention troops, without lessening, by so much as should be purchased, the sowing for another crop. I am therefore to submit to you, Sir, the expediency of ordering your Commissary general to send supplies of this article from the head of Elk or wherever else you may think best, to Richmond. Colo. Aylett informs us they will require about ten thousand barrels for a year's supply. We hope there will be a plenty of forage and of all other articles, necessary for their subsistence, raised within this State.

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TO GENERAL WASHINGTON

J. MSS.

WILLIAMSBURG, Oct. 1, 1779.

SIR,—On receipt of your letter of August 6th. during my absence the Council had the irons taken off the prisoners of war. When your advice was asked we meant it should decide with us; and upon my return to Williamsburg the matter was taken up and the enclosed advice given. A parole was formed of which the enclosed is a copy and tendered to the prisoners. They objected to that part of it which restrained them from *saying* anything to the prejudice of the United States and insisted on "freedom of speech." They were in consequence remanded to their confinement in the jail which must be considered as a voluntary one until they can determine

with themselves to be inoffensive in word as well as deed. A flag sails hence to-morrow to New York to negotiate the exchange of some prisoners. By her I have written to Genl. Phillips on this subject & enclosed to him copies of the within; intending it as an answer to a letter I received from him on the subject of Governor Hamilton. I have the honor to be Sir.

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TO GENERAL WASHINGTON

J. MSS.

WILLIAMSBURG, Oct. 2, 1779.

SIR,—Just as the letter accompanying this was going off Col. Mathews arrived on parole from New York by the way of headquarters bringing your Excellency's letter on his subject, with that of the British commissary of prisoners. The subject is of great importance & I must therefore reserve myself to answer after further consideration. Were I to speak from present impressions I should say it was happy for Governor Hamilton that a final determination of his fate was formed before this new information. As the enemy have released Capt. Willing from his irons the Executive of this State will be induced perhaps not to alter their former opinion. But it is impossible they can be serious in attempting to bully us in this manner. We have too many of their subjects in our power & too much iron to clothe them with & I will add too much resolution to avail ourselves of both to fear their pretended retaliation. However I will do myself the honor of forwarding to your Excellency the ultimate result of council on this subject.

In consequence of the information in the letter from the British commissary of prisoners that no officers of the Virginia line should be exchanged till Governor Hamiltons affair should be settled we have stopped our flag which was just hoisting anchor with a load of privates for N. York. I must therefore ask the favor of your Excellency to forward the enclosed by flag when an opportunity offers as I suppose Genl. Phillips will be in N. York before it reaches you. I have the honor to be Sir with the greatest esteem.

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TO GENERAL WASHINGTON

J. MSS.

IN COUNCIL, Oct. 8, 1779.

SIR,—In mine of the second of the present month written on the instant of Colo. Mathews delivery of your letter I informed you what had been done on the subject of Governor Hamilton & his companions previous to that moment. I now enclose you an advice of Council in consequence of the letter you were pleased to enclose me from the British commissary of prisoners with one from Lord Rawdon also a copy of my letter to Colo. Mathews enclosing also the papers therein named. The advice of Council to allow the enlargement of prisoners on their giving a proper parole has not been recalled nor will be I suppose unless something on the part of the enemy should render it necessary. I rather expect however that they will see it their interest to discontinue this kind of conduct. I am afraid I shall hereafter perhaps be obliged to give your Excellency some trouble

in aiding me to obtain information of the future usage of our prisoners. I shall give immediate orders for having in readiness every engine which the Enemy have contrived for the destruction of our unhappy citizens captivated by them. The presentiment of these operations is shocking beyond expression. I pray heaven to avert them: but nothing in this world will do it but a proper conduct in the Enemy. In every event I shall resign myself to the hard necessity under which I shall act.

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TO COLONEL GEORGE MATHEWS<sup>1</sup>

J. MSS.

IN COUNCIL, Oct. 8, 1779.

SIR,—The proceedings respecting Governor Hamilton & his companions previous to your arrival here, you are acquainted with. For your more precise information, I enclose you the advice of Council of June the 16th, of that of August the 28th, another of Sep. 19th, of the parole tendered them the 1st instant and of Governor Hamilton's letter of the same day stating his objections in which he persevered: from that time his confinement has become a voluntary one. You delivered us your letters the next day when the post being just setting out much business prevented the Council from taking them into consideration. They have this day attended to them and found their resolution expressed in the enclosed advice bearing date this day. It gives us great pain that any of our countrymen should be cut off from

<sup>1</sup> An American prisoner from New York on parole.

the society of their friends & tenderest connections while it seems as if it was in our power to administer relief. But we trust to their good sense for discerning & their spirit for bearing up against the fallacy of this appearance. Governor Hamilton and his companions were imprisoned & ironed. 1st. In retaliation for cruel treatment of our captive citizens by the enemy in general. 2d. For the barbarous species of warfare which himself & his savage allies carried on in our western frontier. 3d. For particular acts of barbarity of which he himself was personally guilty to some of our citizens in his power. Any one of these charges was sufficient to justify the measures we took. Of the truth of the first yourselves are witnesses. Your situation indeed seems to have been better since you were sent to New York, but reflect on what you suffered before that & knew others of your countrymen to suffer & what you know is now suffered by that more unhappy part of them who are still confined on board the prison ships of the enemy. Proofs of the second charge we have under Hamilton's own hand: And of the third as sacred assurances as human testimony is capable of giving. Humane conduct on our part was found to produce no effect: the contrary therefore was to be tried: If it produces a proper lenity to our citizens in captivity it will have the effect we meant: if it does not we shall return a severity as terrible as universal. If the causes or our rigour against Hamilton were founded in truth that rigour was just & would not give right to the Enemy to commence any new hostilities on their part; and all such new severities are to

