

Exploring the Bounds of Liberty

Exploring the Bounds of
LIBERTY

*Political Writings of Colonial British
America from the Glorious Revolution
to the American Revolution*



VOLUME II

Edited and with an Introduction by
Jack P. Greene and Craig B. Yirush

Latin Translations by Kathleen Alvis



LIBERTY FUND

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The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word “freedom” (*amagi*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

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William Smith,
Mr. Smith's Opinion Humbly Offered
to the General Assembly
of the Colony of New-York
(New York, 1734)



WILLIAM COSBY arrived in New York to assume the governorship in August 1732 from Rip Van Dam, who as president of the Council had assumed the administration of the colony upon the death of Governor John Montgomerie in 1731. Cosby and Van Dam quickly got into a legal dispute over Van Dam's claims to half of the governor's salary and other income while the latter was acting governor, and, fearful of losing a case against the popular Van Dam in a jury trial, Cosby created an equity court in which he would act as presiding officer to hear the case. This action produced a groundswell of concern from people concerned to prevent Cosby from acting arbitrarily, the inhabitants of three political jurisdictions presenting petitions to the New York Assembly asking for measures that would deprive all governors of the power to establish courts without an act of the legislature. Divided between those who supported and opposed Cosby, the Assembly invited two of New York's most distinguished lawyers, William Smith and Joseph Murray, to speak to them on this issue and subsequently had both speeches published by the local press. Smith spoke first on June 7, 1734.

A graduate of Yale College and sometime student at the London Inns of Court, Smith displayed impressive learning in constructing his case in favor of the petitioners' challenge to Cosby's authority and their contention that

only the New York legislature could erect courts in the colony. Citing a long list of English court cases and parliamentary acts to show that British kings could not create a court of equity "*without the Consent of the Legislature*," he argued that, inasmuch as New Yorkers, as part of their "*Birth-right*" as English people, had "*the same fundamental Rights, Privileges and Liberties*" as "*the People of England*," including "*a Right to choose the Laws by which we will be governed*" and "*a Right to be governed only by such Laws*" because "*Our American abode*" had "*put no Limitation on these Rights*," no court of equity within the colony could "*legally have any Being or Authority, without such Consent*" of the provincial legislature. "*To affirm this Power in the Crown, without an Act of the Legislature*," he declared, supposed the Crown "*to be vested with an Arbitrary Authority over*" its *American Subjects*, with Power to impose *New Laws* without their Consent; which would be to alter the Constitution, and deprive us of one of the chief Privileges, which we justly glory in, as the *Birth-right of English-men*." He urged the Assembly to "*prize and value*" the liberties and laws New Yorkers had received as "*an Inheritance transmitted to us in the Blood of our Fathers*." (J.P.G.)

Mr. *Smith's*
OPINION
Humbly Offered to the
General Assembly
OF THE
Colony of NEW-YORK,
One {sic} the Seventh of JUNE, 1734
At their Request.

Occasion'd by sundry Petitions of the Inhabitants of the
City of *New-York*, *Westchester County* & *Queens-County*,
to the said General Assembly, praying an Establishment of
COURTS of JUSTICE within the said Colony by Act of
the Legislature.

Published at the Request of the said General Assembly.

*Major Haereditas venit unicuiq; nostrum a Jure & Legibus,
quam a Parentibus:*¹

Cicero. 2 Inst. 56.

Printed and Sold by *William Bradford* in the City of *New-York*, 1734.

1. ["From our justice and laws comes to every single one of us a greater inheritance than from our parents."]

Mr. Smith's Opinion, relating to Courts of
Equity within the Colony of New-York,
Humbly offered to the General Assembly
of the said Colony, at their Request, on the
Ninth of June, 1734.

That the Reader may the better understand the Purport of the ensuing Opinion, it may not be amiss to give some account of the Occasion of it, and the Matters to which it refers; which are briefly these, viz. Sundry Inhabitants of the City of New-York, having presented their Petition to the Honourable, the General Assembly of the Province of New-York,

Humbly shewing, That the said Petitioners being Inhabitants of the Province of New-York, part of the Dominions of Great Britain, they did take themselves to be entitled to the Liberties of English-men.

And they also alledged,

That it is well known, that the Fees of the Lawyers, and all the Officers of the Government are settled by Ordinance of the Governour and Council only and not by Act of the Legislature, as they ought to be by the Laws of England; And that the Courts are not established by Act of Assembly, as by the Laws of England they also ought to be, especially the Court of Equity, lately erected in the Supreme Court of this Province, which they take to be a Grievance, and destructive to the Liberties of the People, as it is now constituted. And they the said Petitioners, did thereby humbly pray Relief in the Premises, which they were induced to hope, would be speedily given, their Honours having (some time since) Resolved, That the erecting Courts of Equity, without consent in General Assembly, was Illegal, and an infringement on the Liberties of the Subject; they therefore pray'd their Honours, that they would settle the Fees of the Lawyers, and Officers of the Government, and the Courts of Justice, by an Act or Acts of the General Assembly, in such manner as their Honours should judge to be most conducive, to preserve the Liberties and Properties of his Majesty's Subjects, from any Encroachment, and their Petitioners, as in duty bound, would ever pray.

There were Petitions of the like Import from the County of Westchester, and Queens-County, which, as appears by the printed Proceedings of the

House, were (according to Order) taken into Consideration on Friday the 31st of May, 1734, and after some Debate on that part which relates to the Courts of Justice (a Bill having been ordered on the 23d of the same Month, to be brought in for the Regulating and Establishing of Fees) it was Resolved, That the further Consideration of the same should be referred to Friday then next following; and that Mr. Murray and Mr. Smith should be desired to attend at that time, for the further Information of the House, upon the subject Matter thereof. Upon which Day, the House being informed, that Mr. Murray and Mr. Smith did attend without, it was Resolved, That they should be heard, on the subject Matter of the three Petitions mentioned, on the 31st of May last, and be desired, that they would, on that part which relates to Courts of Justice, give their real Opinion, Candidly, Sincerely, and upon Honour; and that none of the Members should interfere or interrupt them therein. Then the Gentlemen above-named were called in, and the Doors opened for all Auditors. The several Members being first seated in their Places, the Petitions were read, and the Speaker having opened the importance of them, asked Mr. Murray and Mr. Smith, Whether they were prepared to inform the House of their real Opinion, on the subject Matter above-mentioned, which he desired might be done candidly, sincerely, and upon honour? Whereupon Mr. Smith said to this effect,

Mr. Speaker;

I Shall deliver my Opinion on the Questions arising on these Petitions, with all that *sincerity* which is desired. The value which this House has put upon it, adds to the weight of Obligation, that I lye under so to do. I am convinc'd that the Matter of the Petitions is of that Consequence and Importance to the Welfare of this Colony, which you are pleased to mention; and tho' the little time allowed me, and the continual Interruptions I have met with, from the ordinary course of my Business, has not permitted me to be so well prepared as I cou'd have wish'd to have been; yet having for some years past, had occasion, either in matters which concerned my self or others, to study the Points that are now under Consideration, I shall therefore, without any delay, acquit myself of the Duty with which this House has honour'd me, by giving you my Opinion, with all that Freedom and Impartiality which the Importance of the Case, and nature of the Trust, which this House has reposed in me, does require.

I think, Sir, the whole Matter of the present Debate, will resolve it self into this double Enquiry,

1. *Whether the King can, in England, erect a Court of Equity without the Consent of the Legislature?*
2. *If not, then Whether a Court of Equity within this Colony, can legally have any Being or Authority, without such Consent?*

The Answer to these Questions, together with what I take to be the Reason of the Law in the case, will comprehend the whole of what I have to offer on this Occasion.

First, then, I conceive that the King cannot erect a *Court of Equity* in *England*, without the Consent of the Legislature there.

That the Law is clearly so, appears to me from the Opinion of some of the greatest Lawyers of the *English Nation*, sundry ajudged Cases expresly in Point, and several Acts of Parliament, which either suppose or declare it.

Sir *Edward Coke*, who was Lord Chief Justice of *England* in the Reign of King *James* the First, whose great Learning has dignified him with the Stile and Title of The ORACLE OF LAW, treating of the *Court of Equity* before the Mayor of *London*, Notes,^[1] "That a *Court of Equity* may be had by *Prescription*, but cannot be raised by *Grant*." And treating concerning the *Court of the President and Council* in the Dominion and Principality of *Wales*, he says,^[2] "A *Commission* without an *Act of Parliament*, cannot raise a *Court of Equity*."

Sir *Henry Hobart*, who was Lord chief Justice of the Common Pleas, in the Reign of the same King, in the case of *Martin* against *Marshal* and *Key*,^[3] says,

That the King cannot grant any thing in derogation of the Common Law, but *tenere placita*, that is, to hold Pleas according to the course of the Common Law, may be granted.

He afterwards adds,

That all Kingdoms in their Constitution, are with the Power of Justice, according to Law and Equity, which being in the King, as Sovereign, were

[1]. 4 Institut. 248.

[2]. 4 Inst. 242.

[3]. pag. 63 of his Reports.

after settled in several Courts, as the Light being first made by God, was after settled in the great Bodies of the Sun and Moon. But that part of Equity being opposite to regular Law, and in a manner an Arbitrary disposition, is still administred by the King himself, and his Chancellor, in his Name, *ab initio*,² as a *special Trust committed to the King*, and not by him to be committed to any other.

Sir *Matthew Hale*, who was first Chief Baron of the *Exchequer*, and afterwards Lord Chief Justice of *England*, one of the greatest Men that ever adorn'd the Law, or grac'd the Bench^[4] speaking of the King's temporal Jurisdiction, says,

It consists, *first*, in erecting Courts by his *Great Seal*, so that they be Courts of Common Law; for a *Court of Equity* cannot now be erected, but by Act of Parliament.

Hence it appears that these great Men, all agree, That without an *Act of Legislature*, the King cannot erect a *Court of Equity*. There are many Books which confirm the same Doctrine, which I need not mention, save only the two following.

Wood in his *Institutes*, 460. says, "That *No Court of Equity* can be erected by *Grant* or *Commission*, but must be held by virtue of *Prescription* or *Act of Parliament*." And *Lilly*^[5] says,

That a Court that holds Plea by virtue of *Letters Patent*, ought to proceed according to the course of the *Common Law*; for *No Patent* ought to be granted against the course of the *Common Law*.

These two last mention'd Writers I do not rely on, as having any original Authority; all the credit they have with me, consists in their Conformity to either adjudged Cases, or the Writings of those Learned Men, whose Works they Transcribe.

I pass from the *Opinions* of great Lawyers to *adjudged Cases*, which serve to confirm the same Doctrine. Thus in the Kings Bench, in *Michaelmass Term*, in the 26 and 27 years of the Reign of Queen *Elizabeth*^[6]

2. ["From the beginning."]

[4]. in his *Analysis*, p. 20.

[5]. in his first *Abridgment*, p. 370.

[6]. 4 *Inst.* 87.

in a *Praemunire*³ between *John Perrot*, Plaintiff, and *T. M. H. W.* and others, Defendants; it was Resolved by Sir *Christopher Wray*, Chief Justice, and the Court of Kings Bench, That the Queen cou'd not raise a *Court of Equity*, by her *Letters Patents*; and that there cou'd be *No Court of Equity*, but by *Act of Parliament*, or by *Prescription*, Time out of Mind of Man.

This my Lord *Coke*^[7] mentions, as one of those Cases.

Which upon great and mature Deliberation, had been resolved, by the Judges of the Realm; and whereunto he was Privy, and well acquainted with; which he thought good to report, and publish for the better Direction, in like Cases thereafter.

My Lord *Coke* in the Margin takes Notice, that the above Resolution, was against the *Court of Requests*; with relation to which,^[8] he informs us,

That in the Reign of *Hen. 8.* the *Masters of Requests* thought (as they intended) to strengthen their Jurisdiction by Commission to hear and determine Causes in Equity. But these Commissions being not warranted in Law (for no Court of Equity can be raised by Commission) soon vanished; for that it had neither Act of Parliament nor Prescription, time out of Mind of Man to establish it.

Another adjudged Case which I find, was in the *Court of Common Pleas*, in *Trinity Term*, in the sixth Year of King *James*.^[9] This Case was adjudged, with respect to the Court before the *President and Council in the North*; which my Lord *Coke* says, "Was neither warranted by Act of Parliament, nor by Prescription"; but raised by Commission, issued by King *Hen. 8.* for the Suppression of the Tumults, and Insurrections, which were occasioned by the *Dissolution* of the *Monasteries*. In which *Commissions*, there was a Power, to hear and determine certain Offences therein specified, according to the Law and Custom of the Kingdom of *England*, "*vel aliter secundum sanas discretiones vestras*," That is, or *Otherwise according to your sound Discretions*. Whereupon my Lord *Coke* observes, that it was Resolved by all the

3. [*Praemunire* from *praemoneri*. Literally, "You cause a person to be warned"; i.e., a writ directing the sheriff that "you cause a person to be warned" to appear in court to answer the charge of contempt.—Tr.]

[7]. 4 Inst. 87.

[8]. 4 Inst. p. 97.

[9]. 4 Inst. 245.

Judges of the *Court of Common Pleas*, that this Clause is against Law, as the like had been formerly often resolved. There was also in the same Commission, a Power to hear and determine Actions real and personal, in like manner, according to the Laws of *England*, or otherwise, according to their sound Discretions; but my Lord *Coke* takes Notice, that it was then also clearly resolved, that this latter Clause, to enable them to hear and determine according to their Discretion, was against Law, not only for the Cause aforesaid, but also, for that Actions, real and personal, were not to be heard and determined by Commission; but according to the Laws of the Realm.

Another Resolution which I find in Point, was, in the *Court of Chancery* in the 11th of King *James*, in the Earl of *Derby's* Case,^[10] In that Case, among other Things, it was resolved by the Lord Chancellor, and by the Chief Justice of *England*, the Master of the Rolls, Justice *Dodderidge* and Justice *Winch*, whom the Lord Chancellor called to be his Assistants, "That the King cannot make any Commission to hear and determine any Matter of Equity." Thus be the Judgments of the three greatest Courts of *Westminster*; the King by his Letters Patent or Commission cannot erect a Court of Equity. But that he may do it by Consent in Parliament, I believe never yet was made a Question.

I come now to the third ground of my Opinion on this Head; and it is taken from Acts of Parliament, which either imply or declare, That the King by his sole Authority cannot erect any Court of Equity.

First, Because all those Courts, whose Jurisdiction in Equity have been allowed; had their Authority by Prescription, before the Time of Memory; or if within the Time of Memory, they have their whole Power by Act of Parliament: And even those Courts, which existed before Time of Memory, have always been under the Check and Controul of the Parliament, and have had their Powers enlarged, restrained or confirmed by Acts of Parliament, as will appear from a Variety of Instances.

First, With respect to the high *Courts of Chancery*; I think it is generally agreed, that originally the Chancery was no more than an *Officium* or *Officina Brevium*, an Office or Shop of Writs; to which the Subject might go to purchase such Writs as his Case required, and the Law would allow him; upon which Writs so purchased, not the Chancery, but other Courts, did proceed to relieve the Subject. Many of our *Saxon* Kings had Chancellors,

[10]. 12 Co. R. p. 114, and 4 Inst. 213.

as my Lord Coke makes evident;^(a) as also does Sir Hen. Spelman; (*Gloss sub verbo Chancellerius*⁴) But Mr. Selden, in his Historical and Political Discourses of the Laws of England, under the Reigns of Ed. 3. & Rich. 2. published by Nicholas Bacon Esq; (Page 23) says, this Great Man (meaning the Chancellor) at the first, was no better than a Register, or the King's Remembrancer or Secretary. And he doubts whether the Chancery had attained the Title of a Court, so early as King Stephen's Time, contrary to the Opinion of my Lord Coke,^(b) who supposes it was a Court in the Time of K. Etheldred, whose Reign began in the Year 978. He takes Notice, that my Lord Coke founds his Opinion on a Testimony cited out of the History of Ely, which Mr. Selden thinks^(c) will not warrant it; for a Reason which he there gives; and observes that Fleta who wrote in later Times, calls it not a Court but an Office; his Words are, *Est Inter caetera quoddam Officium quod dicitur Cancellaria.*^{5 (d)} Nevertheless says Mr. Selden,

It is clear that these Times (*To wit*, the Reigns of Edward the 3d. and Richard 2.) brought it to that Condition, that it might carry that Name, if formerly it had it not. For it grew very fast, both in Honour and Power; and this not by Usurpation (tho it did exceed) but by express Donation, from the Parliament. Yet (says he) is this Power much darkned in the Limits and Extent of it, chiefly in regard, that the Chancellor is intrusted with many Things, whereof there is no Evidence for the Chancery to claim any Cognizance.

Then he takes Notice of sundry Acts of Parliament, in those Reigns, granting Power to the Chancery; so that (says he) "It is clear enough, that the Parliament intended, that it should be a Court, and gave their Seal to its Power of Judicature." In this Part of his Discourse, this Author seems to confine himself to the legal Powers of the Chancery; whereby, as my Lord Coke^(e) says, "The Lord Chancellor or Lord Keeper, proceeds according to the right Line of the Laws and Statutes of the Realm." But afterwards, he

(a). 4 Inst. 78.

4. ["Explanation under the word *chancellarius*."]

(b). 4 Inst. 78.

(c). id. Pag 21.

5. ["There is among the other courts a certain Office which is called the Chancery."]

(d). *Fleta* lib. 2, cap. 13.

(e). 4 Inst. 79.

takes Notice, that it had even at that Time an Equity Power likewise, and with respect to both the one and the other, he observes, that the Power of Judicature in those Days, did not rest in the Breast of one Chancellor, but in him jointly with other Council of the King; who were also learned Judges of the Law: which Observation he confirms by an Instance there given (Page 22, and several Authorities in the Margin) and adds, That the same is more evident, by the Title of Bills in those Times, exhibited in the Chancery; which were directed to the Chancellor, and the King's Council, & the Rule given *per tout les Justices*, that is, by all the Justices.

Upon the whole it appears evidently, that it was the Opinion of this very learned Antiquary, that in the Reigns of *Edward 3*, and *Richard 2*. the Chancery had the Title of a *Court*, and at that Day was more than a *Shop of Writs*, and that it had a Jurisdiction, both according to the Course of the *Common Law*, and a Course of Equity; but the precise Time, when the Jurisdiction of either began, is left by him uncertain.

My Lord Coke^(f) treating of the legal Jurisdiction of the Courts of Chancery^(g) observes, That the Stile of the Kings Bench is *Coram Rege*, that is, before the King, and the Stile of this Court of Chancery is *Coram Rege in Cancellaria et additio probat Minoritatem*; that is, before the King in the Chancery, and the addition proves its Minority. From whence it would seem, that it had its Juisdiction later than the Court of Kings Bench; and he plainly declares it to be subordinate to it, in that upon a Judgment given in this Court, a *Writ of Error* lyes returnable into the *Kings Bench*, and he hints at what seems to be good Reason why it should be so, because in this Court the *Lord Chancellor* or the *Lord Keeper*, is the *sole Judge*; and in the *Kings Bench* there are *four Judges* at the least. However, tho' this seems to prove, that the *Chancery* had its legal Power or Authority later, in time, than the *Kings Bench*, yet it proves not the Date of the *Jurisdiction* of either, nor how that Court at first acquired, nor when it first exercised its *Equity Jurisdiction*. But my Lord Coke in his Exposition of the Statute called *Articuli super Chartas*,⁶ made in the 28th year of King *Edward* the first, lays it is mainly opposed, that at that Time (to wit, the 28th year of that King) the Chancellor had *No Court of Equity*, but only a *Court of Record* of Ordinary

(f). 4 Institut. 80.

(g). 4 Inst. 80.

6. ["Articles in addition to the Charters."]

Jurisdiction, according to the course of the *Common Law*, and quotes the Authority of Mr. *Lambert*, who (he says) “was a *Master in Chancery*, and had the keeping of the Records of the Tower,” and had abridg’d many of the Principal of them (which he had seen)

and was well learned, and besides, a great Searcher into Antiquity, who in his Treatise of the *Jurisdiction of Courts*, saith, That he could not find that the *Chancellor* held any *Court of Equity* before *Edward* the IVth’s Time.—And (says he) he who has advisedly read our Antient Authors

(by which, in the Margin, it appears that he meant *Glanvil*, *Bracton*, *Britton*, *Fleta* and the *Mirror*) which speak of the *Court of Chancery*, will observe, that they all speak of the *Ordinary Jurisdiction* of the *Chancellor*, but none of them of a *Court of Equity*. My Lord *Coke* proceeds, and says,

That the Book, called, *The Diversity of Courts*, written in the Reign of *Edward* the 3d, treateth of the *Jurisdiction of the Chancellor*, according to his *Ordinary Power*, but Nothing of that which he holdeth in *Causes of Equity*. Neither, (says he) shall you find in any Book-case or Reports of the Law, any mention made of any *Court of Equity* before or in the Reign of *Henry* V. and yet all of them speak of the *Ordinary Power* or *Jurisdiction* of the *Chancellor*. But in the Reign of *Henry* VI. and *Eward* IV. Cases have been reported, where the *Chancellor* has heard some few *Causes in Equity by English Bill*.

The same Author afterwards tells us,

That it is thought that this *Court of Equity* began under *Henry Beauford*, Son of *John of Gaunt*, that great Bishop of *Winchester*, afterwards Cardinal in the Reign of *Henry* V. and in the beginning of *Henry* VI. and increased while *John Kemp*, Bishop of *York*, and Cardinal, was Lord Chancellor, in the 28 year of *Henry* VI.

But that it increased most of all when *Cardinal Wolsey* was Lord Chancellor of *England*, in the 8th year of *Henry* 8, and continued until the 21th year of the same King, of whom the old Saying was verified, *That Great Men in Judicial Places will never want Authority*.

Thus far as to the Rise and Progress of the *Court of Chancery*, according to my Lord *Coke*. But tho’ Mr. *Lambert*, on whom my Lord *Coke* builds, could not find among the Records in his custody, any Traces of the Antiquity, of

the *Equity Jurisdiction* of the *Chancellor*, higher than *Henry IV*'s Time yet I think it is very evident, from the Accounts given by *Mr. Selden*, That the *Court of Chancery* had an *Equity Jurisdiction* in *Edward* the 3d's Time; for it appears that two Acts of Parliament for the Regulation of its Proceedings, were made in the 37 and 38 years of that King. Upon which *Mr. Selden*, in his before-mentioned Discourses,^(b) writes thus,

*It seems (says he) that they, to wit, the Proceedings of the Equity side of the Chancery, had been formerly very Irregular, and that contrary to the grand Charter, upon a bare suggestion in the Chancery, the Party complained of was imprisoned, and no Proceedings made thereupon. For Remedy whereof, it was Ordained,^(c) That upon Suggestions so made, the Complainer was to find Sureties, to pursue the Suggestions, and the Process of Law should issue forth against the Party, without imprisoning him; and if the Suggestions were not proved True, the Complainant should incur the like Penalty, that the Defendant should have done, in case he had been found Guilty. But afterwards (says he) this latter clause was altered by another Statute,^(d) because it was full of Incertainty; and it was Ordained, That in such case the Complainant shall be imprisoned until he shall satisfie the Defendant of his Damages; and furthermore, shall make Fine and Ransom to the King. But, (says *Mr. Selden*) Because the Defendant many times held his Advantage even to Extremity, this course lasted not long, but a New Law was made,^(e) which put the Power of awarding Damages, in such cases, into the Chancellor, to do according to his Discretion.*

From these Statutes, it seems to me, unquestionably certain, That the *Equity Jurisdiction* of the *Chancery* must have had its being something earlier than the making of either of them, to wit, sometime before the 37th year of *Edward* the Third.

Sir Henry Spelman before-mentioned, a very learned Antiquary,^(f) speaking of the *Chancellor* and *Chancery*, after the Times of the *Norman Kings*,

(b). Pag. 23.

(c). 37 Edw. 3, c. 17.

(d). 38 Ed. 3, c. 9.

(e). 17 Rich. 2. cap. 6.

(f). In his *Diatribes de Cancellario* Gloss 125. {The printing is not legible; possibly means a scholarly explanation of the term *cancellarius*.—Tr.}

(who begun in *William the Conqueror, Anno 1066.* and ended in *King Stephen*, who died *Anno. 1154.*) says to this Effect, *viz.*

That in old Times, the Chancellor held no Court either of *Law* or *Equity*. Therefore when the *Black Book* of the *Exchequer*, makes mention of the *Chancery*, under the Reign of *Hen. 2.* and *Bracton*, under *Hen. 3.* they are not to be understood of a *Court*, but of a *Shop* of *Writs* and *Royal Charters*. In which sense nevertheless (says he) the Author of the now *New Narrations* seems to have called it a *Court*, saying, *The Court of the Kings Chancery*, is the *Ordinary Court* for issuing the *Kings Writs*, but not for holding *Common Pleas*. Moreover (says he) *Briton*, who has given an exact Account of all the *Courts of Justice* in *Ed.* the first's Time, does not speak one Word of this Court, nor any other, that I know of, before the Time of *Ed. 3.* or about his Time.

A late Writer of a Book, entitled, *The Legal Jurisdiction of the Chancery stated*, (page 30.) undertakes to fix the *Æra* of it in the 22th Year of *Ed. 3.* tho' he confesses, That there are some Intimations in Books, as if it was earlier in that Reign; and he says, most probably the *Chancellors Jurisdiction in Equity*, took its publick authoritative Commencement, from a *Writ* or *Proclamation*, which he had transcribed from the Original Words on the Roll, and it is in *English* thus,

The King to the Sheriffs of London greeting; Forasmuch as we are greatly and daily busied, in various Affairs concerning us, and the State of our Realm of England, We will, That whatsoever Business relating as well to the Common Law of our Kingdom, as our Special Grace cognizable before us, from henceforth, be prosecuted as followeth, viz. The Common Law Business before the Arch-Bp. of Canterbury elect our Chancellor, by him to be dispatched; and the other Matters grantable by our special Grace, be prosecuted before our said Chancellor, or our well beloved Clerk the Keeper of the Privy-Seal, so that they, or one of them, transmit to us such Petitions of Business, which without consulting us, they cannot determine, together with their Advice thereupon, without any further Prosecution to be had before us for the same, that upon Inspection thereof, we may further signify to the aforesaid Chancellor or Keeper, our Will and Pleasure therein; and that none other do for the future, pursue such kind of Business before us, We command you immediately upon Sight hereof, to make Proclamation of the Premises, in those Places, which to you shall seem expedient, in Form aforesaid; and this you must not omit.

Witness the King himself, at *Langley*, 13th Day of *January*, in the 22d Year of his Reign.

This referring of GRACE to the Chancellor, seems to have laid the Foundation of *Equity*, in the *Court of Chancery*, says this Writer; and that after this Time, the Chancellor did exercise a *Jurisdiction* in Matters of *Equity*: He infers very justly from *Rol. Parl. 45 Ed. 3. No. 24.* which is printed in *Rolls*, 1 *Ab.* 372. and because that in the Beginning of the next Reign, *viz. Rich. 2.* Complaints are made in Parliament of the Exercise of this Power, to the Subversion of the Common Law; which Complaints he there cites.

And to the like Purpose also, my Lord Coke tells us^(k) {The footnotes in this document skip from “f” to “k.”}

That in the Parliament holden in the 13th *Rich. 2.* the Commons petitioned, that neither the *Chancellor* nor other *Councillour*, do make any Order, against the Common Law. And in the same Parliament another Petition, was, That no Person shou'd appear upon a Writ *de quibusdam certis de Causis*,⁷ before the Chancellor, or any other of the Council, where Recovery is given by the Common Law.

Richard the Second, was a very Arbitrary Prince, and it appears, that he gave but slender Answers to these Petitions, and the Remedy not being obtained, therefore we find another Petition from the Commons, in 2d Years of *Henry IV.* which was,

That no Writs or Privy-Seals, be issued out of the Chancery, Exchequer, or other Places, to any Man, to appear at a Day, upon a Pain, either before the King and his Council, or any other Place, *contrary to the ordinary course of the Common Law*, whereunto the King answered, that no such Writs should be granted, *without Necessity.*^(l)

But the same Grievance continuing, we find that the Commons renewed their Complaint, and in the 3d Year of *Hen. V.* petitioned the King,

That all Writs of *Subpena*, & *Certis de Causis* going out of the Chancery and the Exchequer, may be enrolled, and not granted of Matters

(k). 4 Inst. 82.

7. [Literally, “For certain reasons,” i.e., an older writ directing a person to appear “for certain reasons.”—Tr.]

(l). 4 Inst. 83.

determinable at Common Law, on Pain that the Plaintiff do pay by way of Debt to the Defendant *Forty Pounds*.

Whereunto is answered, *The King will be advised, (Id Ibid)* But the Grievance still continuing, the Parliament do not cease endeavouring to obtain a Remedy, and my Lord Coke tells us, That in the 9th *Hen. V.* it is Enacted, to endure until the next Parliament, that the Exception (how that the Party hath sufficient Remedy at the Common Law) shall discharge any Matters in Chancery. And he says, that at the next Parliament, you shall find a Petition in these Words,

No Man to be called by Privy-Seal or Subpena, to answer any Matters but such as have no Remedy by the Common Law; and that to appear so *by the Testimony of two Justices of either Bench, and by Indenture between them and the Plaintiff*; which Plaintiff shall always appear in proper Person, and find Surety by Recognizance to prosecute with Effect, the Matters of the Bill only; and to answer Damages, if the same fall out against the Plaintiff.

It does not appear that this Petition, then had its desired Effect, yet my Lord Coke Notes thereon, *That never good Petition in Parliament dyed, but first or last will take Effect.*

And we find, that these Struggles in Parliament, thro' three successive Reigns, against the Encroachments of this *New Power* in the *Chancery*, at length produced an Act, in the 15th year of *Henry the 6th*, for a perpetual Law, and the true *Jurisdiction of this Court*, wherein my Lord Coke observes, it is Enacted in these words,

Forasmuch as divers Persons have, before this time, been greatly grieved by Writs of Subpena, purchased for Matters determinable by the Common Law of this Land, to the great Damage of such Persons, so vexed, in subversion and impediment of the Common Law aforesaid, Our Sovereign Lord the King Wills, that the Statutes thereof made, shall be kept after the form and effect of the same; and that no Writ of Subpena be granted from henceforth, till Surety be found to satisfie the party so grieved and vexed, for his Damages and Expences; if so be, that the matter may not be made good, which is contained in the Bill.

In anno 31 *Hen. 6. cap. 2.* says he, *There is a Proviso in these words, "Provided that no Matter determinable by the Law of this Realm, shall be by the said Act determined, in other form than after the course of the same Law, in the Kings Courts, having determination of the same Law."*

Thus the *common Law*, in some measure, retrieved its ground, and became the sole Rule and Measure of Justice, in all Matters within its Cognizance, and nothing was left for the *Equity Jurisdiction* of the *Chancellor*, but those cases only for which the *common Law* had not provided any Remedy.

Upon the Whole of what has been said, with respect to the *Equity Jurisdiction* of this *High Court*, it seems to me, that the Parliament, in the most early Times, claimed a Right to the *moulding* and *fashioning* of it, and actually did give Laws to its Proceedings. And tho' it did, for three successive Reigns, continually complain of its *exorbitant Encroachments*; yet at length it put a Bridle upon its Powers, whereby it was hindred from intermeddling with any *Matter determinable by the common Laws of the Land*. And tho' it does not appear, that the *Equity Jurisdiction* of this Court was Originally derived from an *Act of Parliament*, yet it is very evident, that some part of its Authority, and the true Measure of its *Jurisdiction*, is wholly owing to the *Power of the Parliament*.

The same Observations that have been now made, with respect to this *Great Court of Equity*, before the *Lord Chancellor*, may be made with respect to all the rest of those *Equity Courts*, whose Original was before the Time of Memory.

As to the *Court of Equity* in the *Exchequer*, It has been doubted whether it had any being before the Reign of Henry the 8th; and my Lord Coke seems to leave it as a Doubt.^[1] However this might be, yet it appears, that by the *Stat. 33 Hen. 8. cap. 39.* That Court had full Power and Authority, where the *King's Debt or Duty is demanded*, to discharge the Person, upon Matter in Law, Reason and good *Conscience*, alledged and proved in Bar of such Demand. From whence it seems, that if it had any being before, yet it wanted an *Act of Parliament* to strengthen and confirm it.

It is very evident, that the *Court of Equity* before the Mayor of *London*, tho' held by *Prescription*, yet has been confirm'd by Parliament.^[2]

The *Court of Equity* of the *Dutchy of Lancaster*, was by *Grant*, with consent of Parliament, passed in the 10th of *Edw.* the 2d.^[3]

[1]. 4 Inst. 1 8. 119.

[2]. Hob. Rep. 63. 1 Lev. 310, 311.

[3]. 4 Inst. 204.

The *Court of Equity* before the *President and Council of Wales*, was strengthened and warranted by an Act of Parliament, in the 24th of *Henry the 8th*, *cap.* 26. with reference to a *Prescription*, which went before it.^[4]

The *Court of Equity* before the *Chamberlain of Chester*, had a being before *Time of Memory*; and if it did not at first derive its Authority from the Parliament, yet its *Jurisdiction* is allowed by the Statute of the 50th of *Edward the 3d*, which establishes the *Dutchy Court of Lancaster*, with an express Relation and Conformity to it.^[5]

The *Equity Courts* of the *Cinque Ports* have Acts of Parliament for them, says my Lord *Hobert*, in these Reports.^[6]

Thus, the most, if not all the *Courts of Equity*, that have subsisted from beyond the *Time of Memory*; have had *Acts of Parliament* to strengthen and support them, which seems to me to imply very strongly, that there was a Necessity for those Acts, and that such a *Jurisdiction*, tho' claimed and long used, has not met with full Allowance, till they had an express and known *Act of Parliament* to warrant them.

This Observation, probably, led my Lord *Hobert*, in the before cited case, to say,

That he held it to be a great Question, and of great Consideration to be admitted, that a *Court of Equity* should stand upon *Grant or Prescription Only*

In the 2d *Place*, What further convinces me of the Necessity of an Act of the *Legislature* to give Being and Authority to any *New Court of Equity*, is, That such *New Courts*, whose *Jurisdiction in Equity* have been allowed, have had their Authority from the *Parliament*; and such as depended upon the *King's Commission* or *Letters Patent* only, have been declared *Illegal*, and *Abolished* by Act of Parliament.

An Instance of the *First*, is, The *Court of Augmentations* of the Revenues of the Crown of *England*, this Court was erected by Authority of Parliament, in the 27th of *Henry the 8th*, and my Lord *Coke* says, "This Court could not be Erected but by Parliament, because a Chancellor and a Court of Equity were constituted."^[7]

[4]. 4 Inst. 242.

[5]. 4 Inst. 204, 212.

[6]. pag 63.

[7]. 4 Inst. 121.

An Instance of the latter kind, is, the *Court before the President and Council of the North*, The Commission on which it depended was declared to be against Law,^[8] as has been observed before. Now this, among several other Courts that had rendred themselves grievous to the Subject, were abolished by the Statute of 16 *Car. 1 Cap. 10.* by which among other Thing{s}, it is declared, *That neither his Majesty, or his Privy Council, have or ought to have, any Jurisdiction, Power or Authority, by English Bill, Petition, Articles, Libel, or any other Arbitrary Way, whatsoever, to examine or draw into Question, determine or dispose of the Lands, Tenements Hereditaments, Goods or Chattles of any of the Subjects of this Kingdom, but the same ought to be tryed and determined, in the Ordinary Courts of Justice, and by the ordinary Course of the Law.* This Act is declared to extend, not only to those Courts therein particularly Named, but to *all Courts of like Jurisdiction, to be thereafter Erected, Ordained, Constituted or Appointed as aforesaid, &c.*

Upon the whole, it seems to me abundantly evident, That inasmuch as all or the most of those Courts, which pretend to have had Authority by Prescription, have had Acts of Parliament to confirm and strengthen them, and those Courts whose Being and Authority commenc'd within later Times, and have had an allowed Jurisdiction, have been erected by the Parliament; and such as had only the King's Commission to support them, have been declared to be against LAW, and that not only by the concurrent Opinion of some of our most learned judges, who have wrote upon that Subject; But by the express Declaration of others, upon mature Deliberation, in the most solemn Acts of Judicature, and this not in one Court, nor one Case, but in several Cases, in three of the great Courts of *Westminster* before cited; and if we add to this, the express Declaration of the King, Lords and Commons in an Act of Parliament, that neither his Majesty or his Privy Council, have or ought to have such a Power, and the Courts that have been erected by such Power Only, have been abolished. I say after all this, I may very safely give it as my clear Opinion, *That no Court of Equity can now be erected in England, without the Consent of the Legislature,* which is my Answer to the first Question.

The second Question is, *If the King cannot, in England erect a Court of Equity, without the Consent of the Legislature, then whether a Court of*

[8]. 4 Inst. 245.

Equity within this Colony, can legally have any Being or Authority without such Consent?

This is the grand Question, and the Answer to it is, what most nearly concerns Us. What has been said under the former head, is but of little importance, But as it serves to clear up the Difficulty under this.

On the first Point, my Opinion was greatly supported with *Testimonies*, but on this it must chiefly rely upon the Authority of *Reason*, upon a fair Deduction from such Principles as are known and certain.

Whoever admits, that the King cannot erect a Court of Equity in England without the Consent of the Legislature, and yet affirms, that the King can erect such a Court within this Colony not without such Consent, shou'd shew that Law which enables him to do this.

For my part, I know of no Law to put the Plantations upon a different Footing from *England* in this Respect; I conceive nothing less than an *Act of Parliament* or an *Act of Assembly*, can alter the Law in this Point. And as I know of no such Act, *Therefore I am obliged to be of Opinion, THAT NO COURT OF EQUITY CAN LAWFULLY EXIST WITHIN THIS COLONY, WITHOUT CONSENT OF THE LEGISLATURE.*

I conceive that in the Main, we are under the same Constitution with the People of *England*. That the *Prerogatives of the Crown* and the *Liberties of the People* are the same here as there. 'Tis very evident that we have but one King; who bears the same relation to all his Subjects, as their common Head and Father, who deals not with one as a *Son*, and with another as a *Slave*, but with *all* as *Children*. And as the Bonds of *Duty* and *Allegiance* equally oblige them all, so all have an equal Share in His Paternal Care and Protection.

It is but one Oath that the King takes at his Coronation, with respect to the Government of the People of *England*, and People here. By which Oath, according to the Act of Parliament.^(a) He promises and swears, *To govern the People of England, and the Dominions thereunto belonging, according to the Statutes in Parliament agreed on, and the Laws and Customs of the same.*

Hence the Subjects inhabiting the remotest Dominions, belonging to *England*, are to be governed by the same Laws, as the People inhabiting within the Realm. And as the People of this Colony, are governed by the

[a]. In the 1st *Wm. & M. Cap.* 6.

same Prince, according to the *same Laws*, with the People of *England*, it seems clearly to follow from thence, That the King cannot *Erect a Court of Equity* within this Colony, without *Consent of the Legislature*, because by the *Laws of England*, he cannot erect such Court there, without such Consent.

There is no Doubt but that if the Parliament in *England*, should give to the King a Power to erect *New Courts of Equity* in the *Plantations*, or if the Power to erect a *New Court of Equity* within this Colony, was by Act of Assembly lodged in the Crown, then the King's *Letters Patent* or *Commission*, pursuant to such Power, would lawfully create such a Court, but this is no Part of the present Question. None ever doubted but that a Court created pursuant to a Power given, by *Act of the Legislature*, would legally exist; but the Enquiry is, Whether such a Court can lawfully stand, within this Colony, upon any other Foundation, than such an Act?

To affirm this Power in the Crown, without an *Act of the Legislature*, in my humble Opinion, supposes his Majesty to be vested with an *Arbitrary Authority* over his *American Subjects*, with Power to impose *New Laws*, without their Consent; which would be to alter the Constitution, and deprive us of one of the chief Privileges, which we justly glory in, as the *Birth-right of English-men*.

Nothing is more certain, than that His most gracious Majesty in His great Goodness to His People here, claims no Power to *alter the Laws*, or to put His Subjects here under the Government of any other, than the known *Laws of England*, or of *this Country*, which they or their Ancestors have chosen. Therefore his Majesty's 45th Instruction to his late Excellency, Governor *Montgomerie*, was in these Words,

You shall take care that no Mans Life, Member, Freehold or Goods be taken away or harmed in Our said Province, otherwise than by established or known Laws, not repugnant to, but as much as may be agreeable to the Laws of this Kingdom.

To this purpose also, all the Commissions to the Judges of this Province, which I have seen, are,

To Hear, Try and Determine all Pleas whatsoever, Civil, Criminal and Mixt, according to the Laws, Statutes and Customs of the Kingdom of *England*, and the Laws and Usages of the Province of *New-York*, not being Repugnant thereto.

And as his Majesty does not claim any Right to govern his Subjects here by any *Arbitrary Authority*, but by known Laws, so the Introduction of an *Arbitrary Government* in the Plantations, has been very heinously resented by an English Parliament, in the Case of the *Earl of Clarendon*;^(b) the 8th Article of Impeachment against the Earl was, “*That he had introduced an Arbitrary Government in his Majesty’s foreign Plantations, and had caused such as complained thereof before his Majesty and Council to be long imprisoned for so doing.*”

From all which it seems, that the Government in *England* does, and always has, look’d upon the Plantations as having the same Privileges with the People of *England*; and that the *Prerogatives of the Crown*, and the *Peoples Liberty*, are regulated by and under the Protection of the *same Laws* here as in *England*.

Hence it seems undeniably to follow, that We in this Colony, have a Right to *Magna Charta*, the Effect of which in part is, *That no Man shall loose his Life, Liberty or Estate, but by the Judgment of his Peers, and the Law of the Land.*

Now “*by the Law of the Land,*” according to my Lord Coke,^(c) “we are to understand the *Common Law, Statute Law, or Custom of England,*” which are known Laws, and such as have provided a Rule for the Administration of Justice, not dependent on the Discretion of a *Chancellor*.

If We in this Colony are entitled to the *Privileges of English-men*, then we also share in all the Benefits contained in the Petition of Right,^(d) by which the *Liberties* contained in the *great Charter*, and other *ancient Statutes*, are declared to be the Right of the Subject.

For the like Reason, we in this Colony also share in the Benefit of the Statute,^(e) by which it is declared,

That neither his Majesty nor his Privy Council, have, or ought to have any Jurisdiction, Power or Authority by English Bill, Petition, Articles, Libels, or any other *Arbitrary way* whatsoever, to examine or draw into Question, determine or dispose of the *Lands, Tenements, Hereditaments, Goods or Chattles*, of any of the Subjects of this Kingdom, but the same

(b). State Tryals 2 Vol. 3. 4.

(c). 2 Inst. 46.

(d). 3 Car. 1.

(e). 16 Car. 1 cap. 10.

ought to be tryed and determined in the *Ordinary Courts of Justice*, and by the *ordinary Course of the Law*.

Now it is very evident, as will be observed by and by, That the Rule of an Equity Court is often opposite to the Rule of the common Law, and the Proceedings of such Courts are always different from the ordinary Course of the Law; so that to suppose a Power to erect such Courts in the Crown independent of the Legislature, supposes a Power to deprive the Subject of the Privileges declared in these Statutes, and that without their Consent.

Upon the whole of what has been offered, I conceive, that if the People of this Colony are entitled to the Birth-right of English-men, if the Prerogatives of the Crown, and the Liberties of the Subject, are the same here as in *England*, as they must be, if we are under the Government of the same Prince and the same Laws; which are the common Rule and Measure of both, then *what is not lawful in England, cannot be lawful here*, and consequently *if no Court of Equity can be erected there, without Consent of the Legislature, so neither can such Court be erected here, without such Consent*.

The Sense of the Legislature in this Colony in all past Times, has been agreeable to what I have before advanc'd; for when a Court of Equity was by them thought necessary, they did consent to a Law to erect one, *Anno 1683*. by which among other Things it is declared,

That there shall be a Court of Chancery within this Province, which said Court shall have Power to hear and determine Matters of Equity, and shall be esteemed and accounted the Supreme Court of this Province. And be it further enacted, That the Governour and Council be the said Court of Chancery, and hold and keep the said Court, and the Governour may depute or nominate in his Stead a Chancellor, and be assisted with such other Persons as shall by him be thought fit and convenient, together with all necessary Clerks, &c.

This is a perpetual Law, and gave the Subject a lawful Court to have Recourse to, for such Relief as the common Law had not provided for him: And as the Assembly of this Colony, gave their Consent to the erecting a Court of Equity, when it was thought necessary; so, it appears that they have very frequently declared, against the erecting such Courts without such Consent. To this Purpose we find in the Journal of this House, on the 10th *November 1702*, an Entry in these Words, *viz.*

Capt. *Garton* reported from the Committee of Grievances, to whom the Petition of *William Hallet, Thomas Hicks &c.* and the Petition of *Richard Smith* was preferred, that they had examined and considered the same, and came to a Resolution which they had directed him to report to the House, and is as followeth, *viz.*

Resolved, That the setting up a Court of Equity in the Colony without Consent of General-Assembly, is an Innovation without any former President, inconvenient and contrary to the English Law.

Resolved, That the Court of Chancery as lately erected and managed here, was and is unwarrantable, a great Opression to the Subject, of pernicious Example and Consequence, That all Proceedings, Orders and Decrees in the same are and of Right ought to be declared Null and Void; and that a Bill be brought in accordingly to these two Resolutions, to which the House agreed.

I have been informed, that some time before the making these Resolves, my Lord *Bellomont*, had taken upon him (as far as in him lay) to suspend the Effect of the aforesaid Act of Assembly, whereby a Court of Chancery was erected; and by an Ordinance created a new Court of Chancery, to be holden *before himself, without the Council*, and that this was the Court of Equity, against which the said Resolves of this House were made, which Court continuing, We also find the following Resolves of this House to have been made in later Times, *viz.*

Die Sabat. ⁸ 8 h. A. M. 11 Sept. 1708.

Resolved, That the erecting a Court of Equity without Consent in General-Assembly, is contrary to Law, without President [sic], and of Dangerous Consequence to the Liberties and Properties of the Subjects.

Die Sabat. 24 November 1711.

Resolved, That the erecting a Court of Equity without Consent of General-Assembly, is contrary to Law, without President [sic], and of dangerous Consequence to the Liberty and Property of the Subject.

Die Sabat. 9 ho. A. M. 25 Nov. 1727.

Resolved, That the erecting or exercising in this Colony, a Court of Equity or Chancery (however it may be termed) without Consent in

8. ["On Saturday."]

General-Assembly, is unwarrantable and contrary to the Laws of *England*, a manifest Oppression, and Grievance to the Subjects, and of pernicious Consequence to their Liberties and Properties.

The Act thus made, and the repeated Resolves of former Assemblies, are an undeniable Testimony, that that Branch of the Legislature has heretofore been of Opinion, *That no Court of Equity could legally have any Being or Authority within this Colony, without their Consent.*

I might have passed immediately to show, what I conceive to be the Reason of the Law on the two Points mentioned, had not the Doctrine by me advanc'd, lain open to one Objection; which I have heard often mentioned, and which it behoves me to take some Notice of: The Objection is this, *viz. That though the King cannot erect a new Court of Equity, without Consent of the Legislature; yet the Court of Equity, in the Supreme Court of this Province, is an old Court, that has it's Existence and Authority by the common Law, and depends not upon the King's Power to erect any such Court.*

This Objection seems intirely to give up the Power of the Crown, to erect any such Court without Consent of the Legislature, and places its whole Authority upon the Basis of the common Law, independent of any Patent or Commission from the Crown, or Act of Legislation to give it an original Being and Authority; but in considering it, sundry Difficulties that attend the Opinion thereby advanc'd, have occured to me, which I have not been able to get over.

First, I have not been able to imagine how any Court even of common Law, whose Being and Jurisdiction is confin'd to this Colony, can with any Propriety be said to be *an old Court*: The Colony it self was planted but very lately, and no Court according to the common Law of *England*, can be supposed to have had any Being here, before the Settlement of the Country by the English, *Anno*. 1664, which some People still living, well remember.

It has also been exceeding difficult for me to imagine, how even a Court of common Law can have any Being here by the common Law of *England*, unless it has for its Foundation some general Custom of the Kingdom of *England*, or particular Custom of *England* or Act of Parliament. Now the common Law of *England* in the large Notion of it, consists of general Customs, particular Customs, and Statutes, according to that old Distich,

*Jus commune vetus; mores; consulta Senatus:
Haec tria jus Statuunt (Terra Britanna) tibi.*⁹

Therefore whatever Court exists here by the common Law, must be by Virtue of a general or particular Custom, or Act of Parliament of *England*; but that any Court in this Colony can exist by Virtue of any Custom of *England*, in my humble Opinion, seems in the Nature of Things altogether impossible, if we consider the Nature of the customary Law of *England*, and how it grew up into a Law, and compare it with the Condition and Circumstances of this Country.

The Author of the Book called *Doctor & Student*^(f) says,

The third Ground of the Law of *England*, standeth upon divers general Customs of old Time, used through all the Realm; which have been accepted and approved by our Sovereign Lord the King and his Progenitors, and all his Subjects; and because the said Customs be neither against the Law of God, nor the Law of Reason, and have been always taken to be good and necessary for the Common-wealth of all the Realm, therefore they have obtained the strength of the Law; inso-much that he that doth against them, doth against Justice; and these be the Customs that be properly called *The Common Law*.

The same Author tells,^(g)

That the fifth ground of the *Laws of England*, standeth in divers particular Customs used in divers Counties, Towns and Cities, and Lordships, in this Realm; the which particular Customs, because they be not against the *Law of Reason*, nor the Law of God, tho' they be against the general Customs or Maxims of the Law, yet nevertheless they stand in Effect and be taken for Law.

And among the Examples of the several Customs, the same Author says,

By the general and old Custom of the Realm, the eldest son is only Heir to his Ancestor, &c. but by the particular custom of *Gavelkend* in *Kent*, all the Brethren shall inherit together; also there is another particular

9. ["The ancient common law, customs, decrees of the Senate, these three things establish law for you (British land)."]

(f). Lib. 1. Cap. 7.

(g). Lib. 1. Cap. 10.

custom called *Burgh English*, where the younger Son shall inherit before the eldest, and that custom is in *Nottingham*.

Davis in the Preface to his *Irish Reports*, gives a very rational Account of the Manner how these customs grew into a Law^(b) says,

The common Law of *England* is nothing else but the common custom of the Realm, and a custom which hath obtained the Force of a Law is always said to be *jus non Scriptum*,¹⁰ for it cannot be made or created either by Charter or by Parliament, which are Acts reduced to Writing, and are always Matter of Record; but being only Matter of Fact, consisting in Use and Practice, it can be recorded and registred no where but in the Memory of the People.

For a custom taketh Beginning and Groweth to Perfection in this Manner: When a reasonable Act once done, is found to be good and beneficial to the People, and agreeable to their Nature and disposition, then do they use it and practise it again and again, and so by often iteration or multiplication of the Act it becometh a Custom; and being continued without Interruption time out of Mind, it obtaineth the Force of a Law.

From the Account given by these Authors, of the Nature of the customary Law of *England*, a Court even of common Law, that it may exist by Virtue of those customs, must have these Properties,

1st. Such Court, must have had a Being from *beyond the Memory of Man*, which according to the legal Date (in the beginning of the Reign of *Richard I Anno*, 1189) is now 545 Years; for every thing that is pretended to subsist by this customary Law; must not be known to have had its Original within less Time.⁽ⁱ⁾

2d. Such Court, must have had some *general Jurisdiction* all over *England*, if it subsists by a *general Custom*, or a *limited Jurisdiction* over some particular Part of *England*, if it subsists by Virtue of a *particular Custom*.

Now if we compare any Court in this Colony, even of *Common Law*, with these Properties, we shall find that they are altogether incompatible with the Being and Existence of any such Court.

(b). page 3.

10. ["Unwritten law"]

(i). *Hale's Hist. Law*, page 2 & 3.

No *Court of Common Law* in this Colony cou'd have had a Being before the Year 1664. and it is notorious, that all the *Courts* now in Being, have derived their *Original* from a much later Date; so that no *Jurisdiction* in any *Court* can be pretended to here, by Virtue of immemorial Usage or Custom.

But in the next Place, seeing no *Court* here can pretend to have any *Authority* but within this Colony; and seeing this Colony is no Part of the *Realm of England*, but only a Part of the *Dominions* thereto belonging, it seems from thence clearly to follow, that tho' our *Courts* had subsisted within this Colony from beyond the *Memory of Man*; yet because they have not nor ever had any Being or *Jurisdiction* within the *Realm of England*, they can't with any Propriety be said to subsist by the *Customary Law* of that Kingdom.

From these Considerations, it seems, in my humble Opinion, utterly inconsistent with the Nature of the *Customary Law of England*, and the *Circumstances of this Country*, that any *Court* here, can subsist by Virtue of such Custom.

If it be pretended, That the *Courts of Law*, subsist here by the *Statute Law of England*, then it will be incumbent on the Affirmant to produce those *Statutes*. For my part I know of no such *Statute*; therefore, I conceive, no *Court of Law* within this Colony, does exist by the *Common Law of England*, in the large Sense of that Term, and consequently such *Courts*, must have derived their *Original* from some other Fountain.

But secondly, As no *Court of common Law* within this Colony, does exist by the *Statute Law of England*, nor can exist by Virtue of the *Customary Law of England*, for the Reasons aforesaid; so it seems to me, That no *Court of Equity*, properly speaking, can have Consistent with the Nature of the *Common Law*, any Authority from that Law, even in *England* it self. When I say, such *Court* can't have any Authority from the *Common Law*, I understand the *Common Law* as oppos'd to the *Statute Law*, in which Sense it is often taken; and my Meaning is, that a *Court of Equity*, properly considered, can't have any Authority from the ancient *Customary Law of England*. The Matters about which a *Court of Equity* are conversant, and the Rule by which it proceeds, seem to be strong Evidences of the Truth of this.

The Matters about which such *Courts* are conversant, are either *Cases* for which the *Common Law* has provided no Remedy, or *Cases* where its general Rules, by reason of some particular *Circumstances*, would impose an Hardship upon the Subject, contrary to natural Justice and Equity. Now

that the *Common Law* should give an Authority to determine in Cases not within the Provision of *that Law*, is, to me, inconceivable; It seems to me, as much a Contradiction as to affirm a *Thing to be, and not to be, at the same Time*.

Again, in Cases wherein a *Court of Equity*, undertakes to moderate the *Rigor* of the *Common Law*, it must necessarily act in direct Opposition to the common Law. And it seems to me, to be an Absurdity to imagine, that the *Common Law* should give an Authority to any Court to controul and subvert it self.

It seems further evident, That a *Court of Equity* can't have any Authority from the *Common Law*, if we consider the different Rules by which the *Courts of common Law* and *Courts of Equity* proceed. Thus, in every Case that can be subjected to decision in any Court, there can possibly arise but two sort of Questions, *viz.* Questions about the *Fact*, and Questions about the *Law* arising on the *Fact*; now as to the Tryal of both these, the Rule is different.

First, As to the Tryal of Matters of *Fact*; the ordinary Course of the *Common Law* is by the Verdict of *Twelve Men*; there are indeed some extraordinary Cases wherein the common Law has prescribed another Method of Tryal; as *Infancy*, in some Cases, is tryed by *Inspection*, &c. but these do not subvert the general Rule, which is *Ad quaestionem facti respondent Juratores*.¹¹ But in *Courts of Equity*, the *Chancellor* Judges of the *Facts* by the Testimony of Witnesses, *without a Jury*. Now this Method of Tryal is no ways conformable to the Course of the common Law, and therefore Courts of Equity can have no Authority from thence to try *Facts* in that Way.

Secondly, The Rule by which the Question of Law arising upon the *Fact*, is decided, is different: For Example, the *Courts of common Law*, judge according to the *Statutes and Customs of England*, which are known and certain: But *Courts of Equity* judge according to their *Discretion*, without being tied down to any known and certain Rule, and often times decree directly contrary to the Judgments of the *Courts of common Law*. In such Case, I conceive, the *Court of Equity* can have no Authority from the *common Law*, for the Reasons aforesaid.

From that Opposition, that *Courts of Equity* stand in, to the *Courts of common Law*, I suppose it is, that Mr. *Selden* in his afore-mentioned

11. ["To the trial of matters of fact the jurors return a verdict."]

Discourses, ^(a) speaking of the *Court of Chancery*, says, "It becomes a kind of peculiar exempting it self from the *ordinary Course*, in Manner of Tryal, and from the *ordinary Rules of Law*, in giving of Sentence," My Lord *Hobart* ^(b) speaking of *Equity*, says, it is "opposite to *regular Law*, and in a Manner an Arbitrary Disposition; 'tis true," says he, "the one is bound by Rules, the other absolute and unlimited." The Statute 15 *Henry 6* ^(c) mentions the Proceedings of the *Court of Chancery* to be in SUBVERSION of the *common Law*, and such it must needs be, in all Cases wherein it decides against the Sentence of the common Law.

From these Considerations, it has seem'd to me, as easy to admit a plain *Contradiction* or *Absurdity*, as that any *Court of Equity*, even in *England*, properly speaking, can have any *Being* or *Authority* by the *common Law*, or that any Court can be said to be a Court by the common Law, which proceeds by other Rules than that Law prescribes; wherefore all *Courts of Equity* in *England*, that have had an allowed Jurisdiction, seem to me, to have derived their Original from some other Fountain than by *common Law*, in the Sense in which I conceive the Term.

Thus I have finished what I intended, in answer to the two Questions arising on the Petitions. I shall proceed therefore in the last Place, according to the Method proposed, to offer what I conceive to be the Reason, *Why the King cannot erect a Court of Equity, either in England or here, without Consent of the Legislature.*

The *Reason of the Law* is said to be the *life of the Law*, and *Littleton* concludes his excellent Book of Tenures, by telling us, That *Lex plus laudatur quando ratione probatur.*¹² 'Tis not always easy to assign the true Reason of the Law, but I conceive, a small Knowledge of the *English* Constitution, and the Nature of *Equity Courts*, will enable any Person to guess at what may probably be the Reason of the Law in this Case, and I take it to be this, *viz. That a Power to erect Equity Courts, without the Check of the Legislature, would tend to subvert the common Law, and to erect an arbitrary Authority instead of it.* 'Tis certain that the King can grant to hold Pleas according to the Course of common Law; but this can no way endanger the Liberties

(a). Page 21.

(b). Page 63.

(c). 4 Inst. 83.

12. ["The law is praised more when it is approved by reason."]

and Properties of the subject, because all must proceed according to one common Rule, the known Laws of the Land. But if at any Time hereafter, it should happen, that any Prince should aim at an arbitrary Power, over the Liberties and Properties of the People, it is easy to discern that the fittest Engine, to serve such a Purpose, would be an unlimited Power to erect Arbitrary Courts, for such all Courts of Equity, in some sort, are as my Lord *Hobart* says,^(d) "Equity being opposite to regular Law is in a Manner an arbitrary Disposition." 'Tis certain that in every Constitution, there ought to be some Power to administer Justice in Cases not provided for by the *common Laws* of the Land. Agreeable hereto the same Author says, "All Kingdoms in their Constitution are, with Power of Justice, according to Law and Equity." The Necessity of such a Power appears, in that no Body of Laws can be supposed to be so perfect, as to give a certain and determinate Rule for the Decision of every Case, that can possibly arise. And among those Cases that are provided for, the Rule of Law, under possible Circumstances, will sometimes, prove too severe. But notwithstanding the Necessity of this Power of Justice according to Equity, yet I believe it will be readily granted, that it can be no where so properly lodged as in the Legislature, or in some Court immediately dependent upon it, because every Case not provided for, by the common and known Laws, requires, as it were a new Law for that particular Case; and what Power can be so proper to provide such a Remedy, as that which is able to make a Law?

Nothing seems to be more opposite to the Nature and Design of the *English Constitution*, than a Power in any Person to act Arbitrarily. The strong Checks that are put upon every Branch of Power in our excellent Constitution, is a convincing Demonstration of it. This is discernable in both the *Legislative* and *Executive* Power of the Law.