be considered, not as retaliation but as original and unprovoked. If those causes were not founded in truth they should have denied them. If declining the tribunal of truth & reason they chuse to pervert this into a contest of cruelty and destruction we will contend with them in that line, & measure out misery to those in our power in that multiplied proportion which the advantage of superior numbers enables us to do. We shall think it our particular duty after the information we gather from the papers which have been laid before us to pay very constant attention to your situation & that of your fellow prisoners. We hope that the prudence of the Enemy will be your protection from injury, & we are assured that your regard for the honour of your country would not permit you to wish we should suffer ourselves to be bullied into an acquiescence under every insult & cruelty they may chuse to practice, & a fear to retaliate lest you should be made to experience additional sufferings. Their officers & soldiers in our hands are pledges for your safety: we are determined to use them as such. Iron will be retaliated by iron but a great multiplication on distinguished objects; prison ships by prison ships, and like for like in general. I do not mean by this to cover any officer who has acted or shall act improperly. They say Capt. Willing was guilty of great cruelties at the Natches: if so they do right in punishing him. I would use any powers I have for the punishment of any officer of our own who should be guilty of excesses unjustifiable under the usages of civilized nations. However I do not find myself

obliged to believe the charge against Capt. Willing to be true on the affirmation of the British commissary because in the next breath he affirms no cruelties have as yet been inflicted on him. Capt. Willing has been in irons.

I beg you to be assured there is nothing consistent with the honor of your country which we shall not at all times be ready to do for the relief of yourself & companions in captivity. We know that ardent spirit and hatred for tyranny which brought you into your present situation will enable you to bear up against it with the firmness which has distinguished you as a soldier, and to look forward with pleasure to the day when events shall take place against which the wounded spirits of your Enemies will find no comfort even from reflections on the most refined of the cruelties with which they have glutted themselves.

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TO THE SPEAKER OF THE HOUSE OF DELEGATES

(BENJAMIN HARRISON)

V. S. A.

IN COUNCIL, Oct. 22d, 1779.

SIR,—Since the date of my former letter to you, I have recd. the inclosed resolutions of Congress containing a requisition of additional supplies of money. The General Assembly in considering this subject will naturally cast their eyes on the funds already provided for the Supply of their public treasury. As a principal branch of these was in some degree under the care and direction of the executive, I mean the proceeds of the estates of British subjects, it becomes

my duty to guard the assembly against relying in their calculations for any great & immediate supplies from hence. Facts have come to our notice which give great reason to believe that the transverse & other pleadings justly allowed by the law for saving the rights of those who have real or probable appearance of right is perverted to frustrate or delay its effects, by being put in on grounds either frivolous or false and by that means throwing the subject into a course of legal contestation which under the load of business now on the docket of the general Court, may not be terminated in the present age. In one instance we are certified by the clerk of the general Court that the estate is claimed by the steward; tho' this very man undertook to act as Commissioner of the estate under the sequestration law by our appointment, and has himself personally rendered annual accounts to us of the proceeds of the estate as the estate of a British subject. Yet his claim palpably false as it is, in order to obtain the ceremony of being adjudged so, is to go through all the formalities of regular litigation before the estate can be exposed to sale. Perhaps the aids expected from this law might still be obtained however, and as perfect justice done to every individual by a legislative provision for determining these pleadings in a speedy way. I thought it my duty to guard the general assembly against any deception in their expectations from these funds, that no disappointments may accrue in the measures they shall be pleased to adopt.

While on the subject of Continental demands for supplies from this State I am to inform you, sir, of an

unfortunate delay in the settlement of the Continental accounts. Immediately on the rising of the general assembly the Executive proceeded without intermission to put into a course of execution the several things made incumbent on them, it was the 17th July before, according to their arrangements, they could proceed to appoint a Commissioner to settle the Continental account. They then appointed a gentleman fully qualified in every point of view to discharge this duty perfectly. His first letter, dated three days after the appointment, gave reason to hope he would undertake the charge. Ill health however and other subsequent circumstances obliged him to decline, and the letter notifying that did not come to hand till the 10th of the last month. Since this no person has been found competent to the business & willing to undertake it. We are in hopes that the more extensive acquaintance of the members of General assembly may enable them to appoint a person equal to this very difficult business.

A book of military institutions written by Major General Steuben and recommended for general use by Congress has been transmitted to me. I take the liberty of depositing it with the general assembly as on future revisions of their militia laws they may be able perhaps to extract some useful matters from it. Or it may be thought worth printing & dispersing among the officers of y<sup>e</sup> militia.

## TO THE SPEAKER OF THE HOUSE OF DELEGATES

(BENJAMIN HARRISON)

V. S. A.

IN COUNCIL, Oct. 29, 1779.

SIR,—The Executive in the Month of March 1778, in order to secure the acquisition & proper choice of a supply of Arms, Ordnance & Military implements sent a Mr. Le Mair of the Kingdom of France their Agent express for that purpose to Europe. He executed his commission with a zeal and assiduity which we have rarely met with, having traversed for fourteen months those parts of Europe backwards & forwards where there was a hope of getting the articles wanted, and after eighteen months' absence returned himself in the last of three Vessels which he charged with ordnance and other necessities. His reasonable expenses we mean to pay and were about making him a proper pecuniary compensation for his time and great labour but he prays rather to be rewarded with military rank unattended by either pay or command; expecting to reap greater benefit from this in his own Country to which he is about to return. The Executive apprehending they have no authority to grant brevet commissions, refer to the general assembly the expedience of authorizing them to give to this gentleman a Lieutenant Colonel's commission by way of brevet. They shall not indeed then think themselves discharged from making him some pecuniary compensation tho' a much smaller may be given than they had before proposed.

## TO THE SPEAKER OF THE HOUSE OF DELEGATES

(BENJAMIN HARRISON)

V. S. A.

IN COUNCIL, Oct. 30th, 1779.

SIR,—In pursuance of a resolution of the last session of General assembly the Executive proceeded to form a contract with Messrs. Penet Windel & Co. for the establishment of a manufactory of fire arms & foundery of ordnance on James river and for extending navigation through its falls. The several preliminary papers which passed between them are now transmitted to the general assembly that they may be enabled to judge of the obstacles the executive had to encounter, and to see the reasons explained which led them to the several conclusions. These articles also, as ultimately concluded, accompany this, together with a subsequent letter from Mr. Penet and memorial from Mr. Savarit desiring some alterations in two of the articles.

The several objects of this contract must be admitted of the last importance: The depending on the transportation of arms across an element on which our enemies have reigned, for the defence of our own country, has been already found insecure & distressing. The endeavours of five years aided with some internal manufacturers have not yet found a tolerable supply of arms. To make them within ourselves then as well as the other implements of war, is as necessary as to make our bread within ourselves. The present contract seems really to afford a promising appearance of future supply. Should these articles meet with ratification from the general

assembly, I must still inform them that obstacles are likely to arise, of a very perplexing nature, from an unlucky connection of the public with a certain Mr. Ballendine who has entangled himself into every part of the subjects of this contract. Some of his rights are real; some only pretended. Unless they can be cleared away by legislation in a speedy mode, liberal compensation being first allowed him for such of them as shall be found just, the length of time which would be required to follow him through Courts of Justice in the ordinary course of proceedings, will defeat every hope which might be entertained from this Contract. The duty imposed upon the executive by the resolution of assembly led them necessarily to an investigation of this man's rights & pretensions. That the assembly may have proper lights to conduct their enquiries I will analyse his claims as they have appeared to us. They refer to three several subjects, which I will endeavour to keep distinct, to avoid that confusion they might otherwise throw on one another. 1. To the furnace in Buckingham. 2. To the Foundry at Westham. 3. To the construction of a navigable Canal at the falls of James river.

1. Mr. Ballendine with a partner Mr. Reveley received by order from the assembly £5000 in the year 1776 for the purpose of erecting a furnace in Buckingham & stipulated to repay it in pigiron at seven pounds ten shillings the ton, which in fact amounted to a contract to pay the public 666 $\frac{2}{3}$  tons of pigiron. In December 1777 he received a further sum of £2500. In May 1778 he petitioned the

assembly to release him from the obligation of paying his Debt in iron at £7.10/ the ton, and to take it at the Market price at the time of delivery of the iron, the assembly agreed that he should be allowed more than £7.10. but not the market price at the *time of delivery*, thus signifying their sense that there was some intermediate ground on which they meant to take their stand, but not pointing out what that was. This led us to suppose that the Market price of iron at the time of the *paiment of the money* to Ballendine might be what the assembly had probably in view. On settlement of his several accounts with the Commissioners whom we appointed according to the resolution of assembly for that purpose & whose report is transmitted herewith, there arose on one of them a balance in his favor for part of  $\frac{T^C}{3} \frac{10}{2}$  of pigiron delivered. The Commissioners had extended it in money at £30. the ton, and transferred the balance of £42-5 which that produced to the Credit of his account for the £5000. or 666 $\frac{2}{3}$  tons of iron. We think they should have credited so much of the  $\frac{T^C}{3} \frac{10}{2}$  of iron at £30 as would have balanced that account and transferred the residue, in iron, to the credit of his debt due in iron. This error would have been too trivial to have noted to you Sir, but as it tended to induce a false principle into the account, & to prevent us from informing you precisely that of the 666 $\frac{2}{3}$  tons due to the public for the £5000. there has been paid only  $\frac{T^C}{1} \frac{3}{1}$ , and nothing paid towards discharging the additional £2500. To secure these balances the lands in which the money was invested were conveyed to the

trustees themselves, but under an implied trust, that on payment of the debt conveyances should be made to Ballendine and Reveley: so that it is apprehended that they amount in fact to nothing more than mortgages. There is little hope that the balance will ever be paid; an opportunity now occurs not only of making the securities produce to the public the real worth of what was advanced on them, but also of producing it in arms & implements of war, the very articles originally proposed to be obtained by it, and which of all others are most immediately essential to the public safety. But a bill for foreclosing the trust to pass through the usual forms of proceedings in a Court of Chancery will hardly bring us relief till I hope we shall not need it.

2. The general assembly in May 1776 having determined to erect a foundry at Westham for casting ordnance appointed Commissioners for that purpose. For the sum of £242.10, which they paid Mr. Ballendine they purchased from him for situating the foundry three acres & an half of land adjacent to a Canal he was opening from Westham, and a right to deduce water from the Canal for turning a boring mill & other works necessary for finishing the Cannon—They were also to have free navigation down the canal to the foundry on contributing one moiety to the repairs of that part of the Canal, after it should have been once completed, as he bound himself to compleat it. They erected their foundry and found it necessary to make advances of money to Ballendine to enable him to complete his Canal & dam on which alone they depended for water. The balance

due the Commonwealth on these advances is £2051-2-5½ as appears by one of the accounts transmitted herewith: for securing which payments a mortgage had been taken on 46½ acres of land, the whole of the real property of the said Ballendine at that place, so that the public possessions & interests at this place are the 3½ acres of land with the foundry on it, a right to draw off water for working their machines for completing the Cannon, a common in the navigation, paying one half the expense of keeping that part of the Canal in repair, & a mortgage on 46½ acres of land for securing the payment of £2051-2-5½. But for the state of Mr. Ballendines Dam & Canal & the prospect of obtaining water as long as he is to be depended on for it, I beg leave to refer you to the report of the same commissioners.