First, As to the *legislative Power*: no Law can be made without the Consent of the three Estates in Parliament, and in this respect each is a Check upon the other two. The Power of the King is check'd by the Lords and the Commons; and the Lords are check'd by the King and the Commons; and the Commons are check'd by the King and the Lords; so that in making Laws none can act without the other. Hence it follows, that none have a Power to do Ill, without the Consent of the other Branches of the Legislature; and this is the less to be fear'd, because Mankind are naturally true

(d). Page 63.

to what they find to be their Interest, and the Majority will ever find their Interest in the Welfare of the whole, and it is but a small part of the whole, that can at any Time have any Interest in a Law that is opposite to the public Good; so that a better Constitution in this respect I think cannot be devised or imagined.

Again secondly, If we consider the Executive Power of the Law, we shall observe it in every respect to be under a strong Check. The Constitution has lodg'd this Power wholly in the King, and it is esteemed one of the brightest Jewels in the Crown. To this End he has Power to grant to hold Courts, so that they be Courts of common Law; and to appoint Judges and Officers of these Courts. But nothing can more effectually display the Excellency and Safety of the *English* Constitution, than the Consideration of the Checks that have by Law been put upon this Power, in all its Branches. To evidence this we may observe,

First, There is the fullest Assurance given by the Prince, that this Power shall not be exercised, but according to Law; this is by the Oath taken by all our Kings at their Coronation, wherein the Original compact between the King and People seems to pass under a new and solemn Ratification. What stronger Obligation can be devised, to restrain the Sovereign from affecting a Dominion over the Laws than this?

But for the King to govern his People according to Law, he must appoint Judges. Now great Care has been taken by the Constitution, that the regal Power should be regulated in this respect. To this End the Judges of the *Kings-Bench* and *Common-Pleas* must be made out of those Men, whose *Learning*, *Age* and *Experience* has dignified their *Heads* with a *Coif*, and none can lawfully be called to the Bench, whose Proficiency at the Bar, has not first raised him to the Degree of a Serjeant at Law,^(e) *Fortescue de Laud. Leg. Ang.*¹³ *Cap. 50. 51.*

Bracton, a learned Judge in *Henry the Third's* Time, in his Book of the *Laws and Customs of England*,^(f) very elegantly describes the Qualifications and Duty of our Judges, which translated from the Original Latin, is to this Effect.

(e). 4 Inst. 75, 100.

13. ["In Praise of the Laws of England."]

(f). Lib. 3. Cap. 10.

If the King cannot determine every Cause, (says he) that he may have the less Trouble; he ought to choose out of his Kingdom wise Men, who fear God and hate Coveteousness, and out of them to constitute Judges, Sheriffs and other Bailiffs and Officers, to whom may be referred all Controversies and Complaints, and who must not turn aside from the Path of Justice, either to the right Hand or the left, for Earthly Prosperity or Fear of Adversity; that it may be said of them as is spoken by the Psalmist, That a Righteous Judgment hath proceeded from their Mouth. In every Case that comes before them, they ought well to consider, how far and in what Manner, Necessity, Conveniency and Decency oblige them to act, and in every respect to do their Duty. Such a Conduct becomes the Honour of a King, whose Person they represent in giving Judgment. Let them (says he) deny no Man the Benefit of the Law, of no Man let them ask or receive a Reward, that every Man may have free Liberty to sue for his Right, that the Cause of the Widow may have an easy Access before them, and that they may be the Helpers of the Fatherless, and that they may allow no Exception against any Mans receiving such Relief as the Law affords, That their Judgment's and Sentences may be agreeable to the Law and approved Customs, and the publick Good; before them let not the Power of one Party bear down another, but let every one do what is most for the Benefit of his Cause, and let the mighty be prevented from doing wrong; nor let Hatred, Favour or Good-will prevent their judging justly; that it may be said of them Justus es Domine & rectum Judicium tuum, &c.¹⁴ Also, they ought to be wise Men who judge, that they may not beg or borrow of others the Honour of executing that Office. And if any not Wise and Learned presume to ascend the Seat of Judgment, and to take to him the Honour of a Judge, he falls Head-long from his Dignity, because he attempted to fly before he had Wings; and he that gives such an one Power to judge, does like him who puts a Sword into the Hands of a Madman. Also, a Judge ought not only to be a wise Man, but a Man of Courage, according to that of Solomon, do not seek to be made a Judge, unless you have Strength to break asunder the Bonds of Iniquity, least you should be afraid of the Face of the mighty, and your Cowardice lay a Stumbling-block in your Way.

Thus wrote this excellent Judge about 500 Years ago; which shews, what sort of Men it was then understood that the King was obliged to choose for Judges; and happy must the People be whose Laws are declared by such Judges as answer the Character there given.

14. ["Lord, you are just and your judgment is lawful."]

From the *legal Qualifications* of the *Judges*'tis evident, that there is a Check upon the *Power of the King*; who though he has a Liberty to appoint to that Office whom he pleases, yet his Choice must be made out of those that are *legally qualified* for that Office; and the Tenour of his Oath, whereby he obliges himself to *govern his People according to Law*, obliges him to choose those Men to declare the Law, which are most likely to answer that End.

But, *Secondly*, the Check that is upon the *Regal Power* in the Execution of the Law, is further evident in that the *Judges*, tho' they take their Office from the King, yet their *whole Authority* is from the Law.^[1] That Law which is not made by the King only, but established by *immemorial Custom* or *common Consent in Parliament*. And hence also it is that the King cannot alter the usual Forms of the *Commissions of the Judges*, without an act of Parliament.^[2] And as the *Judges* have their *Authority* only from the Law, and the very Form of their *Commissions* are directed by it, so they *are all sworn to observe and give Sentence according to it, in all their Judgments*. And in the Execution of their Offices, they are in so absolute a Manner *subject* to the Direction of the Law, and *independant* of the King, who appointed them; that they cannot obey any Mandate if it be against the Law, though under the great Seal, &c. from the King himself.^[3] And if in the faithful Execution of their Offices, they are so unhappy as to *disoblige* their Prince, yet it is not now in the *Power of the King* to *displace* them^[4] which great Privilege is one of the blessed Fruits of the late *glorious Revolution!*

This Check in the *Execution of Justice*, is further continued, in that the Judges, if they exceed their Authority, and assume a Power that does not belong to them, are liable to be excepted to.^[5] Hence have proceeded the various Kinds of *Exceptions* and *Pleas* to the Jurisdiction, of which we find so many Examples in our Books.

And if the Judge, before whom the Exception is taken, or Plea pleaded, will not desist, but proceed to take Cognizance of that for which he has no Warrant, the *Check* is still continued, in that such *Judge* cannot act

[1]. 4 Inst. 74 Margin.

[2]. 4 Inst. 74, 75, 100, 117, 163. 2 Conclusion, 2 Hawk Cap. 1. § 1. to 8.

[3]. 2 Inst. 56. St. 18 Ed. 3. Fortescue, Cap. 51.

[4]. 12 Med. 3. Cap. 2.

[5]. *Bracton*, Lib. 3. Cap. 10. Sect. 3. Lib. 5. Cap. 1. Sect. 2. Cap. 14, 15. *Fleta* Lib. 6. Cap. 37 § 11, 13 & 15. *Mirror*, English Edition 59, 60, 230. Abuse 36. 239. Ab. 107. 2 *H.* 4. 4. 1 *Cio.* 320. 1 *Lev.* 310 & 311. 2 *Lev.* 242. 1 *Salk.* 202. 12 *Co.* 53.

Arbitrarily, but is liable to the Prohibition of a *Superiour Court*, which if he still refuses to obey, but proceeds *without Authority*, he is liable to be attach'd and punish'd for his Contempt.^(a)

Again, admitting that the *Judges* have *Jurisdiction* in the Case that is brought before them, the *Check* upon their *Power* still continues, in that they have no right to determine matters of Fact, (Except in some *extraordinary Cases*, as has been mentioned) But this *Power* wholly belongs to a *Jury*; which is a great *Check* to the *Arbitrary* Decisions of a Court.

And then, seeing *Matters of Law* are only the Province of the *Judges*, the check still Continues, in that, if they Err in an Interlocutory Opinion which affects the Merits of the Cause depending before them, the party *Injured* may have a Bill of Exception to such mistaken Opinion,^(b) and by *writ of Error*, returnable in a *Superiour Court* be relieved as well against such Opinion, as against any *Error Apparent* on the Record of the Judgment given in the said Cause.

And if the *Judges* wickedly betray the great Trust reposed in them, as some have done; they are not only lyable to be turned out of their Offices with *Disgrace*, but to be capitally punished for their misdeeds. Our *English History* abounds with Examples of the *punishment of corrupt and wicked Judges*: King *Alfred* hang'd 44 of them in one Year, whose Names and Crimes are all recorded in the *mirror of Justices*.^(c) *Thorpe* a Judge of the Kings Bench in *Edward 3d* Time, met with a lighter punishment; he was only at the Will of the King for his Body, Lands and Goods, because he had done a Thing contrary to his Oath.^(d) We find an Example of severer Justice in the Reign of *Richard the Second* who aiming at *Arbitrary Power*, procured the Judges of the *King's-Bench* and *Common-Pleas* to give it under their Hands, *That the King was above the Laws*. Whereupon *Belknap*, Chief Justice of the *Common-Pleas*, after signing, cryed out with Remorse, and said, *there was nothing wanting but a Horse, a Sledge and a Halter to carry him to the Death he deserved*. And tho' these Judges were compelled to do this by the menaces of the *King's Favorites*, yet that did not excuse them; for some time after they were arrested as they sate in *Judgment*, and most of them sent to the

(a). Lilly, Title Prohibition, par Tout. Title Jurisdiction of Courts, Sparsim.

(b). 13 Ed. 1. Cap. 31. 2 Inst. 426. 427. Feqr, fol 182 a. b.

(c). English Ed. Pg. 239

(d). 2 Lilly, 90.

Tower, and all were condemned as *Traytors*. *Tresilian*, Chief Justice of the King's-Bench who had fled, being apprehended and brought to the Parliament in the Forenoon, had Sentence to be drawn on a Hurdle to *Tiburn* in the Afternoon and there to have his *Throat Cut*, which was executed accordingly. Others say, that he was first hanged, and that the Executioner to make sure work of it, *cut his Throat*, and let him hang till the next Morning.^(e) The rest of his Brethren, together with *Belknap*, and the Judges of the *Common-Pleas*, thro' great Intercession, escaped with *Banishment*.

Another Example of the Capital Punishment of *wicked Judges*, was in the Case of *Empson* and *Dudley*; who notwithstanding what they did, was by colour of Acts of Parliaments,^(f) yet that would not protect them from the *Gallows*, but they fell a Sacrifice to that Resentment, which their *Oppression*, *Injustice* and *Cruelty* had provoked; of whom my Lord Coke says^(g) *Qui corum vestigiis insistent corum exitus perhorrescant*. Let them that tread their Steps, dread their End.

Thirdly, As the *Judges of Law* are under a *powerful Check*, so are *Juries*, who are *Judges of Fact*. This is evident, if we consider their necessary *Qualifications*; they must be *probos et Legales Homines*,¹⁵ Men of Honour, Honesty and Estate, without Interest in the Cause, or Relation to either of the Parties; who by living in the Neighbourhood of the Place where the Fact, which is to be tryed, is said to be done, may justly be supposed to be the best able to understand the Evidence that is given concerning it, as well as to judge of the *Credibility* of the *Witnesses*, and the *Character* of the *Persons concerned* in the Dispute; such Persons can't so easily err, as those who are meer Strangers to the *Fact*, *Witnesses*, and *Parties*; and a Regard to *Justice* and their own *Honour* will oblige them to take the utmost Care that they may not err.^(h)

But besides this, they are not trusted to give their Verdict only *upon Honour*, but *upon Oath*,⁽ⁱ⁾ whereby they are sworn, *Well and Truly to try the Matter in Question, and to give a true Verdict according to Evidence*. Which is an Obligation of the most solemn Nature, that has ever been devised among Mankind. And in Order to help their Understandings, and engage their Wills

(e). *Med. Hist. Ang. Rapin State Trials.*

(f). 11 *Hen. 7. Cap. 3.*

(g). 4 *Inst. 41.*

15. ["Honest and law-abiding men."]

(h). *Fortescue Cap. 25.*

(i). *Fortescue Cap. 25, 26.*

to the faithful Performance of their *Oath* and *Duty*, they have the Bench of grave and learned Judges to preside over and assist them; whose Direction, tho' they must not follow, against the Dictates of their own Consciences, yet the Authority of the Judges, when rightly used, will infallibly awe a Jury into the most solemn Attention to what they are about.

But the *Check* upon a *Jury* does not consist of these Particulars only; but further, if after all the Care that has been taken to inform them, they should, thro' Weakness of Understanding and Judgment, err in their Verdict, the Judges have for some Time past used a discretionary Power in those Cases, to grant a new Trial.^(k) But if, thro' wilful Wickedness, they perjure themselves, and give a false Verdict, they are liable to an *Attaint*, on which the Judgment is, *That they be committed to Prison, their Goods confiscated, and all their Possessions seized into the Kings Hands, that their Houses and Buildings be razed and thrown down, their Woods felled, and their Meadow Grounds plowed up; That they for ever after be taken for infamous Persons, and that in no Place they be received to testify the Truth,*^(l) This is the Sentence of the common Law upon every guilty *perjur'd Jury*; than which nothing but Death can be more terrible.

From all which, it appears, that a Jury are under a most strong and powerful *Check*, and cannot act *arbitrarily* without violating the most sacred Engagements, and exposing themselves to a very fearful Punishment.

We shall further see in the fourth Place, the Guard that has been set against *arbitrary Power*, in the Execution of the Laws, by the *Subordination of Jurisdiction*, and the *Check* which by one Court is put upon another. Thus the Court of *Kings Bench*, called *the Fountain of Justice* (where the King is supposed to sit in Person) has a *supreme Jurisdiction* all over *England*, and checks every *inferiour Court*, having full Power to rectify their Mistakes and correct their Errors, and to punish Magistrates and Officers when they deserve it. Even the *Court of Chancery*, in it's Proceedings according to the *common Law*, and the *Court of Common-Pleas* at *Westminster*, are not exempted from the supreme Cognizance of this great Court, but it has Power to examine into their Errors, and reverse their Judgments.^(m)

(k). 2 Lilly 604, 605 Salk. Tat. Trial partout.

(l). Fortescue de Laud Leg. Aug. Cap. 26.

(m). 4 Inst. Cap. 7. Wood 466. F. N. B. 20, 21. Finch. 480.

And this Court as it is a *Check* to others, so also it is not without a *Check*; for when it's Proceedings commence by Process out of the same Court, then the Subject has a double Remedy against it's Errors and Mistakes, and the Court a double *Check*. *First*, by Writ returnable before the Justices of the *Common-Pleas*, and the *Barons of the Exchequer* in the Exchequer Chamber, and from thence by *Writ of Error* before the Upper-house of Parliament. But if the Proceedings commence by *Original* out of the *Chancery*, then the Court is only check'd by the *Parliament*, who upon a *Writ of Error* return'd there, have Power to reverse its Judgment.⁽ⁿ⁾

Thus we find the *Check* that is put upon every Branch of Subordinate Power is such, that it is not easy to conceive, how the Evils that Communities are Subject to, can be more Effectually prevented, or certainly remedied, than in the way that the *Constitution* has provided. The whole Polity of our Laws appears, to be a Contrivance of great *Wisdom* and *Justice* whereby the true ends for which Societies were first form'd, and Government instituted, seems to be in the best Manner consulted and secured—And I much Question whether there is any *Constitution* upon the face of the whole Earth, which more truly supposes Man to be what he is, and that is better calculated than this, in every respect, to render the *Prince Great and Glorious*, and the *People Free and Happy!*"Tis certain, that nothing can be more opposite to the Disposition and Nature of our Laws, than an *Arbitrary* and *despotick Power* of any kind; and therefore it has fenc'd against it on every Side.

But the Checks that are visible in the Frame and Constitution of the *Common-Law*, are in a great Measure wanting in the *Supream Courts*, of *Equity* in *England*. This is evident if we consider.

That this great Officer, the *Lord Chancellor* is in these Days entirely at the Kings Disposal, his Authority is only *during Pleasure*, whereas the Judges of the *Common-Law* hold their Offices *during good Behaviour*^(o) by which they have an Estate of Life, in their respective Offices^(p) and cannot be removed but upon Conviction of *Misbehaviour* in a due Course of Law, or upon the Address of both *Houses of Parliament*. But the King can *displace* the *Lord Chancellour* when ever he thinks fit, He is made by the delivery of the great Seal, and by taking his Oath; and may be unmade by taking back the great

(n). 27 Eliz. C. 8 3 {illeg.} Cap. {illeg.} Finch. 482, 483.

(o). 12 H: 3. Cap. 2.

(p). 4 Inst. 117.

Seal, whenever His Majesty pleases to demand it.^(q) Formerly this great Officer had his Authority from the *Parliament*. Hence Mr. *Selden*^(r) speaking of the *Chancellor*, says,

At first he was no better than a Register, or the Kings *Remembrancer* or *Secretary*, having also the Honour to advise the King in such Matters as came within the Circuit of the Writings in his Custody; and questionless *eousque*¹⁶ it is suitable to all the Reason in the World, that he should be of the Kings sole Nomination, and Election. But when it befalls that instead of advising the King, his word is to be taken for the Rule and a Judicatory Power put upon that; and unto this is super-added this Honourable Trust of keeping and governing the *great Seal* of the Kingdom, with the continual growing Power, occasionally conferred upon him by the *Parliament*, He is now become no more the *King's Remembrancer*, but the *Lord Chancellor of England*, and *Supream Officer* of State; and it seems but reasonable that he should hold his Place by *publick Election*, as well as the *Grand Justiciar* (whose Plumes he borrowed) and other *Grand Officers of State* did before him. For he that will have his Servant work for another, must give the other the Honour of Electing him thereto; nor was this laid aside, nor forgotten by these Times, but a Claim was put in for the Election or Allowance of this *principal Officer* among others: The *Parliament* obtaining a Judgment in the Case by the Kings Confession.^(a)

Thus the same Author speaking of the *Government of England* under the Reigns of *Hen. 4. Hen. 5. Hen. 6.*^(b) says,

Thus as the Work and Power of the *Chancery* grew, so did the Place and Person of the Chancellour grow more considerable; raised now from being the *Kings Secretary* (for no better was he in former Times) to be the *Kingdoms Judge*; and of such Trust, that although the *King* might make Election of his own *Secretary*, yet the *Parliament* would first know and allow him, that must be trusted with the Power over the Estates of so many of the People, *and therefore did in these Times both place and displace him as they saw Expedient.*

(q). 4 Inst. 87.

(r). in his aforementioned Discourses under the Reigns of *Ed. 3. & Rich. 2.* Page 23. 16. ["Up to that point."]

(a). 15 *Ed. 3.* N. 101. 15. 15 *Ed. 3.* 10 *Rich. 2.* N. 16.

(b). Page 96.

We have a remarkable Example of this *Power of the Parliament* in earlier Times, than these mention'd by Mr. *Selden*. It is in the Reign of *Henry* the third, *Rapin*^(c) says,

That the King having a Mind to remove the Bishop of *Chichester* from the Chancellorship, in which Office he had behaved unblameably, he had the Mortification to find, that he refused to resign it. To justify his Refusal, he affirmed, that he had been entrusted with that Office by the *Parliament*, and therefore cou'd not quit it, but by the same Authority.

Secondly, When this great Officer is created, he is vested with an exceeding great Power over the *Liberties* and *Properties* of the *People*, not being confined to judge by any settled and established Laws, but has Liberty to act according to his own Discretion. Sir *Henry Spelman*, speaking of the *Courts of Equity* before him^(d) says,

That it has Power over *Courts of Record* themselves, and from uncertain Beginnings, hath by little and little enlarged it self to a wonderful Size.

—He afterwards says,

What is most offensive to the Professors of the *Common-Law*, is, that the sacred Judgments of it's Tribunal, have not escaped this Power. Not that it can offer any *Violence* to them, or on any Occasion, decree them to be void (for this the ancient positive Law forbids; the Statutes of the Kingdom forbid) but when its *Judgments* are deemed *Rigorous*, and contrary to *Equity*, it restrains the Party from obtaining an Execution; and so the Judgment continues unalter'd, but intirely unprofitable, and as it were without Force.

A certain Chancellor in former Times, warily (says he) used this extraordinary Authority, yea, he refused it, as that which threatned to cut the Throat of the *Common Law*, but his Successors have more greedily caught at, and held this Power, and from thence has sprung the Complaints of former and the Contentions of latter Times.—So that among us the Authority of the Judges is subjected to the *Chancellor*, just as it was among the *French*, upon their Return from the *Spanish* Captivity under

(c). 3 Vol. 333.

(d). *Gloss sub verbo Chancellarius.*

Francis the first; therefore what many Judges have adjudged according to the Rule of Law, in the supreme Tribunals, the Chancellor alone (if the Matter require it) may render ineffectual, by his meer Will; neither is he so bound by the Decrees of his Court, or himself, but that upon Discovery of new Light, he may resume the Consideration of what he has decreed, and either alter and make it void, as he in his Discretion thinks fit.

He afterwards adds, that it seems a grievous thing, *ut in aula vnius pectoris omnes omnium fortunae, vario agentur discrimine, fatum subeant et succumbant* "That all the Fortunes of all Men should be exposed to a doubtful uncertainty in the Court of one Mans breast, and he compelled to yield to its decisive Sentence."

'Tis difficult to express the Force of Sir *Henry Spelman's* Sentiments, as they are conceived in the Original Latin. But from him we may learn what was the *Authority of this Court*, in the Days of King *James* the first (about which Time this Author wrote, and what was the Opinon of this learned Man, and probably of many others concerning it.

We have already shewn in our Answer to the Second Question, that this Court is not confined to the Rules of the Common Law, *either in giving Sentence or in trying Facts*. Mr. *Selden*^(e) says, that it is as a BACK DOOR for the Kings Arbitry in case of Judicature, in matters of Common-Pleas; as the Council-Table (Star Chamber) was in Crown Pleas; says he, *They both are look'd upon with a very pleasing Eye of Majesty, which loves not to be strait-laced; yet all is embattled under the Colour of EQUITY, HONOUR, CONVENIENCY and CONSCIENCE* like a *Monopoly* that is bred under the Wings of the *Publick*, but feeds itself upon it.

My Lord *Coke*, who was Contemporary with the two last mentioned Writers, speaking of Courts, which proceed by no certain and known Rule, says, *Misera servitus est ubi jus est vagum aut incognitum* i.e.^(f) *Miserable is the Slavery of that Place where the Law is uncertain or unknown*: And when he compares the Certainty of the Rules of the Common-Law with the Uncertainty of a discretionary Decision, he represents the one by the right Line^(g) and Golden and streight Metwand of the Law, whereby all Mens

(e). Page 21.

(f). 4 Inst. 246, 332.

(g). 4 Inst. 79.

Causes are justly and evenly measured;^(b) *the other by the Uncertain crooked Cord of Discretion,*⁽ⁱ⁾ which shews, that that great Man, had no great Opinion of Courts to determine Causes in a Course of Equity.

Tho' it is very certain, that for a long Time such Courts have been suffered, yet it has been with frequent Murmurs and Complaints from the People, and those great Men of the *English Nation*, who have best understood the *Constitution*, and the *Nature and Perfection of our Laws*, have ever look'd with a jealous Eye upon the *Power of the Chancellour*, and have in their Writings given repeated Warnings of the Danger of it; and nothing can be more obvious, than that an *Unlimited and Arbitrary Power* over the *Liberties and Properties* of the People, when in the Hands of weak or wicked Men, under the Influence of an *Ambitious and Arbitrary Prince*, must be introductive of wofull Consequences.

Under the Reigns of our best Kings, the Dangers of this Court have been much out of Sight; wise and good Men have been Chosen to this great Office, and the Designs of their *Royal Masters* have had no bad Influence on their Virtues. This has been the Felicity of our Age, under a Race of *Excellent Princes*, whose Thrones have been established on the Basis of the Revolution.

What Uneasiness this *Power* has Occasion'd in *former Days*, the Records of Time make manifest; what Effect it may have upon *Posterity* the Event will declare. Nothing is to be feared from the House of *Hanover*. The Pillars that Support the Throne, in its *present happy Settlement*, stand upon the same Foundation as the *Peoples Liberty*. His Majesty holds his Crown by the same Title by which his Subjects enjoy their Freedom: But if in distant Ages, a King should arise of *Ambitious and Arbitrary Views*, who shall choose a Man of great Parts and little Honesty, for his *Chancellor*, who shall tell his Royal Master, that he is as Clay in his Hands,^(k) and that his Majesty may stamp upon him what Impression he pleases; the *Discontents of former Ages* may be revived, and the Calamities fear'd from the *Power of a Chancellour*, may be felt with a Vengeance.

But perhaps some may say, *If the Power of Equity Courts have been thought Dangerous, why have they been suffered? Why are they not totally abolished?*

(b). 4 Inst. 240.

(i). 4 Inst. 41.

(k). Bacon Works 4 Vol. 603, 608, 609, 687.

I Answer; *Necessity* gave them Being, *Necessity* continues them in Being. *Et necessitas quod Cogit defendit.*¹⁷ If we consider the Nature of all settled and established Laws, and the infinite Variety of humane Affairs, Cases unprovided for, will frequently arise; and the general and positive Institution in all its possible Applications, will sometimes prove too severe, and deviate from the Rules of Natural Justice. From hence has sprung the Necessity of some Courts, to relieve in such Cases.

A very probable Account of the Occasion and Rise of the *Power of the Chancellor*, is given by sundry Writers. Sir *Henry Spelman* has offered his Conjectures on this Head (*Glos sub verbo Cancellarius*) the Author of the *Legal Jurisdiction of the Chancery* stated⁽¹⁾ Accounts for it, in this Manner, says he.

*The Administration of Justice in this Realm, was the Prerogative of the King, who was Sworn at his Coronation, to deliver to his Subjects aequam et rectam Justitiam;*¹⁸ this was impossible for him to do in Person, therefore of Necessity he delegated it by several Portions to Ministers and Officers, deputed under him, whom he circumscribed within the Limits of positive Laws; whence by Degrees, standing Courts of Justice were formed, who in the Kings Name, and by his Authority, dispens'd Justice to the People, according to established Law and Order; but in as much as positive Laws must in their Nature consist of general Institutions, there were of Necessity, Variety of particular Cases, still happening, wherein no proper or adequate Remedy could be given by the Ordinary Courts of Justice, proceeding according to positive Law, and many times the Rigour of the Law, might in particular Cases, be Oppression and Injustice: Therefore to supply the want, and Correct the Rigor of the positive and established Law, recourse was had to the King, the Fountain of Justice, to obtain Relief in such Cases, and in such Manner as should appear to him to be just.

The Necessity of Relief in those Cases being evident, accordingly the same Author tells us,

That the Method of Application for it, was by Bills or Petitions to the King, sometimes in Parliament, sometimes out of Parliament, commonly

17. ["Necessity also defends that which it compels."]

(1). (*Page 25 &c.*).

18. ["Impartial and lawful justice."]

directed to him and his Council, and the granting them was not esteemed Matter of Right, *but of Grace and Favour*.

When a Parliament met, there were usually Petitions of all Sorts and Kinds preferr'd to the King, and the distinguishing these Petitions, and giving proper Answers to them, occasioned a Weight and Load of Business, especially when Parliaments sat but a few Days; and therefore to remedy it, an Ordinance was made, *Anno. 8. E. 1.* which is in *Ryleys placita Parliamentaria*,^{19(m)} wherein it is recited, that the People who came to Parliament were often delayed and disturbed, to the great Grievance of them, and the Court, by the Multitude of Petitions laid before the King, the greatest Part whereof might be dispatch'd by the *Chancellor* and by the *Justices*; therefore it is provided, that all the Petitions which concern the *Seal*, shall come first to the *Chancellor*, and those that touch the *Exchequer*, to the *Exchequer*, and those which concern the *Justices* and the *Law of the Land*, to the *Justices*; and those which concern the *Jews*, to the *Justices of the Jews*; and if the *Affairs are so great, or if they are of Grace*, that the *Chancellor*, and others, cannot do it without the King, then they shall bring them with their own Hands, before the King, to know his Pleasure; so that no Petitions shall come before the King and his Council, but by the Hands of the said *Chancellor*, and other chief Ministers; so that the King and his Council may, without the Load of other Business, attend the great Business of his Realm, and of other foreign Countries.

This Author observes from hence, *that Matters of Grace* in the Time of *Edward the First*, were only determinable by the King, or by such as he appointed, and not in any formed or established Court of Equity, and afterwards he gives us his Opinion, how and at what Time this Power fell into the Hands of the *Chancellor*, which is in part before recited in our Answer to the first Question.

We may also observe, from what has been said, that the Extraordinary Relief which in those Cases was required, was often sought for by Petition to the King in Parliament, which Practice, I have heard is imitated by some of our Neighbouring Colonies, who in Cases unprovided for by their municipal Laws, on Petition of the Subject, gave an equitable Remedy by Act of their whole Legislature. If this do not, (as it did in *England*)

19. ["Ryley's Parliamentary Rules."]
(m). Page 442.

prove burthensome to their General Assemblies, it seems to be an excellent Constitution.

But notwithstanding what has been said concerning the *Necessity* of some *Court of Equity* to relieve in these extraordinary Cases, yet we find that no more of these Courts have been allowed than have been found to be necessary. Hence says my *Lord Hobart*, this Power of doing Justice, according to Equity, as it is opposite to regular Law, has by the Constitution, been committed to the King and his Chancellor, *ab initio*, as a *special Trust not to be committed to any other*; and whenever a *Necessity* has been pretended, within Time of Memory, for a new Court of Equity, the whole Legislature have taken upon them to judge of the *Necessity* of it, before such Court has been allowed, which Consent of the Legislature I conceive, has been insisted on as necessary, *because an unlimited Power in the King to erect such Courts, might in Consequence of it, let in an arbitrary Power over the Liberties and Properties of the People, to the utter Subversion of the common Law, and the legal Security that is enjoyed thereby.*

Thus I have shewn what I conceive to be the Reason why the King cannot erect a *Court of Equity* in *England*, without the Consent of the *Legislature* there. Which Reason, I think, is of equal Weight in *this Colony*; and there are some additional Reasons with respect to the *Equity Court of Exchequer* lately erected in the *Supream Court* (mention'd in the *Petitions*) which render such a *Power* more *dangerous here* than in *England*. I will beg leave to take Notice of some of them.

First, *Because the Judges here are more dependent on the Power that created them, than the Barons are in England.* This is evident, if we consider, that the Judges of the *Supream Court* claim no *Equity Jurisdiction*, but in the Quality of *Barons of the Exchequer*. Now in *England* the Barons are appointed by the King; Here the Judges are appointed by the Governor; but then indeed it ought to be by the Advice and Consent of the Council:^(m) In *England*, the *Commissions of the Barons* now are and always have been DURING GOOD BEHAVIOUR.⁽ⁿ⁾ But here the Judges hold their *Commissions* only DURING PLEASURE; which *Pleasure*, tho' it be the King's, yet if a Governor should think that he has the Disposal of it, it may so happen, that 'tho the Judges, Act never so unblameably, yet if they should chance to

(m). {Note missing from text.}

(n). {Note missing from text.}

displease the Governor, they may be deprived of their Honours & Offices. And if the Governor, in such case, has an absolute Power to determine the King's Pleasure, without an Appeal to the King himself, such Judge notwithstanding his Integrity, may continue under that Deprivation without any Remedy. Such a State of Things as this, plainly puts our Judges under greater Dependence upon a Governor than the Barons are, or ever have been, upon the King. The Barons know that if they do their Duty, they will find their Safety in it; but our Judges know, that if they will enjoy their Offices, they must please the Governor. While the Judges Duty and the Governour's Pleasure coincide, all is safe; but when the Judges Duty and Conscience dictates one Thing, and the Governour's Pleasure demands the contrary, then is the critical Moment, in which the Judge or the honest Man must quit the Bench. And how safe the Lives, Liberties and Estates of the People will be, in the Hands of the Judge, when the honest Man is gone, I need not tell. And how difficult must the Case of every upright Judge be, who under such Circumstances, will be reduced to an unavoidable Necessity to part with his Integrity or his Office? Such Judge cannot be safe, but upon a Supposal, that the Governour's Pleasure will never cross the Judges Duty, or that the Governor will not please himself by exchanging the Judge, when it is in his Power so to do. How reasonable such a Supposal as this is, I leave to others to determine.

The great Power in former Times, allowed to our Kings, with respect to all the Judges but the Barons of the Exchequer, made King James the first often say, *Give me the Appointment of the Judges, and the Bishop's, and I will have what Law and what Gospel I please.* But our Histories abound with Instances, which shew, that this Power has often proved a Snare to our Princes, to our Judges, and to the People. The Reigns of Richard 2d, Charles 1st, and James 2d, afford flagrant Instances of the Truth of this; which at length gave Occasion for that Restraint which was put upon it, in the Reign of our GREAT DELIVERER King WILLIAM.

How Dangerous to the People of *this Colony* such a Power over the Judges, may hereafter prove to be, will further appear, if we consider in the second Place, *That the Governours for the Time being, may often have an Interest in the Matters depending before them.* As Barons of the Exchequer, the Judge cannot take Cognizance of any Cause, but what the King is either *mediately* or *Immediately* concern'd in. If they extend their Jurisdiction to other Causes, they are liable to be prohibited;^(o) and in all *Crown Cases* 'tis obvious, that

(o). 4 Inst. 118.

the *Governour* as the *Kings Representatives* must have an *immediate Interest* under him, because no *Recovery* can be in Favour of the *King*, but the *Governor* will have the whole or the principal *Power* in the disposal of it.

'Tis true, indeed, that the *King* has the same *Interest* in the Judgements of the *Barons*, but then he has *no Power to displace them*, if they give Judgment against him, nor do we find, that the *King* ever had such *Power*; and the most probable Reason of this is, that the *Barons* might be *perfectly Free* to do *Justice* between the *King* and his *People*, without any fear of being displaced for doing their *Duty*.

But if we suppose that the *Governor* here has a *Power to Place and Displace Judges* at his *Pleasure*, and that he has the same regard to His *Interest*, and the same partiality in Favour of it, which is common to other Men, what must the Condition of the *Judge* and the *Subject* be, in Cases where the *King* is a Party? The *Subject* has no *Safety*, but in the *Honesty* of the *Judge*; and the *Judge* has no *Safety* but in pleasing the *Governor*. If the *Judge* decree for the *Subject*, then probably the *Governor* will be displeas'd and tempted to believe, the *Judge* is unfit for his *Office*, and that to put another in his *Place* will be to do his *Majesty good Service*. I can easily suppose such an *Opinion* to be sometimes very sincere, because I conceive *Governors* to be like other Men, and to have the same *Prejudices* and *Partialities* as other Men have; and in the Course of my Practice, I have observed, the Parties against whom Judgements have been given, have seldom approved of those Judgments, or conceived that they have been well dealt by, but have generally laid the *Miscarriage* of their Causes, not to the *Injustice* of them, but to the *Fault* of the *Court*, of the *Jury*, or of the *Lawyer*.

All this is upon a supposal that the *Governor* may be very *Honest*; and I would always suppose the *Kings Representative* to be so. But if in after times, a *Governor* should prove to be otherwise, how deplorable must the Case of the *Judges* and the *People* be? The *Integrity* of the *Judge* may be imputed to him as a *Crime*, and the *Security* which the *Subject* hath in his *Honesty*, be the very Cause of his *Removal* from his *Office*. What severe Tryals have the *Virtue* of some of our good *Judges* been put to, in former Times upon this Account? Sir *George Croke* may serve for one Example of this; *Whitlock* tells us (as of his own Knowledge)^(p)

that *Judge Croke* was resolv'd to Deliver his *Opinion* for the *King* in the famous Case of *Ship-Money* against Mr. *Hampden*, and to that End had

(p). *Memoirs*, page 24 R.p. 10. Vol. 307.

prepared his Argument: But a few Days before the time of delivering it, upon Discourse with some of his Relations, and most serious Thoughts of the Business, and being heartned by his Lady who told her Husband upon this Occasion, *that she hoped he would do nothing against his Conscience, for fear of any Danger, or Prejudice to him or his Family; and that she would be contented to suffer Want, or any Misery with him rather than be an Occasion for him to do or say any thing against his Judgement*, upon these (says he) and the like Encouragements, but chiefly upon his better thoughts, he suddenly altered his purpose; and argued and declared his Opinion against the King.

Now let any Man read the Character of this good Judge, as given by Sir *Harebottle Grimston* (in the Prefaces to his Reports) and let him also read the Excellent Character of Sir *Harebottle Grimston*, as given by Bishop *Burnet*, (in the first Volume of his History) and upon both, judge whether Sir *George Croke* ought not to be believed to be a Man of uncommon Virtues; and if this great and good Man staggered under the Temptation, and found his *Dependance* on the King, so great a Tryal to his *Honesty*, what must have been the Case, of those Judges whose Vertues did not grow up to so uncommon a size?

The History of these, as well as precedings Times, informs us, that many Judges have split upon this Rock; and from a base Time serving Spirit have made Ship-Wreck of their *Honour*, their *Consciences* and their *All*.

King *James* the Second, aiming at a Power to *dispense with the Laws*, repeated the Iniquity of former Times, by endeavouring to make the Judges the Tools of his purposes. *Rapin* tell us^(q)

that he took care to send for them, one by one, and talk'd with them privately in his Closet, in order to persuade them to declare for his *dispensing Power*, telling them, that he would have no Judges but such as were of his Opinion: Upon this Sir *Thomas Jones* was so bold as to say, *Possibly you may find Twelve Judges of your Opinion, but you will never find Twelve Lawyers to be so*. My Author says, Four flatly refused to comply, and were immediately turned out, and the King appointed in their stead Four others, of more pliable and submissive Understandings.

(q). 15 Vol. 70.

These pieces of History serving to illustrate the Truth of what has been observed, I thought proper to mention them. What has been may be, and like Causes are naturally productive of like Effects!

If things were so circumstanc'd, that the *Interest of a Governor* might never Interfere with the *Interest of the People*, the Danger of this *Dependence* would be much the less; but such is the State of *Property* within this Colony, either from the *legal Imperfections* of our old, or the seeming *Inconsistent Demands*, or difficult *Terms of our new Grants*, that if hereafter a Governor should be placed over us, who shall consult *his Gain* more than *his Honour*, the *enriching* of himself more than the *prosperity of the People*, and to that End shall lay hold of every Advantage, which the Ignorance or Carlessness of former Times, may have furnished him with, *such Governor*, assisted by Time-serving and *pliant Judges and Officers*, wholly at his own disposal, may hereafter prove an Instrument of as great *Oppression and Cruelty* within this Colony, as ever were *Empson and Dudley* in *England*, in the Days of King *Hen. VII.* And Judges, with Power to determine according to *Discretion*, under the Direction of such a Master, may have as much Colour of Law (I am sorry that I have Occasion to say it) to justify their Proceedings, as those wicked Men had.

But *thirdly*, What Increases the *Danger* of this *Equity Court* to the People of this Colony is, that if the Judges should exceed their Jurisdiction, and assume a Power to try all Causes in a Course of Equity, that are triable at Law, there is no Court that has Power to prohibit or restrain them: And if they act *Arbitrarily* in their Sentences or Err in their Decrees, the Decree is absolute, and cannot be appealed from, unless the Appeal be for more than *One Hundred Pounds Sterling*: so that the Judges of the Supream Court will be absolute and final in any Decree not exceeding that Sum. But if the Decree be for a greater Sum, then the Appeal is only to the *Governor and Council*; and if the *Governour* should be interested against the Party, as in all *Crown Cases* he must needs be, then is the Remedy very uncertain; for a *Governor* will probably be a very *unequal Judge*, where he himself is Party. And by the King's Instruction (49) no Appeal will be allowed on the Judgement of the *Governor and Council*, unless the Sum appealed for, exceed *Three Hundred Pounds Sterling*, so that the *Governor and Council* will be absolute and final for any Decree not exceeding that Sum. But if the Appeal be for a greater Sum, and be carried before the *King in Council*, how great must the Hardship of the Subject be, who will be put under the Necessity

of such an Appeal! By reason of our distance from his *Majesty*, the *Fountain of Justice*, and the great *Expence* that must attend the carrying an Appeal before him, the Subject here, will *many Times find, that Remedy worse than the Disease*, and be obliged, when he has fallen under the *Decree of a Court* at the *Kings Suit*, to purchase his Peace of a *Governor* almost at any Rate, rather than be reduced to the Necessity of carrying an Appeal to the King.

Now the Case is much otherwise in *England*; for if the Party be aggrieved in either of these Cases, a cheap and easy Remedy is to be had, by a Restraint that may be put upon their arbitrary Proceedings, or an Appeal before *Judges*, perfectly indifferent, who can have no Interest in the Case, but only to do their Duty.

These Considerations among some others which might be named, taken from the Circumstances of this Country, add very much, in my Opinion, to the Reasons *Why no Court of Equity in this Colony* should have any being or Authority, without the consent of the Legislature; who in the Creation of such a Court may so *Mould and Fashion, Limit and Check* it, that the good Ends proposed by it, may be secured, and the Dangers that attend it, may be prevented.

From what has been observ'd it may in some Measure appear that but *civil Polity* is very imperfect. It will ever be so in Infant Settlements; but it is our Happiness that we have Power to propose, and Liberty to choose the Means of our Perfection and Advancement. To this End we have our General Assembly, by whose Wisdom and Care, those Laws may be provided, which may best promote the Publick good. The Settlement and Establishments of Courts is in its own Nature a matter of the greatest Importance: They are the Pipes by which the Laws are conveyed to the People. The best Laws in the World are of no Effect without them. If these Pipes are not well made, and well laid, the Waters that descend from the pure *Fountain of Justice*, will be often interrupted and polluted in their Conveyance.

How well worthy is it of the Wisdom and Care of the *Legislature*, that the Law may have free Course, and be equally dispensed to the *King* and all his *People*? This cannot be secured but by a just Settlement and due Subordination of *Jurisdiction*. The Wisdom of our Ancestors may serve as a Guide, and their Example may exhibit the Plan, according to which we may, as near as possible, conform our Courts. This Wisdom has display'd it self, in that they have always taken Care to give *no more Power to a Court*, than

might be Serviceable to the end for which it was instituted. Their Maxim in this Case has ever been this, *Cui plus licet quam par est, plus vult quam licet*, that is, *that Court which has more Power than it ought to have, will often use more than it should*. Again, our Ancestors when they conferred Power, they ever put it under a *Bridle*, that it might not deviate from or exceed its bounds. This is seen in the never failing Check, which is put upon every Branch of Jurisdiction. Happy should we be if we had our Courts, as suitable to our Convenience, and under as sufficient *Checks*, as they have. The same Courts we cannot have, because their Jurisdiction is limited to the Realm of *England*. Those *golden Pipes of Justice* are too short to reach over the vast *Atlantick*, and they would not Suit our Conveniency, if they could be extended hither; 'twould be an Intollerable Burthen to send to *Westminster* for every Writ; and for the Subject here to go so far from home to obtain Justice; and it would be as great a Hardship for my Lords, the Judges, to take *America* within their Circuits, in order to dispence Justice to the People here. Our remote Scituation renders the Administration of Justice by the same Courts inconvenient and impracticable.

But tho' the same Courts cannot conveniently extend, yet the same Laws which declare the Rights of Freemen do extend. We hold under the same *grand Charter* with the People of *England*: We have the same *fundamental Rights, Privileges and Liberties* as they have. Hence *we have a Right to choose the Laws by which we will be governed; we have also a Right to be governed only by such Laws*. These are the *Birth-right of English-men*. These summarily comprehend those Felicities which distinguish us from all other People. Our *American Abode* has put no Limitation on these Rights, but what necessarily flow from our *Dependence*; a *Dependance* vastly to our Advantage, which conveys to us the *Protection and superiour Wisdom* of an *indulgent Parent*. Hence we have a Right to choose *every Law* that is not repugnant to the *Laws of England*; and to choose *every Law of England*, that suits our Convenience; and to refuse every Law of *England* that in its Original Institution was not intended to oblige us. By this we have a Right to choose such Courts as best suit our publick Convenience; and to refuse Submission to any Court, not erected by a sufficient Authority. These are the Privileges of *English-men* in their original Purity and native Perfection. Agreeable hereto, the great Courts in *England*, the *Fountains of Justice and the Dispensers of the Law*, have ever been subject to the Legislature. Their Authorities cannot be altered, nor their Names changed, nor a Term shortned, nor lengthen'd, nor

their Times of sitting appointed in any other Seasons of the Year, nor even a Return Day altered, without an Act of Parliament.^(a)

If our *Mother Country* enjoyed this Right with respect to her *Supream Courts*, it follows upon the Principals of *English Liberty*, that we have the same Rights, with respect to ours. Great Care should be taken that we Copy after her Example in the Exercise of this Right. To do this, we ought *duly to proportion the Power of Jurisdiction in the Distribution of it; and never to give the Power, without the Check*. If these *Admonitions* are well attended to, if this *Example* is truly Copied, we shall act like Children, worthy of such a Parent. To admit like *Courts*, with like *Powers*, without like *Checks*, and this under the Notion of its being the *Privilege of English-men*, to do so; is to deceive ourselves with an imaginary Good, but in truth a real Evil. It is not to imitate the Example of our *Mother Country*, nor any part of our Interest or Duty. She form'd her *Courts* upon the Plan of publick Convenience, we then only act up to her Character, and Copy after her Pattern, when we do the like. To have Power to do so, is the *Right of Free-men*, and to exercise that Power, is to enjoy that Right: But to acknowledge a like Jurisdiction, without any Check, is not to consult either our publick Convenience, our Interest or our Happiness; 'tis not to preserve our Privileges, but to betray them, by giving up our *Lives*, our *Liberties* and *Estates* to an unbridled, and therefore to an *arbitrary Power*.

I will not affirm that our *Supream Court*, as a Court of *Common Law* cannot act legally by Virtue of an Ordinance, but whether it can or not, may be made a Question. However, as Ordinances are liable to sundry Inconveniencies, and are in their Nature temporary, and expire with the King who made them, therefore in Order to render the Administration of Justice, within this Province, stable and certain, and to give our *Supream-Court* Duration, and a proper Check, I think an Act of Assembly very needful. And I am humbly of Opinion, that all Courts of a Supreme and general Jurisdiction, either in *Law* or *Equity*, are in their Nature most properly the Objects of the *legislative Power*, and ought to be under its *Check* and *Control*; for those Courts that are to convey the *Law* and *Right* to all, should suit the Conveniency of all, and in all respects be calculated for the publick Good; and how can this be so well consulted or secured, as in the great Court, where all concerned are represented?

(a). *Dict and Stud Lib.* 1. Cap. 7. *Stat. de Anno bissextile*, 21 Hen. 3. *Stat.* 51 Hen. 3. *Stat. Marl.* Cap. 12. 52 Hen 3. 32 Hen. 8. Cap. 21. 16 & 17 Car. 1. Cap. 6.

I have heard it often said, that our *Supream-Court* is by the *Common Law*, *the Reason assigned* is because the great Courts at *Westminster* are so; It is alledged that they are by the old Custom of the Realm, and a Part of the *Common-Law*, and that if the Laws Extend the Courts must, unless we say the whole Extends and that the Part does not. Hence it is inferr'd *that we have no need of an Act to establish our Courts because they stand upon a much better Foundation without it.*

I have already offer'd the Reasons why I can't be of Opinion, that any Court either of *Law* or *Equity* now in being within this Colony, can be said to be by the *Common-Law of England*; and I must confess, that if there is any Force in this sort of Reasoning, I can't discern it. It seems to me that this Argument can be of no Service to our *Supream-Court*, unless it is the very same *numerical Court* with those which are called the *great Courts at Westminster*; and also unless it can be proved, that those very Courts were established by *Custom*, without an *Act of Parliament*, both these are absolutely necessary, in my Opinion, to make the Argument conclusive. For if our *Supream Court* is not the same *Numerical Court* with the *great Courts at Westminster*, then the same Arguments which prove those Courts to be Courts by *Custom*, will not prove our *Supream-Court* to be a Court by Custom. Again, tho' our *Supream-Court* be the same *Numerical-Court*, with those *great Courts*, yet if those *great Courts* were Originally created by *Act of Parliament*, then they are not by *Custom*; and so no Part of the *Common-Law* in the Sense which is supposed. And it will also follow from thence that if those *great Courts* were established by an *Act*, then our *Supream-Court* ought to be established in the same *Manner*; and thus the contrary of what is pretended by this Argument will be proved.

But that the *Supream-Court* of this Colony is the very same *Numerical Court*, with those at *Westminster*, will not (I suppose) be affirmed; for to make it the same *Numerical Court*, it ought to have the same *Numerical Judges*, and *Officers*, the same *Jurisdiction over England*, and ought to sit at the same *Times* and *Places* which the Law has appointed, for those *great Courts* to sit and Act in; that is, the *Judges of the Supream-Courts at Westminster* are the *Judges of the Supream-Court of New-York*, and the *Judges of the Supream-Court of New-York*, are *Judges of the great Courts of Westminster*, and so of the rest of the *Officers*. And the *great Courts, of Westminster*, have the same *Jurisdiction* with respect to *Persons* and *Causes* within this Colony as they have in *England*; and the *Supream-Court of New-York*, has the same *Jurisdiction*

all over *England* as it has over *this Province*. Also, if our *Supream-Courts* be the *same Court*, it cannot sit in any other *Terms* and *Places* than those which the *Laws of England* have appointed for those *great Courts* to sit and act in. These are Consequences that necessarily follow from a supposal that *our Supream Court* is the *same* with those *great Courts at Westminster*, which are said to be by the *Law*, and a Part of it.

Now let our *Supreme-Court* be examined by these Properties of the *Sameness* of Courts, and then let any Man judge whether *our Supreme-Court* is the *same* with those at *Westminster*, or not; particularly let him enquire whether the *Judges* and *Officers* of the *Supreme-Court of New-York* are the *Judges* and *Officers* of the *Supreme-Courts at Westminster*; whether the *Judges* of the *Supreme-Court at New-York* have a *Jurisdiction* all over *England*, or not; whether they ordinarily hold their Court at *Westminster*, and sit in the *Stated Terms* of *Hillary*, *Easter*, *Trinity* and *Michaelmass*, and if upon such Enquiry, it be found, not to be the same Court with those at *Westminster*, but a *different Court*, with *different Judges* and *Officers*, which have no *Jurisdiction in England*, but only over this *Province*, and does not sit at *Westminster* in the *Stated Terms* above-mention'd, but at other *Places* and *Times* mentioned in an *Ordinance*, within *this Colony*, then the Argument from the Identity or *Sameness of Courts*, proves nothing in favour of our *Supreme Court*, but leaves it to stand by it self upon its own Bottom. And tho' those Courts at *Westminster* are by *Custom* and a Part of the *Common Law*, and as such, by this Argument, ought to extend, yet it does not appear that they have to this Day been extended; and considering our Distance from *England*, it seems unreasonable (notwithstanding this Argument) to suppose they ever will.

This Consideration convinces me of the Inconclusiveness of the Argument, to prove the *Being* and *Existence* of our *Supreme Court* by the *Common Law*, upon a Supposal of the *Extension of that Law*, because it is *not the same Court* with the *great Courts at Westminster*, as is pretended, but in Truth and Fact another Court, which does not stand upon the same Foundation with them.

But as to the second Point necessary to make the Argument conclusive, to wit, *That the Courts at Westminster were not created by Act of Parliament but by Custom*. I believe this Assertion can never be proved, and I think the contrary highly probable to be true, from what has been observed already, to wit, That all the Changes in the most circumstantial Matters relating to those great Courts, *even the appointing of new Return Day*, must be by Act of

Parliament. Now if so minute Circumstance, relating to the Jurisdiction of those Courts, requires an *Act* to establish it, surely it implies very strongly, that the Court it self at first was created by an *Act*. 'Tis possible, that the Darkness of past Ages may have obscur'd the Evidence of this Matter, so that nothing relating to it can be directly proved, either one way or other; yet if we consider the Nature of a *Custom* before laid down, it is hard to conceive that any Court could acquire the *Original* of its *Jurisdiction* in that way. And as in the Nature of the Thing, it is very unlikely that those Courts did derive their *Original* from *Custom* or any thing less than an *Act of Parliament*, so I cant help thinking but that it is very probable that upon a proper Search into Antiquity, those great Courts will appear in Reality to have been established in that way.

If it should be further objected, against the Necessity of an *Act*, *That tho' our Supreme-Court is not the same numerical Court with those at Westminster, yet as the Law is the Foundation of those Courts, so the same is the Foundation of ours.*

I would ask, In which Way? I have never heard of any other Way of accounting for this, but by *Extension of the Laws*. Now according to the Idea that we have of the *Extension of Laws*, nothing can be here by an *Extention of the Laws*, but the *same Laws* that are in *England*; that is, what is *Law in England* is *Law here*, and what is by *Law in England* is by *Law here*; Thus the *same Courts* that are by *Law*, and a *part of it in England*, by the *Extension of the same Laws*, the same very Courts must extend, and are a part of the *Laws here*. If this be the Meaning of the Objection, it has been already answered.

But if it be said, *That the Laws extend so as to create here like Courts, tho' not the very same numerical Courts as in England.*

To extend by Likeness is what I don't understand; such a Mode of *Extension*, seems inconsistent both with the natural Idea we have of it, when applied to *Matter*, and the Idea which we have of it when applied to the *Laws*. For Example, thus, We say, that *Hudson's-River* extends from the City of *New-York* to the City of *Albany*, and that the Province of *New-York* extends from the Ocean, on the South, to *Canada*, on the North. Now this is an *Extension* of the same River, and the same Tract of Land, and not of the like River, or the like Tract of Land. Thus also when we say, the *Laws extend*, we mean that the *same Laws extend* and not *like Laws*. Thus the People of *England* have by *Law* a Right to choose the *Laws* by which they will be

governed: We say, that by the *Extension of the Laws*, this same Right belongs to us. Again, when they have chosen a Law they have a Right to be governed by that Law, and no other, till by their Consent it is altered or repealed. We say also, that by the *Extension of Laws*, this Right belongs to us. Again, the People of *England* have by Law a Right to choose their *Courts*, and to consent to the Way in which they will have the Laws administred to them by these Courts. We say, that by the *Extension of the Laws*, this Privilege belongs to us. Again, the People of *England* by Law have a Right to refuse Subjection to any Court which is not erected by a lawful Authority. We say, That by the *Extention of Laws* the People here have the *same Right &c. &c. &c.* This is what I understand by the *Extension of the Laws*.

Now, in all these Cases, it is not the *like Laws* which extend, but the very *same Laws*, the *same Rights*, the *same Privileges* which the People of *England* enjoy, and which are as capable in the Nature and Circumstances of Things, of being *extended* from *England* into this Colony, as they are of being *extended* from one County or Town in *England*, to another. Hence also, by the *Extension of the Laws*, we say, that we hold under the same *grand Charter of Liberties* with the People of *England*, and not a *like grand Charter*, et sic de Caeteris.²⁰

But to say, that the Laws of *England* extend Courts by Likeness, is to affirm a Mode of *Extention*, which is as much unknown to the Law, as it is inconsistent with the Nature of Things. And were it possible that the *Laws of England*, cou'd *extend Laws and Courts* by Likeness, and give them Being and Force here, independent of our Acceptance and Approbation of them, then tho' there be some Laws and some Courts in *England* which have been chosen and erected there with a particular Application to some Persons, Places, Times and Facts, which have no relation to this Country, nor suit our Convenience or Inclination, yet in this way of reasoning, the Laws of *England* would extend such Laws and such Courts to this Colony, without any Propriety or Necessity, and even against our Consent. Whether this Doctrine is consistent with our Right to choose the *Laws* by which we will be governed, and to choose the *Courts* which shall administer them to us, I shall leave to others to determine. By this Rule it seems, that tho' the People of *England* have consented to a Law for themselves, and a Court to dispense that Law among themselves, without any Intention to bind us by that

20. ["So concerning the rest."]

Law, or by the Authority of that Court, yet we are obliged, even without or against our Consent, to admit the Authority of like Law here, and to yield Obedience to a like Court, that shall attempt to put it in Execution.

To apply this a little; the People of *England* very anciently consented to give the Tenths of the Produce of their Lands, and Labour on those Lands, to the Clergy; and Tythes are still due throughout the Kingdom of *England*, by Virtue of the Law that was there made by such Consent. Now if the Laws of *England* extend by Likeness, and independent of our Consent and Acceptance, the Tythes of our Land, and Labour thereon, are as much due here to the Clergy, as they are there; which considering the high Price of Labour in this Country, will reduce our Lands to about six Tenths of their present Value; so that he that has held Lands in this Colony worth *One thousand Pounds* in Times past, will by the Extension of this Law, find the Value of his Estate reduced to *Six hundred Pounds*, or thereabouts.

How well this Doctrine will agree with our Landed Men, I can't positively determine; but I am a little afraid that if Tythes were demanded of them, by Virtue of the Extension of the Laws of *England* that they would be ready to deny that the Law concerning Tythes does extend: And if it should be urged, that if the Laws extend, the Laws concerning Tythes must extend, unless they admit that the whole does extend, and the Part does not, I believe they would be able, without much racking their Inventions, to find Shifts and Distinctions enough to evade the Consequence of that Argument. And tho' they might not well explain what is meant by the Extension of the Laws, nor know how to distinguish those which do extend, from those which do not extend, nor understand the true Ground of the Extension of some, and the Non-Extension of others, yet I doubt not but that they would insist very earnestly, that the Application of those Laws to the State of Things in this Country, would be highly unjust, in as much as it would take by Force from the People here, what their Fore-fathers in *England* gave by their Free-will; and they would be ready to argue, that tho' the present Possessors of Lands in *England* pay Tythes, yet it is but just they should do so, because they either received them by Inheritance with that Incumbrance, or if they purchased them, they consequently paid the less for them. But for our parts (they would say) we hold our Lands at their full Value, without such Incumbrance, and have a Right to do so; and we don't think it consistent with the fundamental Rights of *English-men*, or natural Justice, or any just Consequence of the Extension of the Laws of *England*,

that we should be obliged to part with any Share of our Property or Possessions, without our Consent. But when We, like our Fore-fathers, have granted Tythes out of our Lands, then, and not till then, will the Clergy have a Right to demand them.

What is here said, with respect to *Tythes*, may be said with a respect to all other *Ecclesiastical Laws*, and in like manner of *Ecclesiastical Courts*; for these Courts are by the old Law of the Realm, and at least as Ancient as the *great Courts at Westminster*; and the same Argument which will give being to our *Supream-Court*, upon the Account of its being like the *Courts of Westminster*, will give being to *spiritual Courts* within this Colony, upon the Account of their being like to the *spiritual Courts in England*. Now the Introduction of *those Courts* into these *American Colonies*, by Virtue of the *Extension of the Laws of England*, I believe will generally be as disagreeable to the Men of this Generation, as it would have prov'd a Disappointment to their Fathers to have found them here, who fled by Thousands into these Parts of the World, in order to get out of the reach of them.

From what has been observed, I think, these two points are very Evident, *first*, That the *same Courts* as are in *England*, do not extend to this Colony, *Secondly*, that *like Courts* (in the sense pretended) consistent either with *Reason, Law, or the Liberties of Englishmen*, cannot extend hither.

I have one Consideration further to add, and it is this, *That the very supposal, that our Supream-Court subsists by the Common-Law of England, meerly by Virtue of its likeness to the great Courts at Westminster, is an Opinion the most Fatal and Destructive to that Court, that could possibly have been advanced; in as much as upon that Supposition, all its past and present Proceedings, must be deemed illegal, null and void.* This will appear if we consider, *First*, That if the Law extends those *great Courts*, by likeness, then it extends those *Laws that concern the Administration of Justice in those great Courts*: so that *THEY* must be the *common Rule and Measure* of both, or at least, both Courts *must be under LIKE LAWS and RULES*; for to suppose our *Supream-Court* to be under *Rules and Laws*, differing from, or unlike to the *Rules and Laws of the great Courts at Westminster*, supposes it to be a *Court* unlike to those *great Courts*, in its most essential Characters; and by this means the Foundation of the Argument for the being of our *Supream-Court*, in respect to its likeness to the *Courts at Westminster*, is taken away, and it can't exist by the *Common-Law*, in the manner which is pretended. *Secondly*, If the *Common-Law* extends those Courts by likeness; then in every respect

this *Similitude* must be preserved; and if our *Supream-Court* in any respect fails of that likeness, then it is not in that point like the great *Courts of Westminster*, and Consequently can't have it's Authority by the *Common-Law*, for that unlikeness; but must be authorized by the same Authority, or an equal Authority, with that which would erect the same unlikeness in the great *Courts at Westminster*, from what they at present bear.