3. The extending navigation from Westham to Richmond, besides its other very general importance, being extremely requisite to promote the success of the proposed manufactory by reducing the difficulty & expence attending the transportation of the bulky articles of Coal, wood & other things necessary to be expended on it, and its own very weighty produce, we were led to inquire by what means Mr. Ballendine had got foothold there and on what pretensions he founds a right of constructing the navigable canal. In 1764 the assembly passed an act authorising the opening the falls of James river by subscription of money from individuals and appointing Trustees to take such subscriptions. Some persons accordingly subscribed, but no appearance of the arising of the works, being ever compleated in this way, the assem-

bly after waiting 8 years, to wit, in 1772, passed another act for putting the business into a different train. They directed that as soon as the former & subsequent subscribers or a majority of them should think a sufficient sum raised any ten of them, being subscribers of £100 each at last, might appoint a general meeting at which a president & 11 directors should be elected, who should have power to agree with an undertaker to cut the canal proposed, provided such undertaker should first give sufficient security to perform his agreement: they gave to the adventurers authority to carry the canal through any persons lands, paying the worth of them, allowed them certain tolls, and pointed out the precise mode in which they might transfer their shares in the undertaking, to wit, by deed executed by the president, the subscriber having first tendered his share to the directors who were to have the refusal at the same price: very considerable sums were engaged under this act: but there never was a meeting of the subscribers to elect a president & Directors, nor an undertaker employed. While this was in agitation Mr. Ballendine proposing to clear the falls of James river & the falls of Potowmack, set on foot subscriptions for enabling him to go to England to learn how to do it. Great sums were subscribed, he went, returned & brought some workmen. He purchased at the head of the falls of James river the 50 acres of land, three & a half of which were conveyed as before mentioned to the public for the foundery, and the other 46½ mortgaged to them. He opened a Canal through this land and then of his own

authority, without any act of assembly or even an order of Court, as we are told, he made a dam across an arm of James river & drew off 50 feet width of water along his canal. In November 1777 by Petition to the assembly he informs them that the subscribers under the last act of assembly had transferred their interests to him, that he had made considerable progress in the Canal & should finish it if he met with no interruption from those through whose lands it must pass & prays an act might pass vesting him with the former subscribers. Had the allegation in his petition been true, that the former subscribers had transferred their interests to him, such an act would have been unnecessary, because he would have stood on their footing; but it could not be true, because the transfer being to be executed by the president after a tender & refusal of the share to the Company, & no president having ever been elected, there could have been no such transfer to him as he alleged. I have been thus particular, Sir, in order to show you that Mr. Ballendine has no legal right to the conducting the Canal which can stand in the way of the present Contract. He has an equity of redemption in the  $46\frac{1}{2}$  acres of land before mentioned, and so far stands on the footing of every other landholder through whose lands the Canall must pass. He prayed earnestly that their rights might be sacrificed to him, on his paying them the value: can he then with modesty now say that his rights shall not be sacrificed to others, paying him the value of the injury done him? It is now four years since he begun his Canal; he has conducted it about

one twentieth part of the whole distance: and this too while his workmen were with him, & his means, if he had any, were fresh.

A very simple calculation then will inform us, that, in his hands the completion of this Work will require near a century, and then a question arises whether Mr. Ballendine will live so long. I think we may fairly conclude that he will never complete it. It is right that in cases of such general importance, the interests of a few individuals should give way to the general good, full compensation being made them; and as right that Mr. Ballendine's should, as those of the others whose Lands were to have been laid open to him. He has had a long enough trial to convince the whole world he never will complete it. Other Gentlemen now offer to do it within a reasonable term. As the assembly then after an eight years trial & failure of the act of 1764 made another experiment in 1772 it seems reasonable, after other seven years patience, to try yet other means. It is possible the present undertakers may not find it necessary to make use of Mr. Ballendine's Canal at all, but may take out the water elsewhere. But should they find that it can be taken off no where else, it is submitted to the assembly, whether his having dug a Canal along grounds thro' which the navigable canal must necessarily pass, shall privilege those grounds, more than the meadows & grounds of others are privileged, and for ever obstruct the opening that river, and whether there can be any sound objection to the having in his case, as well as in those of others, a just valuation made of y<sup>e</sup> injury

he will sustain by the use which shall be made of his Canal, and after withholding the £2501.2.5½ due from him to the public, on that particular account, to pay him the balance if the injury shall be found to exceed that sum.

In stating to you the several obstacles which oppose themselves to the execution of the resolution of assembly, I have been necessarily led to mention circumstances which are to be found among your own journals & acts, & of which therefore you had knowledge before. They were necessary to continue the thread of the relation so as to render it intelligible, and are desired to be considered only as references to your own Records for more authentic and precise information.

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TO THE FRENCH MINISTER †

(CHEVALIER DE LA LUZERNE)

IN COUNCIL, Nov. 10, 1779.

SIR,—In compliance with the request which you were pleased to lay before us, I am now to authorize the forces of his most Christian majesty to land in such place, and his vessels to withdraw into such harbors of this Commonwealth as the Admiral or other Commanding Officer shall think proper, and to procure houses for the purpose of hospitals. In determining on the place of his debarkation & encampment, he will be pleased to follow his own judgment;

† From a copy courteously furnished by Hon. Elliot Danforth, of Albany.

receiving from us his information that the farther he can withdraw his vessels up our rivers into the country, the more it would be in our power to assist in defending them against any attack from the enemy.