Hence it follows, that whatever *Changes* cannot be made, without an Act of the *Legislature*, with respect to the great *Courts at Westminster*, the like *Changes* cannot be made without Act of the *Legislature* with respect to our *Supream Court* here; and those *Alterations* in those great *Courts* which if made by a less Authority, will vitiate the *Proceedings* of those great *Courts* there. The like *Alterations*, if made by a less Authority, will vitiate the *Proceedings* of our *Supream-Court* here. These *Consequences* seem undeniable. Now to apply them in a few *Instances*.

First, If our *Supream-Court* Exists, by its likeness to the *Courts at Westminster*, then our *Judges* ought to be authorised in the same manner as the *Judges* of those great *Courts* are authorised; and if the *Judges* there, were authorised like ours, and their *Proceedings* would be void for want of a *legal Authority*, then also upon the principles laid down, the *Proceedings* of our *Judges* will be void.

Now the *Judges* of the *Supream-Courts at Westminster*, are made by *Writ* or *Patents*, in a certain Form, to wit, the *Chief Justice* of the *King's-Bench* is created by *Writ*, the form of which is established by Act of Parliament^(a) the other *Judges* are created by *Letters Patent*, the Form and Words of which are prescribed by the Law,^(b) Again, the Form of these *Writs* and *Patents* are so essential to the *Offices* conveyed by them, that they cannot be altered without an Act of Parliament. To this purpose my Lord *Coke*^(c) says,

That it is a Rule in Law, that Ancient Offices must be granted in such Forms, and in such manner as they have used to be, unless the Alteration were by Authority of Parliament.

And^(d) that all *Commissions* of new *Invention* are against *Law*, until they have allowance by Act of *Parliament*.

(a). 4 Inst. {illeg.} 75.

(b). 4 Inst. 75, 117

(c). 4 Inst. 75.

(d). 4 Inst. 163

Again, these Judges now hold their Offices *during good Behaviour*, and the *Barons of the Exchequer* always have so held their Offices.^(e) Hence an Authority in England, conveyed in any other manner, or by Commissions in a new Form, would be illegal, the proceedings by Virtue of them, would be *coram non Judice*,²¹ and if Exception be taken, will be consequently void.

Now, let us consider whether the *Chief Justice of our King's-Bench* is created by a like *Writ*, or any *Writ* at all? Whether our Judges are Commissioned in the forms prescribed by the Laws of *England*, or by a new form devised by the *Governours of this Colony*, or by the *Governours* with their *Council*? Particularly, whether our *Judges*, or even our *Barons of our Exchequer* have their *Patents during good Behaviour*: I believe, upon Examination, it will be found that the form of Constituting *our Judges*, in all these respects, is unknown to the Laws of *England*, nor like the forms used there, and this by no Act of Legislature, to warrant the dissimilitude or unlikeness.

The Consequence of which, is, that if our *Supream-Court* exists a-like *Court*, and under the like *Laws*; and our *Judges* and *Barons* ought to be created in a like *Manner* by *Writ* or *Patents* of the same Tenour, and if they are not, and the *Unlikeness* is created by a less Authority than could lawfully create the same in *England*, I mean, by an Act of the *Governor and Council* in the *King's Name*, and not by Act of the whole *Legislature*, then our *Judges* have not heretofore had, nor yet have a *lawful Authority* to act by their new invented Commissions; there having been no Act of Legislature to warrant the new Form of their *Commissions*; and consequently, all their past and present Proceedings, are unlawful and void.

Secondly, As our *Judges* and *Barons* ought to receive their Authority by *Writ* or *Patents*, like those in *England*; so also their Authority ought to be exactly alike and subject to the like *Checks*, as the Authorities of the like *Judges* are in *England*. Now these cannot be preserved without an actual Existence of *Four distinct Courts* of *Chancery*, *Kings-Bench*, *Common-Pleas* and *Exchequer* within this Province; for if the Powers of all are united in *One*, and the same *Persons* are *Judges* in all *Causes*: Then the Authorities are unlike to the Authorities of the like *Judges* of those great *Courts at Westminster*, and their mutual *Check* one upon another, is entirely lost. For Example,

(e). 12 W 362 4 Inst. 117.

21. [Literally, "Before an improper judge," i.e., a suit brought in court without jurisdiction; the judgment is invalid.—Tr.]

The *Chancellor*, as Judge of the *Common Law*, has his Jurisdiction limited principally to Disputes concerning *Letters Patents*, and Things that relate to the great Seal, and meddles not with *Pleas of the Crown*, or *Common-Pleas*, or the Matters that concern the *Revenue*. The *Kings-Bench* principally hath Jurisdiction over the *Pleas of the Crown*, with which the *Chancery*, *Common-Pleas* and *Exchequer* do not intermeddle: The Court of *Common-Pleas* has Jurisdiction only in civil Causes, and has nothing to do with criminal Prosecutions; and the *Exchequer* is confined to Matters that concern the *Revenue*. Indeed in some respects they have a mixt Jurisdiction, but I think this Distinction is always supposed in the Forms and Methods of Proceeding in the respective Courts.

Again, these Courts have a Check upon one another, as has been observed already. For Example, the *Kings-Bench* can reverse the Judgments of the *Chancery* and *Common-Pleas*, if they err: And the Judges of the *Common-Pleas* and Barons of the *Exchequer* can reverse the Judgments of the *Kings-Bench*, if that Court errs. And that these Authorities of the respective Courts may be kept distinct, and the Checks preserved; it seems to be one Reason of the Rule in Law, that *nemo vtatur duobus officiis*,^(a) the Meaning of which is, That no single Person shall be Judge of two Courts.

Now I take it to be clear in Law, That no Power can unite the Jurisdiction of these Courts, or any three or two of them into one, and thereby alter the Authorities of the respective Courts, and dissolve the Checks which they have one upon the other, but that of the Parliament.^(b) And that if the King by his Letters Patent, without an Act of Parliament, should attempt to unite those Powers, all Acts done by Virtue of such Union, would be unlawful and void.

Hence from the Premises it follows, That if our Supreme-Court does not subsist but by its Similitude to the great Courts at *Westminster*, and it is unlike those Courts in respect of the Union of the Jurisdiction of at least three Courts in one, and the Loss of the mutual Check that each should have upon the other; and this Unlikeness has been created not by Act of the Legislature, but by Ordinance of the Governour and Council (as in Truth the Case is) then all the Proceedings of our Supreme Court, in Virtue of such Union, must be esteemed unlawful and void.

(a). 4 Inst. 100.

(b). *Doct. Stud.* Lib. 1. cap. 7. *Magna Charta* cap. 11. *Brac. Lib.* III. cap. 7. *Stat de bessex-tile*, &c. *Ante*.

Thirdly, If our *Supream-Court* be a Court like the *great Courts* at *Westminster*, and subject to the like Laws, then if those *great Courts* cannot sit at any other Times than the stated Terms of *Hillary, Easter, Trinity* and *Michaelmas*, unless they are altered by Act of Parliament, and if they should sit and act at other Times than are appointed by such Act, their Proceedings would be void; then also the Proceedings of our *Supream-Court*, if it sits and acts at any other Times, which are not appointed by Act of the *Legislature*, must be illegal and void.

Now it is certain, that our *Supream-Court* has never paid any Regard to the stated Terms of *Hillary, Easter, Trinity* and *Michaelmas*, nor has there ever been any Act of *Legislature* to authorize its sitting at any other Times and Seasons than those Terms: 'Tis notorious, That it has sate for more than thirty Years last past, at Times appointed only by *Ordinances* of the *Governors and Council*, for the Time being, who have at Pleasure shifted and changed the Times of the sitting of our *Supream-Court*, without Act of *Legislature* to warrant their so doing, or any Regard to the Laws concerning the Terms in *England*.

Hence it follows, from the Premises, that if our *Supream-Court* subsists merely by Virtue of its *Likeness* to the Courts in *England*; and its *unlikeness* in this respect, is created by a less Authority than the *like Change* could be created there; and if the Proceedings of these Courts, at other Times than are appointed by Act of *Parliament*, would be unlawful and void, then also the Proceedings of our *Supream-Court* at Times not warranted by Act of the *Legislature*, must consequently be *unlawful* and *void*.

These few Instances, I think, shew plainly, that nothing can be more disadvantageous to our *Supream-Court*, than to suppose that it has its Being from the *Common Law*, merely upon the Account of its being *like* to the *great Courts* at *Westminster*, unless it can be said, that it is a *like Court*, under *unlike Rules* and *Laws*; but this Notion is repugnant to the Nature of the Thing, and would suppose the *Common Law* in the Creation of it, to have acted inconsistent with it self, and to have been Author of Contradictions, that is, not to have created it at all.

I believe none will say, that the Instances given of the *unlikeness* of our *Supream-Court* to the *great Courts* at home, are in matters of little Moment, and that it may properly be said to subsist by the *Common-Law*, by Virtue of its *likeness*, notwithstanding this *Dissimilitude* in the points hinted at. For sure, it is of the highest Consequence to know what Authority a Judge has, seeing that is to be the Rule of his Actions, and the Subjects Obedience.

Now this is conveyed by his *Commission*, and if his *Commission* be *Lawful*, he has a *Lawful Authority*, otherwise not.

Again, it is of the last Consequence to the Publick, that the bounds of *Jurisdiction*, and the *Checks* upon Power, should be inviolably preserved; and if less than an *Act of Legislature* should be permitted to remove, alter or change those ancient Establishments, then the strength of the *Constitution* would be broken; and the Law it self, in Consequence of such Permission, might be given up into the Hands of an *Arbitrary Power*.

Again, If the *King* by an *Ordinance* can alter the *Terms*, without the concurrence of the other Branches of the *Legislature*, then it would be in his Power to appoint the sitting of the Courts so often as to prove burthensome to the Subject, or so seldom as to obstruct the due Execution of the Laws; for if the King may appoint what Law Days he pleases, independent of the other Branches of the *Legislature*, he may keep his *Courts* always sitting, and oblige his Subjects to a constant Attendance, to the great *Obstruction* of *Husbandry* and *Commerce*, and the Ruin of Persons and Families, or he may appoint the *Terms* but once in the ten Years, and so in Effect deprive his Subjects of the Benefit of the Law.

From these Considerations it appears, that our *Ancestors*, with great Reason, have always been concerned in the *Regulation* of the Powers and appointing the *Times* of the sitting of their *Supream-Courts*; and there seems to be the like Necessity why our *Supream-Court* should be subject to the Order and Direction of the *Legislature* here.

I have taken the more pains to set forth this Necessity, and to expose the insufficiency of the Arguments, that I thought might be offered against it, because I have heard the like started before this Time, and great Stress laid on them by some Gentlemen among us, whose Persons and Opinions I Esteem and Honour, who seem to think an Act of the *Legislature* not wanting, and that our Courts stand upon a much better Foundation without it; and that to suppose our *Supream-Court* to require an Act, strikes at the Root of all our *Priviledges*, as Englishmen. But as the Doctrine of the *Extension* of the *Laws*, is the sole Foundation of the opposite Opinion to that which I have advanc'd, I can't help saying, that I think it has been greatly *mistaken* and *misapplied* in this Instance; and I conceive, as to this Point, that the Law has extended nothing more than a Right to us to constitute our Courts so as best to suit our Convenience; and this, I think, is all that we can wish to be extended. This Construction does preserve our Liberty to choose

such Courts, as we like, but the other destroys it, in that if the Law extends Courts by likeness, then Courts must exist here meerly because there are *like Courts in England*, without any Liberty to us to reject or refuse them.

Upon the whole, tho' our *Supream-Court*, in my humble Opinion, neither does nor can, in its present *Constitution*, subsist by Virtue of the *Extension* of the *Laws of England*, but subsists meerly by an *Ordinance*, nor was (I believe) ever thought to have had any other Foundation, till lately; yet I think, it ought to have a better, and to be Established by *Act* of the whole *Legislature*; which may give it *Duration*, and such *Powers* as are Necessary for the equal Distribution of Justice, and such *Checks* as may bound its *Jurisdiction* and prove a sufficient Safeguard against *its Errors*. The Prosperity of this Colony is greatly concerned in this matter, and the secure *Enjoyment* of all our *Priviledges* depends very much upon it.

We are happy under the Administration of the best of Kings, who is as tender of the *Liberties* of his *People*, as of his own *just Prerogatives*. This assures us, that every thing that is proposed by this Assembly for our Common safety, will meet with the *Royal Approbation*. His Excellency our Governor has amply declared his readiness to concur with you, in every thing that may advance the *publick Good*. The Prayer of the People is very Imporunate for the Establishment of Courts. The publick Tranquility, as well as Safety, seem to require it: Much is expected from this Assembly, the Eyes of the People are fixed upon you, and wait with Impatience: The Issue of your Determinations: And the Care which you have taken to inform your selves of what is most for the *publick Good*, is a plain Indication, that you intend to do your utmost to Promote and advance it.

I think, Mr. *Speaker* One *Court of Equity* is absolutely necessary in this Colony. To Constitute and Establish this, under due Regulations and proper Checks, is well worthy of the Wisdom and Care of this House. To suffer such a *Court* without such *Checks*, is to give up our *legal Securities* into the Hands of an *Arbitrary Power*. I think no *Court of Equity* within this Colony, can be beneficial and safe unless under these two *Checks*. First, The PROHIBITION of the *Supream-Court*, if it takes Cognizance of any Cause for which the *Common-Law* has provided a Remedy. Secondly, A cheap and easy APPEAL in all Cases of Error, to (at least) some one Superiour Jurisdiction among our selves; before we are reduced to a Necessity to carry an Appeal to England. The first of these will preserve the Dignity and Authority of the *Common-Law*; and both will go a good way towards preventing an *abuse of Power*; a *Power* without these *Checks* will be exceeding dangerous in any Hands, but

most of all in the Hands of a Governor. My Lord *Coke* says, that it is an Old saying that great Men in judicial Places, will never want Authority.^(c)

To Conclude, 'Tis with the greatest Submission that I tender my Opinion upon these Points. I have said nothing with a Design to offend any Man, nor have I omitted saying any thing, that I thought might tend to the publick Good. *Liberavi animam meam.* I have endeavoured to discharge the Trust, and support the Character, with which this House has honoured Me. You have my sincere and real Sentiments. If I have err'd in any thing, it has been unwillingly. I am heartily a Friend to this Colony, and earnestly wish its Prosperity. I have no Interest in the Points in Question, but what are common to all the Freemen, of this Province. I profess the greatest Veneration for the Laws of my Country, and am glad of every Opportunity to do them publick Honour. They place our *Liberties* upon the firmest Basis, and put our *Properties* under the surest *Protection*. I rejoyce in the Security that we have of a long Enjoyment of them, by the Settlement of the Succession in the House of *Hanover*. 'Tis the Excellency of our *Constitution*, and the Glory of our *Princes*, that they are *Sovereign* over *Free-men*, and not *Slaves*. 'Tis the Misery of an *Arbitrary Government*, that a Man can enjoy nothing under it, that he can call his own. *Life, Liberty* and *Property* are not his, but all at the Will and Disposal of his *Tyrannical Owner*. I don't wonder that our Ancestors have been always so jealous of their *Liberties*: How oft have they bravely Fought, and nobly Died in the Defence of them? We have received our *Liberties* and our *Laws*, as an Inheritance transmitted to us in the *Blood of our Fathers*. How highly therefore should we prize and value them! And what Care should we take, that we and our Posterity may enjoy them in their full Extent? If this be our happy Case, *we shall sit under our own Vines and our own Figg-trees, and none will make us afraid.* We shall see our Country flourish, and our selves an happy People. But if an *Arbitrary Power* over our *Liberties* and *Properties*, be let in upon us but at a BACK DOOR, it will certainly drive many of us out of our Habitations; and 'tis to be feared, will once more reduce our Country to a Wilderness, and a Land without Inhabitant: Which we doubt not but this *Honourable House* will take Care to prevent.

William Smith.

FINIS.

(c). 2 Inst. 553.

Joseph Murray,
Mr. Murray's Opinion Relating to the
Courts of Justice in the Colony of New-York
(New York, 1734)



SPEAKING TO THE New York Assembly five days after William Smith in the selection immediately above, Joseph Murray, an immigrant from Ireland and the son-in-law of Governor Cosby, took a different tack. He agreed with Smith “that the People of this Colony are undoubtedly entitled to all the *Customs, Laws, Liberties and Privileges of Englishmen*,” but he denied that any of what he called the “*four fundamental Courts*” of England, including the court of equity, owed their establishment to an act of Parliament. Rather, he argued, that they were “incident to the Constitution, under which we think our selves happy to be,” and were “as ancient as the Kingdom it self, to which we belong.” Tracing the authority of those courts to the same “*Immemorial Custom in England*” that was the foundation for all the other “*Laws, Constitutions, Liberties and Privileges*” that Englishmen, in the colonies and the metropolis, valued so highly, he warned the Assembly that the denial of this source as the only basis for the colonial court system could be “most *Destructive . . . to the Liberties and Privileges of the People of this Colony*” by providing fuel to those who were in favor of extending prerogative power in the colonies and denying to them their fundamental rights as English people. Both in the text and in an appendix, Murray cited many instances of the New York Supreme Court’s acting as an equity court in previous decades and, questioning the Assembly’s competence to legislate

on such matters, argued that an act to establish courts would be redundant. Murray's speech was one of the most penetrating explorations of the customary origins of the English constitution and the implications of that fact for colonial constitutional development. (J.P.G.)

Mr. Murray's Opinion Relating to the Courts
of Justice In the Colony of New-York;
Delivered to the General Assembly of the said Colony,
at their Request, the 12th of June, 1734.

Mr. SPEAKER;

By the Desire of this Honourable House, I appear here this Day, humbly to deliver my Thoughts upon the subject Matter of three Petitions, (exhibited to this House) one from several of the Inhabitants of the City and County of *New-York*, another from several of the Inhabitants of the County of *Westchester*, and the third from several of the Inhabitants of *Queens-County*, relating to the *Courts of Justice* in this Province; A Matter not only of great Expectation, but really of very great Concernment to the good People of this Colony; a subject which deserves to be handled by Persons of far superior Abilities than what I can pretend to. However, *Mr. Speaker*, I esteem it a great Honour done me, and I own my self much obliged to this honourable House for their Opinion of me, in supposing I cou'd be capable of giving them any Information herein; and tho' I am sensible of my own Inabilities, yet since they have desired it, I shall endeavour to deliver my Sentiments in the best Manner I am capable of; and as there are many Things which I conceive will be proper (on this Occasion) to mention, I have chosen to commit them to Writing, least any of them might slip my Memory. But I must beg leave to acquaint you, that (being often interrupted while I was writing this) I have not been able to contract it in a narrower Campass, for want of more Time, which I hope will apologize for the Length of it.

These three Petitions, *Mr. Speaker*, (being pretty near of one Tenor) may therefore be considered together, the principal and material Parts of which (I conceive) may be reduced to three general Heads.

1st. The Petitioner's own Opinions, (*to wit*) *Being Inhabitants of the Province of New-York*, (part of the Dominions of Great-Britain) *they take themselves to be entitled to the Liberties and Privileges of English-Men.*

2nd, Some Suggestions contained in these Petitions (*to wit*) *That our Courts are not established by Act of Assembly, as by the Laws of England, they ought to be, especially the Court of Equity, lately erected in the Supreme Court, which they take to be a Grievance, and destructive to the Liberties of the People, as it is constituted.*

And 3dly. The Prayer of the Petitions, *to wit, To settle the Courts of Justice by Act or Acts of Assembly.*

As to the First, I do entirely agree with the Petitioners, That the Inhabitants of this Colony are intitled to the *Liberties and Privileges of English Men*, and I hope they always will continue so; the Pains that Mr. *Smith* took last *Friday* to prove this, has rendered it useless for me to enlarge thereon, (which otherwise I shou'd have done) wherefore shall freely own, and say on this Head, that I agree and joyn with Mr. *Smith*, That we are under the *same Constitution*, and entitl'd to the *same Laws* as are in *England*, and I shall beg Leave to add, what I suppose will not be deny'd, that as the *Laws of England* are in Force here, and the Inhabitants of this Colony, have a Right to the Benefits thereof, that what is *Law*, and what is *by Law*, in *England*, is, and ought to be the same here; and such Things as are *Fundamentals*, in and by the *Constitution of England*, must be *Fundamentals here*.

As to the second general Head, *to wit*, The Suggestions in the said Petitions, I conceive may be divided into four Particulars,

- 1st. *That the Courts are not established by Act of Assembly.*
- 2dly, *That by the Laws of England, the Courts here ought to be established by Act of Assembly.*
- 3dly, *Especially the Court of Equity lately erected in the Supreme Court.*
- 4thly, *That the Petitioners take that Court to be a Grievance, and destructive to the Peoples Liberties, as Constituted.*

As to the first Particular, *viz. That the Courts are not established by Act of Assembly*, I believe to be true, tho' I remember some time ago there was a written Book brought into the Supreme Court by a worthy Member of this honourable House, who then was Chief Justice, wherein (as it was said) there were several Acts of Assembly which were passed in the *Duke of York's* Time, among which Acts, one was said to be *An Act for the Establishment of Courts*, and was perpetual, the same Book (as I believe) was produced here by Mr. *Smith* last *Friday*, and that Act read, but whether that was really an Act of Assembly of this Province, or not, or is in Force or not, I cannot say;

It never was among our printed Acts, that I know of, and I do not remember ever to have seen it, except in that written Book; But if that be an Act now in Force, then this Part of the Petition is not true, and what the Petitions pray to have done, is already done; but as I do not know that that is an Act now in Force, I'll beg leave to suppose it is not, and then it must be allow'd to be true, That the Courts are not established by Act of Assembly, as the Petitions assert.

And so I proceed to the second Particular, under the second general Head proposed, *viz.* the Allegation, *That by the Laws of England the Courts here ought to be established by Act of Assembly.*

If this be true, and that they are not erected by Act, It must necessarily and absolutely follow. That there is not, nor has there been, for many Years past, any Supreme Court, or any other Court, legally established within this Colony, from whence must also follow, that all that has been done in the Supreme Court, or any other Court in this Colony, for many Years past, must be null and void; for if the Courts ought (by the Laws of *England*) to be established by *Act of Assembly*, and they are not, then they are not legally established; and if not legally established, whatever is done by a Court that has no legal Establishment, must unquestionably be void. And what an Inundation of unhappy Consequences must flow from thence, I shall leave to this honourable House to consider; they are too obvious to need enlarging upon.

I have heard but one Objection to this Consequence, which is this, *That as to all those Cases, where the Parties have not pleaded to the Jurisdiction of the Court, they by omitting to plead to the Jurisdiction, have admitted it, and now must be bound thereby.*

To which I beg leave to answer, If there was a Court legally established, which had a legal Power to try and judge of Matters arising within their Jurisdiction, and a Suit is brought for Matters arising out of their Jurisdiction; if the Party does not plead in such a Case, that the Matters did arise out of the Jurisdiction, but pleads other Matter, he shall thereby be said to have admitted the Jurisdiction, and be bound by it. But the Cases are not alike, for there, in the Instance put, there was a legal Court that had Power to try Things, within their Jurisdiction (and the Plaintiffs generally alledge the Matters sued for to have arisen within) and if the Defendant will not gain-say that, but plead other Matters, he thereby tacitly owns that they did arise within, and shall be estopped afterwards from saying otherwise,

because, by pleading other Matters, he has admitted and allowed the Jurisdiction; now there, there was a legal Court, whose Jurisdiction was admitted. But here, if what is said be true, there is no *Legal Court* at all. But even in Case of a *Legal Court*, tho' the Defendant does not plead to the Jurisdiction, but pleads other Matters; yet if it appears any where on the Record, that the Matters sued for were out of the Jurisdiction, the Judgment will be erroneous: for no Act of a Party can give Jurisdiction to a Court, if it appears the Court hath no Jurisdiction, as Lord *Vaughan's Reports*, 405. So much of this Case as relates to the present Purpose, are in these Words, *And no act of the Party gives Jurisdiction to the Court, by elapsing his time to plead to the Jurisdiction, if it appears by the Record, the Court hath no Jurisdiction*, as in this case it did. To the same Purpose also is *Keilway's Reports* 55 a.

And if it be so, in case where there is a *Legal Court*, and a *Legal Jurisdiction*, I conceive it will be more so, where there is *No Legal Court* at all; for if it shou'd not be so, where there is *No Legal Court*, it would always be in the Power of any two Parties, by their own Admission and Pleading, to give the *Power and Jurisdiction of a Court* to any Man they please, which I presume, no body will venture to say, any two Parties can do. So that, notwithstanding this Objection, the Consequences I before mentioned, must unavoidably follow, *viz. That all the Acts of the Supreme Court, and other Courts in this Colony, for many years past, must be void*. And it looks very odd to me, if what is asserted in these Petitions, be true, that so many worthy and learned Men as have been Judges in this Colony shou'd not have found this out before.

Wherefore it may be proper to enquire, how this Allegation is proved or appears to be True; and the greatest part of what I conceive has been said for it, will amount at last, only to this, *That by the Laws of England, the King by Grant, cannot erect a Court of Equity in England*. And to prove this, many Authorities were shewn, and many more might be shewn to prove the same thing, and I do own, and agree them all, as I said last *Friday*, to be good Law, and shall likewise agree, *That in England the King cannot, by Grant, erect a New Court of Kings Bench, Common Pleas, or Exchequer, or any other Court with general Jurisdiction*.

Thus much being allowed, let us consider, what is proved thereby, and I apprehend its plain from thence, and the Authorities produced on this head, do abundantly prove, that the *Courts of Chancery, Kings Bench, Common Pleas and Exchequer*, at Home (being *Courts of general Jurisdiction*) were not, nor

could be erected by the *King's Grant*; if so, those Courts in *England*, must have had some other Foundation, and that, *I* conceive, must be either by *Act of Parliament*, or by the *Law* without an Act. That they were, or either of them, was erected by *Act of Parliament*, is what *I* don't remember to have seen any Authority to prove, nor do *I* remember ever to have seen, nor do *I* believe there can be shewn, any *Act of Parliament* by which either of the said Courts was erected; but if any such Act ever was, *I* presume, it is still in being, and may be shewn; and if any such can be shewn, *I* shou'd be of Opinion, this Honourable House wou'd not do amiss to Enact the same here; but as *I* know of no such Act, *I* must beg leave to take it for granted, that there is none; and if so, *I* think it must follow, they are by the *common Custom and Laws* in *England*, without an Act. And *I* shall beg leave to add, and am perswaded *I* shall be able to prove, by and by, That they are not only by the *common Custom and Laws of England*, without an Act, but are *Fundamental Courts*, and incident to the *Constitution of England*; and if so, surely (if the *Laws of England* extend here, and we are under the same *Constitution* with that of *England*) what is by *Law in England*, must be by *Law here*; and the Courts which have their *Originals* from, and are by that Law, are *Fundamental Courts*, and incident to that *Constitution*, must by the *same Law and Constitution* extend here. To say, that the *Laws of England* extend here, and yet, that the Courts, which are by that Law, and by which the Laws are to be administred, do not, is, in the main, *denying the Laws of England to Extend*: For how can the Laws be put in *Execution*, or *administred* without Courts? To say, that we have a *Right*, and deny that we have the *Means* or *Remedy* to come at, or obtain that *Right*, is certainly *Denying the Right*; for, *Want of Right* and *Want of Remedy*, are *Termini Convertibiles*,¹ and the same thing. To say, that the *Laws and Constitution of England* extend here, and deny that the Courts (which are by and part of those *Laws* and that *Constitution*) do extend, is to say, that the *Whole does*, but *part* of that *Whole does not extend*. And *I* wou'd fain know, what sort of *Constitution* must that be, that has *No Courts* to administer *Laws* to the People: The *Constitution of England* is with Courts, and shall we say, that *That Constitution* extends here, but *without Courts*? It is one part of the *Privilege* of an *English-man*, to have his *Property* determined by such Courts as are *Fundamental Courts*, and are by the *Law*, without *Act of Parliament*; but if those Courts do not extend, that *Privilege* he can't have here.

1. ["Exchangeable terms."]

I have heard it said, *That the People here, have a Right to have those Courts established by Act of Assembly.* What sort of a *Right* that is, I am at a Loss to know; If without an Act, they have no Right to the Courts, until an Act be passed into a Law, the People have no Right at all to them; and then, in the mean Time, or all this Time that there has been no Act of Assembly, how cou'd the *Laws of England* be said to extend here, without Courts to put the Laws in Force? How can any Man say, he is secure in his Privileges of an *English-man*, if the Courts which by the Laws of *England* are to secure the Subject in those Privileges, do not extend? Suppose an Act was passed to establish these Courts, they wou'd not be the same Courts that are by the Laws of *England*; for those in *England*, are by the Law, *without an Act*, and the Courts here, wou'd be *by Act*, and *not by the Law*.

Again, suppose an Act shou'd pass this House for the Establishment of these Courts, it must be on a Supposition that the Courts were not on a legal Establishment before; and suppose the Council, or the Governor shou'd be of an Opinion, the Courts were well established, and wou'd therefore not pass the Act, here wou'd be the Opinion of this honourable House, *That the Courts were not legally established*, and yet there are no other Courts in the Colony to administer those Laws that are said to extend, nor to secure the Subjects in the Enjoyment of those Privileges to which they have a Right.

Or, suppose the Governor and Council shou'd pass such an Act, and it shou'd be rejected at Home, Upon what a precarious and uncertain Footing the Laws and Privileges of the People of this Colony wou'd then be, I must refer to this honourable House to consider.

It has been objected against the Supreme Court here in this Colony, *That it has neither Custom, Immemorial, nor Act of Assembly to warrant it, but the Courts at Home have Immemorial Custom, and therefore this Court here can't be on the same Footing with those in England.*

This Objection is now made only against the Supreme Court, but if it be allowed a good Argument in this Instance, I conceive it will in the End prove one of the most *Destructive Doctrines* to the *Liberties* and *Privileges* of the People of this Colony, that cou'd be advanced, and will equally serve as an Argument to prove, *That the People here are not entitled to the Laws, Liberties or Constitution of England*, and then it may well be said to prove too much, which (in Argument) is always said and allowed to prove nothing at all: For first, as to the *Common Law of England*, it is excellently well described by *Sir John Davis* in the Preface to his Reports, which was taken Notice of by

Mr. *Smith* last *Friday*, and allowed by him to be a very good Description of it. I shall therefore beg Leave to read a few Paragraphs thereof, which are in these Words, *viz.*

The *Common Law of England* is nothing else but the *Common Custom of the Realm*, and a Custom which hath obtained the Force of a Law, is always said to be *Jus non Scriptum*;² for it cannot be made or created, either by *Charter*, or by *Parliament*, which are Acts reduced to writing, and are always Matter of Record, but being only Matter of Fact, and consisting in Use and Practice; it can be recorded and registred no where but in the Memory of the People.

For a Custom taketh Beginning, and groweth to Perfection in this Manner: When a reasonable Act once done is found to be good and beneficial to the People, and agreeable to their Nature and Disposition, then do they use it, and practise it again, and again, and so by often Iteration and Multiplication of the Act, it becometh a *Custom*, and being continued, without Interruption, time out of Mind, it obtaineth the Force of a Law.

And this *Customary Law* is the most perfect, and most excellent, and without Comparison, the best to make and preserve a Commonwealth; for the written Laws, which are made either by the Edicts of Princes, or by Council of Estate, are imposed upon the Subject before any Tryal or Probation made, Whether the same be fit and agreeable to the Nature and Disposition of the People, or whether they will breed any Inconvenience or no? But a Custom doth never become a Law to bind the People, until it hath been tryed and approved Time out of Mind, during all which Time, there did thereby arise no Inconvenience, for if it had been found inconvenient at any Time, it had been used no longer, but had been interrupted, and consequently it had lost the Virtue and Force of a Law.

Therefore as the Law of Nature, which the School-men call *Jus Commune*,³ and which is also *Jus non Scriptum*, being written only in the Heart of Man, is better than all the written Laws in the World, to make Men honest and happy in this Life, if they wou'd observe the Rules thereof; so the customary Law of *England*, which we do likewise call *Jus Commune*, as coming nearest to the Law of Nature, which is the Root

2. ["Unwritten law."]

3. ["Common law."]

and Touchstone of all good Laws, and which is also *Jus non Scriptum*, and written only in the Memory of Man (for every Custom, tho' it took Beginning beyond the Memory of any living Man, yet it is continued and preserved in the Memory of Men living) doth far excel our written Laws, namely, our Statutes or Acts of Parliament; which is manifest in this, that when our Parliaments have altered or changed any fundamental Points of the common Law, those Alterations have been found by Experience to be so inconvenient for the Common-wealth, as that the common Law hath, in Effect, been restored again, in the same Points, by other Acts of Parliament, in succeeding Ages.

By this Mr. *Speaker*, it may be observed, that the Custom of the Realm or common Law, is that which has been tryed and approved Time out of Mind, and that it doth far excel Acts of Parliament, and that when the Parliaments have altered, or changed any fundamental Points of the common Law, those Alterations have been found by Experience, to be inconvenient to the Common-wealth. Now it can't be well denied, (tho' least it shou'd, I shall hereafter shew) That the four fundamental Courts of Chancery, Kings Bench, Common-Pleas, and Exchequer, have been Time out of Mind, and are of original Jurisdiction, and by the Law.

But the Objection against them here is, That tho' they have been Time out of Mind in *England*, they have not been Time out of Mind here; and it is impossible they shou'd be, because this Country has not been long enough settled. And will not the same Argument hold against the common Law it self, *viz.* That tho' the common Law has been (Time out of Mind) in *England*, yet it has not been Time out of Mind here; So that the same Argument now used, in Opposition to the Courts here, will equally serve in Opposition to the common Law it self.

Again, 2dly, As to the Liberties and Privileges of the People of *England*, they are entitled to those Liberties and Privileges, by immemorial Custom used there. Now the People of *New-York* can't say, they have their Liberties and Privileges by immemorial Custom in *New-York*, because it has not been long enough settled; and therefore, if the Objection made against the Courts here, to wit (because they can't be here by immemorial Custom) be good, the same Objection will serve against the Liberties and Privileges of the People here as *English-men*, because they can't be here by immemorial Custom.

But 3dly, As to the Constitution of *England*, it is allowed to be Immemorial; we think our selves happy, and value our selves on being under the

same Constitution here; but if the Objection against the Courts being by our Constitution and the Law here be allowed, *to wit*, That tho they are fundamental Courts, incident to the Constitution of *England* and as ancient as the Kingdom it self, and known to the Law at home yet as they are not by immemorial Custom here, they cannot be the same with those in *England*; the same Objection will certainly hold, that as the Constitution can't be by immemorial Custom here, it can't be the same Constitution, or upon the same Footing here, with that of *England*.

But 4thly, This Objection may be made use of, even against Assemblies, (which are our Parliaments here) The Parliaments at home are by the Constitution and Law of the Kingdom, Time out of Mind, and we say the same Constitution, and Law being here, we ought thereby to have the same here. But this Objection will say, there can be no Parliament, or Assembly here, time out of Mind, or by immemorial Custom, and therefore can't be the same, or upon the Footing with the Parliament in *England*.

In short, if this Objection is to carry Weight against the Courts, for want of their being by immemorial Custom here, the same may be used against the Constitution, Laws, Assemblies, and all the Liberties and Privileges that *English-men* boast to have a Right to by immemorial Custom in *England*; for the Inhabitants of this Colony cannot claim any of them by immemorial Custom here.

As to what is said, That the Inhabitants have not a Right to those Courts here, for want of immemorial Usage, but have a Right to have them established by a Law, the same may, with equal Reason, be applied to the Laws, Constitutions, Liberties and Privileges of *English-men* for want of immemorial Usage here; we have not a Right to them, but have a Right to have them established by a Law; so with respect to Assemblies, for want of immemorial Usage here, we have not a Right to them, but have a Right to have them established by Act of Assembly, which I conceive carries in it a very great Absurdity.

But, Mr. *Speaker*, give me leave to speak my Sentiments freely. I humbly apprehend notwithstanding this Objection, That the Inhabitants of this Colony (being a Colony and Plantation of the Kingdom of *England*) are, & I hope, always will be not only entitl'd to the same *Rights, Liberties, Privileges* and *Laws* as are in our Mother Country, but also to the same Courts of Justice by which those *Rights, Liberties* and *Privileges*, are preserved and continued to the People of *England*, and by which those *Laws*

are administred there, and what better Courts can be thought of or desired, or upon what better footing can the Courts be, by which the *Rights, Liberties and Privileges of the People of England*, are *protected*, and by which the *Laws of England* are *administred*, than those Courts which are *Fundamental Courts*, as ancient as the Kingdom it self, known to the Law, and have been *Time out of Mind* there? To put them upon any other footing, might be attended with more Inconveniencies than may at present be fore-seen. And as in *Davis's Preface*, before mentioned, the *Jus non scriptum*, or unwritten Law, far excels the *English written Law*; for when the Parliaments have altered or changed Fundamental Points of the *Common Law*, those Alterations have been found by Experience to be inconvenient to the *Common Wealth*; and if it be *dangerous* in an *English Parliament* to make such alteration, I presume it will not be said to be *less dangerous* for *This honourable House* to do so.

And now, *Mr. Speaker*, as I have all along, in what I have said, taken it for granted, that the *Courts of Chancery, Kings Bench, Common-Pleas and Exchequer*, are *Fundamental Courts*, and are by the *Common Custom and Law of England*, it may be thought necessary to prove them to be so.

But before I proceed to the Proof thereof, it may not be amiss to take Notice of an Objection that has been made hereto, which seems at first mentioning, to have something in it, tho' (when considered) will be found more a playing upon Words, than any force of Reasoning therein. What I mean, is, *That as Courts of common Law and Courts of Equity are generally made use of in contra-distinction one to the other, it seems a Contradiction to say, that a Court of Equity is or can be by the common Law.*

As to which, there are many other things in contra-distinction, to which the Terms *Common Law* are generally made use of, and yet are declared to be by the *common Law*, as for instance, when we speak of the *common Law* and *Statute Law*, the one is made use of in contra-distinction to the other, as in *Lord Hale's History of the common Law*, pag. 54. speaking of the *common Law*, he says thus, *Some have thought it to be so called, by way of contra-distinction to those other Laws that have obtained within the Kingdom, as first, by way of contra-distinction to the Statute Law.* And yet in pag. 66. he makes *Acts of Parliament* one of the *authoritative Constituents of the common Law*; these are his words, *And here it must not be wondred at, that I make Acts of Parliament one of the authoritative Constituents of the common Law, tho' I had before contra-distinguished the one from the other.*

Another instance is, the *common Law* is used by way of *contra-distinction* to particular *Customary Laws*, as in the same Book, pag. 54, speaking of the *Common Law*, he says, *Some have thought it to be so called, by way of contra-distinction to particular Customary Laws.* And yet in p. 25. he says, *The various and particular Customs of Cities, Towns and Mannors are thus far parts of the common Law, as they are applicable to those particular Places.* And those particular *Customs* are always in themselves contrary to the *common Law*, as by the *Custom of Gavel-kind*, all the *Issue Male*, inherit equally; and by *Burrough English*, the *Youngest Son shall inherit all*; both which are contrary to the *common Law*; for by that, the *Eldest Son shall inherit all*; and many more might be mentioned.

Again, by a *Tryal at the common Law*, is generally understood to be a *Tryal by Jury*; but yet there are several other sorts of *Tryals* allowed by the *common Law* as 1 *Inst.* 74. where are these words, *And there be divers other Tryals allowed by the Common Law, than by a Jury of Twelve Men, which you may read at large in the 9th Book of my Reports, so. 30, 31, &c. in the Case of the Abbot of Strata Marcella, which are as plainly set down there as they can be here.*

And in *Tryals per pais*, Page 7. it is thus said, *But because it is necessary to be known that there are many ways allowed by the common Law to try Matters of Fact, besides this by Jurys, I will here repeat some of them, and for this first, hear the Oracle, who tells you, That he has read of six Kinds of Certificates allowed for Tryals by the common Law, &c. Also, 9th Coke, 30. b. is in these Words; There are divers Manners of Tryals allowed by the Common Law, above the three mentioned in the Argument of this Case, (that is to say) of Matters in Fact by Jurors, of Matters in Law by the Justices; and of Matters of Record, by the Record it self. As in Treason, the Tryal of one who is a Peer of the Realm, that is, a Lord of the Parliament, shall be upon an Indictment of Treason or Felony, tryed by his Peers, without any Oath, but upon their Honours and Allegiances; but in appeal at the Suit of a Subject, they shall be tryed per probos & legales Homines Juratos⁴ 10 E. 4 6. &c. Customs and Usages of every Court shall be tryed by the Judges of the same Court, if they be pleaded in the same Court. In Dower or Appeal brought of the Death of her Husband, or in an Assize brought by a Woman who was the Wife of B. if the Tenant or Defendant plead that the Husband is living, the Tryal shall not be by Jury, but*

4. ["By honest and lawful men sworn," i.e., as jurors.—Tr.]

by the Justices, upon Proofs made before them, for greater Expedition, &c. And many other sorts of Tryals that are called Tryals allowed by the common Law, may be seen in the said Book.

And there is a Difference between a *Court of common Law*, and a *Court by the common Law*: When we say, a *Court of common Law*, by that is understood, a Court which is *contra-distinguished* from a *Court of Equity*; but notwithstanding this, they may be both Courts *by the common Law*. And tho' Tryals in Courts of Law, generally speaking, are by *Juries*, yet it will not follow from thence, but that Courts which have another Method of Tryals, are *by the common Law*. There is a plain Instance to this Purpose in *Hales History of the common Law*, 35 with respect to the *Admiralty Court*, which every one knows tries Matters according to the Course of the *Civil Law*, as *Chancery does*; the Words of the Book are,

This Court is not bottom'd or founded upon the Authority of the civil Law, but hath both its Power and Jurisdiction *by the Law*, and *Custom of the Realm*, in such Matters as are proper for its Cognizance.

And Tryals in the *Common Law Courts* and Tryals in the *Civil Law Courts*, are as much made use of in *Contra-distinction* one to the other, as a *Court of Law* and a *Court of Equity*; yet there it is said, That that Court hath both its Power and *Jurisdiction* by the *Law* and *Custom* of the Realm.

Again, what the *Common Law* is in its usual and proper Acceptation, may be seen in Page 24. of the same Book, where among other Things, it is said, "To direct the Limits, Bounds and Extents of Courts, and their Jurisdictions." And in page 25 it is said, That

the *Common Law* assumes divers Denominations, yet they are but Branches and Parts of it, like as the same Ocean, tho' it many Times receives a different Name from the Province, Shire, Island or Country to which it is contiguous, yet these are but Parts of the same *Ocean*.

And indeed I take it, that these two Expressions when made use of in *Contra-distinction* one to the other, is only, or generally, to signify the two different Courts, or the different Methods of Practice or Proceedings in the two different Courts; but when we speak in general, of the *common Custom of the Realm*, we may well and truly say, That it is the very ground of both these Courts.

But to proceed, and shew, all these Courts are by the *common Custom* and *Laws of England*, a Book called *Doctor and Student*, in pages 22, 23. speaking

of the Grounds of the *Law of England*, and of the *Courts of Chancery, Kings Bench, Common Pleas* and *Exchequer*, it says thus,

And tho' in some Statutes is made mention sometimes of the said Courts; yet nevertheless, of the *first Institution* of the said Courts, and that such Courts shou'd be, there is no *Statute* nor *Law written* in the *Laws of England*; and so all the Ground and Beginning of the said Courts, depend upon the *Custom of the Realm*; the which Custom is of so high Authority, that the said Courts, ne their Authorities, may not be altered, ne their Names changed, without Parliament.

Also, by the *Old Custom of the Realm*, no Man shall be taken, imprisoned, disseized, nor otherwise destroyed, but he be put to answer by the Law of the Land: and this Custom is confirmed by the Statute of *Magna Charta*, Cap. 26.

Also, by the *old Custom of the Realm*, all Men, great and small, shall do and receive Justice in the Kings Courts; and this Custom is confirmed by the Stat. of *Marl.* cap. 1.

I cannot omit here taking Notice of an Observation this Book affords, speaking of the *Grounds of the common Laws of England*, it says, *That all the Grounds and Beginning of the said Courts depend upon the Custom of the Realm, &c.* And in the two very next Paragraphs, it gives an Account, *That the Custom of the Realm guards every Man from being imprisoned, disseized, or destroyed, otherwise than by the Law*, and also, *that every Man shall do and receive Justice in the Kings Courts.*

Now, if it be allowed, That the *Common Laws of England extend here*, as I suppose it will not be denied, with respect to the two Paragraphs (last mentioned, as being by *Immemorial Custom in England*) I wou'd fain know, what Reason can be assigned, why the *Common Law*, with respect to the other Paragraph, just preceding them, which is thereby declared to be the Ground of these Courts (as being by *Immemorial Custom* also) shou'd not. And if the Extention of this Part, with respect to the Courts, be objected against, for want of *Immemorial Custom* here; Whether the want of *Immemorial Custom* here, with respect to the other two, will not be an Objection equally strong against their Extention, is what I shall submit.

Again, That all these Courts are so ancient, that no Man can tell which is most ancient, appears in Lord Cokes *Preface* to his 8 *Rep.* the Words of

the Book, & *And in Ann. 10. E. 4. Fo. 53. All the Judges of England did affirm, That the Chancery, Kings Bench, Common Pleas, and Exchequer be all the Kings Courts, and have been Time out of Memory of Man, so is no Man knoweth which of them is the most ancient.*

The same is to be found in 2 *Inst. 23.* where it is said, *It is resolved by all the Judges in the Exchequer Chamber, that all the Courts, viz. the Kings Bench, the Common Pleas, the Exchequer and the Chancery are the Kings Courts, and have been Time out of Memory, Isint que home ne poet seaver que est plus auncient (that is) so that a Man cannot know which is the most ancient.*

But before I proceed further on this Head, I must beg leave here to take Notice, of a Distinction that has been endeavoured to be made, whereby to exclude the Court of Equity in the Chancery; it is said and owned, that the Chancery Court is a *Fundamental Court*, and by the *Common Custom and Law of the Realm*; but it is said, this must be meant of the *Law fide*, and not the *Equity fide*,⁵ in the Chancery Court. And to support this Distinction, some Books seem to give a Colour, where it is said, *The time of Beginning of the Equity fide, is uncertain*, because as some of them say, *no Records or Memorials are to be found thereof, of ancient Times*, and therefore some dated the Beginning to be in *Henry the Fourth's Time*, some not before, or in *Henry the Fifth's Time*; some have allowed them to be as far back as *Richard the Second's Time*, and the farthest back that I have heard allowed, was to the Twentieth of *Edward the Third's Time*.

As to which, it may be observed, what Reasons these Authors go upon, *viz. That they could find no Records or Memorials of such Proceeding*. But with Submission, it will not absolutely follow, because they could not find any Records, or Memorials of such Proceedings, therefore there were none such.

It may be questioned (and not without some Reason) whether there were Records or Memorials kept of those Things, in those ancient Times, so regularly as they afterwards were; for I remember upon such a Method of arguing as this, (*to wit*) That no Records or Memorials thereof appearing, or to be found, it was asserted, that the Commons of *England* were not an essential Part of the Parliament, before the Forty ninth Year of *Henry Third*.

5. [Literally, "In trust." *Fide* refers to a jurisdiction or authority entrusted to a court, sometimes called an "office," that is one of a constellation of office-courts within a court, such as the Chancery or Exchequer. The distinction between common law *fide* and equity *fide* seems to be one of both matters and procedures.—Tr.]

And this by several great and learned Authors, which however, since is fully obviated. Yet by this it appears, that even with respect to their Parliamentary Affairs, in those ancient Times, they either kept no Memorials at all of their Proceedings, or else kept them so carelessly, or Losely, that they were left to after Ages; and if they were so negligent in their Parliamentary Affairs, it may well be that they were not more careful of their Proceedings in *Equity*.

But with humble Submission to those Authors, who date the beginning of the *Courts of Equity* in *Henry the Fifth's* time, some in *Henry the Fourth's* time, some in *Richard the Second's* time; but the farthest back that, it seems, could be found, is in the twentieth year of *Edward the Third*; I'll beg leave, with the little Search that I have made, to shew one still ancienter, and it is in *1st Rolls Abridgment 372 Letter E.* the Book is part in *Latin*, and part in *French*, but the *English* thereof is thus, *Rolls of Parliament 14 Ed. 3 Number 33. an Ordinance was made touching the Priory of Westshirbone, &c. and if any Thing be done against this Ordinance, that then the Chancellor of England shall have Power to hear the Complaint by Bill, and thereupon to proceed in the same Manner as is usually accustomed to do daily in a Writt of Supaena in Chancery.*

And tho' this *Ordinance* is but six years older than the 20th of *Edward the Third*, yet by the *Ordinance* it self, it appears that the *Chancellor* was then usually accustomed to proceed in a *Writ of Subpoena in Chancery*; which words, *usually accustomed*, evidently shew, such *Usage* and *Custom* was before.

But to put this Matter still more out of Doubt, and more fully to obviate these Objections, I shall beg leave to produce some other Authorities, which I presume, will fully evince, that the *Courts of Chancery* (*Equity* as well as *Law fide*) and the *Kings Bench*, *Common Pleas*, and *Exchequer*, are all *Fundamental Courts*, as antient as the Kingdom it self, and are known to, and are by *the common Law*.

And the first that I shall shew, is *Cokes 4th Institutes 213*, by which it appears to have been Resolved, that the *Chancery Jurisdiction*, in Matters of *Equity*, hath had *continual Allowance*, and that Court which hath had continual Allowance, surely cannot be said to be contrary to the Law. The words of the Book are,—*It was Resolved that the King cannot make any Commission to hear and determine any Matter of Equity, but Matters of Equity ought to be determined in the Court of Chancery, whose Jurisdiction therein hath had continual allowance; and so it was Resolved in Perot's case.*

1st Lilly's Abridgment 367. proves they are Fundamental Courts, the words of the Book are, *The Courts of Kings Bench, Chancery, common Pleas and Exchequer are Fundamental Courts, and in pleading of them, you do not begin with a Prescription or Grant, as in inferior Courts.*

Hoberts Reports 63 I take to be an Authority full in Point; the case was, *Martin against Marshall and Key*; the words of the Book, so far as relate to the present Purpose, are thus,

But in the Handling of this Case, it was argued by Serjeant Hitcham, that the substance of the Plea was faulty; for he argued, That a Court of Equity could not lye in Grant, much less in Prescription, being a Jurisdiction to be derived from the Crown; and so he said, it was Resolved by Popham, Anderson, Gawdy and Walmsley, That the King could not grant to the New Queen, to hold a Court of Equity, and that also it could not be by Prescription; for the King cannot grant any thing in derogation of the common Law; but tenere Placita,⁶ according to the course of the Law, may be granted and prescribed; and the Chancery in Chester and Durham, are incidents to a County Palatine, which had Jura Regalia;⁷ and London and the Cinque Ports have Acts of Parliament for them. And indeed, I hold this to be a greater Question, and of great consideration to be admitted, that a Court of Equity should stand upon Grant or Prescription only. For though it be true that the Court of Chancery hath always been, and so in Effect, stands by a Prescription, yet that is not well reasoned; for in pleading, any thing done in Chancery, you do not begin your Plea with a Prescription, as in these inferiour pretended Courts, but you plead a Thing done in the Court of Chancery, as you do all Things done in the Courts of Common Pleas, or Kings Bench; whereof the Reason is, That they are fundamental Courts, as ancient as the Kingdom it self, and known to the Law; for all Kingdoms in their Constitution, are with the Power of Justice, both according to the Rule of Law and Equity, both which being in the King as Sovereign, were after settled in several Courts, as the Light being first made by God, was after settled in the great Bodies of the Sun and Moon. But that part of Equity being opposite to regular Law, and in a manner an Arbitrary Disposition, is still administred by the King himself, and his Chancellor, in his Name, ab initio,⁸ as a special Trust committed to the King, and no' by him to be committed to any other.

6. ["To make pleas."]

7. ["Royal rights."]

8. ["From the beginning."]

In that case, its observable, as it speaks particularly of the *Court of Equity*, it gives the reason why a *Court of Equity* should be as much a *Fundamental Court*, and as incident to the Constitution, as a *Court of common Law* (*viz.*) That all Kingdoms in their Constitution, are with the Power of Justice, both according to the Rule of *Law* and *Equity*; and indeed (as I apprehend) to suppose any Constitution without, would be to suppose it imperfect, and without full and compleat Power to do Justice, which ought not to be supposed of the *Constitution of England*.

Nay, in that case it is said, that in *Chester* and *Durham* (which are *Counties Palatine* within *England*) having *Jura Regalia*, Chancery Courts are Incidents to them; as if he had said, Without such Courts they could not administer full and compleat Justice; And can it be supposed with the least Probability, that these *Counties Palatine in England* should have *Courts of Equity* incident to them, and yet that the *Kingdom of England* should not have them? since it is evident, beyond all contradiction, that there are many instances, wherein, according to the strict Rules of the *common Law*, there can be no Relief.

But to proceed, I shall beg leave to offer a Book, entitled, *Discourse on the Rolls*, 1, 2, to the same purpose. The words of the Book are thus,

The *Laws* are the *Birth-Right* and *Inheritance* of all the Subjects of *England*, who are therefore nearly concerned in the *Jurisdiction* of *Courts of Justice*, especially of the four great Courts at *Westminster*, the main channel thro' which the Benefit of those *Laws* is convey'd to them.

In the Reign of *Edward* the Fourth, it was declared by all the Judges of *England*, That all these Courts were *before Time of Memory*, so as no Man knoweth which of them was the most antient.

In *Doctor and Student*, a Book of good esteem in the Law, it is laid down, That there is no Statute nor written Law, that such Courts should be, but the ground and beginning of these Courts depend upon the *Custom of the Realm*, which Custom is of so high Authority, that neither those Courts, nor their Authorities, may be altered, without Parliament.

A wise and learned Judge of the common Law, my Lord chief Justice *Hobart*, speaking of the *Courts of Chancery*, *Kings Bench* and *common Pleas*, says, "They are *Fundamental Courts*, as Antient as the Kingdom it self, and known to the Law; for all Kingdoms in their Constitution are

with the Tower of Justice, both according to the Rule of *Law* and *Equity*, or in other words, the Jurisdictions of those Courts are a *Fundamental part of the Constitution*.”

The next that I shall shew is *12th Cokes Reports* 113. the Earl of Derby's Case: the Book says,

In the Chancery, between Sir *John Egerton*, Plaintiff, and *William Earl of Derby*, Chamberlain of *Chester*, and others, Defendants, for the Trust and Interest of a Farm called *Budshaw* in the County of *Chester*, It was resolved by the Lord Chancellor, the Chief-Justice of *England*, the Master of the Rolls, *Doderidge* and *Winch*, Justices, that the King cannot Grant a Commission to determine any Matter of Equity, but it ought to be determined in the *Court of Chancery*,—which hath had Jurisdiction in such Case *Time out of Mind*, and had always such Allowance by the Law; but such *Commissions* or *New Courts of Equity* shall never have such Allowance, but have been resolved to be against Law, as it was agreed in *Potts Case*.

Here the Resolution of the Chancellor, the Chief Justice, the Master of the Rolls, and two Judges, was, That the *Court of Chancery* hath had *Jurisdiction in Equity*, *Time out of Mind*, and had always such Allowance by the Law. And this, I think, fully answers the Distinction of *Law* and *Equity fide*, and the Objection, that a *Court of Equity* can't be by the Law. And as to those Petitions in and Acts of Parliament, which say, that the *Chancery Courts* had medled with Things which should have been tryed in a *Court of Common Law*, and this is called and said to be in subversion of the *Common Law*, as I before shewed, the *common Law* circumscribes and limits the Jurisdictions of all its Courts, and whenever one of them exceeds its Bounds, it may well be said to be in *Subversion* of that *common Law* that gave that Court its Being; but it can no way follow from thence, that the Court has not its Being by or from the *common Law*.

Another Authority, which I shall beg leave to offer on this Head, is *Godbolts Reports* 262. the Mayor of *York's Case*, the Words of the Book are, *In an Action of false Imprisonment brought, it was holden by the whole Court, that no Man can claim to hold a Court of Equity, viz. of Chancery by Prescription, because every Prescription is against common Right, and a Chancery Court is founded upon common Right, and is by the common Law.*

By which it is observable, the Question was, if a *Court of Equity*, (to wit) a *Court of Chancery*, could be held by *Prescription*, and there it is said to have been held, by the whole Court, that a *Chancery Court* is founded upon *common Right*, and is by the *common Law*; which I conceive, fully obviates the *Objections* before mentioned.

And now I think, I have fully made out what I proposed to do, (to wit) That the *Courts of Chancery, Kings Bench, common Pleas and Exchequer* are *Fundamental Courts*, and are by the *common Custom and Law of England*; and if the *common Customs and Laws of England*, by which they are Courts there, do extend here, and we are under the same Constitution here, with that of *England*, I conceive those Courts must be Courts by the same Law here.

But I have heard, it has been said, by some, *That the appointing Judges by Commissions, to hear and determine Matters according to the course of the Kings Bench, common Pleas, and Exchequer, is (in Effect) erecting those Courts here by those commissions.* The which I must desire leave to deny.

For, first, It is by Virtue of the *Kings commission* the *Assemblies* are called, and make Acts here. Now it may with the same Reason be said, that by those *Commissions to call and hold Assemblies, the Assemblies* are, in Effect, *Erected*; and if that be true, then they cannot have greater Power than the KING, who gave it them; for a *derived Power* cannot be greater than that from whence it is derived; and if the King cannot erect Courts, by his *Commission*, how can he by *commission* impower others, so to do, *Nemo dat quod non habet*, no body can give a Power he has not; and this would prove, that even the *Assemblies have not Power to erect Courts.*

Again, it is said, *The Judges could not sit, nor those Courts be held without these Commissions had been granted.*

I answer, Neither could the *Assemblies* sit, or be held without the *Kings commission* for that Purpose; so that take this which way you will, the same Objection it affords against the *Courts*, it will also afford against *Assemblies*. But, *Mr. Speaker*, I'll beg leave to say,

That this cannot be an Objection against either the *Assembly* or the *Courts*; for tho' true it is, the *Assemblies* sit and are called together by Virtue of the *Kings commission*, and without the *Kings Commission* for that Purpose, they could not sit, yet *Assemblies*, or their Power or Authority, are not thereby erected, nor is their Power or Authority from *that*

Commission, but from the *common Custom and Laws of England*, claimed as an *English-mans Birth Right*, and as having been such by *Immemorial Custom in England*; and tho' the People of *New-York* cannot claim this by *Immemorial custom* here, yet as being part of the *Dominions of England*, they are intitled to the like *Powers and Authorities* here, that their fellow Subjects have, or are entitled to, in their *Mother Country*, by *Immemorial Custom*.

The same Argument & same way of *reasoning* will hold with respect to the *Courts*; for tho' it is true, the Judges sit and hold Courts by Virtue of the *Kings Commissions*, and without them they could not sit, yet the *Courts*, or their *Power, Authority or Jurisdiction*, are not thereby Erected, nor is their *Power or Authority* from that *Commission*, but from the *common Custom and Laws of England*, by *Immemorial Custom* there. And tho' these Courts here, we cannot say, are by *Immemorial Custom* in this Colony, yet we are entitled to them, in the same manner that we are to Assemblies. And agreeable to this, I'll beg leave to read some Authorities. *Woods Institutes* 466. treating of the Courts of Justice or Jurisdiction of the *Courts in England*, and among the rest, speaking of the *Kings Bench* and the Justices of that Court, he says, in these Words, *The Justices of this Court have no Commission or other Means to hold Pleas, but their Power is original and ordinary; for when the King hath appointed them, they have their Jurisdiction from the Law, both in criminal and civil Causes.*

To the same Purpose is *Cokes fourth Institutes* 74. by a Note of my Lord Coke in the Margin of the Book, in these Words, *Designatio Justiciariorum est a Rege Jurisdictio vero Ordinaria a Lege*; the Appointment of the Justices is from the King, but their ordinary Jurisdiction is from the Law.

To the same Purpose is *Jacobs's Law Dictionary*, title *Kings Bench*, speaking of the Justices of the Kings Bench, the Book says, *And their Power is original and ordinary, when the King hath appointed them, they have their Jurisdiction from the Law.* All which, I think also, fully shews, that the Power or Jurisdiction is by or from the Law.

I own these last Instances given, are with respect to the Court and Judges of the *Kings Bench*, but the Reason thereof will go to all other Courts, that are of original Jurisdiction; and those Books that treat of the Power and Jurisdiction of Courts in general, commonly mention the Kings Bench first, as one of the Courts that is of original Jurisdiction, and then mention

several of the Powers, that such Courts, and the Judges thereof, are vested with, and how they are vested therewith; and then, when they come to treat of the *Common Pleas* and *Exchequer*, they do not (and indeed it would be needless) to repeat the same Things over again, under the several Titles; but it is sufficient to shew, that they are *Courts of original Jurisdiction*; and then it must follow necessarily, that they are vested with their Power and Jurisdiction in the same Manner.

And now, *Mr. Speaker*, from what I have said upon this second Particular, under the second general Head, I conceive, it plainly appears, That by the *Laws and Customs of England*, the *Courts of Justice* there, are *Not by Act of Parliament*, but *by the Law*; and if so, and the *Laws and Customs of England* extend here, it should seem to me, that if the *Laws and Customs of England* that give to the People (and are the Grounds of) their Courts there, the same *Laws* extending here, should likewise give us, and be the Grounds of our Courts here.

I now proceed to the third Particular, which is thus. After the Petitions say, *That the Courts ought by the Laws of England, to be established by Act of Assembly* (then come these Words) *especially the Court of Equity, lately erected in the Supreme Court*. By this they own that this Court of Equity ought, more especially, to be established by Act of Assembly; and if so, there seems, in the Petitioners Opinion, to be a *necessity* for this Court, only they would have it established by Act. But if it be a *Court by the Custom and Laws of England*, then there can be no need of an Act for it; and that it is so, I think is abundantly proved, by what I have said before; for the *Exchequer Court* is one of the *Four Courts* that are of *Original Jurisdiction*. But as some Particulars have been objected against this Court, I must desire Leave to consider them.

First, In the Petition, this Court is said to be *lately erected*, how long ago, is meant by this Word *lately*, I do not know; neither is it set forth in this Petition, how it was erected. I have heard it said by some, *It was erected by Ordinance in this present Governours time*. But this is a Mistake. In clearing up of which, it may not be amiss, to take Notice of what Things have occur'd to me, relating to this *Court of Exchequer*.

I find by the Minutes of the Supreme Court of this Colony, that in the Year 1702. a *Court of Exchequer* was held before *William Attwood, Esq*; then Chief Justice, and *Abraham De Peyster* and *Robert Walter Esqrs*; Justices,

in which some Proceedings were had on the Plea fide,⁹ as by a Certificate under the Clerk's Hand, in these Words, *viz.*

*At a Court of Exchequer held for the Province of
New-York the 22d of April, 1702.*

PRESENT { William Attwood Esq;
Abraham De Peyster Esq;
Robert Walter.

*Dom. Rex*¹⁰ *vers. Wright and French.* Second *Scire facias*¹¹ returned *Nilil*.¹²
The Sollicitor General moves for Judgment upon the *Scire facias*.

Ordered, Judgment, unless the Defendant plead an issuable Plea, sitting the Court on *Saturday* next.

At a Court of Exchequer held the 25th of April, 1702.

PRESENT { William Attwood Esq;
Abraham De Peyster Esq;
Robert Walter Esq;

Dom. Rex vers. Wright and French. Bickley pro Defendant pleads, Conditions performed.

At a Court of Exchequer held the 28th of April, 1702.

PRESENT { William Attwood Esq;
Abraham De Peyster Esq;
Robert Walters

Dom. Rex vers. Wright and French. The Attorney Demurrs to the Plea.
Ordered, The Plea be mended.

9. [Jurisdiction in civil as opposed to criminal cases. See n. 5.—Tr.]

10. [*Dominus Rex*: "Our Lord the King."]

11. [Literally, "You cause the party to know," i.e., a writ based upon a record directing the sheriff that "you cause the party to know" the charge brought against him and require him to appear and show cause that the record should not be enforced.—Tr.]

12. [Literally, "Nothing"; i.e., the return of a writ, usually when there are no goods available to levy.—Tr.]

At a Court of Exchequer held the 18th of May, 1702.

PRESENT { William Attwood Esq;
Abraham De Peyster,
Robert Walters } Esqrs

Dom. Rex, vers. Wright and French.

Ordered, That the Costs to be paid, on amendment of the Plea, be Taxed by the Court.

The Attorney General not being ready, the Court adjourned to Ten of the Clock To-morrow Morning.

At a Court of Exchequer held the 19th of May, 1702.

PRESENT { William Attwood Esq;
Abraham De Peyster
Robert Walters } Esqrs

Dom Rex, vers. Wright and French.

Mr. Attorney General being called upon to proceed in this Cause, acquainted the Court, That he had receiv'd Orders, upon a Petition of the Defendant *French*, under the Hand of his Excellency the Governour, to stay Proceedings till further Order.

New-York, Secretaries Office, June the 11th 1734.

The afore-going are true Copies from the Entries in the Minute Book thereof remaining in the Secretaries Office,

*Ex per*¹³ Fred. Morris, D. Secry.

I do not know certainly that there was any business done from that time (tho' there might have been) till *December, 1729* when I find by the Minutes of the same Supreme Court, a Rule was moved for and granted, in a Cause, the *King* against *Heath*, a Copy of which I have here also certified in the words following, *viz.*

13. [Literally, "Exchequer by"; probably, the record of the Exchequer.—Tr.]

*At a Supreme Court of Judicature held for the Province
of New-York, on the 2d day of December, 1729.*

Present the Honourable *Lewis Morris*, Esq; Chief Justice.

The King vers. Samuel Heath. Whereas it is alledged, That *Samuel Heath*, late Deputy Weigh-Master of his Majesty's Weigh-house, has lately absconded, without rendring an Account or Payment of the Money received by him, for his Majesty's use, for weighing at his Majesty's Beam; and that its the King's Prerogative to have Process out of the *Exchequer*, against the Body, Lands and Goods of his Debtor or Accomptant, and to seize them till Account and Payment.

It was moved by *James Alexander*, in behalf of *Cadwallader Colden*, principal Weigh-Master, That this Court being vested with the Powers of the *Court of Exchequer*, wou'd give leave to take the Process thereof to *compel*, the said *Samuel Heath*, by his Body, Lands and Goods, to render the account, and make the payment aforesaid.

It is Ordered accordingly.

June 11. 1734.

The above is a true Copy of the Original Entry, *Ex per* Fred. Morris, D. Secry.

By this, *Mr. Speaker*, Four thing appear. *First*, That it was then alledged by *Mr. Alexander*, That it was the Kings Prerogative to have Process out of his *Exchequer*, against the Body, Lands and Goods of his Debtor or Accomptant.

2dly, That he then affirmed, That the Supreme Court was vested with the Powers of the *Court of Exchequer*.

3dly, He moved the Court thereon, for leave to take the Process thereof to *Compell*, *Heath* by his Body, Lands and Goods, &c. to render an account. And

4thly, That the Motion was granted by the Court.

I have heard it said, *That this Writ, thus moved for and granted, is a Writ that does not issue out of the Chancery fide*¹⁴ *of the Exchequer.*

14. [A jurisdiction, sometimes referred to as a court or an "office" within the Exchequer acting especially upon issues of debt claimed by the Sovereign. See note 5.—Tr.]

But truly, I conceive (and I think I have two Books of unquestionable Authority, to prove) that it does. *Crompton's Jurisdiction of Courts* 106: a. b. the Book is in French, but the English thereof is thus,

If any Accomptant to the King, or if any Money, or Goods, Chattles, personal, of the King, come to the Hands of any Subject by Matter of Record, or by Matter in Fact, the Lands of such Subject are chargeable for the same, and lyable to the Seizure of the King, in whose Hands soever they afterwards come, be it by Descent or Purchase, or otherwise; for the King might have seized the same in the Hands of the Debtor, and by the same Reason, in the Hands of any who comes in under him; for no Time shall prejudice the King; and the *Exchequer* hath a *Chancery* and *Seal*, and the Writs usual in the *Chancery*, in the *Exchequer*, for Seizure of Lands, in such case, are more antient than the Register, or the Treatise *De Prerogativa Regis*.¹⁵

The next Book is *Plowdens Commentaries* 321.a. which Book is also in *French*, but the *English* is thus;

And hereupon *Gerard* put the case, which was debated in the *Exchequer*, in the Time of the now Queen, in which he himself argued, which was thus, Sir *W. Candish*, who was Treasurer of the Chamber to King *Henry* 8th, and to King *Edward* 6th and to Queen *Mary*, was indebted to the said King *Edward* and to Queen *Mary*, and being so indebted, purchased divers Lands, and aliened them, and of part, he took an Estate to himself and his Wife, and Part remained in the Hands of others, and he died without rendring an Account; and if these Lands could be seized in the Hands of the now Queen, and be retained by the Course of the *Common Law*, until an Account was made by *Candish*, or not, was the Debate. For *Candish* was not obliged to the King in any Recognizance or Obligation, but the Matter of the Seizure rested entirely upon the *Common Law*, where it was well debated at the Bar, by the Council for the Queen, and by the Council for Sir *W. Sentlow*, Captain of the Guard, and his Wife, lately the Wife of Sir *W. Candish*, upon Demurrer in Law, upon the Point. And after full Argument of the same, all the Barons of the *Exchequer* unanimously agreed, *That the Seizure for the Queen; of the said Land, was lawful*. For many Writs and Processes, in a Manner

15. ["On the Prerogative of the King."]

infinite, were in the *Court of Exchequer*, for that Purpose, whereof great Multitudes were alledged and shewn to the Court; by which it appeared, that if any one is Accomptant to the King, or if any Money or Goods or Chattles, Personal, of the King, come to the Hands of any Subject, by Matter of Record, or by Matter in fact, that the Land of such Subject is chargeable for the same, and liable to the Seizure of the King, in whose Hands soever it afterwards comes, be it by Descent or Purchase, or other-ways; for the King might have seized in the Hands of Sir *W. Candish*, and by the same Reason in the Hands of any Person who comes in under him; for no Time shall prejudice the King; and the Exchequer hath a Chancery, and a Seal; and the Writs usual in the Chancery, in the Exchequer, for seizing Lands, in such Case, are more ancient than the Register, or the Treatise *Prerogativa Regis*.

Other Proceedings there have been in this Court of Exchequer, in several Causes, as appear by the Minutes of the Supreme Court. A Copy whereof I have also certified in these Words,

*At a Supreme Court of Judicature held for the
Province of New-York, at the City Hall of
the City of New-York, on Tuesday,
March 21st 1731-2.*

PRESENT {
The Hon. *Lewis Morris*, Esq; Chief Justice.
The Hon. *James De Lancey*, Esq; second Justice,
The Hon. *Frederick Philipse*, Esq; third Justice.

The King in Scaccario,¹⁶ on the
Equity fide, Bill, vers.
Scott and York for
His Majesty's Quit-Rents. } Bill read and filed, and on Motion of
Mr. Attorney, for Process to issue, the Court
ordered, That Process do issue returnable
the first Day of next Term. *per Cur.*¹⁷

16. ["In the Exchequer."]

17. [*Per curiam*: "By order of the Court."]

*At a Supreme Court of Judicature, held for
the Province of New-York, at the City of
New-York, Octo. 16th 1732.*

PRESENT { The hon. *Lewis Morris*, Esq; Chief Justice.
The hon. *James De Lancey*, Esq; second Justice.
The hon. *Frederick Philipse*, Esq; third Justice.

John Briscove,
vers.
George Monthomerie. } In Scaccario,
The Bill filed by Mr. *Warrel*, and
Process Ordered. *per Cur.*

Octo. 17th 1732. Present, as above.

Elizabeth Anthony, vers.
John Lemountes,
Archibald Campbell,
and *Mary* his Wife. } In Scaccario,
The Bill read, and filed by Mr. *Smith*, and
Process ordered, *per Cur.*

The KING vers.
Van Dam, Esq; } Bill filed *Dec. 5th 1732.*
Mr. *Bradley*, Attorney.

Riggs, vers. } Bill filed, *Dec. 20th, 1732.*
Home, Admr. } Mr. *Gilbert*, Attorney.

Eliz. Baxter, vers. } Bill filed, *June 5th, 1733.*
Jam. Baxter. } Mr. *Horsmanden*.

Keziah Glover, vers. } Bill filed, *June 7th, 1733.*
Jam. Baxter. } Mr. *Horsmanden*, Attorney.

Riggs, Esq; vers. } Bill filed, *August 7th, 1733.*
Homes, Admr. } Mr. *Smith*, Attorney.
Montr. Esq;

*At the adjourned Sittings of his Majesty's
Court of Exchequer, held for the Province of
New-York, at the City-Hall of the City of
New-York, on Thursday, June 7th, 1733.*

Present, The Honourable *Frederick Philipse*, Esq; 3d Justice.

Sydenham, al. Stuyvesant, vers. *Ger. Stuyvesant*. On reading Petition and Affidavit of the Plaintiff, it is *Ordered*, That she be admitted to sue in *forma Pauperis*,¹⁸ and that *James Alexander*, and *William Smith*, Esqrs be her Council. *Per Cur.*

June the 11th, 1734. *the foregoing contains true Copies of the Entries made in the foregoing Causes, and the Time when the several Bills therein mentioned were filed*, Fred. Morris.

And this last Petition and Affidavit were brought into Court, and agreed upon by Mess. *James Alexander* and *William Smith*.

So that this Court was not erected by Ordinance in this Governour's Time; for it was held, and Business was done therein, before he was Governour. And as it is allowed, that by Virtue of an Ordinance, it could not be erected, so tho' any Ordinance should be published, with any such Words, as erecting such a Court, if the Court had no other, it would have no good Foundation. And suppose the King should issue his Ordinance in *England*, and there should be Words therein, empowering the *Exchequer Court in England*, to hear, try and determine Causes in *Law* and *Equity*, I presume, this (tho' it would not give a legal Power to that Court) yet it would not take away the legal Power the Court had before. And the Design of the Ordinances that I have seen, must have been principally to appoint the Times of sitting of the Court, that the People might know certainly when to attend, as appears by the Recitals thereof.

Others say, *this Court was erected by the Judges Commissions.*

Answer, This I have shewn before, cannot be; and besides, if this should be so, then every granting of new Commissions to the Judges, might be said a new erecting of the Courts.

Wherefore it must be owing to some other Power. And since the Petitions have not set it forth, I'll pray leave to say, That I take it to be a Court by

18. [Literally, "In the manner of a pauper," i.e., permission given to a poor person to sue without liability of costs.—Tr.]

the common Customs, Laws and Constitution of England, as I think is before fully shewn.

But to this there has been an Objection, *That the Equity fide of the Court of Exchequer, is not upon the same Footing with the Law fide, but is by Act of Parliament.*

Now, *Mr. Speaker*, those that make this Objection, seem tacitly to own, that the Law fide of the Exchequer is by Law. But, I conceive, if one be, the other is of Course so, I need only to observe on the Authorities I before advanced, where this Court of Exchequer is mentioned, and shewn to be a Court of Original Jurisdiction, that there is no Distinction made between the *Law* and *Equity* fide.

And all the Pretence for this, is, or seems to me to be founded on an Expression of my Lord Coke's in his 4 *Institutes* 119. which runs thus, *Some are of Opinion, That a Court of Equity was holden in the Exchequer Chamber, before the Statute of 33 H. 8. and then it must be a Court of Equity by Prescription; for we find no former Act of Parliament that doth create and establish any such Court.*

Here my Lord Coke says only That some are of Opinion, that a Court of Equity was holden in the Exchequer Chamber, before the Statute of the Thirty third of *Henry the Eighth*.

Those that make this Objection, infer, that my Lord Coke knew others held otherwise, or those *some* must mean *some few* who held contrary to the *received Opinion*; and this I must own, is the full Force of what I have heard in support of this Distinction. As to which, I'll pray leave to give several Answers;

First, This is a bare Supposal, and not one Word in the Book to shew it was really so.

Secondly, This is such a Conclusion as will not necessarily follow; for if he heard only some Men Deliver their Opinion upon that Point, he might well say, as he does, that *some Men* are of that Opinion, and know not what any other Persons Opinion was.

Thirdly, The contrary Conclusion must be supposed by the way of writing that this Author commends, in his *Commentarys on Littleton*, he says, when *Littleton* puts a Case that has been disputed, he mentions both the Opinions of the differing Parties. But here it does not appear, any body was of a contrary Opinion.

Fourthly, That he himself was of the Opinion, that the Exchequer Chancery was not erected by that Act.

He gives afterwards, in the same Page, some undeniable Instances, which prove, that the Exchequer Chancery was in being long before. One is, That the Writs usual in the Chancery of the Exchequer, are more ancient than the Treatise *De prerogativa Regis*. Now this Treatise was in the seventeenth Year of *Edward* the Second.

The 2d Instance is a Petition by the Commons, in the second Year of *Henry* the Fourth.

The 3d is another Petition, in the third Year of *Henry* the Fifth, both mentioning the Processes of the Exchequer Chancery, as then used.

So that my Lord *Coke* seems to me, by these, plainly to shew, his own Opinion was, *That the Exchequer Chancery, was immemorial, and not erected by that Act.*

But farther, the two Authorities of *Crompton* 106. and *Plowden* 321. before shewn, both prove that the Writs usual in the Chancery of the Exchequer are more ancient than the Register, and the Register is a Book called, *A most ancient Book in the Law*, as *Cokes* 1st Institutes 73. b. The Words of the Book are, *Register is the Name of a most ancient Book, and of great Authority in Law, containing all the original Writts of the Common Law.*

First, *Lilly's Abridgment*, 374. speaking of Courts, and their Jurisdiction, says thus, *The Court of Exchequer is a mixed Court, and doth consist of Law and Equity; The Plea fide, is for Matters of Law, and the Exchequer Chamber, for Matters of Equity. On the Plea fide they proceed in Latin, and in the Exchequer Chamber, by English Bill, Answer, &c. as in Chancery.*

In *Coke's* 4 Inst. 109. 110. speaking of a Paragraph of this Statute, relating to Trials of Issues in the Court of Exchequer, it is said, *This Act as to that Point is but in Affirmance of the common Law.*

Which shews, the Court must be by common Law. The Case in the Book, is in these Words, *viz. In the Exchequer, at the Suit of the King, in an Information of Intrusion of Lands, wherein Issue is joyned, which may be tryed by the Country; yet where the King hath a direct Record or Records, for the Manifestation of his Title, the King's Attorney may pray, that the Trial may be by Records; whereof you may read a notable Case, Mich. 27 and 28 Eliz. in the Exchequer, where the Case was, That in an Information of Intrusion into certain Lands, &c. against Savill; the Issue was, whether certain Lands belonged to a House, or no. And upon a Trial by Record, Judgment was given against Savill. Afterwards Savill, the Defendant, dyed, and his Son and Heir brought a Writ of Error in the Exchequer Chamber, where it was holden, that this kind of Trial by*

Records, was before the Stat. of 33 H. 8. Cap. 39. The Words whereof be, That all and every Tryal and Tryals, of all manner of Suits, Bills, Plaints, Informations, &c. and Issues in the Court of Exchequer, shall be made and tryed by due Examination of Witnesses, Writings, Proofs, or by such otherways or Means as by the Court of Exchequer shall be thought expedient, and that every such Judgment, Decree or Decrees, shall be good, perfect, and in full Strength, Force and Effect in Law, to all Intents, Constructions and Purposes; and yet, notwithstanding, the generality of these Words, if a Judgment be given upon a Tryal by Record, a Writ of Error doth lie thereupon; because, as to that Point, this Act is but in Affirmance of the common Law.

But if none of these Authorities were, I would only refer to this Act, which they say, erects this Equity fide of the Court of Exchequer, and desire to have it pointed out, which Paragraph it is that erects it. I have read the Act, and find nothing like the erecting the Chancery side of the Exchequer; but wherever it mentions the Exchequer Court, it mentions it as a Court in being before, and when the Act was made; not one Word of new erecting the Equity fide of the Exchequer. Indeed, there are thereby some Advantages given to the King, but one Branch thereof is greatly for the Benefit of the Subject; which appears in Cokes 4 Inst. 118. in these Words (speaking of the Exchequer Court)

By the Statute of 33. H. 8 Cap. 39, they have full Power and Authority to discharge, cancel and make Void, all and singular Recognizances and Bonds made to the King for Payment of any Debt or Sum of Money, or for Performance of Conditions, &c. upon shewing the Acquittance, &c. or any Proof made of Payment and Performance, also to cancel and make void, by their Discretion, all Recognizances made for any Appearance, or other Contempt. And if any Person, of whom any such Debt, or Duty is demanded, allege, plead, declare, or shew in the said Court, sufficient Cause and Matter in Law, Reason and good Conscience, in Barr or discharge of the said Debt or Duty, and the same Matter sufficiently prove in the said Court; then the said Court shall have Power and Authority to judge and allow the said Proof, and clearly acquit and discharge such Person and Persons, &c.

And this is all I can find in that Statute that could give any Colour to say the Equity fide of the Exchequer is thereby erected.

And yet no such Thing as erecting a Court, therein appears; but, that any Person may plead Matter of Equity in his Discharge, in the same Court, where he is sued. So that, by this he might plead Matters of Equity in the Law fide, which he could not do before.

So that, I apprehend that Objection of the Exchequer Chancery's being erected by that Act, has no Weight.

Another Objection against this Court, is, *That the Barons of the Exchequer in England, cannot hold (or determine Causes in) the Exchequer Chancery.*

This, I conceive, is a Mistake, if the following Books are to be believed. *Jacobs Law Dictionary*, Title *Exchequer*, 2 & 3 Columns, speaking of the Court of Exchequer, says thus.

The Court of Equity is holden in the Exchequer Chamber, *Coram The-saurario Cancellario & Baronibus*,¹⁹ but usually before the Barons only, the Lord Chief Baron being the chief Judge, to hear and determine all Causes in Law or Equity.

Wood in his *Institutes* 469. also treating of the Court of Exchequer, has these Words,

The Lord chief Baron, is the chief Judge of this Court assisted, with three other Barons, who are the Sovereign Auditors of *England*, and hear and determine all Causes in Law or Equity.

Also, a Book which treats of the Practice of the Courts in *England*, called, *The compleat Clerk in Court*, in 149. speaking of the Exchequer, Court, says thus.

The Court of Exchequer at *Westminster*, consists of two Parts, the upper Part, and the lower Part; the former whereof hath a judicial Power of hearing and determining all Causes belonging to the Kings Treasure, and the latter is called the Receipt of the Exchequer. The judicial part of the Exchequer is a Court both of Law and of Equity; but the equitable Part hath much the greater Business, which is holden in the Exchequer Chamber before the Treasurer Chancellor and Barons, but generally by the Barons only, who are the Judges of the Court. The Proceedings here are by English Bill, according to the Practice of the high Court of Chancery.

In another Book of Practice, called, *The Practising Attorney*, or *The Lawyers Office*, printed in 1726. in Pages 316, 317. treating of the *Court of Equity* in the *Exchequer*, has these Words.

19. ["Before the Court of the Exchequer and Barons."]

The Court of Equity, which has much the greatest Business, is holden in the *Exchequer Chamber* before the Treasurer, Chancellor and Barons of the Exchequer; but usually, by the Barons only. The Lord chief Baron being the chief Judge to hear and determine all Causes in Law or Equity. The Proceedings here are by Bill, agreeable to the Practice of the high Court of Chancery.

A Book called *Lex Constitutionis*,²⁰ in Page 40. speaking of the Exchequer, says,

And in another Branch of this Court, all Actions, both real and personal, are handled by Bill, &c. as a Court of Equity: A Lord chief Baron, and three other Barons sit in this Court as Judges.

The last Book that I shall offer on this Point, is a Book, called, *Orders of the high Court of Chancery*, printed in 1698. wherein are also the Rules and Orders of the Exchequer, whereby it appears that the Rules and Orders of the Exchequer Chancery in *England*, are made by the Barons of the Exchequer. The Words of the Book in the second Part, Page 1. are thus,

Orders and Rules of Proceedings in the Office of his Majesty's Remembrancer of this Court of Exchequer at *Westminster*, which the Right honourable the Lord chief Baron, and the other Barons have thought fit at present, to ordain and publish, for the better and more speedy carrying on the Business in that Office.

And then follow several Rules and Orders, relating particularly to the Business of the Exchequer Chancery, needless here to insert.

It is objected also, *That the whole Jurisdiction which in England is distributed into three Courts, is here lodged in one.*

I must allow, it is often much more easy to raise Objections than to answer them; however, as to this I answer,

This is a new Colony, and is yet (as it were) but in its Infancy, we cannot be thought to have every thing in its full and compleat Perfection as they have at home, but we endeavour to imitate and come as near to them as we can.

England was once in its Infancy, and had not Things in so regular a Manner as now they have; but to show, that in this we agree with what was in

20. ["Constitutional Law."]

England formerly, we find in *Second Hawkins's Pleas of the Crown*, Chapter 3d, Section the First, That the Jurisdiction of these *Three Courts* were in one, as now we have it. The Words of the Book are, *The whole Jurisdiction which is now distributed among the several Courts of Westminster Hall, seems in the first Reigns after the Conquest to have been lodged in one Court, commonly called, The King's Court, wherein Justice is said to have been Administred, sometimes by the King himself in Person, and sometimes by the High Justicier, who was an Officer of very great Authority.*

And in *Jacob's Law Dictionary*, Title *Justice*, speaking of the Chief Justice of England, and what he was anciently, it is said, That 'he had the Power alone, which afterwards was distributed to three other great Magistrates, that is, he had the Power of the Chief Justice of the Common-Pleas, of the Chief Baron of the Exchequer and Master of the Court of Wards. I find also by a Book, called *The Court Register, and Statesman's Remembrancer*, printed in 1733. in Page 143. that Persons have been *Chief Barons* and *Justices of the Common-Pleas* at one Time. The Words of the Book are, *Moreover it appears, that some of the Justices of this Court were also Chief Barons of the Exchequer at the same time.* And in 155. of the same Book, it is said, *That the chief Justice of England in Henry the 2d's Time sate in the Exchequer.*

Besides, one Court here is enough to dispatch what Business is in this Colony; And where is the Need of three, when one will do?

When Causes and Suitors increase, then it may be proper to divide them into several Branches. And this seems to be the true Reason of severing them in *England*, as in *State Regr.* 142. speaking of the *Common-Pleas*, has these Words, *The severing this Court from the Exchequer, was, no Doubt occasioned by the Increase of Suitors and Causes thereto.*

Another Fault found with this Court, is, *That there is no Check upon the Court, and that it is inconsistent to have the same Persons Judges of Law and Equity.*

In proof of Objection, a Prohibition was taken Notice of, this in 4 *Inst.* 114. and the same is taken Notice of in 118. speaking of the *Law and Equity Courts of Exchequer*, where it is said, *That If in either Court they hold any Plea, which is not for the Profit or Benefit of the King, or which toucheth not the King, there lyeth a Prohibition, which, as is aforesaid, appeareth in the Register; for all are said Communia Placita,²¹ which are not Placita Coronae;²² and this, it was said, shews a Prohibition will go from the Kings-Bench. As to which, 1st.*

21. ["Common pleas."]

22. ["Pleas of the Crown."]

That Prohibition is taken out of the Register of original Writs, 187. *b.* & I never understood that any original Writs ever issued out of the Kings-Bench, but always out of the *Chancery*; so that this Authority does not shew the Kings-Bench is a Check upon the Exchequer. And in *State Regr.* 139. it is said, *The Kings-Bench has Power to examine and correct Errors in Fact and in Law in Courts of Record* (the Court of Exchequer excepted.)

2dly, There was not, nor cou'd there be any Check when these three Courts were in one in *England*; and I have shewn before they were so.

3dly, As to the *Inconsistency* of the same Judges being to judge of *Law* and *Equity*, the same may be said against the Barons of the Exchequer at home, and yet they have been so *Time out of Mind*.

Again, it is said, *This is a new Court here*. As to which, tho' the Practice in this Court may be new here, it is not so in *England*: This is a new Country, and every thing cannot be done or begun at once, but each must have a Beginning in its Turn; and tho' the Practice may have begun but lately, yet as it is a Court by *Immemorial Custom*, and the *Law at home*, the Power thereof hath equally existed with the other Parts of the *Supreme Court*; and if this cannot be by Law here, neither can any Part thereof be, for the same thing that will make one void, must make the other void also.

I come now to the *fourth* and *last Particular*, under my second general Head, *viz. That the Petitioners take this Court to be a Grievance, and destructive to the People's Liberties*, as constituted:

As to which, I find no Instance in particular charg'd herein, it is all in general, and to a general Charge, a general Answer might serve.

However, *Mr. Speaker*, I'll beg leave to say something hereto. I observe the Names of many very worthy Persons signed to these Petitions, for whom I have a great Value and Esteem, and I am very far from, (nay, it would be unreasonable in me in the least to blame or find fault with them) for being of another Opinion than what I am; for every man ought to judge, nay, must and can't help judging by his own Reason, and I hope I may expect the same, from those worthy Persons, whose Opinions I can't joyn with; for as every one of them, so every other Man ought to be left at Liberty to guide himself by his own Reason.

And altho' I believe, I know as much of the Business and Practice of this Court, as a great many of those who signed the Petition, I do declare, I do not know, take or believe it, to be a Grievance or destructive to the Peoples Liberties, tho' I know a great deal of Pains has been taken to expose and ridicule it.

But to return, Mr. *Speaker*, I think I have shewn before, that this Court is upon the same Footing here, as the same Court, by the *common Custom and Law of England*, is in *England*; and in the Methods of Practice here, we have endeavoured to imitate, as near as we can, the *Exchequer Court in England*, and I must own, it looks something strange to hear such a Court called a *Grievance and destructive to the Peoples Liberties* here.

Was there any other, or new Court, not warranted by the *Laws of England*, endeavoured or pretended to be set up and exercised here, every Man ought, and I would as much and as strongly oppose it, as any Man in the Colony, according to my Abilities.

But really, Mr. *Speaker*, the bare calling (without some way proving) it so will, I presume, not be thought sufficient Grounds for this honourable House to declare it so.

I had almost forgot one Objection that was made, viz. *That the Judges are made only during Pleasure here, which renders them too much dependant, whereas in England they are by Act of Parliament during good Behaviour.*

And tho' this is not the Subject Matter of this Petition, yet as it is an Argument used, to shew that there is a greater Necessity of having a *Check* upon the Courts here, than in *England*, I'll pray leave to say something to it.

And *first*, I do own, that there is such an Act at home, as is mentioned, and I also own, and always was of Opinion, that Judges should be made as *Independant* as possible, and that the more independant they are, the better it would be for the *Liberties, Privileges and Properties of the People*; and I must add, I could heartily wish there was a Law here, as in *England*, to make them during good Behaviour.

But, *2dly* Mr. *Speaker*, I am afraid the Method now proposed to make the Judges more *independant*, may be introductive of much greater Mischiefs, than what are thereby intended to be prevented. For what is proposed, is no less (in effect) than to *abolish and declare Void* the *four fundamental and original Courts*, that are incident to the *Constitution*, under which we think our selves happy to be, that are as ancient as the Kingdom it self, to which we belong; Courts, which the Customs and Laws of the Realm (in the Dominions belonging to which we live) are the very ground of; Courts, in which, *time out of Mind*, the Laws of *England* have been administred; Courts, whereby all the *Liberties and Privileges of the People of England*, from *time immemorial*, have been secured to them. These are proposed to be (in effect) abolished, and *new invented Courts*, under a Pretence of being

greater Checks, one upon the other, than those *fundamental Courts*, are proposed to be established in their Room; and what the Consequence of this would be, no Man living can, I believe, pretend to say. And as to this, I shall beg leave once more to read one Paragraph out of *Davis's Preface*, page 4. which is in these Words,

Therefore as the *Law of Nature*, which the Schoolmen call *Jus Commune*, and which is also *jus non Scriptum*, being written only in the Heart of Man, is better than all the written Laws in the World, to make Men honest and happy in this Life, if they would observe the Rules thereof; so the *customary Law of England*, which we do likewise call *Jus Commune*, as coming nearest to the *Law of Nature*, which is the Root and Touchstone of all good Laws, and which is also *jus non Scriptum*, and written only in the Memory of Man (for every Custom, tho' it took Beginning beyond the *Memory of any living Man*, yet it is continued and preserved in the Memory of Men living) doth far excel our *written Laws*, namely, our Statutes or Acts of Parliament, which is manifest in this, that when our Parliaments have altered or changed any *fundamental Points of the common Law*, those Alterations have been found by Experience, to be so inconvenient for the common Wealth, as that the common Law hath, in effect, been restored again in the same Points, by other Acts of Parliament, in succeeding Ages.

And now, if it be so, that even when the Parliament of *England*, that wise Body, has altered or changed any fundamental Points of the common Law, those Alterations have been found, by Experience, to be inconvenient.

What *Inconveniencies* therefore, may we not, with Reason, expect to follow, from having the *four fundamental Courts altered and changed* by the Assembly here.

But 3dly, Mr. *Speaker*, if this be intended, in order to put a Check upon the Judges, because they are not during *Good Behaviour*, I would humbly beg leave to offer to this honourable House, what I conceive would answer that End, and in which it would, in my Opinion, be more likely to succeed, than in this, *to wit*, to pass such an Act as they have in *England*, to make the Judges during good Behaviour here.

If to this it be objected, *That such an Act might not pass at home*.

I answer; if his Majesty should be willing to assent to an Act, to put a Check upon the Judges, equal to that of their being, *during good Behaviour*,

he would do it as soon in an Act for that Purpose; and if he should not be willing so to do, how can it be expected that he will give his Assent to an Act, which in effect is to be a Check equal to it?

Again, it is more reasonable to expect such an Act, as I now propose, will meet with the Assent at home, because there is an Act of Parliament at home for that Purpose, and which this honourable House may make Use of, as their President.

I have now done with the *Second general Head*, and shall therefore proceed briefly to consider the third Head. And that is the *Prayer of the Petitioners*; and as the Petitioners express some grounds for their Hopes of having the Prayer granted. I'll beg leave,

First, To take Notice of those Grounds for the Prayer. And
Secondly, The Prayer it self.

And *first*, As to the Grounds, they are, *because the Members of this honourable House had some time since, Resolved, that the erecting Courts of Equity without Consent in General-Assembly was illegal, &c.* And these and several other Resolutions were read last Friday.

In answer to which, I would first beg leave to read a Report of a Committee, and a Representation of some of the Members of the Council of this Colony, upon those Resolutions, both which are entred in the Minutes of Council, and are added hereto, by way of Appendix, being thought too long to insert in this Place.

And, Mr. *Speaker*, tho' I must own there are many things in these Representations, which do not immediately relate to the present Purpose, yet as those Things that do, are so intermixed and blended together with the others, I could not separate them, and was therefore obliged to have the whole read. I only offer these, to shew, *first*, what Opinion the Members of the Council had of those Resolutions, and what Dangerous Tendency such Resolutions might be of, and how tender and cautious the Assembly ought to be, on such Occasions.

And *2dly*, In what Manner they say the Court of Chancery was erected.

But to return to the Resolutions of the Assembly, aforesaid, what can be inferr'd from thence, but that the Members of the Assembly thought the *Court of Chancery*, as then used and exercised, was not legal, that is certainly plainly to be inferr'd from those Resolutions; and a great many other Persons, and I among the rest, then thought, and still think so too,

that the Footing it was then upon was not right; and that there was not any *Court of Chancery* established here, wherein his then Excellency could judge or make any Decree: That Court is said in the Representation of the Council, in the Year 1727 to have been erected by the Governour himself, with the Advice of the Council, pursuant to the Powers in his Commission, that is, the Governour (having Power by Virtue of his Commission to erect Courts, with Advice of his Council) created himself Chancellor, which I humbly conceive he could not do; but it will not follow from thence, that no *Court of Chancery* was by the Law, by which, when a Chancellor or a proper Judge is appointed, he may use and exercise the Power of, nor will it follow from thence, that the Supreme Court here, or the Equity side of the Exchequer, is not by Law here.

I do own to you, Mr. *Speaker*, I always thought and still do think, and do believe, on a proper Occasion, will be able to shew, that it was not only very improper and inconvenient to the People of this Province, to have the Governour their Chancellor, but very inconvenient to the Governours themselves.

But as this does not effect the Subject Matter of these Petitions, I shall not now enter into the Particulars thereof. However, Mr. *Speaker*, I cannot here omit taking Notice of one Thing, and that is this, It was really the Consideration of the several and many Inconveniencies the People of this Province were under, in having a Chancery Court only in the Hands of a Governour, by the many tedious Delays and great Expences of *Chancery Suits*, by the Governour's being often out of Town, and when in Town, few of them cared to be troubled with the Business thereof, with many other Particulars, needless here to be repeated. Such Considerations as these, put several of the Lawyers (among whom I own my self to have been one) upon thinking how to avoid those *Inconveniencies*; and this Matter was often talked of, in the times of Governour *Burnet*, and Governour *Montgomerie*, and it was proposed often to begin *Chancery Business* in the *Equity fide of the Exchequer*. But none of us cared to begin, while a Governour was here, least we might be thought to decline his Jurisdiction; however, upon the Death of Governour *Montgomerie*, it was then thought a convenient Time to begin, and at some Meetings which we had with the Judges, in Town, that Matter being proposed, it was thought by us all present, that as it would be of Advantage and Benefit to the People, who we were fully persuaded would chuse rather to have their Properties determin'd by *Sworn Judges*, whose

Business would require them to give due Attendance, and whose Estates and Families are in the Country, than otherwise. So it was thought it could not be at all disagreeable to the People.

And as there is a Necessity for a *Court of Equity*, in order to have Relief, or a Remedy, where none can be had at Law; I believe, Mr. *Speaker*, there is hardly a Man in this Colony, if he were asked the Question, but would say, he thinks the same. After this, we were so careful to desire a Sight of the Judges Commissions, that we might see and know whether they could hold such a Court; and the Commissions being brought, and considered by us all, we all that were present, agreed unanimously, that the Judges were well impowered by their *Commissions* to hold the *Equity fide of the Exchequer*, and accordingly before this Governour's Arrival, to wit, in *March Term 1731*: a Bill was filed, and on Motion, Process was ordered by the Court, as by the Minutes of the Supreme Court, I have before shew'd, and ever since Business has been carried on in that Court, there have been several Bills filed in this Court by the other Practitioners; but I assure you, Mr. *Speaker*, I have not yet filed one; but I must inform You; that I was, and am concerned in a Cause which is still depending there, at the Suit of the King against Mr. *Rip Van Dam*: I was employed as an Assistant Council only for the King, and Mr. *William Smith* was concerned for the Defendant, and in that Suit, there was put in what was called a *Plea to the Jurisdiction*, and in the Argument of that Plea, I did argue, and give my Opinion, *That the Judges were well impowered*, and Mr. *Smith* argued and gave his Opinion to the contrary, *That they were not impowered*.

And if it should be objected, *That we may be byassed by our former Opinions, and as being still concerned in the same Cause*.

I answer, in that respect we are upon an equal Footing, and I am far from desiring, nor am I so vain as to suppose that my Opinion should have any Weight farther than the Reasons offer'd, for support thereof, will warrant it. But I'll beg leave to observe, that I and several others gave the same Opinion long before I was concerned in that Cause, nay, long before it was or could be known, that any such Suit was to have been brought; and when neither I, nor any of the rest, that I know of, had or could have any Matter, Reason or Cause to biass our Opinions.

But to return, I conceive, tho' the Assembly had resolved, *That erecting Courts of Equity without Consent in General-Assembly, was illegal, which might well be for the Governour's using or exercising the Power of that Court without*

sufficient Authority, that that can be no sufficient Grounds to hope that a *Court legally held*, should be abolished.

And now I proceed to the Prayer it self, which is, *That this honourable House would settle the Courts of Justice by an Act, in such Manner as may be most conducive to preserve the Liberties of the Subjects here from any Encroachments.*

Now as to this of passing any Act, to preserve the Liberties of the Subjects from any Encroachments, I should be far from being against. But, Mr. *Speaker*, under Colour of this to have a Law passed to abolish or declare Illegal the Supream Court, or any part of it (for if part is, the whole must be Void) might, as I conceive, be Introductive of many Inconveniences more than may be thought of, will appear from the Observations on *Davis's Preface*, as before, and that it would be Inconvenient in some Instances, I shall beg Leave to name some few.

1st, It would render Void, or at least Disputable, all the Acts and Judgments of the Supream-Court, for near these forty Years past.

2dly, It would affect the Causes now Depending in that Court, to the prejudice of the Parties thereto.

But beyond and above all, Mr. *Speaker*, the denying of these *fundamental and original Courts*, by the *Common Laws of England*, to be by the Laws of England here, under the pretence, that these Courts are not, nor can be said to be by *Immemorial Custom* in this Province, if this Denial should appear by an Act of the Legislature, it may (in my humble Opinion) be attended with the most dangerous and fatal Consequences to the *Rights, Liberties and Privileges of the good People of this Colony*, that could well be invented, in this, that as there have been some Persons, in some Reigns who have been Strenuous in Endeavouring to stretch the *Prerogative Power* in *Subversion of the Privileges of the People*, and as there have been such heretofore, we may suppose (and therefore cannot too securely Guard against them) there may be others (who hereafter may endeavour at the like) then supposing all or any of the *English Laws, Liberties or Priviledges* were or should be attacked here, and denied to extend or belong to the People of this Colony, or it should be said, we had not a right thereto, how could we entitle our selves to them, but by saying that as the Inhabitants in England, our Mother Country, are entituled to them by *Immemorial Custom* there, we here, as being part of the Dominions of England, are therefore entituled to the same; would not those *prerogative Men* be furnished by such an Act

with a strong Argument against us, and be able to say, tho' the People of England have those Liberties and Priviledges in England, they have them there, by *Immemorial Custom*, but your Colony has not been a Colony long enough, to give you a pretence to say, you have the same by *Immemorial Custom* here; Therefore you have not the same Right; and out of our own Mouths, by an Act of our own making, they will judge us, and they'll tell us, we have declared we are not entituled to the *fundamental and Original Courts*, which are as much by the Common Laws of England, as any of our *Liberties and Priviledges* (we can claim) are, and that only for want of their being by *Immemorial Custom* here.

Therefore, if you are not entituled to part (for that Reason only) for the same Reason, you are not entituled to the rest; for you must be entituled to all or none.

This, I am afraid, would be pressed home upon us by those *prerogative Men*, in too strong and cogent a Manner for us to get over.

And then (if this Argument could or should prevail) it may justly be feared, this Country may again return to a Wilderness. But on the other hand, if the good and wholesome *Laws and Customs of England*, the *Liberties and Privileges of English-men*, and the *Good old original Courts*, by which those Laws are administred, and those inestimable *Liberties and Privileges* are secured to us; if those, I say, are allowed to be upon the Footing I have proposed (and I think they cannot be so safe upon any other) then it cannot in the least be doubted, but that every Man will rest and sit down under his own Vine, and under his own Figg-tree, and peacably and quietly enjoy the Fruits of his own Labour and Industry.

And now, Mr. *Speaker*, I have in the best Manner that I was capable of, performed what this honourable House desired of me, in giving truly my Sentiments upon the Subject Matter of these Petitions.

Mr. *Smith*, in delivering his Sentiments last Friday, did in so handsome and elegant a Manner, fully prove that the People of this Colony are undoubtedly entituled to all the *Customs, Laws, Liberties and Privileges of Englishmen*, that it was needless for me to attempt the Proof thereof, which otherwise I should have done. But I do entirely agree with him, in all that he said on that Head, and I hope I have proved that the *fundamental Courts* by the *Laws of England*, are as much part of those *Liberties and Privileges*, and as much by the *Customs and Laws of England*, as any other of their *Liberties and Privileges* are, and of Consequence, the People here

as much entitled to those *fundamental Courts*, as to their other *Privileges*, and have endeavoured to answer all the Objections that I had heard, were or thought could be made against our being entitled to the same Courts. And upon the whole thereof, as there has been much talk'd and said about the *Liberties and Priviledges of the People* I would beg leave only to propound this one Question, Who is he that Argues most in favour of the *Liberties of the People*? He who affirms and proves, that they are entitled to those *Liberties and Priviledges, Laws and Customs of England*, and the *Good Old Original Courts*, that are by those Laws, without an Act? Or, he who argues and says, we are not entitled to them, until an Act is passed to establish them? I suppose the Answer would be given, without Hesitation, in favour of the former.

But, Mr. *Speaker*, if it yet should be said, *that there is a Necessity for making Acts relating to those Courts*, I would beg Leave to offer to this honourable House, the Imitation of such Laws, relating to those Courts, as the wise Legislature of England have thought fit to make. I presume, it will not be said, there can be a *better Pattern offered* for the Assembly to go by. And it is not to be supposed, but that the Parliament at home has made all the Regulations therein that can be thought necessary; whereas going into *new Schemes and new Inventions*, may be attended with many *Inconveniencies*, which when they happen, may not be so easily remedied.

And I beg leave to conclude, by praying that God Almighty may Guide, Direct and Influence this honourable House, in their Debates and Consultations upon this Momentous Affair, and that the End thereof may be for the good of all the Inhabitants of this Colony.

Appendix.

At a Council held at Fort-George,
in New-York, November 25, 1727.

Present, His Excellency *William Burnet*, Esq; &c.

Capt. <i>Walter</i> ,	}	{	Mr. <i>Alexander</i> ,
Mr. <i>Van Dam</i> ,			Mr. <i>Lewis Morris</i> , jun.
Mr. <i>Harison</i> ,			Mr. <i>Abraham Van Horne</i> ,
Dr. <i>Colden</i> ,			Mr. <i>Kennedy</i> .

His Excellency was pleased to declare the General-Assembly of this Province dissolved, with the unanimous Consent and Approbation of this Board, on Account of the following Resolves made by them, viz.

*Die Sabbat.*²³ 25 November, 1727.

Col. Hicks, from the Committee of Grievances, reported, That as well by the Complaints of several People, as by the general Cry of His Majesty's Subjects inhabiting this Colony, they find that the Court of Chancery as lately assumed to be set up here, renders the Liberties and Properties of the said Subjects extremely precarious: And that by the violent Measures taken in and allowed by it, some have been ruined, others obliged to abandon the Colony, and many restrained in it, either by Imprisonment, or by excessive Bail exacted from them not to depart, even when no manner of Suits are depending against them. And therefore are of Opinion, That the extraordinary Proceedings of that Court, and the exorbitant Fees and Charges, countenanced to be exacted by the Officers and Practitioners thereof, are the greatest Grievance and Oppression this Colony hath ever felt: And, That for removing the fatal Consequences thereof, they had come to several Resolutions. Which being read, were approved of by the House, and are as follows, viz.

Resolved, That the erecting or exercising in this Colony a Court of Equity or Chancery, (however it may be termed) without Consent in General-Assembly, is unwarrantable, and contrary to the Laws of England, and a manifest Oppression and Grievance to the Subjects, and of pernicious Consequence to their Liberty and Properties.

Resolved, That this House will, at their next Meeting, prepare and pass an Act, to declare and adjudge all Orders, Ordinances, Devises and Proceedings of the Court, so assumed to be erected and exercised, as above-mentioned, to be illegal, null and void, as by Law and of Right they ought to be.

Resolved, That this House, at the same Time, will take into Consideration, Whether it be necessary to establish a Court of Equity or Chancery in this Colony, in whom the Jurisdiction thereof ought to be vested, and how far the Powers of it shall be prescribed and limited.

Examined and compared with the
Journal of the General-Assembly. } G. Ludlow, Cl.

23. ["On Saturday."]

Which Resolves this Board looks upon as unwarrantable and highly *injurious* to his *Majesty's Prerogative*, to the *Recovery* of his *just Rights* in this Province, and to the *Liberties* and *Properties* of the *Subject*, who wou'd, if the said Resolutions were of any Force, be thereby deprived of all *Remedy in Equity*, which they are entitled to by the *Laws* and *fundamental Constitution* of *Great-Britain*.

Ordered, That this Minute be published and printed, and dispersed throughout this Province; and that the Gentlemen of this Board, or any five of them, be a Committee to make their Observations on the said Resolves, and that they report their Opinion thereon to this Board.

*At a Council held at Fort-George, in New-York,
November 27, 1727.*

PRESENT, His Excellency *William Burnet*, Esq; &c.

Capt. *Walter*, Dr. *Colden*, Mr. *Alexander*, Mr. *Morris*, jun. Mr. *Kennedy*.

Resolved, That the Committee appointed to make their Observations on the Resolves of the General-Assembly, the last Sessions, relating to the *Court of Chancery* of this Province, have Power to send for Persons and Papers, and to examine them upon Oath, if Occasion requires it.

*Post Merid. At a Council held at Fort-George,
in New-York, December 5, 1727.*

PRESENT, His Excellency *William Burnet*, Esq; &c.

Capt. *Walter*, Dr. *Colden*, Mr. *Alexander*, Mr. *Morris*, jun. Mr. *Kennedy*.

The Report of the Gentlemen of the Committee, to whom was referred the Resolves of the General-Assembly, relating to the *Court of Chancery* in this Province, was read, & unanimously agreed to by this Board.

Ordered, That the said Report be entered in the Minutes of this Day, which Report is accordingly entered, and is as follows, *viz.*

In Obedience to your Excellency's Commands in Council, referring to us the *Resolves of the late Assembly* of the 25th of *November* last, concerning the *Court of Chancery* in this Province to make our Observations thereon and to enquire what *Complaints*, *Grievances* or other *Motives* occasioned them; we humbly Report,

That we in the first Place enquired, *By what Authority the Court of Chancery, as it now stands*, was established: And find, That on the 29th of

September, in the Year 1711, the then Governour of this Province did erect and open the *Court of Chancery*, by and with the Advice and Consent of the Council, pursuant to the Powers given to the said Governour by the following Clause in his Commission, under the great Seal of Great-Britain, viz.

We do by these Presents give and grant unto You full Power and Authority, with the Advice and Consent of our said Council, to erect, constitute and establish such and so many Courts of Judicature and publick Justice, within Our Province and Territories under Your Government, as You and They shall think fit, for the hearing and determining all Causes, as well Civil as Criminal, according to Law and Equity.

The opening of which Court was accordingly made known to the Subject by publick Proclamation, issued by and with the Advice and Consent aforesaid.

The said *Court of Chancery* continued, as then established, till Your Excellency's Arrival in this Province. And your Excellency being directed by his late Majesty's Instructions to you, *Not to erect any Court or Office of Judicature, not before erected or established; nor to dissolve any Court or Office, already erected or established, without his Majesty's special Order.* We are of Opinion, That the *Court of Chancery* was very remarkably confirmed and continued by the said Instruction, more especially when we had fully considered what follows.

That the Assembly of this Province, soon after the erecting of the *Court of Chancery*, as aforesaid, did, on the 24th of November, in the Year 1711, make the following Resolve, viz. *That the erecting a Court of Equity, without Consent in General-Assembly, is contrary to Law, without Precedent, and of dangerous Consequence to the Liberty and Property of the Subject.* Which Resolve was communicated by the Council of this Province, to the Lords Commissioners for Trade and Plantation; who in their Answer, dated at *White-hall*, June the 12th, 1712, declared, *That The erecting a Court of Equity, by Advice and Consent of the Council, is pursuant to the Powers granted to you by her Majesty, under the great Seal of Great-Britain: And therefore the Resolve of the General-Assembly of the 24th of November, 1711, is very presumptuous, and a Diminution of her Majesty's Royal Prerogative; for that her Majesty has an undoubted Right of appointing such and so many Courts of Judicature, in the Plantations, as She shall think necessary for the Distribution of Justice.* A Copy of which Letter was delivered by the Governour to the Assembly, to be put upon their Journal.

The *Court of Chancery* from that Time, continued in the quiet Exercise of its Authority, to the Day these last Resolves were made. We therefore think it highly presumptuous, that the Assembly should, after all this, take upon them to declare, as they do by their Resolves now before us, *That the erecting and exercising in this Colony a Court of Equity or Chancery (however it may be termed) without Consent in General-Assembly, is unwarrantable and contrary to the Laws of England, and a manifest Oppression and Grievance to the Subjects, and of pernicious Consequence to their Liberties and Properties.*

By this we do not so much apprehend that the *Court of Chancery* is struck at, or those who constituted it, in pursuance of the Power given them, as the Power and Authority of the King himself in this Province: For it will be a *sufficient Justification* to those who erected and exercised the *Court of Chancery*, That the same was erected pursuant to the Power given by the Crown, That it was directed to be continued by the late King, and that the People of this Province have, for so many Years, remained satisfied therein.

We are fully convinced, That a *Court of Equity* is necessarily supposed in our *Constitution*, and that *Justice* cannot be obtained in all Cases without the Aid of such a Court, and therefore that the King has undoubtedly a Right of erecting the same in the Plantations.

That the King's Authority is directly struck at, appears further by their second Resolve, viz. *That this House will at their next Meeting prepare and pass an Act, to declare and adjudge all Orders, Ordinances, Devises and Proceedings of the Court, so assumed to be erected and exercised, as above-mentioned, to be illegal, null and void, as by Law and of Right they ought to be.* The Form of all former Resolves has been to prepare and bring in (seldom to pass) a Bill, which supposes the Concurrence of the other Branches of the Legislature before it become an Act. And considering the *strong Terms* in which these Resolves are conceived, we cannot think that the Word *Act* has been unwarily made use of, but with Design to show to the People, what Influence the Assembly doth assume over the other *Branches* of the *Legislature* here, as well as to alienate the Peoples Affections from *His Majesty's Government*, by making them believe, that *illegal* and *arbitrary Powers* were and are given to the Governours of this Province. *Ignorance* of former Proceedings, and of the Resentment shown by the *Lords Commissioners*, cannot be pleaded, because a Copy of their Lordships Letter is now among the Papers of that *House*, and their *Speaker*, who brought in these Resolves, ready prepared in his *own Hand Writing*, was of the Council, and present,

when the *Court of Chancery* was erected, and was well acquainted with all the above-mentioned Proceedings.

We have the more Reason to suspect, that the *Design* of these *Resolves* was not to *redress Grievances*; because if it had, Care would have been taken to *represent their Grievances* to the *King's Majesty*, or at least to the *Governour and Council* of this Province, who have sufficient Power to redress them, and whose Concurrence is likewise *absolutely necessary*, if an Act was to be passed in the common Form: Neither had they any Reason to suspect, that *your Excellency* would be averse to any useful *Regulation* of the *Court of Chancery*; for your Excellency has often publicly declared, That the *Duty of the Chancery* was too heavy, & that you wished some. Method might be found to ease you of that Burthen.

And it appears further to us, by this last mentioned *Resolve*, That their ardent Zeal to encrease their own *Authority and Power* has made them entirely forget the *Rights and Safety* of their *fellow Subject*: For as they have never examined into the *Justice* of any one of the *Decrees in Chancery* upon which the Right and Quiet of many of the Subjects of this Province depend, it would be very *unjust* to set them all aside, whether right or wrong, and would necessarily create great Confusion. And this would be true, though it were granted, That the Court of Chancery here had been erected without sufficient Authority.

It is not necessary to make any *Remark* on the *last Resolve* of the Assembly, but that it serves to confirm the Opinion we have of the *Spirit* with which these *Resolves* were made.

The *Attempts* which too evidently appear to be made on *His Majesty's Authority*, and on the *Constitution of this Government*, and the tender Concern that is always due to the Characters of all *Officers of Justice*, and likewise the Apprehension we had, that some *Grievances* might have unwarily crept into the Practice of the *Court of Chancery*, which may have given Occasion to Complaints against that Court, and may have created the Uneasinesses in his Majesty's Subjects here, made it our indispensable Duty, to enquire strictly, by all means, to find out what were the Motives and Occasions of these *extraordinary Resolves*. And, to our great Surprise, we are well assured, That the late Assembly took *no Pains* to be informed, and had *no Information*, whereon they could, with the least Probability, found their Assertions as to the Facts alledged in the Preamble of the said *Resolves*; Notwithstanding, that if the Facts there alledged were true, it was their Duty to convince the

World of the Regard they had to the *highest Officer of Justice* in the Province, and that nothing but the most evident Conviction could induce them to charge Him (though only by Insinuation) with *Crimes*, the naming of which must cause an Abhorrence in all good Men: For when they are occasioned by *false Suggestions*, (as we are well assured these are) they are meer *Calumny*.

When we consider, That the most *upright* Judge cannot escape the *Resentment and Malice of Ill Men*, That his *faithful Administration of Justice* is too often the Occasion of such *Malice and Resentment*, and that it is the Duty, even of every private Man, as much as in his Power, to preserve the *valuable Character and good Name of a just Judge*, against all *Attempts* whatsoever. We are concerned that the Assembly was so little upon their Guard, in so tender a Point, as to suffer a Person to draw their *Resolves*, who they know was full of *Resentment*, on account of a *Decree* lately given against him in *Chancery*; and who, notwithstanding of his *Appeal* being allowed, seems to put the *Success of his Cause* on attacking the *Authority and Character of the Court*, which, in another Case, he had so far owned as to make use of its Authority, in obtaining Relief against a *Judgment at Common Law*.

But, though we be thus justly moved on this Occasion to disregard the Allegations in the said Preamble, it has not prevented us from taking notice of any *real Grievance* come to our Knowledge, and of thinking of the proper Methods to Redress them, and to ease the good People of this Province. For this Reason we humbly represent to *Your Excellency*, That we are informed, That the *Fees* now taken by the *Officers of the Court of Chancery* and the *Practitioners of the Law*, are generally complained of by the Suiters in the Court of Chancery, and that this may deserve Your Excellency's Consideration, though the Fees established be less than those allowed the Officers of the high Court of Chancery in *England*. We must likewise observe at the same Time, that the high Sums, which some Bills of Cost have lately amounted to, are in Part owing to the Arts of the Practitioners in drawing *Bills of Cost*, but chiefly to the Contrivances of some Practitioners and their Clients, to delay or avoid the Justice and Equity of that Court.

We are therefore of Opinion, That Your Excellency may order the *Ordinance for establishing the Fees of Chancery* to be reviewed, that they may be adapted better to the present Circumstances of this Province: That the Masters have proper Directions to avoid the Arts of the Practitioners in Augmenting their Bills of Costs. And we Pray Your Excellency to think of all proper Means, to prevent all Proceedings which delay a speedy coming

at Justice, and which are the only true and great *Grievances in the Courts of Chancery*.

To conclude, We persuade our selves, That when People of this Province allow themselves to compare the Actions and Proceedings of the *Governour and Council*, with those of their own *Representatives*, and seriously reflect, how much *Differences* and *Jealousies*, industriously fomented between the several Branches of the Legislature, prevent that *Harmony* and *Impartiality* which is necessary in composing and passing of Laws for the publick good, every Man in his Station, will endeavour to prevent the like for the future. But, as we conceive that the Matters now before Us, do highly concern His Majesty's Authority in the Government of this Province, We are of Opinion, that these Proceedings ought to be laid before the *Lords Commissioners for Trade and Plantation*, that His Majesty may be fully informed, and give such Directions as He shall think proper. Which is humbly submitted to Your Excellency by.

Your Excellency's most Obedient humble Servants,
By Order of the Committee

Cadwallader Colden, Chairman.

ORDERED, That the foregoing Report, and all the Minutes on this Subject, together with all the Papers referred to in the said Report, and necessary to explain it, be forthwith printed and published by Authority, and dispersed throughout this Province.

It is further Ordered That the Gentlemen of the Council, or any five of them, be a Committee to review the *Ordinance of Fees* for the *Court of Chancery*, and to moderate the same in such manner, as they shall judge agreeable to the Circumstances of the Province; and to consider of *Remedies* for the several *Inconveniencies* mentioned in the said Report.