York river according to our present idea would offer itself as the most defensible, but in this, &c., the board of war will issue orders for their immediate supply of provisions from our magazines, and will aid them with such of our vessels as may be necessary for procuring further supplies and landing their sick & other purposes.

These general resources seem to be all we can take for their present relief, till their wants shall be more particularly laid before us. We beg leave to take this early occasion to assure you that we shall receive into our state the forces of his most Christian majesty with the utmost cordiality and spare nothing which shall be within our power to aid and accommodate them in whatever situation they shall choose.

But in this or any other we greatly apprehend the difficulties and distresses which may arise from the want of proper houses for hospitals.

I shall take great pleasure in showing on every occasion which shall occur, my personal gratitude and affection to your nation, and the particular esteem with which I am, Sir,

Your most obedient and most humble ser't.

## TO THE GOVERNOR OF NORTH CAROLINA †

(RICHARD CASWELL)

WMS.BURG, November 11, 1779.

SIR,—I have lately received Messages and information from the Cherokee nation of Indians, painting their nakedness and general distress for want of European Goods, so strongly as to call for pity and all possible relief. Their several Settlements being contiguous to the two Carolinas & to Virginia they have at times received Supplies I believe from each of these States. Their great numbers however & the extent of their Settlements, when taken into view by any one of our States, bear a discouraging proportion to the moderate aids we can singly furnish and render a general distribution of them very troublesome. These considerations have induced me to take the Liberty of submitting to your Excellency a proposition (as I do to Governor Rutledge also by a letter of this day's date) to divide the trouble and task of supplying them among our three States.

The division of those Indians into Southern, Middle & Northern Settlements, renders the apportionment of them obvious. The protecting from intrusion the lands of the Southern Cherokees & furnishing them with Goods seems most convenient to South Carolina, the same friendly offices to the Middle settlements seem most within your power & the Northern Settlements are most convenient to us. The attachment which each settlement will by these means acquire to the particular State which is it's immediate

† From a copy courteously furnished by Dr. J. S. H. Fogg, of Boston.

patron and benefactor, will be a bond of peace, and will lead to a separation of that powerfull people. If this distribution should happily meet the approbation of your Excellency & of Governor Rutledge, we shall do every thing in our power for discharging our Duties to the Northern settlement. Knowing your disposition to have these people protected in the possession of their unpurchased lands, I also take the liberty of mentioning to you that the old Tassel in a late Message to me complains of intrusions on their lands, and particularly of some attempts to take from them the great island. This, by the late extension of our boundary, falling, as I understand, within your State, removes the application for protection to your Excellency, whose power alone can extend to the removal of intrusions from thence. As to so much of their lands as lie within our latitudes, as well as the lands of other Indians generally, our assembly now sitting has in contemplation to authorise the Executive to send patrols of the military through them from time to time to destroy the habitations which shall be erected in them by intruders. The bearer of this Letter is a Major Martin, our agent residing with the Cherokees who will be able to inform your Excellency of any particulars you may wish to learn. We have reason to believe him a good kind of man & worthy of credit. In tending to fix a post and small Garrison in Powell's valley, we have ordered part of a battalion thither to erect a stockade. But as it would be proper for them first to assemble together (being not yet embodied) at a nearer Station, and there being a fort and houses at the great island,

we have taken the liberty of appointing their rendezvous at that fort, till there shall be so many embodied as may proceed with safety to Powell's valley. We have reason to expect that their stay at that place will be very short and hope it will not be disagreeable to your Excellency. The necessity of immediate orders, put it out of our power to apply for your previous approbation: We consider the measure still however subject to your pleasure and therefore take this early opportunity of acquainting you with it.

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TO THE PRESIDENT OF CONGRESS

c. c.

(SAMUEL HUNTINGTON)

WMSBURG, NOV. 16th, 1779.

SIR,—Colo. Bland being about to retire from his Command at the Barracks in Albemarle, and desirous to withdraw at the same time the party of his horse which has hitherto been stationed there, wished that we should supply their place by sending thither about twenty or five and twenty of the horse of this State. Our horse being as yet not very well trained, the officers represented that it would much impede that work, and leave the remaining fragment in a very awkward situation should we divide a troop. We have therefore ordered a complete troop to that station; but wish Congress would be pleased to notify as soon as convenient whether they approve of this or not.

We have hitherto been unable to raise more than about the half of a Battalion of infantry for guarding

the Convention Troops at the same Post. The deficiencies have been endeavoured to be supplied with Militia. Congress have had too much experience of the radical defects and inconveniences of militia service to need my enumerating them. Our assembly now sitting, have in contemplation to put the garrison regiment on such a footing as gives us hopes of filling it by the next summer. In the meantime a Battalion which we are raising for our immediate defence may be spared to do garrison duty this winter, and as but a small part of it is raised, as yet, and not probable that it will be completed within any short time, we suppose that with Colo. Taylor's regiment it will not exceed the number required to guard the Troops.

I would observe to you that the Captains and Subalterns of this new Battalion are not to be called into service but as their men are raised; so that the burthen which has sometimes been incurred of paying officers without men need not be apprehended in this instance. We have therefore Ordered this Battalion to rendezvous at the Barracks and do duty there this winter; and that the Battalion should be discharged in proportion as these come in, on this measure also we ask the pleasure of Congress.

The appointment of a successor to Colo. Bland will give us great satisfaction and we hope Congress will take it into early consideration. The duties of that post call for respectable Abilities and an uncommon vigilance and firmness of character.

TO GENERAL WASHINGTON

W. MSS.

WILLIAMSBURG, NOV. 20, 1779.