At a Council held at Fort-George, in New-York,
August 30th 1728.

PRESENT.

Mr. Van Dam, Mr. Clarke, Mr. Colden, Mr. Alexander,	}	Mr. Lewis Morris, jun. Mr. Abraham Van Horne, Mr. Wm. Provoost, Mr. Phil. Livingston, Mr. Kennedy.
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Mr. *Morris*, in his Place, read a Representation of some of the Members of this Board, concerning the late Assembly of this Province. After which he moved, That the same might be entred in the Minutes of this Day. Whereupon the Question was put, Whether the said Representation be entred? It was carried in the Affirmative.

Ordered, That the said Representation be entred accordingly. Which is as follows,

To his Excellency in Council.

It is with the greatest Concern we find the Proceedings of a Committee of the Council, of which we were the Members, taxed by the Assembly, with the *highest Violation of the Privileges* of the General Assembly, and with rendring the *Liberties and Properties of the People precarious*, as is but too plainly insinuated by their printed Votes of the 30th of *July* last: We therefore think it our indispensable Duty, with respect to that Regard which is due to your *Excellency*, to the *Representatives of the People*, and to that *Justice* which is likewise due to ourselves, to set the whole Matter in a true Light, and to Place the Blame of all Misunderstandings, where we are convinced it ought to be laid, by giving the following short Account of the Occasion of it, and the Proceedings in the present Differences and Animosities, while Mr. *Philipse* was at the head of the last Assembly, he became Defendant in a Suit in the *Court of Chancery* of this Province, for Lands of great Value, and the Matter in Dispute coming to hearing, on Bill and Answer, the Governour decreed (sometime in the Summer before the last Assembly) in behalf of the Complainants. This decree however, was not, in Form compleated, till the 23d Day of *November* last, while the Assembly was sitting.

Two Days afterwards (his Excellency having sent for the Assembly to the Council Chamber, to be Witnesses to his passing the Acts) went about Noon in the usual Form to the City-Hall to publish them, where he was informed of the Resolves made that Day by the Assembly, against the *Court of Chancery*, and thought fit at his Return to the Council Chamber to dissolve the Assembly.

The Council entred some *Counter Resolves* in their Minutes, and a Committee was appointed to make Observations on the *Resolves of the Assembly*; and afterwards, were directed to send for Persons and Papers, and to examine them upon Oath, if Occasion shou'd require it.

We thought it our Duty, not to publish all the Particulars of this Examination, because it may discourage future Discoveries to mention (without

evident Necessity) so much as the Names of the Persons from whom we had our Information; it is sufficient for the present Purpose to declare, That it evidently appeared to us, that there had been *no Complaint* of the *Court of Chancery* made to the Assembly, *no Information* given them of any ill Practice. That Mr. *Philipse*, *Speaker* of the House, only read a Paper of his own Hand-writing, containing all the Words of the said *Resolves*, and of the *Preamble* to them, as they are now entred upon the Journals of the House, without any Alterations, except of the Words *Nemine Contradicente*,²⁴ which upon the Objection of one of the Members, were struck out.

That notwithstanding, these *Resolves* recite a *Report from the Committee*, there was *no Report* made, either verbally or in Writing, but this Paper only read by the Speaker, which of it self plainly shews it cou'd not be the *Report of the Committee*. It likewise appeared to us, That there had no mention been made in the House of any *Grievances* from the *Court of Chancery* before the said 25th of *November* tho' it was well known for some Days before, that the Sessions were to end that Day, and that the only Mention made of the *Court of Chancery* in the Assembly, was by reading that Paper, which was likewise done so little a while before the Assembly was called up to the Council Chamber, (that the Clerk, tho' there was no Interruption made) had not time to enter it upon the Minutes, before the Members left the House.

It further appeareth to us, That the *Committee of Grievances* was convened in a *more private Manner* than usual, in the Evening before the *Resolves* were made, That *no Complaints* of the *Court of Chancery* were made to that Committee, during the last Sessions, at any Time, except once, that the high Fees of that Court were mentioned by one of the Members of that Committee, and no Notice taken of it, till that Evening before the *Resolves* were made in the House, when Mr. *William Smith*, *Abraham Governuor* and *Sarah Hett*, who were all interested in a Suit then depending in Chancery,—and no other Persons, appeared before the Committee to Complain; and we have Reason to believe likewise, that the Persons did not appear of their own accord, but were sent for by one of the Members of the House, and their whole Complaint was of a Writt *Ne Exeat*,²⁵ issued against them, as to the

24. ["With no one dissenting," i.e., unanimously.]

25. ["He shall not depart from the state." Short for *ne exeat regno*; originally a writ restraining a person from leaving the country.—Tr.]

Occasion of which, we must refer to Pag. 10 of the printed Decree in the Case of *Medina, &c.* against *Hett, &c.* These things being clearly made out to us, it is easy to conceive what Impression these *Resolves* (obtained in this manner) made upon our Minds, where we see one of the Branches of the Legislature, the *Representatives of the People*, thus blindly giving up their *Judgments* to the Will of *one Man*, without the least Regard to *Justice*, or to *Truth*, or to the *Honour of the Person* the King had entrusted with the *Government of this Province*: For how can they be said to have any Regard to *Justice*, when they proposed no less than the *Reversing* all the *Decrees in Chancery*, without knowing, or in the least enquiring into the *Merits* of any one Cause, or when they endeavoured to *blacken* the Character of the *highest Judge* of the Province, tho' no one thing in his Conduct appeared to them, that deserved the least Blame? Or what Regard cou'd they have to *Truth*, when they assert *Facts* of the *highest Nature*, without desiring the least *Evidence* to any one of them? And all this *aggravated* by the *greatest Disrespect* that can be shewn, to his Majesty's Authority in his *Courts of Justice*.

Your Excellency will easily believe, what Abhorrence the Discovery of these Things raised in our Minds, and yet we hope that our Conduct will make it manifest, that these Discoveries did not lead us into any indecent Passions, tho' if they had, we might on such an Occasion, {have} hoped for large Allowances from the most severe Judge. No, *May it please your Excellency*, We proceeded with a very different Temper of Mind, we did what the Assembly ought to have done, we enquired, with the greatest Strictness, into the Practice of that Court, as the Council is certainly bound in Duty to do, when any *Complaints of Grievances* come to their Knowledge; And we enquired of all those who were most likely to inform us, among which we ought to expect the most Voluntary, as well as ample Information, from those that made the *publick Complaints*; and however unreasonably backward some of them were, from informing us, we neglected no Information we cou'd obtain, we found the Fees taken by inferiour Officers, to be, in many Cases, too high, and we found the Lawyers had been guilty of many Abuses in their Practice, in prolonging Suits, and increasing the Expences thereof, by manifold Contrivances; but to the *Honour of the Judge of that Court*, we must say, we cou'd find nothing Blame-worthy in the Proceedings of the Court it self, and we are persuaded it can stand the severest Enquiry. We have not only enquired into these Abuses, but hope we have likewise provided effectual Remedies for them, as we think, will evidently

appear to all impartial Judges, who shall see the two late *Ordinances for regulating the Fees and Practice of the Court of Chancery*, prepared by this Committee.

Had we not then, *May it please your Excellency*, good Reason to expect that these our Proceedings wou'd be highly acceptable to the People of this Province? We must presume, your Excellency is surprized to hear that they have not. We must think therefore, that the same artful Contriver that had before so strangely influenced the *Assembly*, influenced the *People* in no less strange a Manner; for it was done by such Arts and Contrivances, as cou'd be suited to no Purpose, but such as appears too evidently to have been *His*, in the Resolves of the late Assembly, such *Falshoods* and *Slanders* were spread amongst the People, of his Excellency our late Governour, and some of the Members of the Committee, that they cou'd have been invented with no other View, but to incite the *Mob*, and with the Hopes that we must sink under the Load of *Calumny*, which was laid, upon us; and that the Discovery of *his Designs* might be thereby prevented.

The Uprightness of our Intention, (for on such an Occasion as this, Men are allowed to defend themselves with less modest Reserve than is usual on other Occasions): We say the *Uprightness of our intentions* made us confidently hope for the *Assistance* of all *Honest Men*, and therefore we cannot forbear declaring our Concern at the want of some Assistance, we had a right to expect in our Proceedings; for thereby we were not only discouraged, and an *Opinion* impressed on the People to our prejudice, but also the Difficulties we laboured under, were highly augmented, and the *Artifice* used against us, more easily promoted.

The *Resolves* of the present Assembly of the 30th of July, and which we are assured were procured in the very same Manner those of the *last Assembly* were, oblige us to be more particular in one Point, than we shou'd otherwise have thought there was any Necessity; for it is insinuated in these Resolves, *that the Committee of Council sent for some of the Members of the last Assembly, in an imperious Manner, and confined one of them for his insisting, that he thought himself, accountable to the House only, for any Act done in it.* The Truth of this Assertion did not in any manner (as we have reason to believe) appear to the House, by any *Complaint* or *Information* whatsoever, made there, but is on the *contrary* such an *Unfair Misrepresentation*, that it cannot be doubted from whose Hand it came. The Truth of that matter in the particular instance which they chiefly point, is this,

We ordered your Messenger to give our Service to Mr. *Beekman*, and tell him, *that the Gentlemen of the Council desire to speak with him at Mr. Blaggs*. A very imperious way of sending for them: And when he came, he was desired to take a Seat with us at the Table, which he did, and no doubt was using him with a very high Hand! We beg our Excellency's Pardon, if we cannot forbear some Resentment on this Occasion. We told him the Occasion of our sending for him, was, that we might be informed of what *Complaints* and other *informations* the Assembly had against the *Court of Chancery*, that we might have an opportunity of *Redressing the Grievances*, and the Governour of *Clearing himself* of the *Reflections* which seemed to be cast upon him.

These Things being put in the form of *Question*, all that we could obtain from him, was, *That he would make no Answer*. We then asked him, if he thought the answering any of these Questions, could do him any personal prejudice? But all he would say, even to this Question, was, *that he would not Answer*. He being desired to with-draw, and afterwards called in, and seated with the same respect as before, some Arguments were used to persuade him to Answer; but he appearing resolute, we desired he would attend us at any other Time, we should give him Notice. Upon which, he answered, in a haughty manner, *that he would, if his Business did not call him any where else*. And while we endeavoured to put a good Construction on his Words, he endeavoured more and more to manifest his disrespect. And when we desired him to stay in the House, till we considered on these last Answers, he said *he would stay an Hour or so long as it would be Convenient to himself*, or Words to the same Purpose. Upon which the Messenger was ordered not to suffer him to go out of the House, without further Orders from us; and about an Hour afterwards, he was told to go about his Business. We do not remember his saying, *That he did not think himself accountable for any Act done in the House*, nor do we perceive how it could be a pertinent Answer, at least, to any Question then put to him; for we did not Charge him, or any other Person, with any Crime committed in the House, or if we had, and this had been his Answer, we cannot say, that we should have been satisfied with it; for if any Crime had been committed, there the House could have taken no farther Notice of it, than as it was Likewise, *a Contempt of the House*, and must have left the Punishment of the Crime itself to a proper *Judicature*, we think that Person must certainly have been accountable. This is that *Calling to an Account* and *Confinement* which the Assembly resents, as the *highest Violation and Breach of the Priviledges due and of Right belonging*

to *General Assemblies, and of Pernicious and Dangerous Consequence to the Liberties of the People*. We heartily wish, that their Resolver may never affect the *Privileges of Assemblies; and the Properties and Liberties of the People*, more than any Act of Council ever did, since we had the Honor to sit at that Board.

Upon the whole, we beg leave to observe to *Your Excellency*, that unless such *Attempts*, as this be effectually *Discouraged*, the *Authority of His Majesty's Courts* may often be in Danger from the *Artifices of popular Men*; that *Judges* may be *frightned*, even in cases where the *King is highly concerned*, from giving Judgment against a *leading Man of an Assembly*; and that the *Poor* may have no Means left of *Defending or Recovering* their Right, when invaded by *Rich and popular Men*.

If such an open *Invasion of the Kings Prerogative* shou'd now be passed with neglect, any discourse of it, for the future, may become the *Jest of the People*.

When *Your Excellency* considers, that the *Gentlemen of His Majesty's Council*, as well as all the *Officers of the Government*, hold their Places only during Pleasure, and that it must be very difficult to Guard against *private Misrepresentations*, where such *open and publick Ones* are attempted, they may be very much inclined to free themselves from troublesome Disputes, that tho' we know of *no Instance* where the *Council* have *overstretched their Authority*, there are many where they have yielded to the *Assembly*, and upon which the Expectation of the *Assembly* have always risen. For Example, the *Assembly* having once gained the appointing of the Officer, with whom the Revenue is to be lodged, they afterwards assumed the same as to all the *Collectors*, so that properly speaking, not one Farthing of the Money given by Act of *Assembly*, for support of Government, is in the *Kings Hand*. They were not contented with this, but expected likewise the *Nomination of all the Officers*, both Civil and Military, in their several Counties, and would lately have assumed to themselves, to be the sole *Judges of the Rewards* due to the Officers, from the highest to the lowest, without the Consent of either the *Governour or Council*, or giving any reason for the encreasing or lessening any Salary. The Consequences of which are to evident to need mentioning.

From this, *Your Excellency* will perceive that the Part of the *Constitution of our Government*, which is designed to Counter-balance any Incroachment of the *Assembly*, will often be too weak, if it be not strenuously supported by our Superiors. And accordingly, the Effects of this unequal

Ballance, generally break out upon the Death or Removal of a Governour, when the Authority of the Council is least able to withstand the *Arts of Popular Men*, because the People love Changes, and there is less Fear of Punishment. When it is to be observed, That few Governours are willing to enter into Disputes at their first Arrival, but generally fall in with the *Popular Party*. We perceive, the Force of *Popularity* daily increasing, and therefore cannot but be apprehensive of what Height it may reach to, especially when the Assembly (since *Your Excellency's* Arrival) openly and boldly claim a Privilege, which can only belong to the *supreme and absolute Authority*, by asserting *absolutely*, *That they are not accountable for any thing they do*. This, no doubt, makes a strong Impression on the Minds of the People, and may make some Persons think themselves safe under the Protection of an Assembly, in the *boldest Attempts* that can be made on the *Constitution*. And we cannot forbear observing, That a Desire to be absolutely *unaccountable*, has always discovered a *strong Byass* towards *Tyranny* and *arbitrary Power* in those who have at any Time claimed this *Privilege*.

As we have no Reason to doubt that *all possible Arts* are used to misrepresent our Actions, so we may expect that this *Representation* will be said to proceed from a *Spirit of Contention*, now when it is given out, that the Assembly designs to drop the Dispute.

But, *May it please your Excellency*, after what manner is it done? They drop it, after they have charg'd us with the *highest Invasion of their Privileges* and the *Liberties of the People*, after they have declared themselves *Not to be accountable*, and after they have *claimed a Power of calling the Council to an Account*, We shall be well pleased, that this whole Affair be subjected to the strictest Enquiry, that it may clearly appear with what Spirit we have proceeded: We shall even be willing to have our *Conduct* in our *private Affairs* considered, as well as in the Publick, to make the *Temper of our Minds* appear more plainly; for if we be naturally of *contentious Spirits*, or *inclineable to injure our Neighbour*, or if we have not *kept clean Hands*, surely some one Instance can be given, and made out, but in this, we bid Defiance.

We shall be far from desiring to have our *Resentments* gratified, but we must zealously endeavour to discourage all *Attempts on the Royal Prerogative*, and the *Safety of the People* in their *Properties* and *Liberties*, from whatever Hand they come. It is with great Pleasure we look on the Happiness of our *Constitution*, where the *Prerogative of the Crown* is so closely interwoven with the *Safety of the People*, that no *Attempt* can be made upon the one,

without manifest *Injury* to the other. And this Observation has mightily supported Us in performing our Duty. But as we have not the least Reason to doubt of *Your Excellency's powerful Concurrence*, not only in these our *Endeavours*, but likewise in *removing all the Fears* that have been *cunningly imprest* on the Officers of the Government in the Performance of their Duty. And as the doing of these Things cannot be the Works of one Day, we humbly submit them to *Your Excellency's prudent Conduct*, which hitherto has given us the greatest Satisfaction.

R. Walter,
Cadwader Colden,
Ja. Alexander,
Lewis Morris, jun.

New-York, August the 27th, 1728.

Secrytaries-Office, *June 6th 1734.* The afore-going is a true Copy.

Fred. Morris, D. Coun.

Sir John Randolph,
The Speech of Sir John Randolph,
upon His Being Elected
Speaker of the House of Burgesses
(Williamsburg, 1734)



WITH THE DEATH of its long-time speaker John Holloway in 1734, the Virginia House of Burgesses selected its former agent to Britain and clerk to succeed. The House was so pleased by Randolph's speech following his election that it ordered it printed by William Parks, the only printer in the colony. One of the few such documents to have been printed contemporaneously, the speech is a classic statement of the importance of political moderation in a free polity. Eschewing the customary forms on such occasions, Randolph used his speech to praise the House for its "accustomed Prudence and Moderation." Celebrating the fact that Virginia had "the Happiness, which seems almost peculiar to our selves, of being under none of the Perturbations which we see every where else arising from the different Views and Designs of Factions and Parties, and" having as "yet no Footsteps of Corruption among us," he recommended temperate and disinterested but vigorous debate that would illuminate the problems before the House by bringing out the great "Variety of Opinions" among its members. "Truth itself will receive an Addition of Strength by being opposed," he declared, "and can never be in Danger by suffering the Test of Argument." (J.P.G.)

THE
SPEECH
OF
Sir JOHN RANDOLPH,
Upon His being Elected
SPEAKER
OF THE
House of BURGESSES,
OF
VIRGINIA.

Printed by Order of the House of BURGESSES.

WILLIAMSBURG:

Printed by WILLIAM PARKS. M,DCC,XXXIV.

The Speech of Sir John Randolph.

GENTLEMEN,

I come now to experience all the Degrees of your Favor and Kindness to me; and it will not become me to pretend any Unwillingness to accept what you think me worthy of: Tho' I know, after Gentlemen have employ'd all their Interest to be elected into this Office, they usually represent themselves absolutely incapable of discharging the Duties of it. But if this be done without a Consciousness of the Truth of what they say, or any Design to depart from the Right of their Election, it must either be a false Appearance of Modesty, or a blind Compliance with a Custom, that perhaps, in the beginning, was founded upon Truth and Reason, but by Time, like many others, becomes only an Abuse of Words; which I cannot follow: And I rather avoid it, because I intend, upon no Occasion, to give you any Instance of the least Insincerity, which I think not only very useless, but the most vicious Thing in the World. Therefore, I must own, I do with a particular Pleasure embrace the Opportunity you have given me, of employing my small Talents, which appear to you in a much better Light than they deserve, still in your Service; and I thank you for this additional Instance of your Confidence in me, in bestowing your greatest Trust upon me. But as to my Fitness to serve you, Time and your own Experience will best determine it; so it may be needless to raise your Expectations about it: Only thus much I will assure you, that all the Advantages I may have received from a long Experience of the Methods of this House, shall be improved for the Advancement of your Reputation, and the Public Good; and I will not imagine, that the Pageantry and Formalities of this Office, are any Part of the Honors of it, which I know must proceed from a Labor and Diligence to prevent any Imputation upon your Proceedings and Resolutions. To this I am bound, not only by the Duty I owe to you, but by my own Interest; since nothing can happen amiss here, that will not be reflected on me, perhaps in more than my due Proportion, while the Weight of my own Failings will lie wholly on my self, and perhaps of some that may be only imaginary: For as, on the one Hand, it is not the easiest Thing in public Debates, so to hold in one's own Temper, as to avoid all Occasions of Reproach; so on the

other, it is one of the hardest, to place what is done justly and laudably in such a View as will be acceptable to every Body. The Prejudices with which we imbibe all our own Opinions, which are generally impressed upon us too hastily, are often the Occasion of great Injustice in this Particular: And the Partiality of Mankind is such, that they cannot cordially approve what is done by those who do not concur with all their Sentiments; but are apt to charge the contrary Side with Ignorance, Obstinacy, or perhaps Corruption. Yet tho' this be very common, every Body is ready to condemn it as one of the great Weaknesses of Human Nature; which is most evidently true from this, that both Sides, in every Opposition, of which one must certainly be in the wrong, entertain the same Rancour and Animosity against each other, from an imaginary Excellence of their own Modes of Thinking. But I have abundant Reason to hope, from my Experience of the Candor and Good-will of this House towards me, that I shall be exempted from any unkind Censures of this Sort; and indeed, seeing we have the Happiness, which seems almost peculiar to our selves, of being under none of the Perturbations which we see every where else arising from the different Views and Designs of Factions and Parties, and have yet no Footsteps of Corruption among us, instead of raising any Intemperance in our Debates, which are always unnecessary, we should look upon all Differences among us to proceed from the Doubtfulness of Expedients that shall be proposed for the Common Good: And upon that Account, the Minority should submit calmly and cheerfully to what the Majority determines, 'til Time and Experience shall either convince, or furnish them with more forcible Arguments against it. Then we shall hear one another patiently, put the Weight of every Man's Reason in the Ballance against our own, and at last form a Judgment upon the whole Matter; which, if not the wisest, yet, resulting from the Integrity of our own Principles, will be honest and commendable. But if we come, by our Resentments and Impatience of being out voted, or by our Affections, to consider Men more than the Matter, we shall be sure to be always in the wrong, because what we do from Considerations without us, can have no good Foundation; and we must lose all the Advantages of Reasoning and Argument. And, however Mankind may be provoked, by being thwarted with the Sentiments of other Men, a Variety of Opinions is not only absolutely necessary to our Natures, but is likewise of all Things the most useful; since if all Men were of one Mind, there would be no Need of Councils; no Subject for Learning and Eloquence; the Mind would want

its proper Exercise, and without it, like the Body, would lose its natural Strength, from a Habit of Sloth and Idleness. Truth itself will receive an Addition of Strength by being opposed, and can never be in Danger of suffering by the Test of Argument.

These being Notions by which we should be directed, in discharging the Trust the People have reposed in us, if we would establish them in our Practice, we should then attain the true Dignity of our Representation; and I flatter my self, from your accustomed Prudence and Moderation, every Gentleman here will consider what it is to represent the People of any Country.

But indeed, I know I must make the worst Figure myself, if I shall be found unable to perform what it will be my Duty to dictate to others; if I shall endeavour to make the established Rules of your Proceedings subservient to my own Fancies and Humours, or Interests; or shall bring into this Chair a Restlessness and Impatience about Points that may be carried against my Sentiments; or shall pretend to any Authority of swaying any Member in his Opinion; I say, then I shall deserve to have no Influence upon your Proceedings; but do not doubt, nay I hope, you will mortify me with the utmost of your Contempt for the Inconsistence of my Theory and Practice. And if I shall happen to succeed better, I will pretend to no other Praise, but that of not having deceived the Expectations of so many worthy Gentlemen, who have continued to heap upon me such a Series of Favors, which so long as I retain the Memory of any Thing, I must look upon as the chief Foundation of the Credit and Reputation of my Life.

[“Americanus”],
Letter to the Freeholders and Other Inhabitants
of the Massachusetts-Bay
(Newport, 1739)



SIGNING HIMSELF *Americanus*, the anonymous author of this pamphlet first submitted it to Boston printers, who rejected it “for fear of incurring the Governor’s Displeasure, which might prejudice them in their Business,” with the result that the author, a resident of Massachusetts, published it in Newport, Rhode Island. One of the better examples of the sorts of election pamphlets that appeared in increasing numbers beginning in the 1730s in efforts to inform voters on the duties of legislators and to encourage them to vote for men of independence and fortitude, this pamphlet exhibited a profound concern with the growing influence of Governor Jonathan Belcher in Massachusetts governance. Citing John Trenchard and Thomas Gordon’s *Cato’s Letter* “upon the glorious Cause of Liberty,” the author reminded voters that, as “*English Men*,” they had been “born to Liberty” and lived under a constitution in which “your Governors have every right to protect and defend you” and “none to injure or oppress you” and in which they had “a large Share in the Legislature” and “the Sole Power over your Purses” and called upon them to choose representatives who would “be very tender of the least Privileges, and . . . keep a proper Guard upon encroaching Prerogative.” In particular, he recommended candidates able “properly to distinguish between the *invaluable Priviledges* granted by *Charter*, and the Instructions given to a Governour” and to understand “that Compliance

with an Instruction which is contrary to the Charter" would amount to nothing less than "a traitorous giving up of the Liberties of their Country."

If *Americanus* exhibited the typical colonial fear of aggressive prerogative, it also revealed the relatively new fear of corruption through patronage that was at this time so prevalent in Britain, where First Minister Sir Robert Walpole had developed a refined system of patronage and pensions to manipulate the British House of Commons. Thus the author warned voters against any candidates who had been or might be susceptible to corruption by "an ambitious or designing Governour" or otherwise have any attachments that made them less than "free Agents" or brought them under executive influence, powerfully recommending the election "of those *uncourtly People*, who have always kept that excellent Preservative of Liberty—*Jealousy*." With far more patronage at his disposal, Belcher's successor as governor, William Shirley, was indeed able to enhance gubernatorial authority considerably in the 1740s and early 1750s. (J.P.G.)

LETTER
TO THE
Freeholders
and other Inhabitants of the
Massachusetts-Bay,
relating to their approaching
ELECTION
OF
REPRESENTATIVES.

To extend the Governour's Right to command, and Subjects Duty to obey, beyond the Laws of One's Country, is Treason against the Constitution, and Treachery to the Society whereof we are Members: And, to dissolve the Ties by which Princes stand confined; and overthrow the Hedges, by which the reserved Rights, Privileges, and Properties of the Subjects are fenced about, tempts every Prince to become a Tyrant, and to make all his Subjects Slaves.

Judgment of whole Kingdoms
and Nations. See, Page 3d.

Printed in the Year, 1739.

Advertisement.

The following was offered to the Printers in Boston, but was rejected. One of them saying they dare not print it, for fear of incurring the Governor's Displeasure, which might prejudice them in their Business.

To the Gentlemen Freeholders, and other Inhabitants, qualified by Law to vote in the Election of Representatives.

Gentlemen,

The annual Election of your Representatives drawing nigh, and the Importance of a good Election, being greater than is generally imagin'd, (nothing less than the *civil Salvation of the People* depending upon the same) has induced me, together with the Request of many of your Friends, to lay before you, the Necessity of using the greatest Care in your several Elections, not only from the great Danger of a *bad One* at all Times, but also from the present Circumstances of the Province.

In order to comply with this their Request, and to set before you the Danger you and your Posterity are brought into by a *bad Election*; I have publish'd this Letter, in which I have made use of some Helps from *Cato's Letters*, which were wrote upon the glorious Cause of Liberty, and have been justly regarded by all wise Men of every Party; and therefore, what is done here in Imitation of those valuable Letters, cannot be judged to be factious, or against the Interest of the Publick.

But, however some may receive *this*, I am sure, every true Lover of his Country, (who has Honesty and Wisdom enough to refuse any Bribe offered him as an Equivalent for the least Priviledge of his Country) will approve of it, and govern himself accordingly in voting.

Gentlemen,

You are born to Liberty, as you are *English Men*, and as you are *Descendants* of the *first worthy Settlers* of this Country, who purchased their and your Liberties, at the most invaluable Price of their *Blood and Treasure*; it is therefore your Interest, and your Duty to Posterity, to preserve them entire, without suffering the least Breach to be made on them.

The Constitution, which you live under, is an Epitome of a mixed Monarchy, where your Governors have every Right to protect and defend you; none to injure or oppress you. You have a large Share in the Legislature; you have the sole Power over your Purses: But it depends upon yourselves alone, to make these Rights of your's, these noble Priviledges of Use to you. And in order to make this plain to you, I shall recount some of the Priviledges you enjoy by your *Charter*, and shew what a Part you have in the Government; as the End of it is, and ought to be, wholly for your Advantage.

The *Charter* ordains, that you shall have a General Assembly, convened, held and kept, every last Wednesday in *May*, which shall consist of the Governor and Council for the Time being, and of such Freeholders, as shall be elected and deputed from time to time, by the major Part of the Freeholders, and other Inhabitants qualified to vote in that Choice, present at such Election. This General Assembly, at their first Meeting, proceed to elect twenty eight Councillors; after which Election, they proceed to make what Laws may be necessary for the publick Good, to raise what Moneys may be necessary to support the Government, in defending and protecting you this is the sole *Priviledge* of your Representatives. To levy and assess reasonable Taxes and Assessments upon your Poles and Estates, is another Priviledge of your Representatives. The General Assembly have the Right of disposing of the waste Lands. The Consent of your Representatives is absolutely necessary in all Acts of Government, and many of them must originate in the House, especially those material Articles of *supplying the Treasury* and *taxing the People*.

By this you may see the great Share you have in the Government, having at least two Branches of the Legislature (who have all the Moneys and other Advantages in their Power) which are appointed by your Election. Your Representatives (who are immediately of your Appointment) are the Trustees of your Liberties, who, if they give up, or are inclined to give up any the least of them, you have it in your Power, the next Year, to choose more faithful Men in their Room; and such Representatives will choose such Councillors, and then all will be well. For not only good Care will be taken, that no Laws but such as are for your Good and Welfare shall be enacted; but also, that none be trusted with the Execution of them, except those who have Competent Understanding and Integrity. Such a General Assembly (which depends upon your Election of Representatives) will be very tender of the least Priviledge, and will keep a proper Guard upon encroaching

Prerogative. They will be able properly to distinguish between the *invaluable Priviledges* granted by *Charter*, and the Instructions given to a Governour, and will know they have no Business with Instructions (*except from the People*) and that any Compliance with an Instruction which is contrary to the Charter, is a traitorous giving up the Liberties of their Country, and an Abuse upon his Majesty. For although it be one of the wise and prudent Maxims of the English Government, 'That no Blame or Wrong be imputed to the King'; it is also another, 'That no Wrong be done to the People'. They will know, that the only Rule of their Government ought to be your Good, and that they are inviolably obliged to keep a watchful Eye upon your Charter, as their Directory, and to see that no Infraction be made on it. *That being your Constitution*, from such a Behaviour in your Legislature, you may naturally expect, his Majesty's Council (who constitute the middle Branch) will, in giving their Consent to the Appointment of civil Officers, be actuated by the same good Principles, they were, as a Branch of the Legislature; and consequently, they will not consent to the Appointment of an unqualified Person to an executive Office in the Government, nor to the Removal of any Judge, unless he has been guilty of Malefeazance in his Office. It was (*Gentlemen*,) one of the material Blessings obtained at the happy Revolution, that the Tenour of the Judges Commissions in *England*, should be altered, from *during Pleasure*, to, *so long as they behave well*. The Crown having the Power of creating and removing Judges at Pleasure, was found by fatal Experience, to be one of the greatest Misfortunes the Nation laboured under; the Law being always expounded in Favour of the Crown, from whence arose the Doctrines of *dispensing Power*, the *Forfeitures of Charters*, and many other slavish ones, destructive of Liberty, which produced the Nation's Delivery from Slavery by King *William* of immortal Memory; who restored to our *Forefathers* their Priviledges, that they lost in the common Calamity of those Times, which so much endeared that glorious *Deliverer* to those Worthies, that there was not then, as there scarce is now, a *Jacobite* to be found in the whole Province; so that we can vie with any of his Majesty's Subjects for Loyalty.

You have here seen some small Sketch of your happy *Constitution* by the Charter, which confirms to you all the Priviledges of *English Men*; and as a Reward for your *Ancestors* great Merit in settling this Country, adds many others, giving you a larger {voice} in the Government, than the People in *England* have. The Improvement of which depends upon you wholly; for to preserve

your Liberties, they must be kept up in their whole Strength. And to this End, it lies upon you to choose for your Representatives, Men that will be really *such*; Men that you can't suppose will be ignorant or careless of your Interests; or what is much worse, that will act quite contrary to them.

For Names (*Gentlemen*,) will not defend you, when the Thing signified by them is gone. The *Emperors of Rome* were as absolute with the Shew of a *Senate*, and the Appearance of the People's choosing their *Praetors*, *Tribunes*, and other *Officers of the Common Wealth*, as the *Eastern Monarchs* are now, without these seeming Checks, and this Shew of Liberty; and in some Respects, they were more secure; as the Infamy of their Tyranny was shared by those Assemblies, the Advantages were all their own, and the Condition of the People was rather worse for these mock *Magistrates*, and pretended Representatives; who, under the Colour and Title of the Protectors of the People, were, at the People's Expence, the real Helpers and Partakers of the Iniquity of the Tyrant. The Kings of *France* have *Parliaments*, but *Parliaments* which dare not dispute their Royal Pleasure; and the poor People would not fare one Jot the better, if these *Parliaments* were bribed not to dispute it.

This wretched Case, Gentlemen, will be yours, and the wretched Case of your Posterity, if ever an ambitious or designing Governour shall, hereafter be able to corrupt or awe your Representatives. And whatever wicked Bargains are then made will be made at your Expence, and you must pay the terrible Reckoning at last. It requires therefore your best Tho'ts, and most vigorous Resolutions, to preserve your Constitution entire in all its Parts, without suffering any one Part to prevail so far over the other, as to reduce it in Effect, tho' not in Name, to a simple Form of Government, which is always Tyranny. It will be immaterial to you, whether this is brought about by Confederacy, or by Force; by Knaves, or Fools; whatever be the villainous Means, Violence, Oppression, and every Rank of Evil will be the End. Wherefore, with an honest and generous Design of saving your Country, you ought to choose Representatives, whose Interests are at present the same with your own, and likely to continue the same. Representatives, who are not already pre-engaged, nor, from their Circumstances, Profession, Offices, and Manner of Life, are likely to be engaged in a contrary Interest. He will prove but a sorry Advocate, who takes Fees from your Adversary; and as indifferent a Plenipotentiary, who receives a Pension from the Prince, whom, he is commissioned to treat with: Nor can there be any Security in the

Fidelity of One, who can find it more his Interest to *betray* you, than to *serve* you faithfully. *Vertue* and *Vice* will be but ill ballanced, when Profits and Honours are thrown into the wrong Scale. A great *Protestant Peer of France*, having changed his Religion, in Compliance with his Master *Henry the 4th of France*, who had changed too, was soon after asked by that *Monarch* publicly, which of the two Religions he thought the best? *The Protestant, Sir, undoubtedly, said the Peer, by your own royal Confession, since in Exchange for it, your Majesty has given me Popery and a Marshal's Staff to Boot.* Where Boot is given, there is always a tacit Confession that the Exchange is unequal without it. Choose not therefore such, who are likely to truck away your Liberties, for an Equivalent to themselves.

It is the Right and Duty of the Electors, to examine into the Conduct, and to know the Opinions and Intentions of those, who offer themselves to their Choice. And (if they have served before) the best Way to form a Judgment of their present Views and Designs, is to survey their *past Behaviour*, when in Office. How can any of you be truly represented, when you know not the Sentiments of those who represent you? It is still your happy Lott, that you have frequent Means and Opportunities to resent effectually the Corruption of those, who have basely betray'd their *sacred Trust*, and slighted with an *insolent Scorn and Contempt, your prudent Instructions*, given for the Preservation of your Liberties; admit no such Man to be so much as a Candidate again, nor indeed any Man to be a Candidate, until he has declared in the most explicit and solemn Manner, his most hearty Regard for your *invaluable Liberties*, and his fixt Resolution to preserve the same, and withstand any Attempts to destroy them.

This, *Gentlemen*, is your Time,—which if you suffer *to be lost, may be forever lost*. Choose not therefore those, who would bribe you, with getting you made distinct Parishes and Praecincts, or with obtaining any other separate Advantage for you, because, you may depend upon it, the Purchase of this Favour for you, must cost you very dear, for they must give a *Quid* for your *Quo*. And if, in order to get this Favour for you, and to establish his Interest with you, your Representative should, by his Vote, (which is probable) gain a Compliance with an Instruction diametrically opposite to the Charter, or do any other Damage to the Publick; upon duly stating the Accompt, you'll find yourselves upon the Ballance great Losers, having suffered more in the publick Loss, than you have gained by your private Advantage. And History furnishes us with numberless Examples of the greatest and heaviest

Misfortunes falling upon those and their Families, who have given up the Liberties of their Country, in order to gain a private Advantage, that being very insecure under an arbitrary Administration.

Choose not those, who are in Confederacy with the Disposers of civil and military Honours, by which Means, some have been able to carry almost *all their Points* in the House, a few Years past. For you may depend upon it, they can't act as free Agents; and what the Consequence of that in a few Years will be, you may judge from what has already happen'd to you. By this, you find Laws enacted without this essential Clause in them, viz. *Any Law, Usage, or Custom to the contrary notwithstanding*; which is a repealing Clause: But this is left out, because, the Governour has an Instruction to consent to no repealing Act whatever; which is depriving you of one of your best Privileges, being nothing less, than taking from the General Assembly the whole legislative Power granted them by the royal Charter; for it ever will be a fundamental Maxim in *Politicks*,—That *the same Power* which can *enact*, can either *alter* or *abrogate*:—According to which, If our General Assembly have no Power to *repeal*, they never had a Power to *enact*; from whence it will necessarily follow, That our whole Body of Laws are *ipso facto*, null and void. This mean Compliance with Instructions, is the Root and Foundation of all your heavy Sufferings, and may yet produce worse and more heavy; whereas an honest Non-compliance with an Instruction, which infringes upon your Liberties, will be a considerable Security to them, by being never troubled with it again, unless now and then by Way of *Scarecrow*, as you have been with the Instruction for fixing the Salary.

You are Freeman, and Men of Reason and Spirit; *awaken* your Spirit, *exert* your Reason, and *assert* your Freedom. You have a Right to Petition the General Assembly, to propose your Thoughts and Grievances to them, to be heard and relieved when you suffer any.

Choose not the Gentlemen of the *Militia*; for altho' it may be objected, That they are not so dependant, as the Gentlemen of the Army in *England*, because they receive no Pay; yet remember their Duty, together with those Darlings, their military Honour and Power, depend upon obeying the Word of Command, as well as the Officers of the regular Troops. And it is well known, That Power and Honour have a greater Influence upon most Men than Money. Because, Covetousness is a Vice, that even the Miser himself would have the World believe he despises; whereas, Power and Honour are allowed to be admired by all. Your military Officers have considerable

Power lodged in their Hands, more in some Respects, than is proper and convenient for your Interest, to entrust many of them with. And this has been considerably augmented by the new Law passed by the last General Court, for raising the military Fines, threefold.

Choose not those Officers who depend upon Fees, because, as you now have two Sorts of Money passing, and the Bills of the old Tenor, extant, are to be called in by the Year 1741, and no other Money is to be passing (unless the next General Assembly take Care of you) except that of the new Tenor: You may depend upon it, the Officers will endeavour that no new Regulation shall be made of their Fees to prevent your being oppressed, but that they shall remain upon the present Establishment. So that a Place now worth in Fees 500 *l. per Annum*, will then be worth more than 1500 *l. per Annum*. *A very fine Advance upon your growing Poverty.*

If a Motion should be made and obtained, in the Courts of this Province, That all Bills of Cost should be taxed, to be paid in Bills of the new Tenor, it must considerably encrease your Law Charges, especially when you compute the Costs of the many small Actions brought before *Justices*, for Debts not exceeding Forty Shillings, and for the unpardonable Crime of not Training, for which terrible Fault, I knew a Man pay Thirteen Shillings new Tenor, the *Justices* Fees, which added to two Fines sued for, made in the whole Twenty Three Shillings new Tenor, and so amounted to Three Pounds Nine Shillings, Bills of the old Tenor. By this you see what you are coming to, unless you prevent this growing Oppression by using proper Care in the ensuing Election of Representatives. I am not insensible, That almost all the Officers, civil and military, will exert themselves in the ensuing Election, in favour of themselves and their Brethren; and will tell you, they are sensible how prejudicial the new Tenor Bills are, and that they carry a Sting in their Tail, but that, that shall be prevented by a new Regulation of Fees; yet regard them not in this Affair, *because your All is at Stake*; (altho' in their respective Offices, when they behave well, as many of them, to their Honour, do, treat them with all due Deference and Respect) but tell them plainly, you fear your good Nature and Credulity in sending them and their Friends, your Representatives, has brought all your Misfortunes upon you; and that therefore you think it high Time, for the sakes of their Families, as well as your own, to alter your Elections, and to choose some of those *uncourtly People*, who have always kept up that excellent Preservative of Liberty—*Jealousy*; and that you have already suffered too much by

gilded Pills, to take any more of them; and that you can have no Manner of Reliance upon this their Promise, least a Law for regulating Fees, should meet with the same Fate, which the Bill did, that, *Anno 1734*, passed the House of Representatives, for restraining the Clerk of the Naval Office, taking exorbitant Fees. Tell them further, That this Instance convinces you, That you are to hope for no Relief from such Gentlemen; for if a Law would not pass to check the Exactions of such an *obnoxious Officer*, who obtained that very profitable Post in a disagreeable Manner, and stands, as he ever has done, upon very ill Terms with many *great Men* here. It can't be reasonably thought, that they, when they get into Power, will do more against themselves, their Friends, and the Governour's Friends, than they did against a Man, whom they would have gladly curtailed in his Fees, but that they feared it would have been made use of as a Precedent, to have prevented their, & their Friends intended Oppression. This glaring Instance must always stare them in the Face, and give them the Lie, when they pretend to say they are for any other new Regulation of Fees, than what shall be in favour of the Officers. No! *Gentlemen*, Tell them *Interest will not lie*, and you are not to be deceived; and that upon this Maxim you will act in your ensuing Election. Tell them you are not quite so blind, as not to see, That as your Trade decays, the Number of Candidates for every Vacancy will daily encrease, which must give *Prerogative* a considerable Advantage over *Liberty*. Tell them, all the additional Profit raised by this new Money must come from you, and so add double Weight in the Scale of *Prerogative* (which is heavy enough already) against *Liberty*; and that this ought to make you consider, what large Strides *Prerogative* will be daily making towards absolute and despotick Power, when it is so considerably augmented, and the Supports of *Liberty* so much enfeebled.

Gentlemen, It highly imports you to consider what you are about, and whether you will bring Life or Death upon us. Oh! Take Care of yourselves, and of us all: We are all in *your Hands*, and so at present are your Representatives. But very quickly the Scene will be shifted, both you and we shall be in their's.

Choose therefore honest Freemen, who when they have been your Representatives, have followed your Instructions, taken Care of your Privileges, and have showed themselves firmly attached to the best Interests of their Country, and have been as tender of your Liberties, religious and civil, as of the Apple of their Eyes.

Choose Men of good moral Characters, who have always in their Dealings in *Meum et Tuum*¹ acted honestly; for it is a great Hazard, whether he who would cheat his Neighbour of *Twenty Pounds*, will not sell his Country for *Judas's Price*.

Choose such as have always shewn themselves, and are likely to continue, your fast Friends; who have opposed every unjust Exaction of your civil Officers, and have almost stood alone for your Sakes, in the Prosecution of such Officers for that Offence.

Choose such as are most likely to relieve you from such Burthens, under which we all sadly groan, and under which we must certainly sink, never to rise again, if we are not relieved.

I am, Gentlemen, With exceeding Sincerity, and all good Wishes, Your most affectionate Humble Servant,

AMERICANUS.

1. [Literally, "Mine and thine," i.e., right of property.—Tr.]

[Maurice Moore],
A True and Faithful Narrative
of the Proceedings of the
House of Burgesses of North-Carolina
(Williamsburg, 1740)



A CONTROVERSIAL FIGURE in North Carolina public life, William Smith was chief justice of North Carolina for most of the 1730s, notorious alike for his arbitrary and corrupt behavior on the bench and for his inability to control his temper. By dissolving the Assembly and calling for new elections, Governor Gabriel Johnston saved Smith, a strong supporter in his long battle with local magnates over land titles and quit-rent payments, from a legislative investigation that would almost certainly have gone badly for him. Smith and his adherents worked successfully to elect members who favored him, and while the new Assembly that met in 1740 was unable to head off the Smith investigation altogether, it had the votes to circumscribe it so severely that Smith was acquitted. Unable to present its full proofs to the Assembly because the majority had allowed it only two days to collect them, the minority added proofs to material from the legislative journals to make its case against Smith in the pamphlet printed here, which serves as another excellent example of a perennial problem in colonial British America: a judicial system rendered ineffective by corrupt, incompetent, or unfit judges.

Scholars have followed some contemporaries in treating this incident as an impeachment, one of the few to occur anywhere in colonial British America. As the pamphlet's author takes pains to point out, however, the "Articles

exhibited against the Chief Justice were not Articles of Impeachment," but "Articles of Complaints for high Crimes and Misdemeanors committed by him in the Execution of his Office," intended to force Johnston to suspend Smith until the Crown's pleasure should be known. Seventeen articles accused him of a wide variety of offenses, including subversion of the laws, packing juries, charging fees higher than those allowed by law, denying jury trials in many cases, imposing excessive fines and lengthy imprisonments, otherwise ignoring "due Process of Law" when it suited him, and many others. Smith's "Exactions and Extortions," his critics maintained, were "more burthensome than the General Tax of the whole Province, every Corner of the Country" being "fill'd with his Oppressions, and all the People cry[ing] aloud for Justice." Despairing that under a judicial system headed by such a man "neither the Laws of *Great Britain* nor those of their own Province" were "sufficient to secure" the people "against the arbitrary Attempts of Men in Power," the author called upon the public to stand up against such violations of "the common Benefits and Priviledges, secured to us by Law" and by the "*British* Constitution, where Liberty is our undoubted Inheritance . . . and ought to be enjoyed in it's full Extent."

Because North Carolina did not yet have a printing press, this pamphlet was published in Williamsburg. No individual claimed authorship, but the text suggests that it was largely the work of one man, probably Maurice Moore, the minority leader and a large landholder in the Cape Fear region of the colony. (J.P.G.)

A
True and Faithful
NARRATIVE
Of the Proceedings
OF THE
House of Burgesses
of North-Carolina,

Met in Assembly for the said Province at
Newbern, February 5th 1739/40.

On the Articles of Complaint exhibited before
them against the Honourable *William Smith*, Esq;
Chief Justice of the said Province, for high Crimes
and Misdemeanors done and committed by the
said *William Smith* in the execution of his Office.

*Published for the Justification of the Members of that House,
who voted the said Articles-sufficiently prove for the said Chief Justice
to be charged therewith.*

Addressed to the Freeholders of *North-Carolina*.

Pro: xxix. 2. *When the Righteous are in Authority the People rejoyce,
but when the Wicked beareth Rule the People mourn.*

A True and Faithful Narrative, &c.

The slow and confused Proceeding of the late Assembly held at *Newbern* for this Province, the little regard the Majority of that House seemed to have for the Interest of their Country, in rejecting the Evidence brought to support the Articles of Complaint, exhibited before them against Mr. Chief Justice *Smith*, makes it necessary for those Gentlemen who happened to differ in Opinion from the Majority to appeal to the World for their Justification, and to acquit themselves of any Blame that may lay at their Doors, by publishing those Articles against the Chief Justice, with the Proceedings thereupon, to the World, and they are the more inclined to this Method of Proceeding, not only because it will open the Eyes of the deluded People of this Province, but that the Iniquities committed by Mr. *Smith* in the Courts of Justice where he presides may meet with the Censure they deserve.

Before I enter further into the Proceedings of the last Assembly it will not be amiss to look back into, and inquire out the Causes of the Dissolution of the former, who took more pains to reconcile and unite the divided Interests of their Country, than any that went before them. That Assembly was, (according to it's Prorogation) to have met at *Newbern*, on the fifth Day of *November* last; accordingly Twenty-six Members met [at that Town, but four of those Gentlemen being more attached to the Chief Justice, than to the Service of their Country refused to attend the House, by which Means, there wanted two Members, to make a Majority without which their could not be a House; His Excellency the Governour being acquainted with the true State of the Affair, prorogued the Assembly several Times, in hopes more Members would come, but the Season of the Year and the intemperance of the Weather, prevented the coming of any more, until after the Dissolution of that Assembly, which happened a Week after the Time appointed for it's Meeting. Thus after many Prorogations within the space of a Week at the end of each of those Prorogations the four Gentlemen constantly neglecting to attend the Service of the House; the Assembly was put an end to by Dissolution to the great Damage of the Province.

I think it would not be just, should I neglect to acquaint the World with the Names of those abdicating Gentlemen, their Conduct, since sufficiently convinces us, what Motive occasioned their Desertion, and as those Gentlemen this present Assembly moved to have the Thanks of the House for the Service done their Country, by their Abdication. I imagine (notwithstanding

the House was not so kind as to comply with their Desires) that I cannot offer a more pleasing Incense to the vanity of the illustrious Patriots; and so without any kind of Apology, I inform our Readers they were, *John Hogson*, Esq; the present Speaker, Colonel *Benjamin Hill*, Mr. *John Blount*, and Colonel *Benjamin Peyton*. The Reasons which induced those Gentlemen to such Conduct were notoriously known to proceed from Mr. Chief Justice, that Gentleman was acquainted, that Articles of Complaint would be exhibited against him, for Male Administrations in his office, and he plainly foresaw that if there should be at that Time a House, a strict Inquiry would be made into his Conduct, which he was well convinced would not bear a nice Scrutiny, and that there was no Way so effectual to prevent the Danger he was exposed to, as breaking the House, which could not be effected but by perswading those Gentlemen to Abdicate: This is Evident to any one, who considers the Correspondence the Chief Justice kept with those Gentlemen in the Time of their Desertion, and more especially from a very remarkable Letter sent from the Chief Justice, to the now Speaker in their last Retreat, which Letter for the Elegance of it's Stile, deserves to be handed down to Posterity with great Care and Circumspection; but as we have not been so happy as to peruse that extraordinary Epistle, we can only communicate the Substance of it, as we received the same, from one of those abdicating Gentlemen; "Sir, the Assembly is Dissolved and the Members sent to the Devil, tantarararo, tantwive, tantwive." If our Readers will consider this Correspondence, & how steadily those Gentlemen have since adhered to the Chief Justice's Interest in the Affair of the Articles, exhibited against him, they will not think, those Gentlemen unjustly charged with deserting the Service of their Country at that Time with intent to screen the said Chief Justice from a deserved Publick Censure. Immediately after the Dissolution of the last Assembly, his Excellency the Governour, was pleased to issue Writs for Electing Members for a new Assembly; We imagine it cannot surprize any judicious Persons, that the Articles of Complaint, against Mr. Chief Justice *Smith* should miscarry, when he shall be acquainted with the great Expencc and Diligence of that Gentleman to get his Friends into the House, he work'd upon the Hopes, the Fears and the Avarice of the Electors to gain his Point, every Election throughout the whole Province was more or less influenced by that Gentleman or his Friend: It is indeed much greater Cause of wonder, how there came to be so great a Minority as was in that House, and that in so great a Defection from the Interest of their

Country, and notwithstanding so powerful, so assiduous an Interest carried on by that Gentleman and his Friends at the last Election, with so much Profuseness and Extravagance, so many Gentlemen should obtain Seats in that House, contrary to the Expectations and Designs of himself and his Friends. And that notwithstanding all Mr. Chief Justice, his Assiduity and Expence at *Newbern*, all his Perswasions and Promises of passing such favourite Bills as those, he depended upon were most Interested in, that after this, this very Assembly, which he flatter'd himself he had moulded to his Wishes, should refuse to Vote the Articles against him, false, or him Innocent and Upright, contrary to the Motion of his securer Friends in that House, and his own Expectations, and that those his own Friends, should not reject the Articles against him, but only reject the Evidence and should unfortunately leave those Articles so much his dread, upon their Journals, still subject to a further Examination and Inquiry.

We shall now proceed to the Journals of the Assembly as far as relates to the Subject of this Narrative.

Feb. 11, 1739 Mr. *Benjamin Peyton* moved this House, as Mr. Chief Justice *Smith* was the last Assembly if they had sat, to have been Charged with several Crimes and Misdemeanors, and they were not yet produced to this House, that they might be produced immediately, or the said Chief Justice might be declared a just and upright Judge, upon which Sir *Richard Everard* Baronet one of the Members of this House charged the said Chief Justice with high Crimes and Misdemeanors, and was seconded by Mr. *Samuel Swann*, and pray'd leave to exhibit Articles to that purpose against him, and moved this House to have Leave till Wednesday to bring in the said Articles, which was accordingly granted. Vera Copia¹ Test *William Heritage* Clerke Dom Bur And a Warrant issue Sign'd by Mr. Speaker to bring all Persons, Papers and Records before them, to enable them to make good their said Articles.

True Copy, *William Heritage* Cl. Dom. Bur.

Sir *Richard Everard* moved this House, as he was ordered to draw the Articles against the Honourable *William Smith*, Esq. Chief Justice, that Mr. *Maurice Moore*, might assist therein, and that they might withdraw from the Service of the House, till Tomorrow Morning to prepare

1. ["True copy," i.e., an understandable copy.—Tr.]

the said Articles: *Ordered*, that they have Leave to withdraw themselves Accordingly.

We apprehend it will be proper for the clearer Understanding of the present Controversy for us to make our Observations upon the Proceedings as they passed in the House, Day by Day, rather than to Observe upon the whole at once, which may possibly render them confused and intricate so that we may unfortunately by that Means disappoint the World.

On Monday Feb. 11th Mr. *Benjamin Peyton* Member for the County of *Beaufort*, made the Motion aforementioned, upon which ensued a very warm Debate, in which the Gentlemen, who were concerned in the Articles, seemed to decline the producing them to the House, at that Juncture for Reasons very plain and obvious, but the Gentlemen on the other Side tumultuously insisting that the Chief Justice should be voted innocent and upright, notwithstanding no Accusation then lay against him, and Mr. Speaker being very forward to put the Question, which he often during the Debate stated thus, *Viz* Whether Mr. Chief Justice *Smith* should not be declared by the House an impartial and upright Judge, and that he should receive the Thanks of the House for his good Services? It was then thought high Time to put a stop to such extravagant Proceedings, and since Argument and Reason, had been found ineffectual, to have recourse to some other Method, which induced Sir *Richard Everard* Baronet to rise up and accuse the said Chief Justice of high Crimes & Misdemeanors, and to pray a sufficient Time might be granted to exhibit Articles for that purpose to the House, and he was seconded by Mr. *Samuel Swann*. The Chief Justice's Friends, who did not apprehend such a Consequence would proceed from Mr. *Peyton's* Motion, were very much Alarm'd thereat, and they knew that nothing could save their Friend, but straitning the Gentlemen who were to produce the Articles, as to Time, upon which those Gentlemen insisted that they might be produced the next Morning, which occasioned another Debate, and the House were told that it looked as if they had no real Design to give their Country any Relief as to the Matters which might be contained in the Articles, since they seemed so desirous to Contract the Time, that the Articles ought to be well considered before they appeared in the House, and that in the like Cases at home, sufficient Time was never deny'd; at last Mr. Speaker put the Question, If the Gentlemen should be allowed Time till Saturday, to prepare and bring in their Articles? which was carried in

the Negative, but no notice is taken of this Division in the Journals of the House, and as many other Things are neglected in the course of this Proceeding, we shall upon every Division which happened upon any Question, relating to the Affair in Hand, constantly set down the Names of the Persons who Voted for and against the Question.

For the said Question.	Against the Question.
Col. <i>Maurice Moore</i>	Mr. <i>Thomas Loowick</i>
Mr. <i>James Castelow</i>	Collector of Port <i>Beaufort</i> .
Mr. <i>Thomas Bryan</i>	Mr. <i>George Robers</i>
Mr. <i>John Brown</i>	Mr. <i>George Bould</i>
Mr. <i>Simon Alderson</i>	Mr. <i>Benjamin Peyton</i>
Mr. <i>John Banbury</i>	Mr. <i>Richard Rigby</i>
Mr. <i>John Starkey</i>	Mr. <i>Joseph Tart</i>
Mr. <i>William Brice</i>	Mr. <i>John Blount</i>
Mr. <i>Edmund Smithwick</i>	Col. <i>Benjamin Hill</i>
Mr. <i>William Gardiner</i>	Doct. <i>Abra Blackall</i> Deputy
Mr. <i>Samuel Swann</i>	Post-Master.
Mr. <i>John Swann</i>	Mr. <i>James Cravin</i>
Sir. <i>Rich Everard</i> Bar.	Clerk of the Gen. Court
Mr. <i>Arthur Mabson</i>	Mr. <i>Walton</i>
Mr. <i>Samuel Sinclair</i>	Col. <i>Macrora</i> Scarbow
Mr. <i>William Bertram</i>	Mr. <i>Carruthers</i>
<i>John Montgomery</i> Esq;	Mr. <i>James Sumner</i>
<i>His Majesty's Atty. Gen.</i>	Mr. <i>Tho. Pendilton</i>
Mr. <i>Joseph Sutton</i>	Col. <i>Tho. Hunter</i>
Mr. <i>Joshua Long</i>	Mr. <i>David Bayly</i>
	Mr. <i>William Relf</i>
	Mr. <i>John Caron</i>
	Mr. <i>Jacob Carrow</i>
	Mr. <i>Leary</i>
	Mr. <i>Thomas Loucher</i> .

The Question thus carried against allowing Time till Saturday, the House was at last prevailed with to grant Time till Wednesday. Soon after the House adjourned, Sir *Richard Everard* and Mr. *Samuel Swann* waited upon the Speaker, with a List of the Persons, Records, and Papers which were wanting as Proofs

of the Articles. Mr. Speaker declared after he had perused the Lists he could not, nor would not grant his Warrant for every Thing contained in the said Lists, but that he would for the Persons therein named, and that he would the next Day ask the Opinion of the House thereupon, and Mr. Speaker returned the Lists, which were the next Day laid before the House by Sir *Richard Everard*, as appears by the following Transcript of the Journals.

Tuesday Feb. 12, 1739 Sir *Richard Everard* Bart gave in a List to this House of the following Persons necessary for Evidences, and pray'd they might be Summoned to make good the Articles against the Honourable *William Smith* Esq. Chief Justice, viz.

- William Dudley* of Onslow County.
 - Cornelius Harnet*, Esq; Sheriff of *New Hanover* County.
 - Samuel Bridgin* of *New Hanover*.
 - Rufus Marsden* Merchant in *Newton*.
 - Daniel Dunbibin* Merchant in *Newton*.
 - Mr. *Benjamin Wheatly* of *New Hanover*.
 - Mr. *John Smithers*, Dep. Sheriff of *New Hanover* County.
 - Thomas Morphy*
 - William Tunnielif*
 - Robert Pitts*
 - Robert Kirkland*
 - James Kieth*
- } of *Craven* County

And also a List of Persons and Copies of Records wanting from *Bath*, *Bertie*, *Chowan* and *Edenton*, in the Articles of Accusation of high Crimes and Misdemeanors against the Honorable *William Smith*, Esq. Chief Justice of *North Carolina*, to be sent for, by the Speaker's Warrant, Viz.

Copies of the Venires² and Pannels since Mr. *Smith* was Chief Justice, Copies of the four Writs for Executing the Criminals at *Edenton* signed by the Chief Justice, Copy of Mr. *Smith's* Commission as Chief Justice, Copy of the Commissions of Grand Sessions, and Commissions *Si non Omnes*.³ (If any) Copy of the Record of Mr. *Dawson's* contempt about

2. [Literally, "To come." A writ, usually *venire facias*, directing that you, the sheriff, cause the jury to be summoned for a trial.—Tr.]

3. [Literally, "If all cannot" (meet on the assigned day). A writ allowing two or more justices to proceed with the business.—Tr.]

Trotter July 1737. ditto concerning the Presentment of John Boude, March 1736. Diddo of Robert Calahorn, Andrew Conner and others at Bath August 1739. Copy of the Execution in the Case of Bridgin against Fullwood, ditto Copy of the Indictment against Kelly for forcible entry into Mr. Anderson's Land, and Copies in the two Cases per Anthony Booth, ditto in the Case of William Dudley, against William Crosby for Assault, Robert Forster, Esq. Joseph Anderson, Esq. Thomas Jones Attorney at law, Orlando Champion of Chowan, Robert Calahorn and Andrew Conner of Bath Town, James Kelly of Edenton, Anthony Booth of Mr. Duckenfield's Plantation in Bertie County, William Macky late of Edenton but now of Bertie County.