SIR,—Your Excellency's letter on the discriminations which have been heretofore made between the troops raised within this state and considered as part of our quota, & those not so considered, was delivered me four days ago. I immediately laid it before the Assembly, who thereupon came to the resolution I now do myself the honor of enclosing you. The resolution of Congress of Mar. 15. 1779 which you were so kind as to inclose was never known in this state till a few weeks ago when we received printed copies of the journals of Congress. It would be a great satisfaction to us to receive an exact return of all the men we have in Continental service who come within the descriptions of the resolution, together with our state troops in Continental service. Colo. Cabell was so kind as to send me a return of Octob. 1779. of the Continental regiments commanded by Lord Sterling, of the 1st & 2d Virginia state regiments, and of Colo. Gist's regiment. Besides these are the following viz., Colonel Harrison's regiment of artillery, Colonel's Baylor's horse, Colonel Bland's horse, General Scott's new levies, part of which are gone to Carolina, and part are here, Colonel Gibson's regiment stationed on the Ohio, Heath and O'Hara's independent companies at the same stations, Colonel Taylor's regiment of guards to the Convention troops: of these, we have a return.

There may possibly be others not occurring to me. A return of all these would enable us to see what proportion of the Continental army is contributed by

us. We have at present very pressing calls to send additional numbers of men to the Southward. No inclination is wanting in either the legislature or Executive powers to aid them or to strengthen you: but we find it difficult to procure men. I herewith transmit to your Excellency some recruiting commissions to be put into such hands as you may think proper for re-enlisting such of our sooldiery as are not engaged already for the war. The act of assembly authorizing these instructions requires that the men enlisting should be reviewed & received by an officer to be appointed for that purpose; a caution less necessary in the case of men now actually in service, & therefore doubtless able bodied, than in the raising new recruits. The direction however goes to all cases, and therefore we must trouble your Excellency with the appointment of one or more officers of review. Mr. Moss our agent receives orders, which accompany this, to pay the bounty money & recruiting money, & to deliver the clothing. We have however certain reason to fear he has not any great sum of money on hand: and it is absolutely out of our power at this time to supply him, or to say with certainty when we shall be able to do it. He is instructed to note his acceptances under the draughts and to assure payment as soon as we shall have it in our power to furnish him, as the only substitute for money. Your Excellency's directions to the officer of review will probably procure us the satisfaction of being informed from time to time, how many men shall be re-enlisted.

By Colo. Mathews I informed your Excellency

fully of the situation of Governor Hamilton & his companions. Lamothe, & Dejean have given their paroles, and are at Hanover court-house: Hamilton, Hay, and four others are still obstinate; they therefore are still in close confinement; tho their irons have never been on, since your second letter on the subject. I wrote full information of this matter to General Phillips also, from whom I had received letters on the subject. I cannot in reason believe that the enemy, on receiving this information either from yourself or General Phillips, will venture to impose any new distresses on our officers in captivity with them. Yet their conduct hitherto has been most successfully prognosticated by reversing the conclusions of right reason. It is therefore my duty, as well as it was my promise, to the Virginia captives to take measures for discovering any change which may be made in their situation. For this purpose I must apply for your Excellency's interposition. I doubt not but you have an established mode of knowing at all times through your commissary of prisoners, the precise state of those in the power of the enemy. I must therefore pray you to put into motion any such means you have of obtaining knowledge of the situation of the Virginia officers in captivity. If you should think proper, as I could wish, to take upon yourself to retaliate, any new sufferings which may be imposed on them, it will be more likely to have due weight, and to restore the unhappy on both sides to that benevolent treatment for which all should wish.

## PROCLAMATION LAYING EMBARGO

c. c.

[Nov. 30, 1779.]

By His Excellency Thomas Jefferson, Esq.; Governour or Chief Magistrate of the Commonwealth of Virginia

*A Proclamation*

Whereas the exportation of provisions from the State will be attended with manifest injury to the United States, by supplying the enemy, and by rendering it difficult for the publick agents and contractors to procure Supplies for the American troops, and will moreover give encouragement to engrossers and monopolizers to prosecute their baneful practices, I have thought fit by and with the advice and consent of the Council of State, to issue this my proclamation for laying an embargo on provisions; and I do hereby lay an embargo on provisions, viz., on all beef, pork, bacon, wheat, Indian corn, pease or other grain, or flour or meal made of the same; to continue until the first of *May* next. And I do hereby strictly prohibit all mariners, masters, and commanders of vessels, and all other persons whatsoever within this State, from loading on board any vessel for exportation, and from exporting all or any of the above species of provisions, by land or water from the date hereof, during the term aforesaid, under pain of incurring the penalties inflicted by the act of Assembly intituled *An Act to empower the Governour and Council to lay an embargo for a limited time*, except as in the said act is excepted. And I do hereby strictly charge and command all naval officers and

others, in their respective departments, to exert their best endeavours to the end that this embargo be strictly observed.

Given under my hand this 30th day of November, 1779.

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TO THE PRESIDENT OF CONGRESS

(SAMUEL HUNTINGTON)

C. C.

WMSBURG, Decr. 16, 1779.