The House notwithstanding the List given in as aforesaid, gave no other Directions to Mr. Speaker concerning the same, nor does any Order of that Day appear upon the Journal concerning them, neither did Mr. Speaker deliver his Warrant for any of the Persons, Records or Papers mentioned in those Lists, until Wednesday the Day appointed for Exhibiting the Articles. And then only for some of the Persons desired, and not for any Papers or Records, notwithstanding the repeated Applications to him for the same.

It cannot be deny'd that the whole Conduct of the Speaker was such as plainly shewed how much he was interested in the safety of Mr. Chief Justice at that Time, tho' he has heretofore more than once deceived, betray'd, and by solemn Oath has conspir'd with others, (*per fas et nefas*⁴) to destroy the said Chief Justice, notwithstanding at that very Juncture he was receiving distinguishing Marks of that Gentleman's grace and favour; Mr. Speaker's Warrant I have mentioned (an exact Copy of which is hereafter Inserted) is attended with a remarkable Circumstance as to it's Date, it being dated Feb. 10th 1739, the Day before Mr. Peyton's Motion; and consequently before any Charge against the Chief Justice was moved for in the House, the Preamble of the Warrant suggests that was granted the very Day the Charge of high Crimes and Misdemeanors against the Chief Justice was moved in the House, by Sir. Richard Everard and Mr. Samuel Swann; whereas in fact, the said Charge was made on Monday the 11th of Feb and not on Sunday the 10th as the Speaker in his Warrant wou'd suggest, neither was the Warrant (notwithstanding it's Date,) ever seen by any of the Gentlemen who were

4. [I.e., *per fas et nefas*: "By fair means or foul."]

for the Articles, until Wednesday the 13th, the very same Time the Articles were exhibited to the House, when Mr. Speaker delivered that Warrant; and another unsigned Warrant, for some Persons in *Craven* County to the House, which Warrants were directed to no Person.

North-Carolina, ss. Whereas Sir *Richard Everard*, Baronet, and Mr. *Samuel Swann* have the Day of the Date hereof before this House, charged the Hon. *William Smith*, Esq; Chief Justice of this Province, with high Crimes and Misdemeanors, and have in order to make good their said Charge moved this House, that the Speaker Issue his Warrant to Summons Persons &c These are therefore to Will, Require, and Command you to Summons *William Dudley* of *Onslow* County, *Cornelius Harnett* Esq; Sheriff of *New Hanover* County, *Samuel Brigdin* of *New-Hanover*, Gentleman, *Rufus Marsden* and *Daniel Dunbibin* Merchants of *Newton*, Mr. *Benjamin Wheatly* of *New Hanover*, *John Smithers* Deputy Sheriff of *New Hanover*, to attend this House on Wednesday next the thirteenth Instant at *Newbern*. Herein fail not at your Peril, and for so doing this shall be your Warrant. Given under my Hand at *Newbern* the Tenth Day of *Feb* 1739. By Order.

John Hodgson, Speaker.

Upon reading this Warrant, would any Man alive imagine *New Hanover* County, to be One Hundred Miles from *Newbern*, and the Persons within that Warrant contained to, live at so great a distance from *Newbern*, as in fact they do? Is it not wonderfully consistent with honour and uprightness of the House of Burgesses, to compel Gentlemen to accuse the Chief Justice of high Crimes and Misdemeanors in the Administration of his Office; and then to limit them to the space of three Days, to prepare and exhibit Articles which contained ten Sheets of Paper; and to prevent them as far as was in their Power, from obtaining one Proof to support their Charge, by their obstinate Resolution of having the Articles the very Day they were exhibited, to be fully and substantially proved, they declared they would not be satisfied with such Proof, as would be sufficient to induce a Grand Jury to find a *Billa Vera*⁵ upon an Indictment, because they were confident that such Evidence, notwithstanding all obstacles could be produced, but would have such Evidence as should be sufficient for a petit Jury to Convict upon,

5. ["True bill," i.e., indictment sustained by evidence.—Tr.]

which they imagined as Circumstances then stood with the Gentlemen who produced the Articles, were not to be had, tho' many of them afterwards owned that they were perswaded if Time had been allowed, such Evidence cou'd have been produced to have supported the Charge; nay the Gentlemen of that side the Question have made further discoveries of the Motives which induced them to such unaccountable Conduct, as shall be shewn in it's proper Place. Take the whole Affair relating to summoning Evidences, and to produce Records and Papers before the House, to support the high and heinous Accusations exhibited against the Chief Justice, and consider it in all it's Progressions, Mr. Speaker's Conduct in relation to the Warrants, the Order of the House of Feb. 11th, two Days before the Exhibition of the Articles, for Mr. Speaker to Issue his Warrants to bring Persons, Papers and Records before the House, that Order intimates Time for such Things to be done in; Mr. Speaker's Warrant commands Persons to be summoned to appear before the House on Wednesday, who most of them lived upwards of one Hundred Miles from the Place where the Assembly sat, and supposing the Date of that Warrant to be right; and a Messenger immediately posted away to Execute it, was there a possibility of performing that Service within the Time expressed in that Warrant? No one will presume there was. But from the Time Mr. Speaker produced his Warrant to the Time the Articles were exhibited to the House, no Man cou'd have gone one Mile. The Gentlemen accusers of the Chief Justice were ordered to lay before the House Articles for that purpose on Wednesday the 13, but no Part of the Order directed the Articles to be then proved, nor could any one in his Senses imagine it was intended; the very Order plainly intimates the contrary, it directs that the Speaker Issue his Warrant for Persons, Records and Papers, to make good the said Charge; the House thereby granted Time for such Proofs; and by what Art and Management, they were perswaded afterwards to insist upon Proof on Wednesday, shall appear before we leave this Subject.

Wednesday 13. 1739. Sir *Richard Everard* pursuant to his Motion of Monday last, laid before this House the several Articles against the Hon. *William Smith*, Esq; Chief Justice; which he read in his Place, as follows, *Viz.*

To his Excellency *Gabriel Johnston*, Esq; Governor and Commander in Chief of His Majesty's Province of *North Carolina* in Council.

Articles of Complaint against *William Smith*, Esq; Chief Justice of the Province of *North Carolina* by the General Assembly of the said Province, as well in their own Name, as for and in the Name and on the behalf of all His Majesty's Leige People of this Province for divers high Crimes and Misdemeanors done and committed by him the said *William Smith* in the Execution of his said Office.

1. That he the said *William Smith* at sundry Times since his Admission into the said Office of Chief Justice, hath endeavour'd in a most violent, arbitrary and illegal Manner, to subvert the Laws both of *Great Britain* and this Province, made for the preservation of the Lives, Liberties and Estates of His Majesty's Leige Subjects living and residing within the same. And also by divers others illegal, violent and arbitrary Proceedings, doth frequently disturb the Peace and good Order of this His Majesty's Government; and all these Things he hath openly and avowedly declared, acted and done, not only in Words, but premedately and deliberately, in his Opinions, Judgment, Practices, and Actions contrary to his Duty, and in manifest Violation of his Oaths, and Breach and Derogation of the great and high Trust reposed in him

2. And the said General Assembly do more particularly and expressly Charge that by an Act of the General Assembly of this Province passed the 23d Day of *June* 1723 entitled, An Act to provide indifferent Jurymen in all Cases civil and criminal, it is Enacted among other Things, that all Jurors should be drawn by balloting according to the Method and Rules by the Act prescribed, and that no Person should be a Juryman but such whose Names were written in the List thereunto annexed, or such as should then after be added by Authority of Assembly; and every Judge, Justice, and Officer of the said General Court is required to take an Oath for the due observance of the said Act, and the Penalty of *One Hundred Pounds* thereby annexed for each default, in non observance of the same, as by the said Act, to which they refer, doth more fully appear; and the said Act hath been strictly observed and put in Execution by all the Justices of the General Court of this Province from the Time of it's passing until the said *William Smith* acted as Chief Justice. That pursuant to said Act, the said *William Smith* Chief Justice, upon his entering into the said Office took the Oath thereby enjoined for the due Observance of the said Act: Nevertheless the said Chief Justice having no Regard to the said Act, nor to his solemn Oath which he took on the Holy Evangelist of Almighty God for the due Observance thereof, nor to the Penalty

thereby inflicted for each default for Non-observance of the same, hath for divers Years last past in manifest and open Violation of the said Act, and by, and of his own mere Will, contrary to the Practice of all former Justices, caused Jurors to be summoned by Venire, without ever drawing the said Jurors or any of them by way of Lot or Ballot, either before the Venire issued, or after the Jurors were Summoned, returned and appeared, as by the said Act is required, by Means of which illegal Proceeding of the said Chief Justice; all the Care taken by the Ligislature for preventing Corruptions of Officers in packing of Jurors, are entirely obstructed and defeated. Divers Criminals have been illegally convicted, condemned and Executed. All Judgments in civil Cases after Verdict liable to be reversed, and the Lives, Liberties, Properties, and Estates of His Majesty's Subjects in this Province continually exposed to much Hazard and Danger.

3. That the said Chief Justice being appointed by his Excellency's Commission of the 29th of *July* last to hold several Courts of Assizes, Oyer and Terminer, and General Goal delivery, at the several Towns of *Bath*, *Newbern*, and *Newton*, held all the said Courts accordingly at the several Times appointed, but never took any Oath for the due Execution of the said Commission, nor the Oaths to His Majesty at any Time since the Issuing the said Commission as by Law required, tho' it is now many Months since. Thus sometimes neither regarding the Oaths he has taken, nor the Statutes enjoining the Oaths to be taken, nor the Penalty of *Five Hundred Pounds* Sterling thereby inflicted for not taking the same.

4. That the said Chief Justice assuming to himself an equal Power and Authority with His Majesty's Ancient Court of King's Bench at *Westminster*, when Criminals are convicted of capital Offenses without waiting for any Warrant from the Governor or Commander in Chief for the Time being, doth cause Execution to be done on the Bodies of such Offenders by his own Orders and Rules of Court and Precept, thereby depriving his Excellency the Governor of all Opportunities of showing His Majesty's Grace and Pardon, to such Persons as might happen to be real Objects of Mercy and which your Excellency is impower'd to do by His most gracious Commission and Instructions.

5. That one *John Powel* at a Court of Grand Sessions held at *Edenton* the last Tuesday in *July* 1736 being Convicted of Murther in poisoning

his Wife, Sentence of Death was awarded against him, and he was accordingly hung up by the Neck at the usual Place of Execution, but the said Chief Justice having caused him to be cut down while he was yet alive, soon afterwards, notwithstanding Judgment, and in Part executed as above said, and without ever any Pardon being granted to said *Powel*; did constitute and appoint the said *Powel* to be Cryer of the General Court at *Edenton*; and he continued to hold the said Office till *July* last.

6. And for as much as by the Great Charter passed of King *Henry* Third, and at divers Times since confirmed, its among other Things Ordained, that a Freeman shall not be Amerced for a small Fault, but after the manner of the Fault: Yet the said Chief Justice hath on the most trivial and light Occasions, contrary to the said Charter, and divers other the Laws of the Kingdom of *Great Britain*, frequently imposed excessive Fines on divers of His Majesty's good Subjects in the Province, in no wise adequate to the Offence, and Imprisoned them till the same were paid, and that in a most illegal and arbitrary Manner, without any Bill of Indictment found, or Information fil'd, by His Majesty's Attorney General, or any due Process or Trial at Law, or the Parties ever being legally convicted of such Offences by the Oath of twelve Jurors, contrary like wise to the Statute of *Magna Charta*, which expressly enjoins that no Man shall be taken, imprison'd or condemn'd but by lawful Judgment of his Peers, or by the Law of the Land, and this some Times, under pretence, that such Offences were Contempts of Court; altho' the said General Assembly are inform'd that the Offences for which the said Persons were so illegally Fined and Imprisoned were in themselves no Crimes or Offences that could subject the Parties to any Criminal Prosecutions, and that if they were so, they were not committed in the Presence, or within View of the said Court, or against the process of the same; and the said General Assembly in further Maintainance of their Allegations above said, do expressly Charge that one *John Dawson* a Member of the General Assembly, being summoned to serve as Petit Juryman at the General Court held at *Edenton* the last Tuesday in *July* 1737, by one *James Trotter* a common Bailif or Deputy Marshal, told the said Deputy Marshal that he need not have given himself the trouble, for that he had been summoned already, or was obliged to attend, whereupon the said *Trotter* told the said *Dawson*, that he need not expect any Favour from him, the said *Dawson* reply'd he did not, and further told the said *Trotter*,

that if he the said *Trotter* had any Trump Cards in his Hand, to play them for he (meaning himself) might chance one Time or other to get *Jack* and *Ace* in his Hand, and should make Use of them; and the said Chief Justice being informed of the said *Dawson's* having spoken and uttered such Words out of Court, the Court being then adjourned, did the next Day without any legal Tryal set a Fine on the said *Dawson* of *Ten Pounds* Proclamation Money, and ordered him to be Committed to Gaol without Bail or Mainprise till he should pay the same, and to find good Security for his the said *Dawson's* good Behaviour for a Year and a Day, as by Record, Minutes, or Docket of the same Court doth appear; and the said *Dawson* after having lain about five Days in Gaol paid the said *Ten Pounds* Proclamation Money, or Value thereof accordingly: Altho' the said General Assembly do conceive that the Words so spoken are frivolous and senceless, and in Case any Indictment had been prefer'd against the said *Dawson* for the same, they cou'd not by the most far fetched Innuendo have been strained to Mean or Signify any Thing, and was a very small Fault, if any, nor can the same be any Ways deemed (as they conceive) to be a Contempt offered to the Court.

7. That the said Chief Justice at a Court of Oyer and Terminer held at *Newbern* the first Tuesday in *September* 1739, did set a Fine upon one *John Bryan* one of His Majesty's Justices of the Peace for the County of *Craven*, of *Ten Pounds* Proclamation Money for a supposed Misdemeanor, without ever the said *Bryan's* being called to Answer the same, either by Presentment, Indictment, or any due Process of Law whatsoever; and when one Mr. *Heritage* an Attorney moved the said Chief Justice, that he would be pleased at least to send for the said *Bryan* to know if he had any Thing to say, the said Chief Justice refused it, saying, do you know my Sentiments Sir, better than I do my self? I Fine him the said *Bryan Ten Pounds* Proclamation Money, to enlighten the Gentleman's Understanding, and did afterwards issue Process accordingly, and levied the Sum of *Seventy five Pounds* this Currency on the said *Bryan*.

8. The said General Assembly further Charge and Alledge that by An Act entitled An Act concerning Fees and Officers, pass'd the 19 of *October* 1722 they did Provide and Establish sufficient Fees for the Support and Dignity of the said Office of Chief Justice; and by another Act entitled An Act to ascertain Officers Fees pass'd before that Time (to wit) the 19th Day of *January* 1715, they did likewise provide sufficient

Fees for the Maintenance and Support of a Clerk of the said Court, notwithstanding which the said General Assembly do expressly Charge that the said *William Smith* Chief Justice, hath oft Times in a most illegal and arbitrary Manner, extorted from divers of His Majesty's Subjects within this Colony, most extravagant and exorbitant Fees, where no Fees are at all due by Law, and at other Times doth exact and extort from His said Majesty's Subjects much greater Fees than ever were allowed or established, in manifest violation and defiance of the several Acts of Assembly made for ascertaining of Officers Fees, and to the grievous Oppression of His Majesty's Subjects; and the said General Assembly in further Maintenance of this their Charge, do particularly and expressly Charge and Alledge that one *James Kelly* sometime in the Month of *March* 1739 at the General Court held at *Edenton*, being indicted for a forcible entry into the Lands and Tenements of *Joseph Anderson*, Mr. *Vernon* Attorney for the Defendant moved to quash the Indictment for some Defect found therein, and the said Indictment was quashed by the said Chief Justice accordingly, nevertheless the said Chief Justice issued an Execution for *Twenty two Pounds ten Shillings* Proclamation Money for Fees pretended by him to be due on the said Indictment, altho' there were no Fees whatsoever due on that Account that the said General Assembly ever knew or heard of, save *Fifty Shillings* to the Attorney General, and *three Shillings* and *six Pence* to the Clerk of the Crown. And the said General Assembly further Charge that one *John Boude* Gentleman, at a General Court held at *Edenton* the last Tuesday in *March* 1736 was presented for being the Father of a Bastard Child; but it appearing to the Court that the said *Boude* had comply'd with the Laws of this Province by indemnifying the Parish, and paying the Fine by Law inflicted there were no further Proceedings had upon the said Presentment, nevertheless the said *William Smith*, Chief Justice did then exact and extort from the said *Boude*, *Twenty-six Pounds* odd *Shillings* current Bills of the said Province, for Fees pretended to be due on such a bare Presentment, altho' in Truth there are no Fees due to the said Chief Justice on any such Account, as they conceive; that the said Chief Justice where one Indictment has been brought for a Riot against divers, doth exact and extort from each Defendant the whole Fees pretended to be due to him on the said Indictment, and tho' the whole Fees he pretended to Claim for himself and Clerk, is as he says, *Twenty two Pounds Eight Shillings*, yet the said Chief Justice exacts *Twenty-two Pounds Eight Shillings* from

each Defendant, altho' in Truth there is not one *Penny* due to the Chief Justice, and but *Six Shillings* to the Clerk; and the said General Assembly do particularly Charge that the said Chief Justice at a Court of Oyer and Terminer held at *Bath Town* in *August* last upon an Indictment for a Riot against *Andrew Conner, Robert Calahorn* and others, did exact and extort from each of the Defendants *Conner* and *Calahorn* *Twenty two Pounds Eight Shillings*, and Process upon the same Indictment Issued against others for the like Sum, so that each Defendant is made chargeable with the whole *Twenty two Pounds Eight Shillings*, altho' as they are ready to prove, there are no Fees whatsoever due or allowed to the Chief Justice in Criminal Cases, but he takes and exacts the same, and what he thinks fit of his own mere arbitrary Will.

9. And the said Assembly in further Maintenance of that Part of this general Charge against the said Chief Justice for exacting and extorting more and greater Fees than ever were established and allowed by Law, do particularly Charge and Allege that one *Anthony Booth* being Indebted to {blank} in the sum of *Two Pounds Five Shillings*, and to one {blank} in the Sum of *Two Pounds Ten Shillings*, both this Country Currency, sometime in the Month of {blank} 173{blank}. The said Chief Justice sent two Executions against the said Defendant for *Seventy Pounds* and upwards, including the said original Debts, which both together made but *Four Pounds Fifteen Shillings*, and the Defendant having no Money to satisfy for the said Debts and Fees, was obliged to deliver to the Marshal four Thousand Pounds of good fresh Beef in satisfaction of the Debts and Charges aforesaid, tho' the said Beef at that Time was worth *One Hundred and Twenty Pounds* computed at *Three Pounds* each Hundred weight.

10. That whenever any *Capias*⁶ Issues, altho' the Defendant be never Arrested or Summoned, and without the Defendant being made Party in Court by giving Bail, or Appearance otherwise; yet nevertheless the said Chief Justice doth exact and extort from every Plaintiff the Sum of *Six Pounds* Current Money of this Province, for Fees pretended to be due to himself and Clerk, whereas in Truth the whole Fees due to himself and Clerk do amount to no more than *Twenty Shillings* and *seven*

6. [Literally, "You seize," i.e., a writ directing such as the sheriff that "you seize" the person for imprisonment, usually someone having failed to appear in court as ordered; a bench warrant for arrest.—Tr.]

Pence, as appears by the said Acts, for ascertaining Officers Fees, and which according to the said Chief Justice's own Estimation of taking four for one for the difference of the Value of Money at that Time the Fees were first settled, could amount to no more than *Two Pounds two Shillings* and *four Pence*; and the said Chief Justice doth *Ex Officio*⁷ most frequently issue a *Fieri Facias Capias ad Satisfaciendum*,⁸ as he sees fit, without the Knowledge of, or Request made to him either by Plaintiff or Defendant or either of their Attorneys: And the said General Assembly do particularly Charge that one *Samuel Bridgin*, sometime before *October* General Court 1738, took out a Writ against one *Thomas Fulwood*, but the Matter being made up between them, he proceeded no further therein, nor was any Declaration fil'd against the Defendant, yet the said Chief Justice did exact and extort from the said *Bridgin* the Sum of *four Pounds eight Shillings* and *three Pence* Proclamation Money for Fees pretended to be due to himself and Clerk, altho' in Truth the whole Fees for the said Writ according to the Fee-Act could amount but to *ten Shillings* and *seven Pence* Proclamation Money; and the said Chief Justice without any request made by the Defendant or his Attorney under pretence of a *non pros*⁹ before any such judgment on a *Non Pros* was ever entered upon Record against him, did issue an Execution against the Plaintiff for the said *four Pounds eight Shillings* and *three Pence* Proclamation Money, and the Plaintiff paid the Sum of *seventeen Pounds thirteen Shillings* this Currency, altho' computing four for one according to the Chief Justice's own Method of Computation, the whole Fees for the said Writ could amount to but *two Pounds two Shillings and four Pence*, that the Plaintiff on Payment of the said *seventeen Pounds thirteen Shillings*, had the Execution deliver'd up to him by the Marshal, which Execution he has ready to produce. That sometime after the said Chief Justice on his own mere Motion, issued another Execution against the Plaintiff in the same Cause, for the like

7. ["Powers implied by an office but not explicitly given."]

8. [The writ of *fieri facias* is issued first. *Fieri facias*: a writ commanding the sheriff that "you cause to be made" the debt according to the judgment out of the property of the defendant. If the *fieri facias* is returned to the effect that the defendant does not have means to pay the debt, the *capias ad satisfaciendum* may be issued: a writ commanding the sheriff that "you seize, for the purpose of satisfying the claim" the defendant for imprisonment until he pays the debt.—Tr.]

9. [I.e., *Non prosequitur*. Literally, "The plaintiff does not follow up" his suit. Therefore the defendant ought to have a judgment against the plaintiff.—Tr.]

Sum of *four Pounds eight Shillings* and *three Pence* Proclamation Money, for which the Plaintiff paid a second Time the like Sum of *seventeen Pounds thirteen Shillings*, and took Mr. *James Craven* the Chief Justice's Clerk his Receipt for the same, as appears by the Receipt ready to be produced; and the said General Assembly are ready to produce many Instances of the like kind, not only of the said Chief Justice his exacting four Times more than his the said Chief Justice's real due, but also of his issuing Executions over again, for the same Fees, after the same have been really paid sometimes to his Clerk, and at other Times into the said Chief Justice's Hand.

II. That the said Chief Justice the better to colour his illegal Proceedings, doth always issue his Executions on his supposed *non pros's* in this Form (*mutatis mutandis*¹⁰) *North Carolina* ss. *George the Second* by the Grace of God of *Great Britian, &c.* To the Provost Marshal of our said Province. Greeting. "We Command you to take *Samuel Bridgin* of *Cape Fear*, so that you have him before our Justices at our next General Court to be holden for our said Province at the Court-House at *Edenton* on the last Tuesday in *March* next, to satisfy *four Pounds eight Shillings* and *three Pence* Proclamation Money, which in our said Court on the last Tuesday in *October* last was Adjudged and Taxed for his Cost in his Suit against *Thomas Fullwood*, wherein he I would no further prosecute, whereof he is Convicted and have you then and there this Writ with your own Fees. Witness *William Smith*, Esq; our Chief Justice of our said Province at *Edenton* the 15th Day of *November*, *Annoque Domins {Domini?}*¹¹ 1738, *W. Smith.*" Whereby the said Chief Justice doth artfully avoid saying to satisfy to the said *Thomas Fullwood*, because in truth the said Defendant *Thomas Fullwood*, who is supposed to apply for this *non pros*, is to have no Part of them paid to him, to reimburse him the Fees he hath paid his Attorney; for the Chief Justice keeps all to himself; yet in the other Part of the Execution, it seems as if such Fees belonged to the Defendant, by saying for his Costs in his suit against *Thomas Fullwood*, but there is no Antecedent to be found in the Relative, *his*, in all the precedent Part of the Writ, unless it be *Samuel Bridgin* the Plaintiff, and it cannot be

10. ["The necessary changes about to be made."]

11. ["And in the year of our Lord."]

presumed that *Samuel Bridgin* should be taken into Custody to satisfy *Samuel Bridgin*. And the General Assembly do not take Occasion to criticise on this Proceeding for want of due Form, or as a jeosail, slip, or mistake of the Clerk, but it is contrived on set purpose by the said Chief Justice to colour his own illegal Exactions under pretence of doing Justice to the Defendant, who at the same Time never receives any Part of these Fees, and over and besides this, the Chief Justice takes *eleven Shillings and three Pence* Proclamation Money, for Fees for Execution on this *non pros* for himself and Clerk, tho' there is but *five Shillings and six Pence* due to both and no more; in which particular Fee they conceive the Chief Justice is very modest, exacting very little more than Cent per Cent more than is due.

12. That sometime in *December 1734* one *William Dudley* apply'd to the said Chief Justice for a Warrant against one *William Crosby* for an Assault, which the said Chief Justice, granted without demanding any Fee, nevertheless the said Chief Justice by a certain Act entitled An Act for reviving An Act entitled an additional Act to the Act for Tryal of small and mean Causes, having procured himself to be invested with the same Power as two Justices of the Peace for trying small and mean Causes, the said Chief Justice without ever demanding any Fee of the said *Dudley* for the said Warrant, or summoning him to shew Cause why he did not pay it, issued an Execution against the said *Dudley* for *eight Pounds seventeen Shillings and six Pence* pretended to be due to him for the Fees of the Warrant, altho' at the said General Assembly apprehended there is but *ten Shillings* this Currency due to the said Chief Justice for the said Warrant.

13. That the said Chief Justice doth contrary to the Duty of his Office execute an *Officium merum et promotum*¹² and doth instigate, promote, prosecute and carry on divers Suits and Prosecutions both civil and criminal Causes against such Persons who have any ways offended him in opposing his violent and arbitrary Measures, and the said General Assembly in Maintenance and Support of this their Charge, do particularly Charge and Alledge that Sir *Richard Everard* Baronet, Son of Sir *Richard Everard* Baronet, heretofore Governor of this Province, being a Member of the General Assembly, and having frequently mentioned and

12. ["Power naked and aggressive."]

taken notice of the illegal and arbitrary Proceeding of the said Chief Justice, the said Chief Justice sometime in the Month of *June 1738*, did fill up, or cause to be fill'd up a Writ of *Capias* against the said Sir *Richard Everard*, Baronet, by the Chief Justice *philus Pugh* of *Nancemon* in *Virginia* Merchant, without the Order or Knowledge of the said *Pugh* or his Attorney, the Chief Justice having before threatened the said Sir *Richard Everard*.

14. That one *James Castelaw* a Member of the General Assembly, and now one of the Justices of *Bertie* Court, being in Company with the said Chief Justice on the 27th Day of *July 1737* and the said *Castelaw* having been from Time to Time made acquainted with the violent, and arbitrary Proceedings of the said Chief Justice, did in freedom tell him the said Chief Justice that the many Hardships and Grievances the People of the Province labour'd under, wou'd at length put them either under a necessity of rebelling and running away, and leaving all their Lands and Houses behind them; whereupon the said Chief Justice in a violent Passion said, and swore by God, I wish you wou'd that is what we want; thereby intimating that he wou'd be glad to see the People drove to such Extremities as to quit their Estates or forfeit the same for Treason, which indeed as they conceive wou'd be no small Advantage and Benefit to the Chief Justice.

15. That the Chief Justice is a Person of a most violent, passionate, and revengeful Temper and Behaviour, and instead of endeavouring to curb or restrain his Passions, does on all Occasions give the utmost loose to such his Passions, and doth frequently and most outrageously Insult and Abuse divers Persons of Credit and Distruction with most opprobrious Names, and abusive Language, as well in open Court sitting in the Seat of Justice, as without; and the said General Assembly do particularly Charge that one *Arthur Mabson* being a Member of the General Assembly, at a General Court held at *Edenton* on the last Tuesday in *July 1739*, had Articles exhibited against him for a certain Contempt offered to the said Court by the said *Mabson*, but the said *Mabson* appearing and being examined was found by the said Chief Justice to be no ways Guilty of any Contempt whatsoever, and was accordingly acquitted by the said Chief Justice, whereupon the said *Mabson* being fairly acquitted of the said Contempt as abovesaid scrupled to pay the Fees of the Court, and a dispute between the Attorneys arising, whether the said *Mabson* ought

to pay Costs, the said Chief Justice without any Affront or Indignity offer'd to him by the said *Mabson*, did in a most violent manner Villify and Abuse the said *Mabson*, calling him Rogue, Villian, notorious Rogue, and treacherous Villian, altho' the said *Mabson* is well known to be a worthy Man, a Person of very good Repute, and a Man of a good Estate.

16. That the said *William Smith* having been advanced to be Chief Justice of this Province and President of His Majesty's Council, ought to be a Person of Virtue, and of a discreet, sober and grave Conversation, giving good example to others, & to Demean himself according to the Dignity of his Office, yet nevertheless the said Chief Justice by the notorious Immorality of his Life, and his constant prophane Cursing and Swearing, doth daily offer indignity to Almighty God, and give just Occasion of great Scandal and Offence.

17. That all the Articles aforesaid are only a few Instances out of many of the said Chief Justice his violent, illegal and arbitrary Proceedings, for his Exactions and Extortions are more burthensome than the General Tax of the whole Province, every Corner of the Country is fill'd with his Oppressions, and all the People cry aloud for Justice from your Excellency's Hands.

And the said General Assembly do most humbly pray your Excellency that the said Chief Justice may be immediately put to Answer all and singular the said Articles of Complaint, and that a reasonable Time during this present Sessions of Assembly, may be appointed by your Excellency for the said General Assembly to make good their said several Charges against the said Chief Justice, and that if the said Chief Justice shall confess the same or be found Guilty thereof, that then your Excellency will be pleased to cause the said Chief Justice to be immediately and from thenceforth suspended from all his Offices and Employments, until His Majesty's Pleasure be farther known thereupon, and in so doing, your Excellency will remove him who has been the Source, Spring, and chief Author of most of the Differences and Disturbances which have happened in Government since your Excellency's arrival, do a most exemplary Piece of Justic[e] both to the King and People, and restore Peace and Tranquility to the Province.

The General Assembly do further most humbly Request your Excellency that the said Chief Justice be in the mean Time sequestered from the Council Board pending the Debate and Examination of the said

Articles, it being (as they conceive) contrary to natural Right and Justice that any Person should set and Vote in his own Case.

And the said General Assembly by Protection reserving to themselves the Liberty of exhibiting at any Time hereafter any other and further Articles of Complaint against the said Chief Justice, and of replying to any Answers, that he shall make thereon, and offering Proofs of the Premises, and to any other Articles to be by them hereafter exhibited against him, and of further explaining themselves upon all and every the same Articles of Complaint if need require.

After reading the said Articles the House resolved itself into a Committee of the whole House, to Debate on the said Articles, unanimously chose Mr. *Thomas Hunter* Chairman.

Mr. Speaker moved, and was seconded by Mr. *Benjamin Hill*, that the Articles exhibited against the Honourable *William Smith*, Esq; Chief Justice might be Debated, and that the Proofs of the same be produced immediately that the House might resolve whither the Articles exhibited are sufficiently proved to this House, for this House to Impeach the Chief Justice.

To which Mr. *Samuel Swann* objected, and was seconded by Sir *Richard Everard*.

And it was put to the Vote, and carried in the Affirmative of a Majority of ten Voices.

Thus far the Journal informs us. I shall add the Names of the Persons for and against the Speaker's Motion, which being very dark and unintelligible, I shall endeavour presently to Explain.

For the Speaker's Motion

John Hodgons, Esq Speak.

Mr. *Tho. Lovick*

Collect of Port *Beaufort*

Mr. *George Roberts*

Mr. *George Bould*

Col. *Benjamin Peyton*

Mr. *Richard Rigby*

Mr. *Joseph Tart*

Col. *Benjamin Hill*

Mr. *James Craven*,

Clerk of the General Court.

Mr. *Walton*

Col. *Macrora Scarborough*

Mr. *James Sumner*

Col. *Thomas Hunter*

Mr. *Carruthers*

Mr. *Thomas Pendilton*

For the Speaker's Motion (*continued*)

Mr. <i>John Blount</i>	Mr. <i>David Bayley</i>
Doct. <i>Abraham Blakal,</i>	Mr. <i>William Relf</i>
Deputy Post Master.	Mr. <i>John Caron</i>
Mr. <i>Leary</i>	Mr. <i>Jacob Caron</i>
Mr. <i>Thomas Lowther</i>	Mr. <i>Joseph Sutton</i>
Mr. <i>William Bestram</i>	Mr. <i>Joshua Long.</i>

Against the Speaker's Motion

Col. <i>Maurice Moore</i>	Mr. <i>William Gardnier</i>
Mr. <i>James Castelaw</i>	Mr. <i>Samuel Swann</i>
Mr. <i>Thomas Bryan</i>	Mr. <i>John Swann</i>
Mr. <i>John Brown</i>	Sir <i>Rich Everard, Bar.</i>
Mr. <i>Simon Anderson</i>	Mr. <i>Arthur Mabson</i>
Mr. <i>John Banbury</i>	Mr. <i>Samuel Sinclair</i>
Mr. <i>John Starkey</i>	<i>John Montgomery Esq;</i>
Mr. <i>William Brice</i>	His Majesty's Attorney General.
Mr. <i>Edmund Smithwick</i>	

Could any Thing be more absurd to say no worse than this Motion of the Speaker's, or more retrograde to the Sense of the House, if we may judge of their Sense from their Journals, he is directed by them to issue his Warrant to bring before the House, Persons, Papers, and Records, which he refused, and neglected to do, and yet this Gentleman and his worthy Friend Col. *Benjamin Hill* call for Proofs the Moment the Articles were read, and such Proofs too, as he said, should be sufficient to induce the House to Impeach the said Chief Justice, the first Words of an Impeachment mentioned in that House is from Mr. Speaker. The Articles exhibited against the Chief Justice were not Articles of Impeachment, they were Articles of Complaint for high Crimes and Misdemeanors committed by him in the Execution of his Office, the Gentlemen who exhibited them are still of Opinion they had sufficient cause to Complain of that Gentleman's Conduct in his Office, his past Actions and Behaviour in that Station (as they thought) had rendered the Lives, Liberties and Fortunes of his Majesty's Subjects in this Province, very precarious, they were certain the Facts alledged by them in their Articles were strictly true, and they never imagined that the Representative Body of the whole Province, would have laid them under any difficulties as to Time,

and if the Chief Justice by his own Management, and the scandalous Arts of his Friends, is continued in that Station, and shall hereafter deviate from Law and his Duty, and oppress his Majesty's Subjects of this Colony, it is those Gentlemen are to Answer for it, who were deluded by the Artifices of him and his Friends, or were corrupted by more substantial Motives from their Duty to the Public to prevent an impartial Enquiry into his Conduct.

And what hopes are to be conceived of that Gentleman's further Uprightness and Integrity in that Station may be easily determined, by considering the Nature of the Articles, and the Proofs brought to support them. The whole Conduct of Mr. Speaker and the rest of the Chief Justices Friend's, was calculated only to give Mr. *Smith's* Case a favourable Completion. Should it go home against him, they foresaw that an absolute refusal of Enquiry into his Conduct would not be prudent, and to suffer a strict Enquiry into it would be attended with great Danger to him; in such a nice Affair, they thought the best Steps that could be taken was to call for the Articles when the Gentlemen engaged in that Affair were least aware of it, and to limit them as to Time, that they might fall short in their Proofs, Things would then look (they imagined) with a favourable Aspect, if they should be laid against Mr. *Smith* at home, no Body there might be acquainted with the little Circumstances attending the Affair, such as the Management of the several Elections, and of the Members afterwards, the Behaviour of the Speaker, and the distance of the Evidences from *Newbern*, and the scanty Allowance of Time to prepare and prove Articles of so great Concern and Importance to the Publick. Mr. *John Blount* moved that before the Articles were Proceeded upon the House might be cleared; to which Col. *Maurice Moore* objected saying that as the Proceedings of this Day being of the greatest Consequence to the Province, he could wish all the Inhabitants of the same were present to be Eye and Ear Witnesses of the Conduct of their Representatives, that they might be satisfied who were Friends and who Enemies to their Country, for which Reason he insisted the Doors might remain open, and that whoever pleas'd might come into the House, and hear the Debates, upon which the Door was left open. I shall now return to the Journal.

Then Sir *Richard Everard* Proceeded to Proof as follows, 1st to the 7th Article, and produced Mr. *John Bryan* and Mr. *William Herritage* Evidences to Support the said Article, and then moved for the Opinion of the House whether the said Article was proved sufficient to Impeach

the said Chief Justice with the same. Mr. Speaker objected to the said Motion, and moved they might go through the Evidence of the whole Charge, and was seconded by Mr. *Blackall*: Which was put to the Vote and carried in the Affirmative.

Thus far from the Journal.

For the Speaker's Motion.

<i>John Hodgson, Esq; Speak.</i>	<i>Col. Macrora Scarborough</i>
<i>Mr. Tho. Lovick, Colector</i>	<i>Mr. Carruthers</i>
<i>of Port Beaufort.</i>	<i>Mr. Tho. Pendilton</i>
<i>Mr. George Roberts</i>	<i>Mr. David Bayley</i>
<i>Mr. George Bould</i>	<i>Mr. William Relf</i>
<i>Mr. Richard Rigby</i>	<i>Mr. John Caron</i>
<i>Col. Benjamin Peyton</i>	<i>Mr. Jacob Caron</i>
<i>Col. Benjamin Hill</i>	<i>Mr. Leary</i>
<i>Mr. John Blount</i>	<i>Mr. Thomas Lowther</i>
<i>Doct. Abraham Blackall</i>	<i>Mr. Joseph Sutton</i>
<i>Deputy Post Master.</i>	
<i>Mr. James Craven,</i>	<i>Mr. Joshua Long</i>
<i>Clerk of the General Court.</i>	

Against the Speaker's Motion

<i>Col. Maurice Moore</i>	<i>Mr. Samuel Swann</i>
<i>James Castellaw</i>	<i>Mr. John Swann</i>
<i>Mr. Theo. Bryan</i>	<i>Sir. Rich Everard, Bart.</i>
<i>Mr. John Brown</i>	<i>Mr. Samuel Sinclair</i>
<i>Mr. Simon Alderson</i>	<i>Mr. James Sumner</i>
<i>Mr. John Banbury</i>	<i>Mr. Walton</i>
<i>Mr. John Starkey</i>	<i>Mr. Joseph Tart</i>
<i>Mr. William Brice</i>	<i>Mr. William Bartram</i>
<i>Mr. Edmund Smithwick</i>	<i>John Montgomery, Esq; His</i>
<i>Mr. William Gardiner</i>	<i>Majesty's Attorney General.</i>
<i>Mr. Arthur Mabson</i>	

It is necessary here to mention two Points of no small Consequence to the Articles, which were determined by the House with dividing, and of

which no mention is made in the Journals, the first was a Motion of Sir *Richard Everard's* to the House, seconded by Mr. *Swann*, that the Evidence which should be produced against the Chief Justice might be taken in writing, which was bore down by so great a Majority, that the Gentlemen who proposed the Question did not think proper to call for a Division upon it, the other was a Motion made to alter the Method of voting in the House, that upon any Question, the Names of the Members for and against the Question might be taken in writing, which was also refused by the House; these two Motions being determined as aforesaid, the Gentlemen who were for the Articles were under a necessity to take Minutes of the Examinations of the Evidences themselves, and it is from those Minutes that the Matters of fact in this Narrative as far as relates to the Articles are taken, and we assure the World that they are as near as may be exact as they were given in Testimony to the House.

And whenever any Division of the House happned after that Determination upon any Question relating to the Articles, we constantly committed to writing the Names of the Members who Voted with us.

The seventh Article which thro' Accident came to be the Subject of the first Enquiry was allowed by all Persons to be fully and substantially proved, and no one doubted but that the House would be of that Opinion which when Sir *Richard Everard* moved for, Mr. Speaker who well knew that if the House was of Opinion that any one Article was proved, they could not avoid charging the Chief Justice with the Articles so proved, objected against that Motion, and desired that the House would not give their Sense of the Evidences to each Articles seperately in it's proper Course, but that they would suspend any Determination whatsoever until they had gone thro' the whole Charge. This produced a warm Debate in the House, and upon the Question it was carried according to Mr. Speaker's desire by the Majority of one Voice.

Mr. Speaker could have no other view in this Proposal of his but only to perplex the Understandings of the Members of the House by mixing such Articles which he knew were (as Affairs had been managed) difficulties to be proved, with such Articles as he was confident wou'd be fully proved, and that the Question at last might be reduced to this, (as in fact it was) whether the Proofs that were produced and heard to Support the said Articles were sufficient for this House to Impeach the said Chief Justice. That was the Question, and many of the Members who voted against the Articles

afterwards owned that many of the Articles were sufficiently proved, but that the whole were not so well proved as might be expected in order to a Conviction; the small allowance of Time laid insuperable Difficulties upon the Gentlemen on the side of the Articles. Whether those Articles to which no Proof was produced, or which were not fully proved, could have been sufficiently proved we leave the World to determine, after they shall have perused the Proofs contained in the Appendix to this Narrative, and which would have been produced to the House, had Time been allowed. But to return to the matter of fact given in Evidence to the House, upon the seventh Article; Mr. *John Bryan* on his Examination upon Oath before the House declared that some Time before the last Circuit-Court held at *Newbern*, one *Walker* was committed to Prison by Captain *George Roberts*, upon the Complaint of Mr. *Joseph Hannis* upon Suspicion of having stolen a Negro from the said *Hannis*, that some Time after the Commitment of the said *Walker*, Mr. *Hannis* came to the said *John Bryan* he being one of His Majesty's Justices of the Peace for the County of *Craven* and desired him to let *Walker* out of Prison, for that his Negro was come home, and he was fully perswaded that his Accusations were groundless against him, and that he was sure *Walker* never had the Negro; but he the said *John Bryan* fearing that thro' Ignorance he might do wrong, he advised with *William Wilson*, Esq; Sheriff of *Craven* County, and with Mr. *Seth Pilkington* Guardian to the said *Walker*, who represented to the said *Bryan* that it was a very hard Case that *Walker* should be kept in Prison upon that Account, because the very Negro for which he was committed was Justice *Walker's* Negro, in right of his Mother agreeable to a Law of the Island of *Barbados*, and that Mr. *Hannis* was possessed of that negro no otherwise than as Administrator to the said *Walker's* Father, but as Mr. *Hannis* who had been the Accuser had absolutely acquitted him, they were of Opinion that the said *Bryan* might discharge him the said *Walker* without any Hazzard, and that if they were Magistrates they would do it; and Mr. *Seth Pilkington* the Guardian of *Walker* further told Mr. *Bryan* that if he would Discharge *Walker* he would give him his Bond to indemnify him, which he afterwards did. That the said *Bryan* upon this and having likewise examined the Commitment of the said *Walker*, which he found to be without Date, and without mentioning for what he was committed, and Mr. *Hannis* having informed him that he had entered into no Recognizance to Prosecute the said *Walker*, he Discharged the said *Walker* out of Prison, and the said *Bryan* further declared upon his

said Examination before the House that at the Circuit-Court at *Newbern*, he had information given him that the Chief Justice was displeas'd at this Proceeding of his, and that before the end of the Court he must expect to be call'd upon to Answer for so doing; upon this, the said *Bryan* attended about the Court and near the Court-House; but that he never heard himself call'd upon for that purpose, but one Day being near the Court-House Door he heard the Affair mentioned in Court with much heat by the Chief Justice, who pronounced the said *John Bryan* fined *Ten Pounds* Proclamation Money, that he knows of no Information or Presentment made or fil'd against him, neither was there to his Knowledge any Oath made by any Person against him, nor was he inform'd or believed that any was taken. That the said *John Bryan* heard a certain Person in Court whom he believes and took to be Mr. *Herritage* Attorney at Law, move the said Chief Justice that he wou'd be pleas'd to send for the said *Bryan*, and hear what he had to say for himself, that he was sure if his Honour was but acquainted with the Case he would mitigate the Fine, that he hoped his Honour meant *Ten Pound* Bill Money. The said *Bryan* declared upon his Oath that he heard some Person whom he took to be the Chief Justice, and was afterwards inform'd it was him, reply in these Words as near as he could remember, I am well inform'd in the Affair, do you know Sir my Sentiments better than I do my self, I do pronounce *John Bryan* fined *Ten Pounds* Proclamation Money, and that to enlighten the Gentleman's Understanding; and the said *John Bryan* further declared that an Execution was issued Signed by the said Chief Justice, directed to the Sheriff of *Craven* County to levy the said Fine upon the said *Bryan*, and that in Consequence of the said Execution he paid to *William Wilson*, Esq; Sheriff the Sum of *seventy five Pounds* Current Money of this Province, and took the said Sheriff's Receipt for the same. The Receipt mentioned by the said *Bryan* was produced to the House by Sir *Richard Everard*. There are some other Circumstances which would have been still a stronger support to this Article, forgot by Mr. *Bryan* in his Examination, for which we refer the Reader to the Appendix.

Mr. *William Herritage* Attorney at Law and Clerk of the House of Burgesses, was call'd upon by Mr. Speaker in order to clear up this Article on the side of the Chief Justice, tho' by what he said he left it worse than he found it, after being Sworn, he was ask'd if the said *Bryan* had been call'd in Court to Answer to the Offence for which he was fin'd, to which he believed he was, when the Court sat in the Morning of that Day in the Afternoon of

which the said *Bryan* was fined, he also Swore that he appeared for the said *Bryan* at his Desire, but agreed to take no Fee for so doing and being asked whether he moved the Chief Justice in Court that *Bryan* might be sent for, and that the Fine might be Mitigated, he declared that he had so done, and that the Chief Justice made Answer to his Motion much as Mr. *John Bryan* had Sworn, and being further ask'd if any Enquiries had been made into *Bryan's* Offence in open Court, if there was any Information against the said *Bryan*, or any Evidence examined upon Oath in Court in Relation to the said *Bryan's* Offence for which he was fined, he answered that he knew of none such.

This was the whole Substance of Mr. *Herritage's* Examination which was very far from answering the Ends intended by it; we leave to the World to judge if any Evidence be wanting to support this Article, and whether this Article alone is not sufficient to take away the Pretension of any Judge to the Character of Impartiality and Uprightness. We shall return again to the Journals.

And then they Proceeded to the second Article, and produced Mr. *Joseph Anderson*, and Mr. *Archibald Hamilton* Evidences.

Mr. *Joseph Anderson* Attorney at Law and formerly Clerk of the General Court, being upon Oath, was examined before the House as follows; he was asked if the said Chief Justice had taken the Oath directed to be taken by all Justices of the General Court for observance of the Jury Act, and whether the said Chief Justice had observed that Act, to which he reply'd that the Chief Justice had taken that Oath, and followed the Directions of that Act in drawing Jurors at a General Court in which he presided before he went for *England* but that ever since his return he had absolutely disregarded that Act.

Mr. *Archibald Hamilton* Attorney at Law, being Sworn was asked by the House; if the Jurys at the General Court since he had practised the Law at the Court, had been drawn according to the Directions or the Jury Act; to which he reply'd that the Jurors who were Summoned to appear and serve at the General Court have not been drawn by Balot according to the Jury Act, but have been constantly Summoned by *Venire* from the Chief Justice without any regard to that Law; and being further ask'd if he ever heard the Chief Justice acknowledge that Law to be in Force, and that he had taken the Oath by that Law directed to be taken; Answered, that he heard the said Chief Justice in open Court declare the Act of this Province for appointing

indifferent Jurymen in all Cases civil and criminal to be in Force, and that he had taken the Oath by that Act enjoined.

Before we take notice of the next Article mentioned in the Journals of the House, we must inform our Readers that the third Article is not mentioned in the Journals, from whence that neglect proceeded is not material, it sufficeth that the Article was true, which evidently appears from the said Chief Justice's taking the Oaths before the Governor in Council, sometime after Exhibition of the Articles to the House. But to proceed to the Journals.

Then Proceeded to the fourth Article and produced Mr. *Joseph Anderson*, Evidence.

We could wish the Journals of the House had been more full and express, and that they had been pleased to have suffered the Evidence to have been committed to writing, it would have spared us the Trouble and Pain we are forced to encounter to render the Proceedings intelligible to our Readers, this Article accuses the Chief Justice with assuming to himself, equal Power and Authority with the Court of King's Bench at *Westminster*, &c. to support which two original Writs for the Execution of Criminals at *Edenton* were produced and read to the House, the first in these Words, *Viz.*

North-Carolina, ss.

GEORGE the Second by the Grace of GOD, of Great Britian, &c.

To the Provost Marshal of our said Province, Greeting.

Whereas at our Court of King's Bench holden for our said Province at the Court-House in Edenton on the last Tuesday in July last before our Chief Justice and his Assistants Judges, one Beal Brown of Edgcomb Precinct in our said Province Planter was Convicted for the felonious stealing a Horse from Constant Williamson, and thereupon received Sentence of Death, and at the Motion of our Attorney General for a Writ to Command the Marshal of our said Province to put the Sentence against him the said Beal Brown in Execution, which was granted, and a Rule of Court thereon made, we therefore Command you that on Thursday the fifth of this Instant August, between the Hours of ten of the Clock in the Forenoon and three in the Afternoon, you Cause the Body of the said Beal Brown to be carried from our Gaol at Edenton to the Place of Execution, and there to be hanged by the Neck till he is dead, and all our Leige People are hereby Comanded to be aiding and assisting in the Premises. Herein fail not and make due Return of this Writ, and your Proceeding thereon. Witness

William Smith, Esq. our Chief Justice of our said Province at Edenton the second Day of August, in the tenth Year of our Reign, Anno Domini. 1736.

W. Smith, C. J.

The Execution of which Writ, was thus Certified in writing upon the back thereof, like wise read to the House.

Edenton, ss. By Virtue of the within Precept I executed it on the Body of *Beal Brown*, on the Day and Time of the Day within mentioned being this fifth Day of *August*, Anno Domini 1736.

Christo Becker, D. M.

The other original Writ for the Execution of one *John Tucker* convicted of Burglary and Felony of the same Date with the former and in the same Words *Mutatis Mutandis*, and upon the back thereof was Indorsed as follows, Executed this 5th Day of *August*, 1736.

Christopher Becker, D. M.

Mr. *Joseph Anderson* declared upon Oath the said Writs to be original Writs, by which the aforesaid Criminals were Executed, he being at that Time Clerk of the Crown.

Mr. Speaker having declared to the House that His Majesty's Warrant or Sign Manual, for appointing Mr. *Smith* Chief Justice of this Province, gave to the said Chief Justice the same Power as the several Courts in *Westminster Hall* are possessed of, that our Readers may be fully satisfied how much Mr. Speaker is mistaken in his Assertion, we shall present them with an exact Copy of that Warrant taken from the Records, then leave them to determine, if the Chief Justice has the least Pretension or Title to Claim or Execute the Powers of His Majesty's Ancient Court of King's Bench at *Westminster*.

G R

Trusty and well Beloved, We Greet you well.

Whereas we have taken into our Royal Consideration the Integrity and Ability of our Trusty and well Beloved *William Smith*, Esq; we have thought fit hereby to Require and Authorize you forthwith to cause Letters patents to be passed under our Seal of that our Province of *North Carolina* in *America*, for Constituting and Appointing the said *William Smith* our Chief Justice of and in our said Province, to have, hold, execute

and enjoy the said Office during our Pleasure and his Residence within our said Province, together with all and singular the Rights, Profits, Privileges, and Emoluments unto the said Place belonging or appertaining, with full Power and Authority to hold the Supream Courts of Judicature, at such Places and Times as the same may and ought to be held within our said Province, and for so doing this shall be your Warrant, and so we bid you Farewell. Given at our Court at *St. James's* the 13th Day of *November* in the fourth Year of our Reign.

By His Majesty's Command.
Holles Newcastle.

The fifth Article not mentioned in the Journals notwithstanding it contains a fact so notoriously known that not one Member in the House was a Stranger to it.

We shall again Return to the Articles.

Then Proceeded to the sixth Article, and produced Mr. *Joseph Anderson* Evidence.

The Journals neglect mentioning a more material Evidence produced to Support this Article, than Mr. *Anderson* who only corroborated the Examination of Mr. *Dawson* taken upon Oath by one of His Majesty's Justices of the Peace for *Bertie* County, read to the House as follows, *Viz.*

The Examination of *John Dawson* taken before Mr. *John Edwards* one of his Majesty's Justices of the Peace for the said Precinct the 14th Day of *January* 1737, who being duly Sworn on the Evangelists of Almighty God, declares that he made his personal Appearance at a General Court held at *Edenton* the last Tuesday in *July* last, and as he was in the Evening walking in the Street near the Court House in Company with one *James Barnes*, accidentally met Mr. *James Trotter* Deputy Marshal, and one *Jackson* who immediately Summoned the said *Dawson* to attend that Court as a Petit Jurymen, Mr. *Dawson* at the same Time telling him that he need not have given himself the Trouble for he had been Summoned before; *Trotter* reply'd that he could not expect any Favour at his Hand, *Dawson* answer'd that he did not, and if he had any Trump Cards in his Hands to play them for he (meaning himself) might chance at one Time or other to have Jack and Ace in his Hands, and should make Use of them; *Trotter* signified that he the said *Dawson* had used him very ill at his House, when he Demanded the Quitrents, and he might expect no Favour at his Hands, *Dawson* replying he was sorry when he took his Money from him in the manner he did, that he had not well basted him; which ended the Conversation.

Next Day the Court being opened and fitting, the Petit Jury was called, where the said *Dawson* appeared, and were all ordered to give their Attendance when wanting, whereupon *John Montgomery*, Esq; His Majesty's Attorney General moved to the Chief Justice that Mr. *James Trotter* the Marshal had Complained to him that one *John Dawson* had insulted him in the Execution of his Office, *Trotter* being call'd, and *Barnes* and *Jackson* being Sworn, and having both delivered their Evidence in the very Words above narrated. The Judge asked *Trotter* if he was at that Time in the Execution of his Office, who reply'd your Honor knows I am always about my Business in Court Time, but could not readily give any Account of what particular Business, but remembered that he had then Summoned the said *Dawson* on the Jury, to which *Trotter* was Sworn, the Judge ask'd Mr. *Dawson*, what he had to say for himself for insulting one of His Majesty's Officers in the Execution of his Office in Time of the Court sitting; who answered that it being in the Evening when the Court was adjourned, and as he had been Summoned before that Time, in Obedience thereto he appeared, and did not intend any Offence to His Majesty's Officers, if deemed such he did it Ignorantly and was sorry for it; the Judge without any further Enquiry, expressed himself in these Words, I commit you to Gaol without Bail or Mainprise, there to remain till you pay *Ten Pounds* Proclamation Money, and give sufficient Security for your good Behaviour for twelve Months and one Day and Night. Mr. Chief Justice sent for the said *Dawson* to his Lodgings, when Mr. Attorney General and Captain *William Downing* an Assistant Judge procured his enlargement from Saturday Evening till Monday Morning.

The Court being opened at the usual Time on Monday, the Judge discovered some Words written on his Desk by some Person unknown, reflecting very much upon his hasty committing and fining the said *Dawson*, which occasioned a warm Debate between the Judge and Mr. Attorney, whereupon Mr. Attorney ordered the said *Dawson* to Prison, where he continued two Days and Nights, and being prevailed upon by his Friends paid *Ten Pounds* Proclamation Money, gave the Security required, and was dismissed.

Certified under my Hand the Day and Year above written,

John Edwards, Pac. Just.¹³

13. ["Justice of the Peace"; probably short for *Pacis Justiciar*.—Tr.]

Mr. *Joseph Anderson* who was call'd as a corroborating Evidence, declared that the said *Dawson* had been fined and imprisoned as he hath Sworn.

But to return to the Journals.

Then Proceeded to the eight Article and produced Mr. *Joseph Anderson*, Mr. *John Caldom*, Mr. *Bryan*, and Mr. *John Starkey* Evidences.

Here again the Journals are remiss in not mentioning all the Evidences produced to Support this Article, besides those mentioned in the Journals, *John Montgomery*, Esq; Mr. *Archibald Hamilton* and *Robert Calahorn* were examined, and the Deposition of *John Boude* read, before the House; Mr. *Joseph Anderson* informed the House that he indicted one *James Kelly* for a forcible Entry, that the Indictment was quashed, as is set forth in the Article, that *Kelly* paid as he believes between *l. 70 and l. 80* Bill Money, in which all Fees relating to the same were included, that he knew of no particular Fee ascertained by the Law of this Province for such Service, but that he made out the Fees *Kelly* paid by Direction from the Chief Justice from the Compleat Attorney and Solicitor.

Mr. *Archibald Hamilton* Swore that *Kelly* informed him that the Fees with which he was made chargeable for that Indictment, amounted to *Twenty two Pounds Ten Shillings* Proclamation Money, and that he had paid *l. 90* Bill Money in Lieu thereof.

John Montgomery, Esq; also inform'd the House that *Kelly* acquainted him that he had paid *l. 90* for the Expence, occasioned by that Indictment.

The Deposition of *John Boude* aged near thirty Years, being first Sworn on the Holy Evangelist, saith that he was by the Grand Jury at *Edenton* in the Year 1735 or 1736 presented for having a Bastard Child by one *Katharin Dew*, which this Deponent hearing of, went into the General Court, and moved by his Attorney to be heard on the said Presentment, and on Motion to the said Court Mr. Chief Justice *Smith* and Mr. *John Montgomery* Attorney General allowed the said Presentment to be insufficient, the said Deponent having comply'd with the Laws of the Province, in paying the Fines to the Church Wardens of the Parish, and providing necessaries for the Support and Maintainance of the Child, and that the said Child was Born near five Years before the said Presentment and the Fines then paid, and that the said Deponent has not Cohabited with the said *Katharine* since, nor ever heard that there was any previous Complaints either by Church Wardens, Overseers of the Poor or any other Persons, and that he had always maintained the said Child in a Christian like manner,

and further saith that when the said Court dismissed the said Presentment, Mr. Attorney *John Montgomery*, Esq; moved that the Deponent should pay the Costs, but Mr. Chief Justice *Smith* was silent, altho' Mr. *Montgomery* mentioned it twice to the said Court, and the Deponent thought he was to pay no Costs, there being nothing Alledged against him but a very short Presentment from the Jury, and no Summons or Bill prefer'd against this Deponent, or any Thing else as he ever heard of but the said Presentment; yet notwithstanding the Deponent for fear of further Trouble went to the Clerk of the Crown when the Court was Adjourned, and tendered to pay the Fees, and demanded to know what they were; the said Clerk laughing reply'd, Let it alone, I don't know whether you have any Thing to pay, and made a Poh at it, from which this Deponent apprehended it to be a very Trifle, but in a very short Time the Deponent met *James Trotter* the Marshal, who shewed the Deponent an Execution against him for *Twenty-six Pounds* some odd *Shillings* Fees for the said Presentment, and the Deponent further saith that soon after seeing the Clerk of the Court and resenting his sending out the Execution, he excused it by saying he could not avoid it, for it was by the Chief Justice *Smith's* Commands, the which *Twenty-six Pounds* the Deponent paid; and further saith not.

John Boude.

Sworn before me the 26th Day of March, 1737.

Thomas Hansford.

Robert Calahorn being examined upon Oath Swore that himself, *Andrew Conner*, and others were indicted at the last Circuit Court held at *Bath-Town* for a Riot, as in the said Article is set forth, that himself and *Andrew Conner* each of them paid the Sum of *Twenty two Pounds* to the Chief Justice and his Clerk for Fees for the said Indictment, that he paid the same by Mr. *John Caldom's* Assumption that Execution for the like Sum were out against the other Persons mentioned in the said Indictment.

Mr. *John Caldom* Swore that he gave his Assumption to pay to the Chief Justice and his Clerk the Sum of *Twenty-two Pounds* upon the Account of the said *Robert Calahorn*, and for the like Sum upon the Account of *Andrew Conner*, and that upon his the said *Caldom's* Assumption, the said *Calahorn* and *Conner* were discharged from the Demand of the said Chief Justice and his Clerk. We shall again Return to the Journals which brings us to the ninth Article.

Then proceeded to the ninth Article and produced a Copy of *Anthony Booth's* Deposition in Evidence.

Bertie Precinct, ss. On the 17th Day of *March* 1737, came before me *John Holbrook, Esq;* one of His Majesty's Justices of the Peace, *Anthony Booth*, and made Oath, on the holy Evangelists that on or before the first Day of *October* last he the Deponent being sick in Bed of a Fever, *Peter Young* Deputy Marshal, served two several Executions on the Body of the said Deponent for Debt, one for *two Pounds Ten Shilling*, and another for *two Pounds five Shillings* Bills together with Costs and Charges amounting to upwards of *seventy Pounds*, tho' the Deponent never was legally Arrested, for which the said *Peter Young* insisted upon carrying the said *Anthony Booth* to Prison, but the Deponent being very ill with great Difficulty prevailed upon the said *Young* to take a Negro Girl for Security of the Payment of the above Sum until the Court. Accordingly the said *Young* took her with him to *Edenton*, by consent of the said Deponent, notwithstanding which the said *Peter Young* with three Assistants came a second Time and received from the said Deponent 4000 Pounds of fresh Beef into his Boat, and at the same Time forced the said Deponent on Board the Boat with the Beef to *Edenton* (by which means the Deponent was Violently forced away) and kept him Prisoner two Days and then discharged him.

Sworn before me,

J. Holdbrook, J. P.

The said Deposition was endorsed, A true Copy examined by us *John Swann* and *Thomas Jones*, Col. *Maurice Moore* and Mr. *John Swann* affirmed to the House that they had examined the said Copy with the Original, and that it was a true Copy. But if the House had been in any Doubt as to the Truth of that fact, they ought to have commanded *Booth's* Attendance.

Then proceeded to the tenth Article, and produced Mr. *Joseph Anderson*, several Executions, and Mr. *Richard Lovit* Evidences.

Mr. *Anderson* being asked if he was Clerk of the General Court at the Time the Facts alleged in this Article were committed, declared he was not. The several Executions and other written Evidences produced to the House, were as follows, *Viz.* The first Executions against *Samuel Bridgin* in these Words.

North-Carolina, ss.

Seal.

GEORGE the Second by the Grace of GOD of Great Britian, &c.

To the Provost Marshal of our said Province. Greeting.

We Command you to take Samuel Bridgin of Cape-Fear so you that have him before our Justices at our next General Court to be holden for our said Province at the Court House in Edenton on the last Tuesday in March next, to satisfy four Pounds eight Shillings and three Pence Proclamation Money, which in our Court on the last Tuesday in October last, was adjudged and taxed for his Costs in his Suit against Thomas Fullwood, wherein he would no further Prosecute, whereof he is convicted. And have you then and there this Writ, with your own Fees. Witness William Smith our Chief Justice of our said Province at Edenton the 19th Day of November, Anno Domini, 1738.

W. Smith, C. J.

Which Execution was endors'd on the back in the Hand writing of Mr. *Richard Lovit* Attorney at Law to whose Care that Execution was committed.

Proclamation Money				}	In Bill Money
Chief Justice	l. 4	8	3		at four for one
This Precept		II	3		l. 19 18 0
	l. 4	19	6		

Then was Read Mr. *James Craven's* Receipt for the Fees in that Action agreeable to Allegations of the Articles the second Time the same was paid by *Samuel Bridgin*, but as the Chief Justice's Friends would not allow Time sufficient to send for *Bridgen* and others, designated as Evidences to support this Article, we refer our Readers to the Appendix.

Received September 22d 1739, of Mr. *Samuel Bridgin* the Sum of *seventeen Pounds thirteen Shillings* Current Bills, for Fees due in his Cause against *Thomas Fullwood* due to the Chief Justice and Clerk of the Court. I say Received for the Use of the Chief Justice and Clerk of the General Court.

Per *James Craven*, Cl Gen. Court.

Rufus Marsden has paid a *Fieri Facias* for discontinuing his Suit against *Edward Davis*, the Sum of *seventeen Pounds ten Shillings* to *Thomas Rowen*,

and since has paid a *Fieri Facias* for the said Action the Sum of *eight Pounds five Shillings* to the Chief Justice as may appear by the Clerk's Receipt.

Rufus Marsden.

Daniel Dunbibin paid an Execution at the Suit of *James Fergus*, *thirty Pounds* to *Thomas Rowen*, which he can make appear by the Oath of *Edward Scot* and *James Fergus*, and since has been compell'd to pay the Sum of *twenty-one Pounds* for Costs of the said Suit as may appear by the Clerk's Receipt.

Daniel Dunbibin.

Mr. *Richard Lovit* declared upon Oath before the House that he believed Mr. *Dunbibin* might have paid the Sum to Mr. *Thomas Rowen* deceased, Clerk of the General Court thro' the Hands of Mr. *Edward Scot*.

Then was produced and read to the House an Execution upon a *Non Pros* against *William Dry* in the same Words (*Mutatis Mutandis*) as that against *Samuel Bridgin*, being for the Sum of *four Pounds and five Pence* Proclamation Money, and also three *Fieri Facias's* against the said *Dry* for the Discontinuance of three Suits brought by him in the General Court, all of them of the same Date. In the following Words (*Mutatis Mutandis.*)

North-Carolina, ss.

Seal.

GEORGE the Second by the Grace of GOD King of Great Britian, &c.
To the Provost Marshal of our said Province. Greeting.

Whereas at our General Court holden at Edenton, the last Tuesday in October last for our said Province, William Dry having discontinued a Suit against Jonathan Caulkins it was order'd that he pay Costs, as to us of Record appears, which said Costs have been taxed at Three Pounds seventeen Shillings, Proclamation Money, and as yet hath not been paid or satisfied.

We Command you that of the Goods and Chattels of the said *William Dry* if to be found in your Bailwick you Cause the same to be levied, paid and satisfied together with *eleven Shillings, and three Pence* Proclamation Money, accruing on this Writ as also your own Fees, and make due return. Herein fail not. Witness *William Smith, Esq;* Chief Justice of our said Province at *Edenton* this 10th Day of November, 1737.

The other two Executions against Capt. *Dry* were one of them for Discontinuance of a Suit against *Thomas Sawier*, and the other for the like against *Clifton Brown* and the Costs mentioned in them, besides the *eleven Shillings* and *three Pence* Proclamation Money as follows, *Viz.*

	Proclamation Money,			
Mr. <i>Dry's</i> Cost in his Suit against <i>Brown</i>	l.	3	17	0
Mr. <i>Dry's</i> Costs in his Suit against <i>Sawier</i>			3	12 0

We shall now again return to the Journal,

Then to the eleventh Article, and produced Mr. *Joseph Anderson* Evidence.

The Evidence produced to support the tenth Article fully and clearly proved this Article; Mr. *Anderson* was asked if the Execution against *Samuel Brigdin* upon the *non pros* was in the Form which the Chief Justice constantly issued them in, he reply'd he believed it was in the same Form, and being asked if *eleven Shillings* and *three Pence* Proclamation Money was the Fee which the said Chief Justice claimed for himself and Clerk for such Executions, he answered it was.

Then proceeded to the twelfth Article and produced Mr. *Joseph Anderson* and Mr. *Richard Lovit* Evidences.

Here again the Journals decline mentioning the most material Evidence produced and read to the House to support this Article, and concerning which only the two Evidences mentioned in the Journals were call'd, the first being an original Warrant granted by the Chief Justice against *William Crosby*.

By the Honorable *William Smith*, Chief Justice,
North Carolina, ss.
 Seal.

Whereas I have this Day received Information upon Oath that William Crosby of Onslow Precinct Planter, about the first Day of June last did felloneously and of Malice afore thought, assault and wound David Berry, of which wound the said David Berry for sometime Languished, and about five Weeks after died, and likewise that he the said William at the Time aforesaid did without any lawful Provocation assault, wound, and bruise William Dudley.

These are therefore to Command you to apprehend the Body of the said *William Crosby* and him bring before me at *Edenton*, or before

Abraham Mitchell in *Onslow* to Answer the Premises and to be dealt with according to Law. Fail not, and for so doing this shall be your Warrant. Given under my Hand and Seal at *White Oak*, December 4th 1734.

W. Smith C. J.

To the Provost Marshall and his Deputy, and to each and every the Constables of the aforesaid Province & their Assistants.

And then was read an Execution against *Dudley* in the usual Form, for one Pound ten Shilling and seven Pence half Penny Proclamation Money, and eleven Shillings and three Pence of the like Money Fees for the said Execution; that Execution suggests that *Dudley* had discontinued a Suit against *William Crosby*: all the Attorneys who practised in the General Court of this Province at that Time except one being present they were severally ask'd by the House if any of them knew of, or had brought any Action against *William Crosby* at the Suit of *Dudley*, and they severally declared they had not, neither could they recollect any such Action to have been upon the Docket. It is further remarkable, that Mr. *Richard Lovit* who receiv'd the Money and Fees arising from the Execution against *Dudley*, upon Account of Mr. Chief Justice, could not recollect any Action brought by *Dudley* against *Crosby*, he gave the following Receipt upon the back of the Execution.

Receiv'd the within Sum of eight Pounds seven Shillings and six Pence for the Use of William Smith Esq; Chief Justice, 2d July 1740.

Richard Lovit.

As this Case is very remarkable we intend to state it at large in our Appendix, to which we refer our Readers.

We shall now go on with the Journals.

Then proceeded to the thirteenth Article and produced Mr. *Archibald Hamilton* Evidence.

Mr. *Hamilton* being produced to support this Article is a circumstantial Evidence only, and the Evidence who would have put the same beyond Dispute not being there thro' want of convenient Time and the aid of the House, we shall refer our Readers to the Appendix.

But to follow the Journals.

Then to the fourteenth Article which they agreed to expunge being used in private Conversation, notwithstanding which Confession we are of Opinion,

we ought to convince our Readers that the Matter contained in that Article was Truth, as will undeniably appear from the following Deposition.

Bertie Precinct, ss: March 17, 1737,8.

James Castelaw of this Precinct of fifty Years of Age, and duly Sworn on the holy Evangelists saith, that on the 27th *July* having some Discourse with the Chief Justice *Smith* and Mr. Attorney General *Montgomery* in *James Trotter's* Porch, concerning the Hardships the Inhabitants of this Province labour'd under since the Administration of his Excellency *Gabriel Johnston, Esq;* our present Governour, told them they were got to that height that we should be under a necessity to rebel against them or run-away and leave our Lands and Livings, behind us, Chief Justice *Smith* in a heat answered, by God I wish you would, that is what we want; the Deponent started up from the Place where he sat betwixt them, surpriz'd at such an unguarded Expression, and reply'd, good God, what a strange Government we are under, that the Ministry Labour the ruin of the Subject, and are so bare faced as to own it. The Attorney said *fye fye*, are such Expressions fit to come out of the Mouth of a Chief Justice of a Province, or Words to that effect. The Day following *John Dawson* a Member of the Assembly, was committed to the Publick Gaol by Judge *Smith* for Words passed in the Street between him the said *Dawson* and *James Trotter*, there to lie without Bail or Mainprize until he paid *ten Pounds* Proclamation Money, and fined Security for his good Behaviour (as this Deponent was inform'd) for a Year and a Day.

Sworn before me

John Holdbrook, Jus. Pea.

Now we attend the Journals to the fifteenth Article.

Then to the fifteenth Article and produced Mr. *Archibald Hamilton* Evidence.

Mr. *Hamilton* upon his Oath declared that he heard the Chief Justice in open Court abuse Mr. *Arthur Mabson*, in the Manner and Words, and at the Time as in that Article is expressly mentioned.

We come now to the sixteenth and last Article mentioned by the Journal.

Then to the sixteenth Article not any Evidence produced.

As the Proofs produced before the House were brought there not to convict but only to induce the House to accuse the Chief Justice, it was

thought needless, to prove what every Member must by ocular Demonstration know to be Truth, there was scarce any Member of that House who had not at Times made his Observation thereof, and was well convinced that Mr. Chief Justice has long since merited a Myrtle Wreath.

We come now to the Debate and Question upon the Articles.

Then proceeded to Debate the same, whether the Proofs to the said Articles are sufficient for the House to Impeach the said Chief Justice.

Then Mr. Speaker resumed the Chair.

Mr. Chairman reported from the Committee of the whole House that the above Articles and Proofs were debated by the said Committee.

Then the Question was put whether the Proofs that were produced and heard to support the said Articles were sufficient for the House to Impeach the said Chief Justice, or whether they be rejected.

And voted by a Majority of six Votes rejected.

Vera Copia *Wm. Herritage*, Cl. Dom. Bur.

For rejecting the Proofs

Mr. <i>Tho. Lovick</i> , Colector of <i>Port Beaufort</i> .	Mr. <i>George Roberts</i>
Mr. <i>Thomas Hunter</i>	Mr. <i>Richard Rigby</i>
Mr. <i>George Bould</i>	Col. <i>Benjamin Hill</i>
Doct. <i>Abraham Blackall</i>	Mr. <i>John Blount</i>
Deputy Post Master.	Mr. <i>John Caron</i>
Mr. <i>James Craven</i> , Clerk of the General Court.	Mr. <i>Jacob Caron</i>
Col. <i>Macrora Scarborough</i>	Mr. <i>Leary</i>
Mr. <i>Carruthers</i>	Mr. <i>Joshua Long</i>
Mr. <i>Tho. Pendilton</i>	Mr. <i>James Sumner</i>
Mr. <i>David Bayley</i>	Mr. <i>Walton</i>
Mr. <i>William Relf</i>	Mr. <i>Joseph Tart</i>
	Mr. <i>Thomas Lowther</i>

Against rejecting the Proofs.

Col. <i>Maurice Moore</i>	Mr. <i>Arthur Mabson</i>
Mr. <i>James Castelaw</i>	Mr. <i>Samuel Swann</i>
Mr. <i>Tho. Bryan</i>	Mr. <i>John Swann</i>
Mr. <i>John Brown</i>	Mr. <i>William Bartram</i>

Against rejecting the Proofs. (*continued*)

Mr. <i>Simon Alderson</i>	Sir <i>Rich. Everard</i> , Bart.
Mr. <i>John Banbury</i>	<i>John Montgomery</i> , Esq;
Mr. <i>John Starkey</i>	His Majesty's Attorney General.
Mr. <i>William Brice</i>	Mr. <i>Joseph Sutton</i>
Mr. <i>Edmund Smithwick</i>	Mr. <i>Samuel Sinclair</i>
Mr. <i>William Gardiner</i>	

I have now gone thro' the Articles and the Matters of Facts relating to them as the same were actually given and produced before the House, and I make no doubt but that our Readers are convinced that, that Proceeding of ours was the pure Effect of our Duty, and that the Articles of Complaint are neither frivolous, idle, or maliciously intended only to asperse and blacken the Chief Justice, as he hath suggested, tho' the Members for the Articles acted by his own Directions and Advice, and as it were with his own Consent signified to them from the Bench in many of his Charges to the Grand Juries of this Province, *That he who condemnes the Innocent and he who letteth the Guilty go frees are both an Abomination to the LORD.*

We appeal to our Readers if it be not very monstrous to suppose that a Sett of Gentlemen who without vanity may be looked upon at least equal to any in the Province, should conspire together to blast the Expectation and ruin the Fortune of the Chief Justice, only to gratify some little Pique or Malice of their own, in manifest and open Contradiction, to Truth, and the Sense of the rest of the Province: As such an attempt as this would be little short of down right Madness, so it would be very easily baffled, and the villany of it exposed to the World, and the Actors therein would meet with deserved Reproach and Contempt; But blessed be GOD we live under a *British* Constitution, where Liberty is our undoubted Inheritance, is well understood and ought to be enjoyed in it's full Extent; in such a Government if any one shall presume to break thro' and violate the common Benefits and Priviledges, secured to us by Law, and trample under Foot the most solemn Oaths, the most binding and necessary Laws, Laws upon which the Safety of the whole Province necessarily depends, and which have never been before then broken or disobeyed, I say when all this happens, and Men in Power, behave as if they were less accountable for the abuse of their Trust, then the Royal Hand which bestowed it upon them; is it not high

Time for People labouring under such Oppressions and Injuries to look about them? Is it not necessary to put a stop to such Iniquities, and is it not just at least to endeavour to punish such daring Offenders; can any Man or Set of Men possibly remain quiet and easy when they see by Experience that neither the Laws of *Great Britain* nor those of their own Province, are sufficient to secure them against the arbitrary Attempts of Men in Power? And is it not the greatest Hardship and Cruelty imaginable that Men in such a wretched Condition endeavouring honestly to discharge the Trust reposed in them by the injured and oppressed People, complaining in the most decent manner of these Enormities; should be looked upon by the Gentlemen in the Administration little better than Rebels, and that Gentlemen who had Courage and Honesty sufficient to exhibit Articles upon just Grounds against the Chief Justice, should be called Libellers and Opposers of the Measures of the Government, purely for the sake of Opposition only, and that those necessary Articles against the Chief Justice, which are founded upon undeniable Matters of Fact, should be called by him false and libellous? It is an easy matter to say so of the most solemn Truths, but we take the freedom to put that Gentleman in mind, that the World will be much better satisfied with his proving them false and libellous, than with his bare *ipse dixit*,¹⁴ that they are so.

Our Readers we make no doubt will look upon the Matters of Fact contained in the Articles and the Proofs collected in this Narrative, as sufficient to support the necessity and justness of our Proceedings against Mr. Chief Justice Smith.

The great Care taken by himself and Friends to suppress the Evidence against him, by contracting the Time and by the other Methods and Artifices before mentioned, ought to be taken for the strongest Evidence imaginable. Upon the whole it intirely lies upon Mr. *Smith* to convince the World that he is injured by us, and that he has behaved with that Uprightness and Integrity in his Station that he ought, and which we could have wished had accompanied all his Actions.

THE END.

14. ["He himself said."]

[William Douglass],
A Discourse Concerning the Currencies
of the British Plantations in America
(Boston, 1740)



WILLIAM DOUGLASS was a Scottish-born physician, educated at universities in Edinburgh, Leiden, Paris, and Utrecht, from the last of which he received his M.D. In 1718, when he was in his late twenties, he settled permanently in Boston, where over the next thirty-four years until his death in 1754, he proved himself to be a vigorous polemicist who could write authoritatively on a wide variety of subjects in medicine, politics, economics, and history, his most famous and ambitious work being *A Summary, Historical and Political, of the First Planting, Progressive Improvements, and Present State of the British Settlements in North America*, the fullest account of the history of colonial British North America up to the time of its publication in 1748. This pamphlet grew out of his extensive involvement in the late 1730s and throughout much of the 1740s in the lively debate then raging in New England and some of Britain's other American colonies over the utility and necessity of paper currency.

From early on after the initial settlement of the colonies, the drain of hard money to pay for English and other European goods had left American settlements without a sufficient medium for internal commercial exchange and without the means to pay for sudden emergencies arising from natural disasters or military threats. After the early 1690s more and more colonies began to issue and designate as legal tender paper bills to meet such exigencies. By retiring this paper at specified intervals, by requiring government

acceptance of it for taxes and other fees, or by securing it with lands or other forms of collateral, colonial legislators endeavored to prevent, rarely successfully, their paper issues from depreciating. Responding to the fears of British merchants that such issues would lead to payment of colonial debts in depreciated paper, British authorities instructed royal governors to withhold consent from laws issuing further paper, but they often yielded when legislators could find no other way to meet public expenses, and, as Douglass complained, a charter colony like Rhode Island “admit[ted] of no Instructions from the *King*, [Privy] Council or Board of Trade.” In the late 1730s in New England, the desirability of paper currency, which had long been a medium of exchange, came under intense debate, as one group pressed for further emissions in an attempt to alleviate a general economic distress, while another opposed it as little more than an attempt to defraud creditors by increasing the supply and thereby lowering the value of money. No friend to paper currency, Douglass sought with this pamphlet to lay bare the evils of such a medium and to summarize and refute the contentions of its New England advocates. In the process, he provided a short history of the use of paper money in Europe and of its present state in all the British colonies in America. The British Parliament would eventually answer such calls for action by a 1751 statute prohibiting further issues of legal tender paper in the New England colonies, a prohibition that Parliament in 1764 would extend to all the continental colonies. (J.P.G.)

A
DISCOURSE
Concerning the Currencies
OF THE
British Plantations
IN
America. Especially with Regard to their
PAPER MONEY:
More Particularly,
In Relation to the Province of the
Massachusetts-Bay,
IN
NEW ENGLAND

BOSTON: Printed and Sold by S KNELLAND & T GREEN,
over against the Prison in Queenstreet.

1740.

A Discourse concerning the Currencies of the British Plantations in America &c.

The many Schemes at present upon the Anvil in Boston, for emitting enormous Quantities of Paper Currencies; are the Occasion of this Discourse. The Writer does not vainly pretend to dictate to Government, or prescribe to Trade; but with a sincere Regard to the publick Good, has taken some Pains, to collect, digest, and set in a proper Light, several Facts and Political Experiences especially relating to Paper Currencies; which tho' plain in themselves, are not obvious to every Body. If any Expressions should sound harsh, they are not to be understood as a Reflection upon this Province in general: It was always my Opinion, That the Province of the Massachusetts-Bay, is by far the most vigorous and promising Plant (with proper Cultivation) of all the British Plantations; in the best of Countries at Times, bad Administrations, and private evil Men of Influence have prevailed. The Author is not a transient Person, who from Humour or Caprice, or other Views may expose the Province; but is by Inclination induced, and by Interest obliged to study the Good of the Country.

All Commerce naturally is a *Track Trade*, exchanging Commodities which we can spare: (or their Value) for Goods we are in want of. *Silver* it self is a *Merchandize*, and being the least variable of all others, is by general Consent made the *Medium of Trade*. If a Country can be supposed to have no Dealings but within it self; the Legislature or tacit Consent of the People, may appoint or receive any Currency at Pleasure: but a trading Country must have regard to the universal commercial Medium, which is *Silver*; or cheat, and trade to a Disadvantage: It is true, that in some Countries of Europe *Billon* (a base mixture of Metals) is used for small Change, but not as a Medium of Trade.

Every Country or Society have their own peculiar Regulations, which may be called their *Municipal*, or *By-Laws* in Trade: but the universal trading Part of the World, as one tacit Confederacy have fallen into some *general Rules*, which by Custom of Merchants are become as Fundamental: One of these is a *Silver Medium of Trade*, that all Contracts (Specialties excepted) are understood to be payable in this Medium, being always of the same fixed Value, or easily adjusted by the *Par*, and accidental small Differences of Exchange from one Country to another.

There can therefore be no other proper *Medium* of Trade, but Silver, or Bills of Exchange and Notes of Hand payable in Silver at certain *Use's* or Periods, which by a currant Discount are reducible to Silver ready Money, at any Time. The Debitor Party (I am ashamed to mention it) being the prevailing Party in all our Depreciating-Paper-Money Colonies, do wickedly endeavour to delude the unthinking Multitude, by persuading them, that all Endeavours of the Governour, or Proposals and Schemes of private Societies, to introduce a Silver Medium, or a Credit upon a Silver Bottom, to prevent the honest and industrious Creditor from being defrauded; are Impositions upon the Liberty and Property of the People.

Depreciating of the Value of *nummary Denominations*, to defraud the Creditors of the Publick and of private Persons; by Proclamations of Sovereigns, by Recoinages, and by a late Contrivance of a depreciating Paper-Credit-Currency; were never practised but in notoriously bad Administrations.

All over *Europe* for many Ages preceeding the 14th Century, the *nummary* Pound, and the *Ponderal* or Pound Weight of Silver were the same: but in some following Ages in bad Administrations the Values of nummary Denominations were gradually reduced; as in *England* to 4 oz. Silver value (upon all Occasions I use the nearest round Numbers) one third of its original Value; in *Holland* the Pound *Ulams* (6 Guilders) to 2 oz. Silver being only one sixth of its original Value. A general Stop has been put to those notorious publick Frauds ever since Trade began to flourish; the civil Governments becoming more polite, found it their Interest in Affairs of a *Medium* of Trade, to be advised by the more knowing and experienced Traders: Thus, since the Reign of *Edward VI.* in *England*, the Shilling Denomination hath lost only 2 gr. Silver. We have two or three Instances of late in *Europe*, that have deviated from that *Maxim* of a fixed Value of Silver in Trade; these were in arbitrary Governments, under most arbitrary Administrations. 1. *France* by *Recoinages* from A. 1689, to the wise Administration of *Cardinal Fleury*, was obliged to defraud the Subject, to maintain unjust Wars and Rapines upon its Neighbours, and lessen'd the Value of nummary Denominations from a *Mark* of Silver at 27 *Livres* to 80 *Livres*. 2. *The King of Spain* A. 1668 lowered his Denominations 25 *per Cent.* a heavy Piece of *Eight* formerly 8 *Royals* Plate, passed for 10 *Royals* currant. 3. *Sweden* under the Administration of *Baron Gortz*.

In all Sovereignities in *Europe* where *Paper-Money* was introduced, great Inconveniencies happened; upon cancelling this Paper Medium all those Inconveniencies did vanish. 1. In *Sweden*, *Baron Gortz*, by imposing *Government Notes* (and *Munt tokyns*) reduced the People to extreme Misery (this was one of the principal Crimes alledged against him when he suffered capital Punishment) but these being called in, and the *Coin* settled upon the same Foundation as it was before *Charles XIIth* Accession, *Sweden* flourished as formerly. 2. The late *Regent of France*, by the Advice of *Mr. Law*, did form a Project A. 1720, and by his arbitrary Power, endeavoured to put it on Execution; to defraud State Creditors and others, by banishing of Silver Currency, and by substituting a *Paper Credit*: the Effect was, the greatest Confusion, and almost utter Subversion of their Trade and Business: The Remedy was (*Mr. Law* having sneak'd off, became a *Profugus*¹ and at last died obscurely) after a few Months the Court of *France* were obliged to ordain, that there should be no other legal Tender but Silver-Coin; and Commerce has since flourished in *France* more than ever. At present, under the wise Administration of *Cardinal Fleury* (who allows of no Paper Currencies, nor Recoinages, which had the same Effect in depreciating nummary Denominations in *France*, that frequent and large Emissions of Paper-Money have in our Colonies) their Trade bids fair to outdo the Maritime Powers (as *Great Britain* and *Holland* are called) and has a much better Effect in advancing the Wealth and Glory of *France*, than the *Romantick* butcherly Schemes of Conquest over their Neighbours, under the Administrations of *Richelieu*, *Mazarine* and others, in the Reigns of *Lewis XIII* and *XIV*. 3. In *Great Britain* A. 1716, were current four and a half Millions of Pounds Sterling in *Exchequer Notes*, being the largest Quantity current at one Time: although they bore about half of legal Interest, and not equal to one third of the concomitant national Silver Currency; they laboured much in Circulation, and the Government to prevent their being depreciated, was obliged to give considerable *Premiums* to the *Bank* for cancelling some of them, and circulating the remainder.

It is not easily to be accounted for, how *England*, *France* and *Holland*, have tacitly allowed their several *American Colonies*; by *Laws* of their several Provinces, by *Chancerings* in their Courts of Judicature, and by *Custom*; to depreciate from Time to Time, the Value of their original Denominations,

1. ["Exile."]

to defraud their Principals and Creditors in *Europe*. The *British Plantations* have not only varied from Sterling, but have also very much varied from one another; to the great Confusion of Business, and Damage of the Merchant. This will appear plain by inserting at one View the State of the Currencies in the several British Plantations; whereof some are per *Exchange*, some in *Spanish Silver Coin*, and some in *Paper Money* called Colony or Province Bills of publick Credit.

Originally and for some Years following in all the *English American Colonies*, 5 s. Denomination was equal to an English Crown Sterl. after some Time *Pieces of Eight*, being the general Currency of all foreign American Colonies, became also their Currency; and they remitted or gave Credit to the Merchants at Home (by Home is meant *Great Britain*) a Piece of Eight (value 4s. 6d. Sterl.) for a Crown or 5s. Sterl. *this was a Fraud of 11 per Cent.* In sundry of our Colonies were enacted Laws against passing of light Pieces of Eight; these Laws not being put in Execution, *heavy and light Pieces of Eight passed promiscuously*; and as it always happens, a bad Currency drove away the good Currency; heavy Pieces of Eight were ship'd off. This current Money growing daily lighter, a Difference was made between heavy Money which became Merchandize, and light Money in which they paid their Debts gradually from 10, 15, 20, to 25 per Cent. as at present in *Jamaica*: *this was another and continued Course of cheating their Creditors and Employers at Home.* From a Complaint of Merchants and others dealing to the Plantations; Q. Anne by Proclamation, and the Parliament of Great Britain afterwards by the *Proclamation Act*, ordered, that after A. 1709, *A heavy Piece of Eight and other Pieces in Proportion to their Weight, in all our Colonies should not pass exceeding 6 s. Denomination.* This Act continues to be observed in none of our Colonies, excepting in *Barbadoes*, and *Bermudas*. *Virginia* Currency was formerly, and continues still better than what the Act directs.

In *NEWFOUNDLAND*, all large Sums are transacted in *Sterling Bills of Exchange*; small Dealings are in *English Coin* Sterling Value, and in *Pieces of Eight* at 4 s. 6 d. being the Sterling Value.

In *NOVA SCOTIA*; The *Sterling Bills of Exchange* on the pay of the Troops, Garrison, and Train, Supply them with what they may have occasion for from *New England*: Small Dealings are in *New England publick Bills*, and in *French Coin* from *Cape Breton*; one *Livre* equal to 4 s. *New England*

Currency: at *Canso* Fish and Oil are purchased by *Bills of Exchange New England Money* upon *Boston*.

In the four Colonies of *New England*, viz. *New-Hampshire*, *Mossachusetts Bay*, *Rhode Island* and *Connecticut*, their Currency being Paper, is promiscuously the same.

NEW HAMPSHIRE (too diminutive for a separate Province, of small Trade and Credit) their *Publick Bills* are so much counterfeited they scarce obtain a Currency; hence it is (the Governour's Instruction limiting Sum and Period is also a Bar) that at present, their outstanding Bills of publick Credit, some on Funds of Taxes, some on Loan, do not exceed *l. 12,000*, gradually to be cancelled by *December 1742*. Their ordinary Charge of Government is about *l. 1500 New England Currency per Annum*.

MASSACHUSETTS-BAY: This being more especially the Scene of our Discourse, we shall be more particular. At the first settling of the *New England Colonies*; their Medium was Sterling Coin at Sterling Value, and Barter; some Part of their Taxes was paid in Provisions and other Produce, called *Stock in the Treasury*. When they got into Trade a heavy Piece of Eight passed at 5 s. A. 1652, They proceeded to coin Silver Shillings, six Pences, and three Pences, at the Rate of 6 s. to a heavy Piece of Eight; Silver continued current at this Rate by sundry subsequent Acts of Assembly till A. 1705, by a Resolve of the General Court Silver was to pass at 7 s. per Oz. A. 1706 the Courts of Judicature chanced Silver to 8 s. per Oz. in satisfying of Debts, being nearly after the Rate of 6 s. a light Piece of Eight as then current. At this Rate Silver and Province Bills continued upon *Par* until A. 1714, the Assembly or Legislature fell into the Error of making from Time to Time large superfluous Sums of *Paper Money upon Loans*, and the Emissions for Charges of Government not cancellable for many Years, so that these *Publick Bills* have been continually depreciating for these last 26 Years, and are now arrived to 29 s. per Oz. Silver.

Massachusetts-Bay was the Leader of Paper Currencies in our Colonies. Their first Emission was of 40,000 *l.* A. 1690 & 1691, to pay off the publick Debts incurr'd by that expensive, unsuccessful, Expedition against *Canada*; of this Sum 10,000 *l.* was cancelled and burnt in *October* A. 1691: In the following Years no more new Emissions, but some Re-emissions of the remainder, and that only for the necessary Charges of Government, called in by Rates or Taxes within the Year; the last emission of these Bills was A. 1701, of 9,000 *l.* Bills all this Period continued at the Rate of 6 s. a heavy

Piece of Eight, and were called *Old Charter Bills*. A. 1702 began new Emissions of Province Bills; but, as it ought to be in all wise Administrations, cancelled by Taxes of the same and next following Year, until A. 1704, the Rates for calling them in, were in Part postponed two Years; they began A. 1707 to postpone them in Part for three Years; A. 1709 for 4 Years; A. 1710 for 5 Years; A. 1711 for 6 Years; A. 1715 for 7 Years; A. 1721 for 12 Years; A. 1722 for 13 Years: *Thus unnaturally instead of providing for Posterity, they proceeded to involve them in Debt.* This long publick Credit and the enormous publick Loans, have depreciated our Province Bills to the small Value they bear at present; the Issues and Cancellings of their Bills being for a long Series of Years is too tedious to be particularly and minutely inserted.

The Province of the *Massachusetts-Bay* besides the Emission & Re-emissions of the 40,000 *l.* old Charter Bills, have since A. 1702 emitted and re-emitted Bills of publick Credit, 1,132,500 *l.* upon Funds of *Taxes*, and 310,000 *l.* upon *Loans*, being in all near one and a half Million; whereof about 230,000 *l.* still outstanding, and if publick Faith be better kept will be gradually cancelled by A. 1742. The ordinary Charges of Government may be about 40,000 *l.* *New England Currency per Ann. Exchange with Great Britain 450 per Cent. Advance*, or five and an half *New England* for one *Sterl.*

RHODE-ISLAND, their first Emissions were A. 1710, towards paying more readily their Quota of Charges on the Expedition against *Port Royal* (now *Annapolis Royal*) in *Nova Scotia*, and have emitted from Time to Time, in all 399,300 *l.* whereof only 19,300 *l.* upon Funds of *Taxes* for Government Charges, and 360,000 *l.* upon *Loans*, whereof there is at present outstanding (all upon *Loans*) 330,000 *l.* circiter; which, if their publick Faith should chance to be kept in Time coming, will not be finished cancelling until A. 1759. The Interest of those publick Loans defrays the Charges of Government, and of their Towns.

I shall embrace this Opportunity of exemplifying the Iniquity of Colony publick Bills of Credit by the Instance of *Rhode-Island*, a small Colony containing about 18,000 Souls, under an old Charter very lax and general; they admit of no Instructions from the *King*, Council, or Board of Trade and Plantations; the *King* having no Representative or *Commissioned Governour* in their Legislature. This handful of People have lately made a *very profitable Branch of Trade and Commerce by negotiating their own Paper Money in various Shapes*: their Money being *Loans of Paper Credit called Bills*, from their

Government to private Persons upon Land Security; to be repaid not in the same real Value, but in the same depreciating fallacious Denominations.

1. Their first Loan was A. 1715 for 10 Years, but have by subsequent Acts postponed and prolonged the Payments, so that the last Payment was A. 1738, Thus A. 1715 Exchange was at 65 *per Cent.* with *England*, A. 1738 Exchange was at 400 *per Cent.* Advance; that is for 100 *l.* Sterl. Value received, they pay only after the Rate of 33 *l.* Sterl. Suppose further, that the same Person upon the same Land Security, borrows again of the new Emission A. 1738, this 33 *l.* Sterl. value; and, as formerly by repeated large Emissions, Exchange becomes as at present in *North-Carolina* 10 for 1 Sterl. by A. 1758 the Period of this Loan, *the original 100 l. Sterl. Value will be redeemed with 16 l. Sterl. Value.* And if this Paper Money Loan Trade, could be supposed to continue, the Land Security would gradually vanish, *the Land redeem'd and the Debt paid with nothing.*

2. They who take up this Loan Money are called *Sharers*; and for the first ten Years pay into the Treasury 5 *per Cent.* per Annum Interest; and for the other ten Years pay 10 *per Cent.* per Annum of the Principal, without Interest. The *Sharers* let out this Money, in their own & neighbouring Colonies at 10 *per Cent.* for the said twenty Years (some let it at a higher Interest) is at the Expiration of the twenty Years 300 *l.* for every 100 *l.* Loan, Principal and simple Interest; for which only 150 *l.* is paid into the Colony Treasury, & 150 *l.* is clear Gain: *So that in this Shape for every 100,000 l. Emission, their People in the space of twenty Years, have after the Rate of 150,000 l. clear Profits.*

3. In another Shape; upon a new Emission, Interest is made with the *Managers*, to obtain Shares in the Loan: the *Sharers* immediately sell (or may sell) their *Privilege*, as it is called, for *ready Money Praemium*; at the Emission A. 1738 the *Praemium* was 35 *per Cent.*: that is, *the Emission of 100,000 l. does immediately produce after the Rate of 35,000 l. ready Money profit.*

4. *Rhode-Island* purchases from their neighbouring large Province of the *Massachusetts-Bay*, all Sorts of British and Foreign Goods with this Paper Manufacture which cost nothing, which enables them to rival us in Trade, particularly in that valuable Branch of it to the West India Islands, and to which by some unaccountable infatuation we give a Currency; while at the same Time our Merchants cannot make Returns by any Colony Paper Money, for these Goods; it is true; sometimes they bring us Molasses from the Sugar Islands. We have a late good Law against the currency of such

Bills, but not being put in Execution, is of no Effect. *The only Reason that can be assigned for giving the Rhode-Island Bills of Currency*, is, that they are received in all Payments by Consent: The same Reason may hold good for passing of any Bills, even the 500,000 *l.* lately proposed without Fund or Period; and of counterfeit Bills, as in Fact some Bills of *Connecticut* of small Denominations, tho' known to be Counterfeit, have a currency.

CONNECTICUTT, a Charter Colony of industrious Husbandmen, having, with much Prudence emitted only small Quantities of Bills; Silver would have continued with them at 8 s. per Oz. as it did in *New York* their neighbouring Government westward, if their People had not given a Currency to the publick Bills of their Brethren, in the neighbouring Colonies of *New England*. *Connecticut* emitted Bills only for the present necessary Charges of Government upon Funds of Taxes, until A. 1733, having granted a *Charter* for Trade and Commerce to a Society in *New-London*, this Society manufactured some Bills of their own, but their Currency being soon at a Stand; the Government were obliged in Justice to the Possessors, to emit 50,000 *l.* upon *Loan* to enable those concerned in the Society to pay off their Society Bills in Colony Bills; their Charter was vacated, and a wholesome Law enacted, *That for any single Person, or Society of Persons to emit and pass Bills for Commerce or in imitation of Colony Bills, Penalty should be as in Case of Forgery, or if counterfeiting Colony Bills.* Their first Emission of Colony Bills was in A. 1709, and may have emitted in all 155,000 *l.* whereof only the above 50,000 *l.* upon *Loan*. There are at present outstanding about 60,000 *l.* which will be gradually cancelled by A. 1742, if the present good Assistants (Council) continue to be annually elected. They have at Times been guilty of emitting small Sums for the present Supply of Government (by oversight and not with any sinister Design) without annexing a Fund or Period; but have soon after been cancelled by Taxes. Their ordinary Charge of Government does not exceed 3,000 *l.* *New England* Currency per Annum.

N. B. This promiscuous Currency in the four Governments of *New England*, that is, one Colony giving a Currency to the enormous Paper Credit Emissions of one of the other Colonies, has the same Effect as if that Colony did emit Bills of its own: thus *the King's Instructions to the commissioned Governments are evaded*, by the popular Charter Governments, rendring them of no Effect, having as it were no Dependance on the Crown. *A Parliamentary Regulation is the only adequate Remedy.*

NEW-YORK chancered Proclamation Money to 8 s. per Oz. of Silver, at the same Time and for the same Reasons, as has been said of *Massachusetts-Bay Government*: A. 1709 towards the Charge of an intended Expedition against *Canada* (upon this same Occasion, began the first Paper Money Emissions of *New Jerseys & Connecticut*) they issued 13,000 *l.* publick Bills of Credit bearing Interest: A. 1710 the Interest was taken off upon pretence, that it occasion'd them to be hoarded up as Bonds, and did frustrate their Currency; and 10,000 *l.* more Bills without Interest were issued. All these Bills being small Sums and faithfully paid off & sunk in Taxes, *did not affect Exchange with England.*

A. 1714. By *collusion* of the Governour, Council and Representatives, a large Sum of 27,680 *l.* in Bills, was issued, to pay off Government Debts, whereoff some Part consisted of *their own ill founded Claims*; gradually to be cancelled by *Excise* on Liquors to A. 1734: these were issued with the *Royal Assent*.—A. 1717 for paying of Government Charges & Debts were issued 16,607 *l.* without waiting for the *Royal Approbation*, gradually to be cancelled by a *Duty* upon Wines and Rum for 17 Years and *Excise* continued from A. 1734 to A. 1739: this Emission was connived at by the *Boards* of Council, Trade and Plantations at Home; lest many Persons who had *bona fide* received them for valuable Considerations, might suffer by their being suppressed. Which Indulgence this Government have abused, by never waiting for the *Royal Assent* in their future Emissions.

In the intermediate Years were some small Emissions for Charges of Government, and regularly cancelled.—A. 1734 issued 12,000 *l.* in Bills for *Fortifications* to be gradually sunk before A. 1746 by *Imposts*.—A. 1738 issued 48,300 *l.* Bills, whereof 40,000 *l.* upon Loan; all to be sunk and paid in by A. 1750: this rais'd Exchange to 70 *per Cent.* and Silver to 9 s. 3d. per Oz. *The Lieut. Governour to obtain of the People a Governour's Allowance consented to humour them in this Emission.*

A. 1739, the Funds being otherways applied, it was found that *contrary to publick Faith*, 15,000 *l.* of the Emissions A. 1714 & 1717 were still current, and fifteen Years more upon *Excise* were enacted to cancel them. So that now there is about 70,000 *l.* in Bills of *New-York* current.

NEW JERSIES, A. 1709 issued 3,000 *l.* publick Bills of Credit upon the intended Expedition against *Canada*; and A. 1711 upon another intended *Canada* Expedition 5,000 *l.* more Bills were emitted, to be cancelled gradually

before A. 1713; but were by Acts of Assembly *postponed*, & many Bills of both Emissions were currant A. 1723.

A. 1724 emitted 40,000 *l.* in Bills whereof some small Part was to cancel the old outstanding Bills, and the rest upon Loan, to be paid in gradually in twelve Years. This being *too large an Emission* for a small Colony, their Bills became of less Value than those of *New-York*; but being yearly in good Faith, sunk, they became equal, and after some Years 2 *s.* in the Pound better than *New-York* Bills. This is a Demonstration, that the Quantity of Paper Money increasing or faithfully decreasing, sinks or raises the Value of it.—A. 1733, was issued 20,000 *l.* more upon Loan to be gradually paid in sixteen Years: this Emission *sell* their Bills to near Par with *New-York*.—A. 1734, the first Loan of A. 1724, being near sunk, the Assembly enacted a 40,000 *l.* Loan, but was not issued till A. 1736, having then obtain'd the Royal Approbation, and *passed scarce at Par with New-York*; but upon the *New-York* Emission of 48,300 *l.* A. 1738, the *Jersey* Bills are 6 *d.* in the Pound better than *New-York* Bills, and 1 *s.* in the Pound better than those of *Pensylvania*.

The *Jersey* Bills keep their Credit better than those of *Pensylvania* and *New-York* for these two Reasons, 1. *New-York* Bills not being current in *Pensylvania*, and *Pensylvania* Bills not current in *New-York*; but *Jersey* Bills current in both, all Payments between *New-York* and *Pensylvania* are made in *Jersey* Bills. 2. In the *Jerseys* failure of the Loan Payments, at the Days appointed; is confessing to Judgment, and thereafter only 30 Days Redemption of Mortgages is allowed.

The 5 *per Cent.* Interest of publick Loans defrays all *Charges of Government*. In the *Jerseys* at present about 60,000 *l.* in publick Bills current all upon Loan.

In the two Governments of *PENSYLVANIA* their Currency continued Silver Proclamation Value, until A. 1723: The three Upper Counties (strictly called *Pensylvania*) emitted upon Loan 15,000 *l.* in Bills, and A. 1724 emitted 30,000 *l.* more; but A. 1726 finding that in strictness of the two preceeding Acts 6100 *l.* part of the Capital of 45,000 *l.* was sunk the Encouragers of Paper Money procured an Act for re-emitting what should be annually paid in of the remainder by the Borrowers; and A. 1729 emitted 30,000 *l.* which have generally been continued out by *re-emitting Acts* from Time to Time. A. 1739 they made an Addition of about 11,100 *l.* upon Loan on the same Terms: so that at present they have 80,000 *l.* all upon Loan.

Exchange with *London 75 per Cent.* before Emissions of Paper Money it was only *33 per Cent.*

The three Lower Counties have also Paper Currency in small Quantities, and upon the same footing.

In MARYLAND Silver continued at Proclamation Value until A. 1734, with a considerable Concomitant *Truck Trade* as a *Medium*, viz. *Tobacco*; they then emitted 90,000 *l.* in Bills, which tho' payable to the Possessors in Sterling well secured, the Sum being too large, and the Periods too long, viz. three partial Payments of 15 Years Periods each; *Exchange immediately rose from 33 to 100 and 150 per Cent.*

VIRGINIA has the same considerable *Truck Trade Medium*, viz. *Tobacco*; and with regard to Silver Currency have kept their Integrity better than the other Colonies. It is true, *Lord Culpeper* their Governour, about A. 1680, by an arbitrary Proceeding in the quality of the King's Representative, did, by virtue of his own Proclamation, alter the Value of their Silver Coin for his own Profit, to defraud an English Regiment then paid off and disbanded, (this Regiment was sent from *England* to quell an Insurrection or Mutiny in *Virginia* under *Bacon*) but soon finding, that it occasioned much Confusion in Business, and did particularly affect his own Perquisites; he reduced it again to the former Standard. Silver a few Years ago was 6 s. a Crown British, or 6 s. 3 d. per Oz. Silver, at present it is 6 s. 8 d. per Oz. of Silver, and 5 *l.* per Oz. Gold; *is 25 per Cent. worse than Sterling.*

NORTH CAROLINA, an inconsiderable Colony scarce capable of any Fund for Paper Emissions; have notwithstanding 40,000 *l.* upon *Loan*, and 12,500 *l.* upon Funds of *Taxes*. At present Exchange is settled by their Legislature at 10 *North Carolina* for 1 *Sterling* but *in drawing upon London 12 to 14 for 1 St.*

In SOUTH CAROLINA their first Emission of publick Paper Credit was A. 1702, towards the Charges of an Expedition against *St. Augustine*. Their Legislature have been most *notoriously guilty of breach of publick Faith* in not cancelling their Bills. Besides the Emissions for ordinary Charges of Government, and their Expeditions against the *North Carolina Indians* A. 1711, and against the *Southern Indians* A. 1715, they have large Sums upon *Loans*. They may have at present outstanding about 250,000 *l.* in Province Bills (whereof above 100,000 *l.* without Fund or Period) besides private Notes of substantial Merchants negotiated, payable upon Demand in Province Bills; they have also a valuable *Truck*, viz. *Rice*. Their present Exchange

with *London* as settled by their Legislature to ascertain the Value of Debts contracted, is 8 *South Carolina* for 1 *Sterling*.

In the new Colony of *GEORGIA*, their Currency are the Trustees *sola Bills Sterling*: the Funds are the Allowances by Parliament, and private Subscriptions to carry on the Settlement.

PROVIDENCE including the rest of the *Bahama* Islands is scarce reckoned a Colony.

In *BERMUDAS* a Colony of Sea Carriers; their Currency continues *Proclamation* Value.

BARBADOES: Their Currency is *Proclamation* Value, by weight 6 s. 10 d. *farthing* per Oz. Silver. By the Advice of Mr. W. from *New England*, they made the Experiment of a Paper Currency, and emitted 16,000 l. upon the *Negroe Tax* Fund, and soon after 80,000 l. more upon *Loan*; these Bills immediately fell 40 *per Cent.* below Silver, and upon Complaint were directly suppressed by an Order from *England*; and some of the Possessors who gave them a Currency have Quantities of them to show as a Monument of this Folly, and of Paper Money becoming waste Paper.

Here as in all our Sugar Islands, *Sugar* according to its Quality at the Market Price, serves as a *Trade Medium* to pay Debts. *The Par of Exchange* is 33 *per Cent.* but generally lower and in favour of *Barbadoes*.

The *CARRIBEE LEEWARD ISLANDS* of *Antegoe, Newis, St. Christophers, Montserrat, & the Virgins*, have depreciated from Silver *Proclamation* Value to 8 s. per Oz. in the same Manner as has been said of *Massachusetts-Bay*; but never proceeded to that Fraud, Paper Money: light Pieces of Eight are current by Tale. *Exchange* 50 *per Cent. Advance*.

In *JAMAICA* formerly a heavy Piece of Eight current at 5 s. but light Money taking Place at a Currency; the heavy Money was ship'd off in course of Time at 10, 15, 20, & 25 *per Cent.* as at present, Difference. At this Time a light Piece of Eight passes at 5 s. a heavy Piece of Eight at 6 s. 3 d. and Silver at 7 s. 2 d. per Oz. *The Par of Exchange with London* is about 36 *per Cent. difference*, but generally higher and in favour of *London*.

Thus we see, that particularly in our Paper Money Colonies, the Currencies have incredibly depreciated from *Sterling*, and from one another. *Exchange with Great Britain* being at this Time (Febr. 1739) in *New England* 450 *per Cent.* in *New-York, Jerseys, & Pensylvania* 70 to 75 *per Cent.* in *Maryland* 150 *per Cent.* in *North Carolina* 1100 to 1300 *per Cent.* in *South Carolina* 700 *per Cent.* worse than *Sterling*.

To make a Bill or Note bearing no Interest, and not payable till after a dozen or score of Years, a legal ready Money Tender (under the highest Penalties as in *New-York* and *Jerseys*) in Payment of Debts, is the highest of *despotick* and arbitrary Government: *France* never made their State Bills a common Tender. Our Paper Money Colonies have carried the Iniquity still further; the Popular or *Democratick* Part of the Constitution are generally in Debt, and by their too great Weight or Influence in Elections, have made a depreciating Currency, a Tender for Contracts done many Years before; that is, *they impose upon the Creditor side in private Contracts*, which the most *despotick* Powers never assumed. An Instance of a still further arbitrary Proceeding in relation to Paper Money was an Act of Assembly in *New Jerseys* A. 1723, whereby *Executions for Debt were stayed until Paper Money should be issued*.

The Mystery of the infatuation of our Colonies running Headlong into a depreciating Paper Currency may be this: In many of our Plantations of late Years, by bad Management and Extravagancies, the Majority of the People are become *Debtors*, hence their Elected Representation in the Legislature have a great Chance to be generally of the Debtors Side: or in other Words, the *Representatives* being generally Freeholders, and many of them *much in Debt*; by large Emissions their Lands rise in Denomination Value while their Debts becomes really less, and the Creditor is defrauded in Part of his Debt. Thus our Colonies have defrauded more in a few Years, than bad Administrations in *Europe* have formerly done in some Centuries. The great Damage done to the generous Merchants at Home, and to the industrious fair Dealers amongst our selves; call aloud, for some speedy and effectual Relief from the supreme Legislature the *Parliament of Great Britain*.

There is an Argument, which tho' not much attended to here, may be of some Weight at Home, viz. *That the Government at Home ought to connive at Paper Money in the Colonies*, because by indulging them in this Error, all the Silver which they acquire from Time to Time is sent to *Great Britain*; and by the *chimaera* of a fallacious Cash, Extravagancies are encouraged in favour of a great Consumption of British Goods: *This ought to be an Argument with us against that Paper Currency*, which tends to turn the Ballance of Trade so much against us. It is true, That *Great Britain* naturally ought to reap some Profit by its Plantation Improvements: but a good Husbandman improves his Lands not by working them out of Heart (as the Term is) but

by manuring them, that they may yield the better Crops: besides, what the British Merchants lose in their Returns by the Colony Bills depreciating, and by the Bankruptcy of their Factors and Dealers here; is much more than what *Great Britain* gets, on the abovesaid Accounts.

In the Sequel of this Discourse, I shall 1. Enumerate the Inconveniencies and bad Effects of our large Emissions of Paper Money. 2. Endeavour to remove the Prejudices which some designing Men have infused into the Minds of the Populace in favour of Bills of Credit. 3. Consider several Projections or Schemes to rectify our Currency and present Circumstances, or to prevent their growing worse.

The Mischiefs arising from a large Paper Currency are,

I. With regard to *the particular and immediate Sufferers thereby.*

1. *The Labourers and Trades-men*, who in all Countries, are the Hands which feed the Belly of the Common Wealth, and therefore *deserve our chief Regard*. How much they have suffered and continue to suffer is obvious: For Instance, a Carpenter when Silver was at 8 s. per Oz. his Wages were 5 s. a Day all Cash. The Town House A. 1712 was built at this Rate; whereas at present A. 1739 from the bad Influence of Paper Money Silver being 29 s. per Oz. he has only 12 s. a Day, equal only to 3 s. 4 d. of former Times; and even this is further reduced, by obliging him to take one half in Shop Goods at 25 per Cent. or more Advance above the Money Price: this Iniquity still grows, by reducing the Goods Part to the least vendable; the Shopkeeper refusing to let them have Provisions, West India Goods, or Goods of *Great Britain* that are in Demand.

To make the Case more familiar, Suppose a Tradesman laying in his Winter Store, when Wages were at 5 s. with one Day's Labour he purchases 15 Pound of Butter being 4 d per Pound (I use Butter because it rises the most uniformly of all Provisions) at present his 12 s a Day purchases only 7 Pound of Butter at 20 d a Pound. *The Clergy* or settled Preachers to Congregations in *Boston*, no Offence in classing them with Labourers, when Silver was at 5 s. had 3 l. per Week, at present Silver at 29 s. per Oz. they have only 6 l. to 8 l. equal to 40 s. of former Times.

The *Shopkeepers* are become as it were Bankers between the Merchants and Tradesmen, and do impose upon both egregiously. Shop Notes that great and insufferable Grievance of Tradesmen, were not in Use until much Paper Money took Place: this Pay in Goods which generally are of no necessary Use (Provisions and West India Goods at this Time are removed

from that Denomination) encourage Extravagance in Apparel and Furniture much above our Condition.

2. *The Merchants of Great Britain Adventurers to New England, because of their largest Dealings have suffered most.* Their Goods are here generally sold at a long Credit, while the Denominations of the Money in which they are to be paid, continues depreciating; so that they are paid in a less Value than was contracted for: thus our Bills have successively depreciated from 8 s. per Oz. Silver A. 1713, to 29 s. in this Year 1739; that is, if we could suppose the same Person to have constantly followed this Trade (without extraordinary Hits) for that space of Time, *he must have reduced his Estate after the rate of 8 s. only for 29 s.* For every Shilling in the Pound that Silver rises in Price, or, which is the same, for every Shilling in the Pound that the Denomination of our Paper Money depreciates, the Creditor actually loses 5 per Cent. of his Debt.

There have been from Time to Time *seeking Factors*, who to procure Business from Home, have entred into Engagements which could not possibly be complied with: these having little or nothing of their own to loose, soon make desperate Work of it; become Bankrupts, and from a general insensibility of discredit, do notwithstanding keep their Countenance as before.

Many *Factors* to dazle their Employers for a Time, and in the mean while to procure more Consignments; send Home a high Account of Sales, by the Shopkeepers giving a great Advance in Consideration of a very long Credit, and to be drawn out in Shop Notes. This Practice has so much prevailed, that it is now become a fixed tho' pernicious and ruinous Custom.

As Paper Money pays no Debts abroad, the Factor is obliged to give an extra Quantity of it, to purchase Silver, and other Returns; which can be exported, to satisfy Debts; in this Shape also the Merchant becomes a Sufferer.

3. *Widows, Orphans, Funds for Charity* at Interest, and all other Creditors; by Bonds, Notes, & Book Debts, acquired by Industry, good Management, and Frugality; are great Sufferers from Time to Time: For Instance, from Autumn A. 1733 to Autumn A. 1734 Silver rose from 22 s. to 27 s. per Oz. this was a Loss of 23 per Cent. of the Principal.

II. *The repeated large Emissions of Paper Money are the Cause of the frequent rise of the Price of Silver and Exchange;* that is, of the publick Bills of Currency depreciating in all the Paper Money Colonies; which do as

regularly follow the same, as the Tides do the *Phases* or course of the Moon. When no larger Sums are emitted for some Time, than what are cancelled of former Emissions; Silver and Exchange are at a Stand; when less is emitted than cancelled (which seldom happens) Silver and Exchange do fall. This is plain to a kind of Demonstration, from the Instance in the History of our Paper Money Emissions in *New England*.

After Silver had rose A. 1706 to 8 s. per Oz. by light Pieces of Eight superseding the heavy Pieces; it continued at that Rate, while Paper Emissions did not exceed a due Proportion to the current Silver. A. 1714 we emitted 50,000 *l.* upon Loan, and A. 1715 in *Rhode-Island* 40,000 *l.* besides Emissions on distant Funds for Charges of Government; in the Autumn A. 1715 Silver became 15 per Cent. Advance above 8 s. that is about 9 s. 2 d. per Oz. *Massachusetts-Bay* A. 1717 emitted 100,000 *l.* upon Loan and a very long Period; Silver rose to 12 s. per Oz. A. 1721 *Massachusetts-Bay* emitted 50,000 *l.* and *Rhode-Island* 40,000 *l.* upon Loan, Silver A. 1722 became 14 s. per Oz. From that Time a chargeable Indian War, required large Emissions, and Silver rose to 16 s per Oz. it continued at this Rate till A. 1728, Emissions not being larger than Cancellings. A. 1727 *Massachusetts-Bay* emitted 60,000 *l.* and A. 1728 *Rhode-Island* emitted 40,000 *l.* upon Loans; Silver became 18 s. per Oz. A. 1731 *Rhode-Island* emitted 60,000 *l.* upon Loan. (*N. B.* Besides the several Loans in the course of this History, all the Charges of the four Governments were defrayed by Paper Emissions) and Silver became A. 1732, 21 s. per Oz. A. 1733 *Massachusetts-Bay* emitted 76,000 *l.* upon Funds of Taxes, *Rhode-Island* 104,000 *l.* upon Loan and Taxes, *Connecticut* 50,000 *l.* upon Loan, and A. 1734 Silver became 27 s. per Ounce. From A. 1734 to A. 1738 more Bills were cancelled than emitted, Exchange fell from 440 to 400 per Cent. Advance. A. 1738 *Rhode-Island* emitted 100,000 *l.* upon Loan, Silver rose from 27 s. to 29 s. per Oz.

In *New England*, as in all other trading Countries, from some particular Accidents and Circumstances, there happened at Times, some small fluctuations in Exchange, without any regard to Emissions of Paper Money. At all Times, when Returns in Ship Building, Whale Oil and Fins, Naval Stores &c. turn out well at Home; Silver and Exchange here suffer a small fall: at other Times when these prove bad Returns, Silver and Exchange rise a small Matter; the most noted Instance was A. 1729, when the usual Returns to *Great Britain* turned to bad Account; the Merchants from Home, directed their Factors here, to make Remittances in Silver or Exchange only, and at

any Rate; together with an Agency from this Province and that of *Connecticut*, fitted out with a Silver Supply; Silver rose very considerably, but after a few Months fell again to the former Price.

The Instance of *Barbadoes* must put this Assertion beyond all Dispute with sober thinking honest Men. A. 1702 by the Perswasion of Mr. W. from New England, *Barbadoes* emitted 16,000 *l.* Bills of publick Credit on a Fund of 3 s. 9 d. Negroe Tax; at first they passed at a Discount, but no more being emitted, and the Period of cancelling being short, they rose again to near *Par*: this encouraged them to make an enormous Emission of 80,000 *l.* Bills on Land Security at 4 per Cent. Principal payable after 5 Years: These Bills immediately fell 40 per Cent. below Silver: by an Order from Home, they were soon suppressed, and their Currency became Silver Value as before. That Province has ever since kept their Currency up to Proclamation Value, Ballance of Trade in their Favour, Exchange to *Great Britain* being generally under 33 per Cent. the *Par*.

III. *Large repeated Emissions of publick Bills of Credit called Paper Money, is no addition to the Medium of Trade.* No Country can have an indefinite or unlimited Credit; the further a Country endeavours to stretch its Credit beyond a certain Pitch, the more it depreciates. The Credit of a Country may be compared to that of a private Trader; if his Credit is equal to 100,000 *l.* Sterl. his Notes of Hand for 100,000 *l.* will be as good as Silver; if it be known that he passes Notes of Hand for 200,000 *l.* Sterl. their full Credit will be suspected and eventually be worth no more than his real Credit 100,000 *l.* Sterl: if he can be supposed to utter 500,000 *l.* Bills or Notes, his 5 *l.* Note will be worth only 20 s. Sterling.