SIR,—We have information from our Delegates in Congress that the detention of some continental arms by the executive of this State during the course of the last summer has given considerable umbrage to Congress. I beg leave therefore, thro' you Sir, to lay before that honorable body facts, simply as they occurred, hoping that these will satisfy them that, the arms being justly due to this State, necessity alone dictated the measure, and that no sentiment of disrespect to Congress entered into the transaction. This State in an early part of the present contest raised at first two, and soon afterwards seven Battalions for its particular defence. Finding however that the dangers of our being invaded became less, our legislature made a tender of these Battalions for the Continental service. The tender was accepted of by Congress only on condition that we would permit them to carry their arms with them. They were accordingly marched to the grand army, time after time, as we could get them armed. I think this condition was dispensed with as to two Battalions only which Congress, induced by their increasing wants of men, per-

mitted to march on without their arms. This is one of the articles of Debit in our account of arms against the Continent, which I state particularly, in order to bring it into recollection with some of your honorable members, and because, being recollected, it will go far in our justification as to the number of arms retained with us. Since this however, at different times, and for different corps, many smaller parcels of arms have been sent to Congress by us. It is a fact, which we are to lament, that, in the earlier part of our struggles, we were so wholly occupied by the great object of establishing our rights, that we attended not at all to those little circumstances of taking receipts, and vouchers, keeping regular accounts, and preparing subjects for future disputes with our friends. If we could have supported the whole Continent, I believe we should have done it, and never dishonored our exertions by producing accounts; sincerely assured that, in no circumstances of future necessity or distress, a like free application of any-thing theirs would have been thought hardly of, or would have rendered necessary an appeal to accounts. Hence it has happened that, in the present case, the collection of vouchers for the arms furnished by this State has become tedious and difficult.

Our board of war has been attending to this business a considerable time, but have as yet authenticated the loan of only 5664 stand of arms and 580 rifles. They seem however to believe that (exclusive of considerable numbers delivered where no receipts were taken and the officers to whom delivered are

dead or not to be found, which of course we shall lose) they will be able to establish a right to 10,000 stand. These arms were most of them of the very best quality, imported from Great Britain, by the State, for its own use. After the loan of so many to the continent, the loss of a considerable number put into the hands of the militia during the short invasion of the last spring, many of which we were never able to recover, and a very recent loan of 1000 stand, to be sent on, at the request of Congress, to South Carolina, we were reduced to not more than 3,000 stand in all our magazines. Rumors were spread of an intended invasion by the enemy for the purpose of rescuing the convention Troops: that body of men were in the heart of our Country under a guard not able to furnish centinels for ordinary duty; congress had just recommended to us to prepare for the most immediate and most vigorous operations, and to have our militia ready to march at the shortest warning; the knolege of the low state of our magazines had by some means got abroad, and spread a general alarm among our people: in this situation of things a vessel, loaded with arms, seemed to be guided by the hand of providence into one of our harbours. They were it's true the property of our friends, but of friends indebted to us for those very articles. They were for the common defence too, and we were a part of the Body to be defended. An officer came for the purpose of removing them out of the State. Would circumstances have permitted a previous application to congress, tho' not present myself, I so thoroughly know the respect which the executive bears for con-

gress, that I am safe in affirming that such an application would most certainly have been made. But had they awaited that ceremony, the arms would have been gone: the continent of course would have been at the expence, and the arms exposed to the injury, and risk of, a double transportation: for I cannot but take for granted that congress would on such an application, in the case of a State so reduced in her magazines, and reduced by Loans to them, have ordered the arms to be replaced. Time however did not admit of this ceremony; the executive therefore retained 5000 stand. We shall not draw examples of similar liberties taken by other States, we shall never recapitulate aids granted to, or taken by our brethren, from the common stock, because we wish it to be freely used for their service, and to draw nothing from it for ourselves unless our distresses should at any time be such as to point us out to them as objects needing the common aid. But we will observe in general, that, between congress and this State, similar freedoms in other articles, had been repeatedly and mutually taken, on many former occasions, and never had been the cause of discontent to either party. This precedent then, strengthened by the existence of an actual Debt, seemed to give a Double sanction to the executive for what they did: nor did any instance occur to them of unreadiness at any time to spare freely on continental requisition any articles within possession or power, which might expose them to experience in turn the disregard of congress. I flatter myself therefore that that honorable Body whenever this matter shall be the subject

of their deliberations will be of opinion that the proceedings of the Lieutenant Governor and Council were substantially justifiable. They hope that no want of ceremony, or other smaller circumstance may have been matter of Offence to congress. If in this they should be mistaken, feeling the most real respect for that body, impressed with the idea that its authority can never be wounded without injury to the present union, they are to lament the misapprehension & wish to remove it by assuring you, as they may with truth, that no sentiment of theirs, either on this, or any other occasion, has justified it. A motive of duty and respect to the collective council of our union has led me into this detail to remove all grounds of discontent from among us, and to assure you Sir at the same time that I shall consider as occasions of manifesting my zeal for our sacred cause.

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TO GENERAL WASHINGTON

W. MSS.

WILLIAMSBURG Decr. 16, 1779.

SIR,—I take the liberty of putting under cover to your Excellency some Letters to Generals Phillips and Reidesel, uninformed whether they are gone into New York or not, and knowing that you can best forward them in either case.

I also trouble you with a letter from the Master of the Flag in this State to the British Commissary of Prisoners in New York, trusting it will thus be more certainly conveyed than if sent to Mr. Adam. It is my wish the British Commissary should return

his answer through your Excellency or your Commissary of Prisoners, and that they should not propose under this pretext to send another Flag, as the mission of this Flag is not unattended by circumstances of suspicion, and a certain information of the Situation of ourselves and our allies here might influence the measures of the enemy. Perhaps your Commissary of Prisoners can effect the former method of answer.

I inclose to you part of an act of Assembly ascertaining the quantities of Land which shall be allowed to the officers and soldiers at the close of the war, and providing means of keeping that country vacant which has been allotted to them.

I am advised to ask the attention of your Excellency to the case of Colo. Bland, late commander at the Barracks in Albemarle. When that Gentleman was applied to, to take that Command, he attended the Executive here, and informed them, that he must either decline it, or be supported in such a way as would keep up that respect which was essential to his command without at the same time ruining his private fortune.

The Executive were sensible that he would be exposed to very great and unavoidable expence, they observed that his Command would be in a department separate from any other, and that he actually relieved a Major General from the same service. They did not think themselves authorized to say what should be done in this case, but undertook to represent the matter to Congress and in the mean time gave it as their opinion that a decent table

ought to be found for him. On this he undertook the command, and in the course of it incurred expenses which seem to have been unavoidable unless he would have lived in such a way as is hardly reconcilable to the spirit of an officer, or the reputation of those in whose service he is. Governor Henry wrote on the subject to Congress. Colo. Bland did the same; but we learn that they have concluded the allowance to be unprecedented and inadmissable, in the case of an officer of his rank. The Commissaries on this have called on Colo. Bland for reimbursement. A sale of his Estate was about to take place, when we undertook to recommend to them to suspend their demand till we could ask the favor of you to advocate this matter with Congress so far as you think it right, otherwise the ruin of a very worthy officer must inevitably follow.

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TO THE SPEAKER OF THE HOUSE OF DELEGATES

(BENJAMIN HARRISON)

V. S. A.

IN COUNCIL Dec. 23, 1779.

SIR,—The inclosed letter from Governor Lee and intelligence <sup>1</sup> accompanying it, gives reason to apprehend that the enemy meditate an invasion of this state. The reasons which support this opinion as well as those which oppose it will occur to the General Assembly. It is our duty to provide against every event and the Executive are accordingly engaged in concerting proper measures of defence. Among

<sup>1</sup> From the French Minister.

others we think to call an immediate force from the militia to defend the post at York, and to take a proper post on the South side of James river, but the expence, the difficulties which attend a general call of the militia into the field, the disgust it gives them more especially when they find no enemy in place, and the extreme rigor of the season, induce us to refer to the decision of the general assembly, whether we shall on the intelligence already received & now communicated to them, call a competent force of militia to oppose the numbers of the enemy spoken of; or whether we shall make ready all orders & prepare other circumstances, but omit actually issuing these orders till the enemy appear or we have further proof of their intentions? The assembly will also please to determine whether, in case the enemy should make a lodgement in the country, it would be expedient to avail ourselves of the laudable zeal which may prevail on their first landing and enlist a sufficient number to oppose them & to continue in service during the invasion or for any other term. Perhaps it may not be amiss to suggest to the assembly the tardiness of collecting even small numbers of men by divisions, that if any better method should occur to them they may prescribe it. The present state of the Treasury in more points than one, will no doubt be thought an absolute obstacle to every military endeavor which may be necessary.

TO THE PRESIDENT OF CONGRESS

c. c.

(SAMUEL HUNTINGTON)

WMSBURG, Decr. 30th, 1779.

SIR,—Your letter inclosing the resolutions of Congress relating to the capture of the Portuguese *Snow* by Captain Cunningham has remained hitherto unanswered because I hoped Daily to be enabled to write more fully on that subject. The resolutions and documents accompanying them, as soon as received, were put into the hands of our Attorney General for his opinion, with intention to have such proceedings at Law instituted as he should advise. You will see that, by his opinion, which I do myself the honor of inclosing you, the Offence could not be prosecuted here criminally; our act of Assembly, establishing a Court of Admiralty, having, in conformity with the Articles of Confederation, expressly inhibited it from criminal jurisdiction. The General Assembly being then to meet in the month of October, I reserved the subject to be laid before them, which was accordingly done. A great variety however of other Business, which would not admit of being postponed, occasioned them to pretermitt this til their next session. So that if the offenders be within the Cognizance of the criminal Law at all (which the attorney seems to doubt) we have as yet no court wherein they may be prosecuted. A Civil action for Damages may be instituted; and if the sufferers shall think proper to direct it, the countenance and protection of Government here shall not be wanting so far as propriety will admit or justice require.

I am to acknowledge the receipt of your Letter of

December 10th, inclosing resolutions of Congress of the same Date, approving our measures for guarding the Convention Troops, and accepting the resignation of Colo. Bland. I hope that, ere this, his place has been supplied, as the constant attention of an officer of knowledge and understanding is requisite there. Perhaps his troubles might be lessened and his office more fully discharged, by residing at the Barracks, rather than at Charlottesville; these posts being five or six miles apart.

The resolutions of the 11th & 14th inst, inclosed in your letter of the 14th unfortunately came not to hand till two Days after the rising of the General Assembly, which was on the 24th, and they will not meet again before the period for the delivery of the Indian Corn will be passed. They had however, early in the present year, laid a Tax payable in specific commodities; and, in their late session, directed the Executive to raise from the proceeds of that Tax, six hundred thousand pounds, towards making up the quota's of money for which they were called on by Congress. The articles specified were Wheat, Indian Corn, rye, Barley, Oats, hemp and Tobacco at the option of the payer, but it is conjectured that payment will be made almost wholly in Indian Corn & Tobacco. I am in hopes that, on those acts of the legislature, we shall be enabled to comply with your requisition as to the specific article and quantity required, as we may retain the Tax in its specific form instead of converting it into money: but we shall fail in point of time; because it happens, that the ultimate term

of paiment allowed for this Tax is the Day on which your resolutions require delivery of it to your Commissary at such places as he shall appoint. In this point then will be felt the misfortune of the legislature's separation before receipt of the resolutions; the Executive having no powers to shorten the Day of paiment. I thought it my duty to give you this early notice of the particular part of that requisition, with which, from these circumstances we shall be unable to comply, that the ill effects of disappointment may be lessened by other timely measures.

The resolution of the 15th Instant recommending the continuance of embargoes is also received, that measure had been adopted some time ago as you will see by the proclamation inclosed.

I shall hereafter according to the desire of your Secretary transmit you copies of our acts of Assembly by which you will receive more minute information of the measures taken in consequence of your recommendations from time to time than the compass of a letter would admit.

END OF VOLUME II