In *New England* A. 1713 there were about *two thirds* Bills to *one third* Silver current, equally at 8 s. per Oz. Silver Value; there being an Allowance of 5 per Cent. in all publick Payments in favour of Bills only, gave them a Credit beyond their natural Stretch. At that Time the publick Bills of the four Provinces were about 175,000 *l.* at 8 s. per Oz. Silver Value (we use always the nearest round Numbers) is 438,000 Oz. Value, with 219,000 Oz. of Silver Currency is 657,000 Oz. Silver Value. A. 1718 the publick Bills of *New England* were 300,000 *l.* (Silver all drove away by the worse Currency of Bills) at 121. per Oz. Silver; is 500,000 Oz. Value in Silver. A. 1731 *New England* publick Bills were 470,000 *l.* at 20 s. per Silver, is 470,000 Oz. Silver Value. A. 1730 the current Paper Money of *New England* was 630,000 *l.* at 29 s. per Oz. Silver is in Value 434,000 Oz. Silver. Here it is plain that the

more Paper Money we emit our real Value of Currency or *Medium* becomes less, and *what we emit beyond the trading Credit of the Country does not add to the real Medium, but rather diminishes from it, by creating an Opinion against us, of bad Oeconomy and sinking Credit.*

A Country may exceed in any Commodity or *Medium*, excepting in that universally Staple Commodity and Medium Silver; and a smaller Quantity of any other Commodity or Medium will turn to the same or better Account than a larger. In *Holland* upon a too large Importation of Spices, they destroy some Part, to keep up the Value of Spices. Not long since in *Virginia*, finding that Tobacco (their Currency as well as Export) by its too large Cultivation began to depreciate; by Act of Assembly they restricted it to 1000 *l. wt.* per Annum per Tythable. In *Maryland* A. 1734 & A. 1735 for the same Reason they burnt yearly 150 *l. wt.* per Rateable. If our House of Representatives allow our Paper Money to be cancelled in Course, and be sparing in the Manufacture of more; the Value of the remainder, would be equal to the Value of the whole now current, or proposed to be added to the Currency.

It is therefore vain and inconsistent to make *Provincial* or Municipal Bills of Credit, for a Medium of general Trade: Merchants know how to find their own Tools or *Medium* of Trade, better than any Civil Administration can prescribe: in Fact, they who call out loudest for this Paper *Medium*, are not our large Traders; but such as would take up Money at any bad lay, *viz.* the Idle, those in desperate Circumstances, and the Extravagant; who never can have any other Claim to Money but by Fraud; we must except some who tho' naturally honest are misguided. Publick Bills of Credit in a proper Sense are only to defray the incident Charges of Government which may accrue, before the proper Ways and Means of Taxes can take Place; but so soon as can be, to be cancelled by those Taxes. We know of no Country in *Europe*, where Exchequer Notes, State Bills, or other Bills of publick Credit, have been issued by the Government for a *Medium* of Trade.

IV. *This infatuation in favour of Paper Money has had a mutinous bad Effect upon the Civil Government, in several of our Colonies.* The Representatives of the People, have frequently refused to provide for the necessary Charges of Government, and other wholesome Laws; because the Governours & Councils would not (in breach of their Instructions from the Crown) concur in emitting large Sums of Paper Money to defraud the industrious Creditor and fair Dealer. I shall mention only a few Instances. In *S. Carolina*

A. 1719, the People deposed the Proprietors Governour on this Account: it is true, the King did not much resent this Mutiny; perhaps, that the Proprietors might be weary of their Property and Government; and accordingly seven of the eight Proprietors, for a small Consideration, did A. 1729 resign and sell to the Crown: Upon Governour *Johnson's* arrival in *S. Carolina* A. 1731, there had been no Supply granted in the four preceeding Years. The Government of the *Massachusetts-Bay*, has from Time to Time been distressed, by our Representatives refusing Supplies for the necessary Charges of Government, and other publick Affairs neglected on this Account: *Our present Governour's Fortitude and steady Adherence to the King's Instructions, & his having shortned the long Periods of Emissions for Charges of Government (I am under no Obligation to flatter) are highly laudable.* *New Hampshire* Representatives for five Years preceeding A. 1736 granted no Supply. As the French humour of building Forts, to protect their Settlements against an Enemy is perverted to the enslaving of the Subject; and as the Spanish humour of Devotion, in building Churches and Convents, is perverted, by their becoming Nurseries of Idleness and other Vices; so the *English Liberty and Property of the Subject*, in many of our Plantations are sometimes abused, to levelling and licentiousness; it is true, all Men are naturally equal, but Society requires subordination.

V. *Long Credit, is not one of the least of the bad Effects of Paper Money.* People run in Debt, endeavour after a long Credit, and refuse paying their Debts when due; because while Bills are continually depreciating, the longer the Debt is outstanding, they pay their Creditors with a less and less Value, than was contracted for. *Sir Alexander Cumings* in his Defence wrote A. 1729, says, that in his Time in *South Carolina*, pay after twelve Months, was reckoned as ready Money. Long Credit thus obtained, does in its turn, forward a bad Currency, they go Hand in Hand. A Creditor after being long out of his Money, chuses rather to take the bad Currency and run the Risque of passing it off again (as was the Case of the *Rhode-Island* Emissions A. 1733 & 1738) than of losing his Debt, if another Creditor should take it, and the Debtor afterwards become Insolvent.

With ready Money or short Credit, Business goes on brisk and easy. *Long Credit* occasions the unthinking of all Conditions and Occupations, to involve themselves. A Merchant over-trades himself, a Shopkeeper buys more Goods, and at a greater Advance than he can afterwards comply with; the Countryman buys and Mortgages Lands, to his final Ruin.

VI. *Insensibility of Discredit, does naturally follow long Credit:* All Shame and Modesty is banished even in the Creditor; who tho' formerly a modest forbearing Man, is now obliged to Dun incessantly or lose his Debt. Ready Money and short Credit, give a quick Circulation; the quicker the Circulation, the less Quantity of *Medium* is required to carry on the same Trade and Business: long Credit, and insensibility of Discredit, have the contrary Effect. There are at present extant of *New England* publick Bills of Credit about 630,000 *l.* a much larger Sum than ever was extant at any other Time; yet Money was never so scarce and Debts worse paid: *People chuse rather to hoard it up, and wait for better Times, than put it out and not be able to recover it again, but after an unreasonable Length of Time and much Trouble; Money hoarded up, is the same as if not in being, as to Currency.* If a Shopkeeper does not clear with his Merchant, till after two or three Years due; he is notwithstanding esteem'd as honest as his Neighbour: Our Courts are full of plain Bonds, and Notes of Hand; Appeals on them are allowed, Executions delay'd &c. This insensibility of Discredit, breaks all Friendship; it makes a Man cautious of lending his Money to his best Friend, and nearest Relation.

A general Clamour for a depreciating Paper Currency, is a certain Sign of the Country being generally in bad Circumstances, that is, *in Debt*; because all Creditors who by their Industry and Frugality have acquired Rents, Bonds, Notes and Book Debts, loose by its depreciating; and the Debtors (the Idle and Extravagant Part of the People) come off easy by the Creditors loss. Seeing they who are desperately in Debt, and want to pay a smaller Value than contracted for, for they *who have nothing to lose, are generally of the Party for Paper Money*; this ought to be a strong Prejudice against it, with sober thinking Men.

We have *some prevailing Customs and some Laws in force*, which seem to encourage this *insensibility of Discredit* in Debtors; 1. *A Maxim amongst Shopkeepers*; That the most ready Way to grow rich, without any Expence of Industry; is, to run boldly in Debt, procure a long Credit, after Time of Payment is elapsed to bear Dunning with a good Face, and finally to let the Debt take its full Course in the Law, which further requires twelve Months or more, at a small Cost: Notwithstanding this Chain of Iniquity, the Debtor keeps his Countenance, and many Factors continue to trust him with their Employers Goods as formerly. 2. *Estates too easily allowed to be represented as Insolvent*; whereby Creditors are defrauded of some Part of their Due. 3.

Appeals upon plain Bonds, Notes of Hand, and Defaults, to the great Relief of the fraudulent Debtor, and Damage of the honest Creditor. 4. Sheriffs impune delay of Executions, while the Creditor is allowed neither Interest not Damage upon the Debt. 5. The too general Laws for the relief of insolvent Debtors, whereby the Fraudulent, the Idle, and the Extravagant, when sent to Gaol; are too soon, and at too easy a Rate turned loose to follow the same Courses. What I have here said, cannot be understood in contempt of our Legislative Authority; because of that valuable Privilege belonging to our Constitution, viz. of repealing, amending, or explaining what Laws from Experience may be found to require the same.

The Arguments current amongst the Populace in favour of Paper Money are,

I. In most of the Paper Money Colonies one of the principal Reasons alledged for their first Emissions; was, *to prevent Usurers imposing high Interest upon Borrowers, from the scarcity of Silver Money*, it is true, that in all Countries the increased Quantity of Silver, falls the Interest or Use of Money; but large Emissions of Paper Money does naturally rise the Interest to make good the stoking Principal: for Instance, in the Autumn A. 1737 Silver was at 26 to 27 s. per Oz. but by a large *Rhode Island* Emission, it became in Autumn 1739, 29 s. per Oz. this is 7 per Cent. loss of Principal, therefore the Lender to save his Principal from sinking requires 13 per Cent. natural Interest (our legal Interest being 6 per Cent.) for that Year. In Autumn A. 1733 Silver was 22 s. per Oz. by large Emissions it became 27 s. in the Autumn A. 1734; is 22 per Cent. loss of Principal, and the Lender to save his Principal requires 28 per Cent. *natural Interest* for that Year. Thus *the larger the Emissions, natural Interest becomes the higher*; therefore the Advocates for Paper Money (who are generally indigent Men, and Borrowers) ought not to complain, when they hire Money at a dear nominal Rate.

If Bills were to depreciate after a certain Rate, Justice might be done to both contracting Parties, by imposing the loss, which the Principal may sustain in any certain space of Time (the Period of Payment) upon the Interest of a Bond or Price of Goods: but as depreciations are uncertain, great Confusions in Dealings happen.

II. *That the Merchants arbitrary Rise upon the Price of Goods, does from Time to Time depreciate the Denominations of our Paper Money*, is imposed upon the unthinking Part of the People, as a certain Truth, by designing Men. It is certain, that in all Countries of *Europe*, where by Recoinages or Proclamations, the current Specie has been debased; the nominal Price of

Goods did naturally rise in Proportion: is it not more natural to say, that formerly in *France* their recoinings or lessening the Value of their Denominations, did rise the Price of Goods; than to say that the Rise of the Price of Goods, was the Cause of their Recoinages. A continued Rise on Goods in general is from a depreciating *Medium*; but fluctuations in particular Goods, are from the Quantities and Demand; thus A. 1739 Provisions the most Staple of all Commodities, have been cheap, *viz.* Wheat at 10 s. per Bushel, Silver being 29 s. per Ounce, whereas A. 1738 Wheat was at 18 s. per Bushel, when Silver was only 27 s. per Oz.

When a large Emission can be foreseen the Price of Goods rises; because being sold upon long Credit, the effects of the Emission will take Place before the Time of Payment: hence it is that *generally the Price of Goods Advances, before Exchange and Silver do rise*; Exchange and Silver being bought with ready Money, cannot take Place until the Addition is made to the Currency by this new Emission, and then only gradually as the Merchant receives his Pay; thus the large Emissions of A. 1733 did not bring Silver to its heighth, 27 s. per Oz. until Autumn, A. 1734: Hence proceeds that inculcated Fallacy of the Advance on Goods rising the Price of Silver and Exchange. The same Reason for Lenders of Money, imposing a high Interest, holds in the Rise of the Price of Goods: Custom has given a long Credit, Insensibility of Discredit, makes it still longer, and before the Merchant is paid, the Currency is become much depreciated.

III. *The Sticklers for Paper-Credit requiring long Periods, as well as large Emissions is a most unnatural Desire.* Some of the *Massachusetts-Bay* Loan, of A. 1717 is still outstanding A. 1739: The several *Rhode-Island* Loans do not terminate in less than 20 Years: By this natural Contrivance they oblige Posterity to supply the Extravagancies of their Parents and Ancestors, instead of the common and natural Instinct of Parents providing for their Children.

IV. *It is not repeated large Emissions of a base Paper-Currency, but our Imports exceeding our Exports, that occasions Silver to be ship'd off in Balance; therefore we are not to expect a Silver-Currency supposing all Bills cancelled.* Before Paper-Money took Place in *New England*, Silver abounded in Currency as much and perhaps more, than in many of our Colonies: Our Exports are always in Demand, *viz.* Ship-building, all Branches of Fishery, Naval-Stores to *Great Britain*, Logwood from the Bay of *Honduras*, Lumber, Stock, and other Provisions to the other Colonies; and (*Bermudians* excepted) our Navigation is the cheapest of all Carriers. Silver began to be

generally ship'd off as Paper became the Currency; which gave the Merchant the Liberty of shipping off his Silver as Merchandise, which otherways he must have kept as Cash, seeing no Business can be carried on to Advantage without Cash. In all Countries if a bad *Medium* is introduced, People take care to secure the better *Mediums* and they are no more current.

The Fallacy of Quantities of Paper-Money, has increased our superfluous Imports, much beyond what was in former Times. The *seeking Factors* upon a large Emission, advise the Merchant in *Great Britain*, that Money being now very Plenty, a large Quantity of Goods will sell: Accordingly a Glut of Goods is sent to *New England*, more than can be sold for ready Money and short Credit; the Consequence is, a long Credit, with its consequential Multitude of Evils; that is Returns or Exports in full, are never, or not, till after a long Time, ship'd off.

Our Paper-Money being only passable amongst our selves, is the Reason, why, *they who deal only in buying and selling a Share, get the most Money*; all their Profits are upon our selves, and run no Risque of precarious Returns; while the generous Merchant looses upon his Exports to a foreign Market. This is a ruinous Case.

As Paper-Money grows scarce, Imports will be less, and be sold cheaper; no Country can want a true real Medium of Trade, while their Exports exceed their Imports: Let us then lessen our Imports by our Frugality, and add to our Exports by our Industry; and we shall have no occasion for this *chimerical ill founded Medium, Paper Money*.

V. *The goodly Appearance, which Boston and the Country in general at present, make in fine Houses, Equipage, and Dress, is owing to Paper Money*. All our Plantations from some Infatuation, are inclinable to run into Prodigality, Profuseness, and Show: these Paper Loans (from publick or private Schemes) upon long Periods, give the unthinking and unwary, Opportunities of involving themselves, by thus sinking what they have borrowed; by repeated Emissions, they have Opportunities of paying a former Debt, by running further in Debt, till at length they become Insolvents. People do not consider, that all Emissions upon Funds of Taxes or upon Loans, is running the Country more and more in Debt, and will in Course fall heavy upon every Individual. Never were greater Complaints of want of Money, while at the same Time, never more extravagance in Equipages and Dress. *Boston, like a private Man of a small Fortune, does not become richer but poorer, by a rich goodly Appearance*.

What Part of these Emissions have we laid out in Improvements of Produce, or Manufacture? Not any. It is true, it gave some Men Opportunities of building Vessels and running into Trade; but their Education and Experience not laying that Way, and having no other Bottom of their own, they soon became *broken Merchants*.

Expending in fine Houses & Apparel what ought to have purchased Exports, is one of the Reasons, why Ballance of Trade is against us.

There is another Fund for all this finery, and of which we ought not to boast, but be ashamed. By the Means of a depreciating Currency the Merchant at Home, has been paid in less Value, than was contracted for; his Loss was our Gain. Several Factors from Time to Time, have by Artifice, & Assurance, procured large Commissions from Home, and with Effrontery and Insensibility of Discredit, have become Bankrupts: Thus the Produce of these Effects remained here, and makes good in some Sense, that Position of Dr. *Mandevilles*; Private Vices are publick Benefits.

VI. *This Country formerly had but a small Trade, now our Trade being much enlarged, we require a large Medium.* This like all the Arguments commonly used to pervert the People, is very unnatural: because the more a Country grows in good Trade, the more true *Medium* of Trade it acquires, and would have no Occasion, to have recourse to a fallacious *Succedanium* or Shift. Notwithstanding the vast Floods of Paper Money lately emitted, and our Trade also more general; we find that in former Times, the People were more willing and able to pay high Rates, than at present. The first Assembly upon the new Charter, did in *June A. 1692*, lay a Tax of 30,000 *l.* (equal to upwards of 120,000 *l.* present Currency) payable within the Year, *viz.* one half before 25th of *December A. 1692*, and the other half before 1st of *May 1693*; towards paying off Charges formerly incurred by the *Canada Expedition* and Charges of that Year. *A. 1694* the Tax was 17,589 *l.* (equal to upwards of 70,000 *l.* present Currency) towards paying off the Government Charges of that and the preceeding Year. Whereas, we who reckon our selves so much increased in Trade at present *A. 1739* refuse a small Rate of about only 50,000 *l.* towards paying Government Charges incurred *A. 1728*, *A. 1733*, and *A. 1737*.

VII. *How can we pay our Taxes and Debts, if the Government do not make large Emissions of Paper Money?* In all Countries excepting in Paper Money Colonies, the People support the Government: it is absurd to imagine that a Government finds Money for its People, it is the People who by their Trade

and Industry, provide not only for their own Subsistence, but also for the Support of Government, and to find their own *Tools* or *Medium* of Trade. It is true, the Government, that is, the Stewards of the Publick, may by the Consent of their Principals, the collective Body of the People; raise Money upon the Credit of the Real and Personal Estates of the People: but this in Propriety of Speech, is not making (or acquiring) of Money as we term it, but the reverse: A Prodigal who involves his Estate to raise ready Money, is it not ridiculous to say he has made so much Money; whereas in effect he has spent so much Money by sinking some Part of his Estate. The unthinking Part of our People do not consider, that *every Emission of Paper Credit called Money, is laying a heavy Tax upon us*, which in Time will contribute to our Misery: and is really analogous to the Negroes in *Guinea*, who sell their Progeny into Slavery, for the sake of raising some ready Pence.

Our present Rates, are only a calling in Bills formerly Emitted, and therefore are supposed in being, and do not require a new Emission. This Cry is the same, as if a private Person borrows of another 100 *l.* payable after some Time, and in the mean while by profuseness and bad Oeconomy, becomes incapable of satisfying the Debt when the Term of Payment is come: but says to the Lender, you use me very ill, if you do not lend me 200 *l.* to enable me to pay the first 100 *l.* and for other Occasions: If the Lender proceeds thus to indulge the Borrower, this bad Husband must at length be reduced to a State of Bankruptcy: *Province Bills are as much a Debt upon the collective Body of the People; as a private Man's Bonds and Notes of Hand, are a Debt upon himself.*

VIII. *The Emission of 35,000 l. to 40,000 per Ann. for the ordinary Charges of Government, is a small insignificant addition to our Currency; publick Loans have been found inconvenient; let us then emit large Sums in Province Bills (the Charge of making Bills is a Trifle) towards publick Edifices, Fortifications, Guarda Costas, Bridges, Castles in the Air, or any Thing, tho' of no Use or Consequence: they will draw out larger Sums, and considerably increase our Currency.* They do not consider, that this contracting a large unnecessary Debt, to be redeemed after some Years, by heavy Rates and Taxes, will occasion a Clamour, perhaps a Mutiny, worse than the present groundless Complaints of Oppression. Such unnecessary Impositions are frequently Grounds of Complaint in the People against some Governours; but that the People should thus impose upon themselves, is one of the unnatural Effects of Paper Money.

IX. *Seeing, there is like to be no Stop to our Infatuation in receiving the depreciating Bills of Rhode-Island; why should they reap all the Profit in our Ruin: why should not some of our merciful Selves (as the Authors of the 500,000 l. Scheme call themselves) partake with them in the Plunder, by taking the Advantage of our present Indispositions & Weakness. Carry the Imposition further than that of Rhode-Island; even beyond what could have entred into the Heart of Man, at any other Time or Place, to conceive: I mean the emitting of 500,000 l. in Notes without Fund or Period; a Project, to outdo the Rhode-Islanders in Fraud, & to make these Bills more current, because worse than those of Rhode-Island: it is almost incredible to what a Pitch of Iniquity some People are arrived, even prophanely to lard their Proposals with Scripture Phrases, to impose upon the Vulgar waste Paper, instead of a valuable Medium.*

The several Projections or Schemes which occur at present, towards rectifying our Currency, or at least to prevent its growing worse, are

I. Of a publick Nature.

1. *Is palliative, to prevent its growing worse, by bringing it to a Standard. By Act of Assembly let the Governour and Council be impowred, with the Advice of Merchants, to settle once or twice a Year the Price of Exchange to London, or of Silver, in Province Bills; all Bonds, Notes, and Book Debts when paid, shall be received in Province Bills equal in Value to the Exchange or Price of Silver, as it was thus settled at the Time of contracting: For Instance, if contract for 500 l. New England Bills of Credit when Exchange is settled at 5 New England for 1 Sterling, and when the Contract is to be satisfied, Exchange is settled at 6 for 1; I must pay the true or Sterling Value, which is 600 l. New England Bills: this is strict Equity and natural Justice, it will effectually obviate the fraudulent Practices of those who are constantly clamouring for more Province Bills, and prevent the neighbouring Colonies from imposing their depreciating Bills upon us. Both Carolina's have given us a successful Precedent.*

2. *As private Credit, being under Coercion, is better than publick Faith, which being above the Law, is lawless. Let the Legislature give a Sanction to some Society, of good substantial Men, who may be willing to emit Bills upon a good Silver Bottom, continually meliorating at a small Rate, v.g. 3 per Cent. per Ann. to prevent their being hoarded up; and receivable in Taxes and all publick Payments: Such Bills will soon bring a Discount upon all other Bills. We have at this Time (Christmas A. 1739.) a remarkable Instance of*

private Credit being good, and publick Faith of no Account: *Merchants Notes* (a private Emission some Years ago upon a Silver Bottom) are sold at 33 per Cent. Advance, their true Value above common Currency; at the same Time, *our Province Bills of the new Tenor*, which in good Faith are 25 per Cent. better than the other Currencies, pass promiscuously with the bad Currencies at *Par*.

3. Let *Massachusetts-Bay Bills* only, be receivable by the Treasurer of the Province, Counties, & Towns; all Bills of the old Tenor when brought into their Treasury, to issue out no more: *that all publick Bills hereafter to be emitted, be of the Nature of our late Bills of a new Tenor*, with this additional Clause, "And after the last of *December A.* ——— the Treasurer is hereby directed, without further Advice or Order, to pay to the Bearer ——— Silver or ——— Gold upon Sight": The Fund for bringing in this Silver and Gold from abroad, to be Impost upon Goods, Tonnage, and Light-House Money, payable in Silver or Gold only. At the several Emissions, let there be an equal Sum taxed on subsequent Years within the Period; and these Taxes at the same Time assessed on the several Towns, ordering the Province Treasurer at the stated Times to issue out his Warrants accordingly without further Order; to prevent breach of Faith in future Assemblies, refusing to assess the Taxes of the Year, which is the same as postponing. Thus all these Bills will have the *Credit of a Silver Bottom*, tho' in their Nature they will be cancelled in Course by Taxes, before the Period of redeeming them by *Silver* arrive; that is, *there will be none left to make a Demand upon the Treasury*: the *Silver* lodged, will, after the Period, be ready for any Exigency of Government. In Fact, if breach of publick Faith do not intervene; *the present Bills of the new Tenor will, by the end of December A. 1742, bring Silver to: 20 s. per Oz.*—Let all new Emissions be in *Bills of a second new Tenor*, two for three of the first new Tenor, payable in Silver or Gold after the last of *December A.* ——— if not paid in by Taxes as above. Thus *Silver will be brought to 13 s. 4 l. per Oz.*—Finally, after some Years let all future Emissions be in *Bills of a third new Tenor* 1 for 2 of the second Tenor, payable in Silver or Gold after the last of *December A.* ——— with the forementioned Circumstances; *Silver will then be 6 s. 8 d. per Oz.* It is plain, that 100,000 *l.* of this last Money, will be a larger Medium of Trade, than 400,000 *l.* of the present Currency. *This promises best, and would be a gradual, gentle, and easy Method of making our Currency as valuable as that of Virginia*, which is the most valuable of all our Colony Currencies.

4. *The Parliament of Great Britain* are at this Time, perhaps, taking some more *summary Method* of settling our *Plantation Currencies* towards redressing the injured Merchants at Home, and the fair Dealers in the Colonies; they made some Steps towards it last Sessions of Parliament. It is probable they may abridge the Plantations of this Privilege which they have assumed, of making their *publick Bills of Credit, a Tender* at any Rate they please to impose, which is *equal to the King's Prerogative in Coins*. And to prevent private Societies, from *bubbling* the People; perhaps, they may extend, the Act of *Anne*, to the Plantations, viz. *That to Partnership exceeding Six shall act as Bankers*.

II. *Private Schemes*. It happens unluckily for our Paper Money Advocates, that, at this Time when the Parliament are about redressing these Grievances, they should *madly* advance many more Schemes (some fraudulent, some foolish, and some good, but impracticable) than ever before for multiplying of Paper Money; this makes good the old Saying, *Quem Deus vult perdere, prius dementat*.²

All *Private Banks* for large Sums upon Subscription, have the same bad Consequence which attends publick Loans, viz. *a Snare to the People*, by giving the unwary, and the Prodigal, Opportunities of borrowing, that is, of involving & ruining themselves. Our *Legislature* from Experience, are become sensible of this Error, and for many Years have issued no publick Loans.

1. *Land Banks*. The famous Mr. *Law*, noted for his Knowledge in the Chances of the Games called Hazard, and for these Fallacies called Sharping: in favour of a Land Bank, being preferable to Silver, says, That *Land mortgaged serves for Money, and Culture*, or Produce at the same Time; whereas Silver cannot serve for Money, and Plate at the same Time. As he did not understand Trade, he did not consider that *Silver serves for Money and Merchandize* at the same Time, and that Trade is more profitable than Agriculture. A Land Credit or Bank may do in a Country of no Trade: but it is ridiculous to imagine that it can serve as a *Medium* for foreign Commerce: it cannot be shipt off as Merchandize or Returns, as is the Case of Silver; it cannot be transferred by Bills of Exchange; for so many Ounces of Silver received in *Boston*, I can draw upon my Correspondent for so many Ounces of Silver payable in *London*, but for so many Acres of Land made over to

2. ["Whom God wishes to destroy, he first makes mad."]

me in *New England*, I cannot draw upon *England* for any Number of Acres, quantity and quality adjusted.

In a Country where the Denominations of their Currency depreciates, Land being fixed in itself, rises in Denomination Value, whilst what is owing upon the Land becomes so much less as the Denominations do depreciate: Hence it is, that a Land Bank is so much desired, by those who are in Debt by Mortgage, or who desire to run in Debt by Mortgaging their Lands.

2. *A Credit or Bank of Produce, and Manufacture*, will never answer in a Country where Idleness and Indolence prevails; a late large *Bounty upon Hemp* did not encourage the raising of any considerable Quantity thereof: it would prove a most perplexed labouring Affair, *viz.* inspecting the Quality, settling from Time to Time the Market Price, Deficiencies in Case of bad Crops, and other Misfortunes: Notes payable at these *unweildy Stores*, would be of the same Nature, and attended with the same Inconveniencies, as the so much deservedly exclaimed against Shop Notes. In the Infancy of Countries, particularly of this *Province*, some Part of the Taxes were paid in Produce, called *Stock in the Treasury*; but as our foreign Trade did grow, it was found most convenient to discontinue it.

I shall exemplify our present Projections of Banks upon Land, Produce, or Manufacture; by only one Instance. *The Bubble of 450,000 l. upon Land and Produce*, which fills by Subscriptions a great Pace; the Subscribers by their Articles, give their *Twelve Directors a Negative in the whole Management*; a Power never before heard of in any Society of Bankers or joint Stocks; it is true, they deserve it; because, by the Face of their Bills, the Directors or *Signers promise to circulate the whole 450,000 l. upon sight*. But is it possible, that any Man who gives himself the Trouble of thinking seriously, can imagine, that 12 Men of small Fortunes (who perhaps do not trade for 30,000 l. per Ann.) should in their Trade, immediately circulate 450,000 l.? Can it be supposed possible to *negotiate Notes of so great a Sum, upon so small a Bottom*? In short, this Scheme is so full of Inconsistencies, that it seems to exceed any of the *Bubbles* (which were upwards of 100 in Number) projected in *London*, in that Year of Bubbles A. 1720.

3. *A Credit upon a Silver Fund* well regulated as to Periods and Discounts, would answer, if there were no concomitant bad Currency: but as such a Currency already prevails, and will in all probability increase; by two Years Charges of this Government to be emitted at once; by a 100,000 l. *Rhode-Island Emission*, which they may throw in upon us at Pleasure; and by a new

Emission of 100,000 *l.* from *Connecticut*, which they have been endeavouring from Time to Time, by trying to drop a majority of the present *Assistants* or Council; Silver will then rise in Price, and these Notes on a Silver Bottom becoming more valuable, will be hoarded up, lie dormant, and answer no *Design of a Currency*: It is true, they will secure to the Possessor, his Principal with a growing Interest; but as to Currency they are worse than common Bills, which being daily let upon Bond do circulate and promote Business, tho' at the same Time the Owner or Creditor sinks part of his Principal, by its depreciating; and his Interest is ill paid from a general insensibility of Discredit. *Such Bills will never obtain a Currency, until they force a Discount upon the bad Currency.*

An Experiment of this Kind, has already been made by the *Merchants Notes* so called, without any good Effect: they never became a Currency; they prov'd a Snare to many of the Subscribers and Borrowers; Silver did rise in Price as much and perhaps more, than if they had never been emitted. Any Scheme of this Nature if upon a longer Period, will on that Account, be the more defective.

If the Scheme for emitting Company Notes or *Bills, to be paid after 15 Years, with Silver at 20 s. per Oz.* can be so contrived, as to bring a growing Discount upon the bad Currency; it will be of the greatest Service to this Province. It seems to bid fair for it (I am no Undertaker nor Promoter thereof, and therefore may be deemed *impartial*) the Undertakers are Men of known Probity, of the best Estates and of the largest Trade in this Place: by their Articles they oblige themselves under high pecuniary penalties, to circulate these Bills at a certain annually growing Value, until they arrive at 20 s. per Oz. and, in conformity to a late Law of this Province, to refuse all future Emissions of the neighbouring Governments, unless founded upon a Silver Bottom.

It may perhaps be advisable to suspend the Execution of any Paper Money Schemes, as the Affair of Colony Paper Credit, is this present Sessions, under the immediate Consideration of the Parliament of Great Britain, our supreme and absolute Lawgiver: lest the Subscribers (Undertakers) or Possessors of these Bills and Notes should suffer some considerable Damage, by their peremptory Suppression.

The Projectors of the many various private Banks for Currency, seem to presume too much upon the Indulgence or *Connivance of our Legislature*: Some audaciously question their Power to prevent the People from *bubbling*

one another, (being as they call it) an *Act of Liberty and Property to pass and receive Notes of Hand*; others impudently impeach the Integrity of the Majority of the Legislature, as being in a private Capacity Promoters and Encouragers of these *Bubbles*. Doubtless our Legislature, as the *natural Guardians* of the People, will compassionately prevent their ruining of themselves; by proper Laws, such as those in *Great Britain 6th Annae* against Bankers, and sundry Acts against *Bubbles*; or to go no further for a Precedent, that of our neighbouring Colony *Connecticut, A. 1733*, against private Society or Bank Bills. There seems, at least for the present, an absolute Necessity to suppress those which will unavoidably have a riotous Consequence; I mean the passing upon the unwary, for a valuable Consideration, *Bills without any true Fund or Bottom*: Such Bills soon stop in Currency, and the poor innocent Possessors, the Tradesmen and Artificers, who for special Reasons (as they express it) are made their *Dupes*, will be provoked to use the Persons and Effects of the Projectors and Signers of those Bills in a *riotous* Manner. Our Assembly did formerly effectually suppress the pernicious *Bubbles* of private *Lotteries*. Our Law enacted in *January, A. 1738*, may be extended, so as to comprehend private Societies amongst our selves. *This Act forbids passing or receiving Bills to be issued by the neighbouring Governments, unless redeemable by lawful Money, (Silver Proclamation Value) upon good Security, (to appear upon the Face of the Bill) within ten Years after their first Emission.*

While this *Affair of Colony Paper Money*, is under Consideration of Parliament for Redress; it will appear as a *daring Presumption*, to proceed to large Emissions especially in those Colonies who have *valuable Charters* to lose. I mention this with a particular regard to *Connecticut*, who have hitherto behaved well; but at present their Eastern Borders being tainted by a bad (I had almost said *abandoned*) Neighbourhood, the Colony in general ought to be upon their Guard.

In redressing of this Error, in which many of our Plantations have obstinately persisted for many Years: it is to be hoped the *Parliament of Great Britain*, will not use any rigorous sudden Methods; but give us Time gently & gradually to extricate our Selves; That we may be allowed upon any sudden extraordinary publick Exigences to emit *Government Notes* to be a Tender only in publick Taxes, and to be called in as soon as may be by subsequent Taxes: that publick Bills may never be a Tender in Trade and Business. As to the calling in of publick Bills already extant; in those Governments where the Periods are short (*in New-Hampshire, Massachusetts-Bay,*

and *Connecticut*, they do not extend beyond A. 1742) they may be allowed to run their Course: Where the Periods are long; if upon *Taxes*, as the Governments have the Privilege of Taxing at any Time, they may be required to assess the same at any Time sooner; if upon *Loan* the Borrowers may be obliged to pay in yearly for a few Years a certain Part of the Debt, but if they insist upon the original long Period, let the Governments give *Premium's* upon all such Bills, as they are brought in; thus few or none of these Bills will be left with the Borrowers, and at the Expiration of the Periods of the Loans, they must pay in lawful Money Proclamation Value; which they will by all Means endeavour to avoid, by paying as is directed.

FINIS.

Postscript, to a Discourse concerning the Currencies of the British Plantations in America.

In the Discourse, I enumerated and endeavoured to answer in so plain, clear and easy a Manner, all the Arguments and Suggestions, then current amongst the Populace in Favour of Paper Money; that nothing but the raising a Mist of Obscurity, together with bold Assertions in Place of Argument, could affect it: accordingly there soon followed a Pamphlet called *An Enquiry, &c* in Favour of Paper Currencies, consisting of a new Kind or Set of Arguments in *Abstracto* (as the School's Term is) without any Regard to Matter of Fact, but supported with Mobbish Hints, such as, "The Author of the Discourse shakes his Rod over us, by threatening us with Parliamentary Enquiries—His numerous and gross Reflections upon the civil Administration.—What he says is to distress the Province, &c." This Piece is swelled to a considerable Bulk, by some idle Digressions; giving an imperfect Account of the Banks of *Venice* and *Amsterdam*, of Baron Gorts *Munt tokyns* in *Sweden*, of Mr. *Law's* projected Land Bank, and his pernicious unsuccessful Paper Money Scheme in *France*; together with some Scraps from Mr. *Lock* and others concerning Money, Banks, and the like.

To write satisfactorily to competent Judges and to enlighten, but not to amuse the Vulgar with empty Words, is my present Design; lest his bare but bold Affirmations in Favour of Paper Money might have some Affluence in carrying on the Delusion in weak Minds: Weak Minds in all Ages after

being well advis'd, do in Time come to the Truth and Right of Affairs: It is therefore the Duty of good Men, according to their Capacity candidly and with Fortitude, to inform those, who are not conversant in such Matters, but are blindly led away by evil Men; political Constitutions have at Times been subject to Maladies which require and do admit of a Cure.

Before I proceed, to prevent Misrepresentations and Prejudices, I must observe, that by the *Vulgar and Populace*, I always mean the unthinking Part of Mankind, who are not capable of consulting their own Interest; the *Mobility* who do not reason for themselves; but are tossed about with every Wind of designing ill Men. The Word *Vulgar*, is injuriously applied to the honest Tradesmen, Artificers, and common Labourers, who are the Support of the Common Wealth: Amongst them are found great Souls, who at Times, in several Countries have excelled as Prime Ministers and other Officers of State.

This Postscript, tho' a short, just, and serious Abstract of his Book and Scheme, I am afraid will seem to any Person who has not perus'd his Book, to be a Piece of Banter or ludicrous Representation, because the Enquiry itself, appears to be not properly an accidental temporary Aberation of Mind, called a *Delirium*; but the Produce of a certain native *Anomaly* of Mind called by an English *cant* Expression WRONG-HEAD. The Enquiry being *Anonimous*, allows any Freedom consistent with Truth with us the Imputation of designed Reflections against the Author.

The Author must excuse me, if for the Sake of Propriety of Expression, I class his Positions or Arguments by the Name of *Paradoxes*. He may also allow me, with Regard to his perplexed, diffused, tedious, and testing Manner of expressing Things; to utter them most concisely and distinctly, but without deviating from his Sense.

I. The principal and fundamental Paradox. *Bills without any other Fund or Period than common Consent, and no other Standard than a variable Market Price, are the only valuable Bills: all Bills promising Silver at a certain Price and Period, ought to be prohibited.* Because (says he) as they promise nothing they cannot be negotiated by proper *Premiums* and Discounts; and do thus prevent *usuricus* Practices, Suits in Law, and other Inconveniencies—If they depreciate, they cannot properly be said to have suffered a Discount, because a Discount signifies something fixed from which the Discount is made. Having no other Fund but common Consent, if this is gradually and at length finally withdrawn (nothing is more precarious than the *incertum*

Vulgar.³) the suffering Possessors can lay the Blame no where but upon their own Folly, in giving Consent: They are remediless in Law, and according to the Nature of the Scheme are fairly dealt with and ought to take Care not to deal in such perishable Commodities in Time to come.

How is it possible to imagine that this perishable Consent, should be better than *Silver*, an adequate *Depositum*⁴ which abides for ever? Is it not plain that such Bills promising nothing but Waste Paper, if left free to their Course in the Market, their Market Price would be accordingly?

By common Consent, he means the *Vox Populi*⁵ because, he frequently mentions Government and common Consent, as distinct Thing. If common Consent were to take Place all the Effects in the Province would be equally divided amongst the People, because we are all born equal: After some Time the Idle and Extravagant becoming empty handed, while the Frugal and Industrious become rich, common Consent would divide again. Our depreciating Paper Currency by taking from Time to Time, Part of the Estates of the Creditors in Favour of the Debtor be the same Treachery: Is this to encourage Industry? Who would labour in Produce and Manufacture to be thus stript of his Earnings? Suppose a Company of Men who have little or nothing to loose, valuing themselves upon their Numbers (which is our Author's common Consent) should proceed in a Scheme of Bills without any other good Foundation; at first they pass them amongst themselves and Friends, and in Course will be made a tender to others under Penalty of the Forfeiture of Goods and Merchandize for which they are offer'd, the *suprema Lex*⁶ of the Mob being *Rapine*: That is, the inevitable Consequence will be Riots and Mutiny, without any Regard to the general Rules of Commerce or particular Acts of Government.

II. *All Standards of Currencies are pernicious; Currencies like Commodities ought to have their free Course in the Market, not to be limited by Funds or Periods which are Imperfections.* He excludes our Bills of the New Tenor from his Currencies because they promise something *viz.* *Silver* at a definite Period. He instances, 1st *Barbadas* Bills of A. 1702 which because redeemable at a certain Time, suffered a proper Discount, whereas if there had been no

3. ["The untrustworthy mob."]

4. [Something held in trust, deposit, pledge.—Tr.]

5. ["Voice of the people."]

6. ["The highest law."]

Period there could have been no Discount, or rather, he should have said, no Acceptance or Currency at any Rate. 2d. *Maryland Bills*, immediately upon their Emission suffered a large Discount, because they promised Sterling Value after a long Period: If they had promised nothing, or if any Thing, never to be paid; a Discount would not have been fixed, and they would have proved a good Currency, which they are not, tho' a Tender in Law.

III. *Silver is not the best Measure, nor the best Instrument in Commerce.* All the Trading World at present, and Time out of Mind, have used a *Silver Medium*. The Patriarch *Abraham* purchased a Field with Silver, which he calls the Merchant's Currency. 2. *Silver in a Course of Years changes its Value more than most Commodities.* In *England* since *K Edward the sixth* Time a Silver Shilling hath lost but two Cr of its Value. Since we begun to manufacture Bills, which have undergone vast Alterations, Silver Currency in the trading World has suffered no Alteration. 3. *The Imperfection of Silver is the true Cause of the Introduction of Banks.* He should have added and for the same Reason, of Merchants keeping Oath Books; whereas the universal fixed and durable Value of Silver is the Foundation of all Banks. 4. *An Impression upon Paper is better than an Impression upon Silver.* Whereas the first is a most tender Matter and of no intrinsick Value: the other is a durable intrinsically adequately valuable Metal. 5. *The Fluctuation of Silver as a Commodity, as in London from 50 & 3 d to 51 & 6 d per Oz. is the same as our Bills depreciating many Hundreds per Cent.* 6. *Whether we had made Paper Money or not, all Contract, and Debts would have depreciated after the same Rate,* That is, 3 Oz. of Silver contracted would have at present weighed only 1 Oz. Such Paradoxes do admit of no Commerce. 7. *One Years small Payment of Impost in Silver did rise Silver from 27 to 31 s. per Oz.* Why did not the preceeding and subsequent Years of Silver Impost Money, raise Silver after the same Rate? Why did Silver rather fall than rise in Price from A. 1734 to 1738. notwithstanding the large Silver Payments upon Account of calling in the Merchants Notes? 8. *Bills promising Silver at a certain Value & Period; their present Value is much less than the Value of our Province Bills.* He seems as much prejudiced against Matters of Fact as against a Silver Currency. We all know that last Christmas, Merchant's Notes payable after 4 Years in Silver, were negotiated at 25 per Cent. better than Province Bills.

IV. *Every Country's, every Man's natural Pound is according to his Circumstances.* That is, if I borrow of a Man ten Times richer than my self a certain Sum of Money, and at the Period of Payment, let him have my natural

Pound being only one Tenth of the real original Value which I borrowed, I have in Equity satisfied the Debt. As People's Circumstances differ as much as their Faces, What Confusion would this occasion in Dealings! Do not the Courts of Judicature in all Nations make up Judgments against Debtors indifferently without Distinction of Circumstances. *A Bankrupt*, (he says) by Imprudence, Misfortunes or Villany without Distinction, *who pays only 5 or 10 s in the Pound, pays his Pound and satisfies his Debt as honestly and laudably as he who pays 20 s in the Pound*: A nominal Pound is as good as a real Pound: no Standard of Justice: Or as he elsewhere (deviating from himself) well observes, we deal as if we had no Yard nor Bushel; This is pleading the Cause of Bankruptcy, and exposes this Country much, by comparing our depreciating Paper Money, to a Bankrupt's Pound: What we do not return, he says, is so much forgiven us by the Merchants at home. But to carry on the Comparison; If a Bankrupt pays his Creditors only one Shilling for a Crown, ought this Bankrupt's one Shilling be made a Tender for a Crown in all Dealings?

V. *Bills are a Commodity, and therefore do naturally rise and fall in the Market*. If so, ours are a very bad Commodity, because always a falling in the Market Price. A Commodity in the general Acceptation and Letter of the Word, signifies what is materially useful, as a necessary or Conveniency of Life; take from Bills the Notion of Currency, they are only Waste Paper, as to their Matter; whereas Silver is equally valuable as a Commodity, or as a Currency. 2. *Silver being a universally staple Commodity, and Bills only a local Commodity, makes no Difference*. 3. *Our* (fluctuating or rather continually depreciating) *Paper Bills are a Standard for Silver*. That is, a Ship upon the Coast progressively under Sail, stands still, while the Fields and Trees fluctuate.

VI. *Our Bills are emitted upon the best Plan the World ever did see; all the essential Parts of the Banks of Venice and Amsterdam, are to be found in our Province Bills of the Old Tenor*. This Hint seems borrowed from a facetious Writer, who finds all the Beauties of the best Greek and Latin Authors, in the History of *Tom Thumb*. The Credit of those Banks, is the universal Consent or Acceptance of the whole trading World, an adequate *Depositum* in Silver, and *Agio*⁷ above the current Price of Silver: Our Bills have

7. [Term expressing difference in value of one currency over another, such as between metal and metal or metal and paper monies. No literal translation could be barbarized.—Tr.]

only a small local Provincial Consent, no *Depositum* many per. Cts. worse than Silver, and continually depreciating or growing worse than themselves from Time to Time. Forgetting himself, in another Place, he says, our bad Circumstances are the Reason, why our Bills are not upon the same good Establishment as the Transfers of the Banks of *Venice* and *Amsterdam*; How then can they be essentially as good? He should have plainly expressed it thus; at present our Circumstances render us incapable of having a solid Bank of Credit.

For the great Benefits accruing to a Country from Paper Money, he unluckily instances *South Carolina* where its bad Effects have been the most notorious, by occasioning the greatest Confusions, even *Mutiny* itself. The flourishing State of that Province, proceeds from its Soil and Climate, producing a good Staple, the best of *Rice*; and from a neighbouring vast Indian Country, affording large Quantities of *Deer Skins*: Their large Dealings are not transacted in Paper Money; but in *Rice*, and Bills of Exchange.

VII. *The cancelling of publick Bills, according to publick Faith, is a publick Fraud or iniquitous Administration; it is establishing of Iniquity by a Law, because as they promise no effective Payments, the Postponing of them is Justice and Righteousness.* He hints at what he imagines a sort of *Magna Charta*, granted A. 1712 by our Assembly to the People, whereby they virtually took upon themselves to supply the Province with Bills to serve as Money, therefore if we do not postpone these Bills, the Legislature are guilty of a Breach of *Magna Charta*. Was there ever a *Heresy* from any Scriptural System, so enthusiastically imagined, and so ill founded.

VIII. *Paper Money borrowed is not running in Debt, Province Bills are only a Debt amongst our selves, and therefore improperly to be called a Debt.* The publick Debts in *England* to the several Companies or Stocks there, are upon all Occasions called heavy Debts, and the Poor the Consumers are very sensible of the Load of the Funds, the grievous Taxes upon Coals, Candles, Soap, Leather, and some other Necessaries of Life: We murmur yearly because of our great Taxes or Rates, occasioned by this Paper Money Debt; every Emission of our Paper Money, is sensibly found to be contracting of Debt, when the Taxes or Mortgages on which they are founded come to be paid. 2. *We grow daily richer by means of this Paper Money, we are three Times richer than we were at the introducing of these Bills.* If this could be supposed true, while we daily pay less and less in the Pound, how should we avoid the Imputation of a fraudulent Bankruptcy; a Country or Town may look

well to outward Appearance, and yet be in a Galloping Consumption, as the vulgar Phrase is. In *London* a Merchant or Tradesman making a more than usually splendid Appearance, is frequently a Fore-runner of Bankruptcy.

The Paper Money Advocates represent our 630,000 *l.* present Paper Currency, as a clear *Medium* of Trade, and say that it is not too much for *New England*, and is but a Trifle when reduced to a Sterling Value: whereas it is really an Incumbrance or Debt to be paid, and is already without Additions, too heavy upon the good People of this Province, and will oblige them to sink Part of their trading Stock (instead of enlarging their Trade) to pay their large Taxes.

By Experience we find, that our Credit does not allow of so large a Debt, without depreciating; therefore all new Emissions being additional Debts, do sink the Credit of our Bills more and more. Our inordinate Desire of more, may be compared to Thirst in a *Dropsy*, which by endeavouring to satisfy with Drink, increases the Distemper. *Cressit indulgens sibi dirus Hydrops.*⁸

IX. *The Mother Country, Widows, and Orphans, have suffered for want of a sufficiency of Bills.* That the Merchants of *Great Britain* have been the greatest Losers by Discounts in their Returns of some Hundreds per Cent. is acknowledged by all Parties. Widows, Orphans, Societies incorporated or voluntary, who have a considerable Part of their Stock at Interest, have suffered very much. *The College of Cambridge in New England*, have sunk above 10,000 *l.* *A charitable Scot's Society in Boston*, (formed in Imitation of the *Scot's* charitable Corporation in *London*) have suffered very much; some of their Bonds are lately paid in, at the Rate of 29 *s.* per Oz. Silver, which were contracted when Silver was at 7 *s.* per Oz; this is 300 per Cent. loss of Principal: *Ministers of religious Congregations*, are not paid the real and true Value of their Stipends contracted for: In short, *all Creditors* who have dealt in Honesty and Simplicity of Heart, have been thus sharpened upon. Our Author with an open Countenance, says, That the *Rhode-Islanders* outwitting of us, by their repeated large Emissions; is doing for their own interest, what all wise People ought to do—The Paper Money Solicitors in Answer, say, That the reducing of Contracts to Specialties *i.e.* to Silver by Weight, is not forbid; therefore private Men must blame themselves, Orphans must blame their Guardians, and Widows their Advisers, for not making their

8. ["Fearful Hydropsy grows satisfying itself"]

Contracts in Silver Value, and not in those Bills: This is giving up the Cause of a good Currency, and allowing that every prudent Man should have refused the Currency of those fallacious Bills; or that our *Legislature*, the common Guardian of us all, to prevent our being cheated by others, and our cheating of ourselves, ought to have established a *Specialty*, as has lately been done in the *Carolinas* with good Effect.

Sufficiencys of Bills, properly speaking, are the Sums which the trading Credit of a Paper Money Country can bear; the more that these Sums are exceeded, the more they become a negative Sufficiency (as *Mathematicians* say of positive Quantities in a continued Progression to certain Limits, after which they become more and more negative) and their Credit depreciates, and the Creditors or Acceptors of such Bills suffer more and more. This negative Sufficiency multiplied, is what our Author proposes for our Relief, and for the introducing of Silver again; but as Bills by their increasing Quantity superseded and drove away Silver, Silver can never be again thus introduced, unless at length, Bills by their Quantity and bad Bottom, become as *Wast-Paper*; then Silver must take Place.

X. *The Legislature to make Laws to bring the Balance of Trade in our Favour.* This is as unnatural and impracticable as the Legislature making a *Medium* of Trade; both which can only be effected by Trade itself. Ballance of Trade when against a Country, is answer'd by exporting the current Cash, equal to what the Exports in Merchandize sell short of the Imports: our Paper Currency is not exportable to pay a foreign Debt, and therefore will answer no Ballance of Trade 2 *Our Bills have depreciated, in Proportion to the Ballance of Trade increasing against us.* In *S Carolina*, where the Ballance of Trade is much in their Favour, many of the Inhabitants having large Sums of Money lodged in *England*; their Paper Money notwithstanding is much more depreciated than ours, because of their greater Paper Money Emissions and Breach of publick Faith.

XI. *Contracts reduced to Writing but not the Silver contracted for, is the Money or Medium.* He might perhaps have the Hint of this, from the Analogy of many Spendthrifts amongst us, who after being long dunn'd for a Book Debt; if the Creditor accepts of their Notes or Bonds, they became as easy as if they had paid the Money. *Medium* of Trade in its proper Sense, signifies some intermediate adequately valuable Commodity, such as is Silver. Some Colonies of peculiar Produce, allow of a local (*therefore imperfect*) *Medium*; as Sugar, Tobacco, Rice, in some of our Colonies are Tenders.

XII. *Every landed Man, even to the mortgaging of his last Acre, has a Right to make Money.* He should have added, and finally has a Right to the Alms-House. Thus these projected Banks give the Idle and Extravagant Opportunities of borrowing or involving of themselves, that is these Banks tend to the Ruin of the Province; we allow that in Prudence a landed Man may sell off some Part, the better to improve the Remainder.

XIII. *The projected Bank or Scheme, commonly called J—— C—— and others, is built upon the best and only good Foundation we have: the Subscribers are Men of Judgment, Integrity, and Estates.* Notes of a dubious, some say desperate Credit, not receivable in Taxes, (no legal Tender, bearing no Interest to the Possessor, obligatory only for Goods at a precarious Price, and not actionable till after 10 Years. *Shop Notes* which our Author (happening accidentally to be in the right) deservedly tho' inconsistently with himself, so much exclaims against, are much preferable to such Bills, because payable upon Sight, and in Case the Shopkeeper uses the Bearer very ill, are immediately returnable to the Merchant. Such Bills being ill founded will soon stop in Circulation, the Possessor in Time must have a Law Suit with the Signers, who perhaps prove insolvent: But if they may be supposed solvent, the Signers for their own Redress, must sue a numerous Tribe of perhaps generally insolvent Subscribers, *and occasion a Convulsion in the Government.* To give a Hint, of such Notes satisfying of Contracts payable in Province Bills, is the Height of ——

A *Depositum* of Silver, Land Security, Government Security, are proper collateral or additional Securities; but we know of no Bank without an adequate *Depositum* of Silver, if they negotiate on Transfers; or Silver sufficient to answer all their Cash Notes upon Demand, if they deal in Cash Notes: It is impracticable to circulate Product and Manufacture, being perishable unweildy, uncertain, fallacious Matters. The Land Bank projected in *England* in *K. William's* Reign, tho' established by an Act of Parliament, like a Mushroom, soon came to nothing. The only proper Land Banks, are but Count-Registers, where Lands are regularly transferred daily.

I shall dismiss this Paper Money Agent, by observing, that his Memory sometimes gives him the slip, and *inconfidently with himself he deviates into Truth.* I shall mention a few Instances. Contracts ought to be paid in Silver, at the current Market Price as when made, but not as it now is, if depreciated—All other Commodities keep Pace with Silver, *is it not the most natural Medium?*—When People were obliged to receive light Pieces of Eight in

Currency, they advanced upon their Goods in their Contracts accordingly: *This equally holds good with Respect to a depreciating Currency (our Bills) of any Kind* Pag. 57 Upon a large Emission of Bills, Silver and other Returns must remarkably rise. P 17. By emitting and calling in of Bills their Value may be fixed or diminished: *This is our grand Argument against large and frequent Emissions, viz. the depreciating of our Currency.*—Thus unwarily he gives a full Answer to his own Book.—Further I must observe that in Recommendation of his Land Banks, he says, The Mother Country will sooner make Abatements in our Pay than take Lands.

I shall conclude with a Recapitulation of some general Remarks, concerning our Paper Money.

1. If Bills provincial or national, would answer all the Intentions of Money, no Country in the most chargable unsuccessful Wars, or in the greatest Bankruptcy as to Trade, would be distressed for want of Money. If Bills upon Land Security could answer the Invention of Money; the Emperor would not have given him that late inglorious Peace with the Turks for want of Money to support his Forces. The Spaniards might make themselves easy, tho' their Flota's, Galients, Flotillas, Assogues, and Register Ships proceed to port. A Manufacture from Copper Plates, Paper and Ink (a late Invention of the British Colonies in *America*) is a more compendious and infinitely less chargeable Market of Currency and Medium of Trade. A Sort of *Philosophers Stone* (a Term used by the *Alchemists*) or Art by which no Country (a Country always supposes Land) can be without a sufficient Quantity of Money: The *Spanish Mines* in *America*, an industrious Trade, are becoming mere *Chimeras* and Deceptions; If Land should be exhausted, there remains still a better Fund, *viz.* common Consent, without any other Bottom.

2. The Party for multiplying a depreciating Paper Currency are 1 *The Idle and Extravagant* who want to borrow Money at any bad Lay, tho' finally to their own Ruin; 2 *The fraudulent Debtors*, that they may pay their Creditors in less Value than contracted for, and notwithstanding retain their Credit without being reckon'd Bankrupts; a mortgaged Estate can be redeem'd by a smaller dismembring, a Shopkeeper pays his Merchant at a great Discount. 3. Some Men of Substance and industrious, but of a *natural improbity and Depravity of Mind* who by Experience have found, that the greater Confusion such Emissions occasion in Business, the greater Latitude is given for cheating; For Instance, in a depreciating Paper Money Country, the only Method (much practised by the Advocates for Paper Money) of growing

rich, is by a Series of the greatest Acts of Injustice, viz. to owe to others more than is due to themselves, to procure long Credit, when due, to postpone Payments and bear dunning, and finally to let the Law which in this Province is tedious and not chargeable, take Place. 4. *The weak and ignorant* (here I include a large Number of good honest Men but misled) who imagine, or are taught, that the Legislature, can give every individual Person of the Government, what Money they may desire, without any other Bottom, but an Act of Assembly; and that the withholding of it, is Step Father or Step-Mothers usage.

3. The Party against a depreciating Paper Money currency, are 1. *The Industrious and Frugal*, our considerable foreign Traders and rich Men; who because of their great Substance deposited in the Country, are obliged to have the Interest of the Country most at Heart: Thus in *Great Britain* (to compare great Things with small) the *Peers* by Reason of their great Estates in the Kingdom, are deem'd the natural and standing Council of the *King* and Country. The Industrious and Frugal have Reason to withstand the raising of Money upon Taxes by a Paper Credit, because by the other Party, who are the most numerous, they are loaded with almost the whole Burthen of the Assisments; the Assessors ought to consider, that the easing of the Extravagant in their Taxes; is so much Encouragement allow'd them to carry on their Extravagancies; in other Countries Extravagancies and the Extravagant are much taxed. 2. *The honest Creditors*, who are for fixing, the Value of their Contracts and Debts by a Standard: This is called by the Paper Money Party, endeavouring after unlawful Gain. 3. *The fair Dealer*, who desires neither to bubble nor be bubbled. 4. *The considerate* thinking Man, who from Experience finds, that all Emissions, are contracting of Debts.

4. All Mankind exclaim against clipping of Coin, because it is a Fraud to tender Denomination of a lessned Value: making of a depreciating Paper Money Currency a Tender in Law, has the same effect. It is allowed by every Body, that the most glorious Action of *King William's* Reign, was the calling in of the clip'd Money, and ascertaining the Value of it by a *mill'd Recoinage*: The Progress our late Assemblies are making towards sinking of our precarious Bills of the Old Tenor, and reforming them into new Tenor Bills of a fixed Value, will have the same good Effect. A depreciating Paper Money, has a vastly worse Effect than clipping of Silver Coin, which never reached further than a Fraud of 25 or 30 per Cent, but the other has reached in *New England* to 450 per Cent, in *S. Carolina* to 700 per Cent, in *N. Carolina* to

900 per Cent. As the effectual Cure of the clipt Coin in most Nations of *Europe*, was reducing it to mill'd Money, or to Weight as in *Barbados*: So our Provincial Bills may be brought to a Sterling Price by fixing Exchange from Time to Time, as in the *Carolina's*.

5. *The Paper Money Men* (some anomolous excepted) generally allow, that *Silver is a better Medium than Paper; but as it is impossible (so they express it) for Silver ever to be made current with us, they are for continuing and increasing the Paper Money Currency.* Let us not despair, it is not impossible to give Silver again it's Currency; let us tread our Foot Steps back, and we shall naturally return to where we came from: That is, as the increasing Quantity of Paper Money drove away Silver, a gradual lessening of the same, will make Room for this better Currency: 1. As Bills grow scarce, the Merchants will be obliged to convert some Part of that Commodity Silver into Cash, as in other trading Countries, no Man can trade to Advantage without Cash. 2. The Scarcity of our Province Bills will effectually bring a Discount upon the Bills of the neighbouring Colonies, because *Praemiums* will be given in other Bills, for Bills of our own Province to pay Taxes; and no more Bills being emited from time to time than sufficient for the present Charge of Government, our Bills may be brought to Proclamation or Sterling Value. 3. Bills growing scarce, our extravagant Way of Living, that is, our Imposts will lessen for some Time: we find at present the Homespun is more in Wear by the Country People, and Spinning is more practised, than at any Time, since the Beginning of this Century. If this scarcity of Currency oblige us to go further into Shop Notes for small Dealings, and into Barter for larger Transactions, it will be only for a Season (in Sweden from Baron Gortz's *Munt tokyas*, they went into Barter, and from thence back again unto their intrinsically good Currency) until the Inconveniencies thereof become still more sensible, and then the very good Husbands will retain Silver for Cash, whereby they can deal to better Advantage, and seek out for other Returns, to supply its Place as a Commodity. Bills are in their own Nature, only proper to be returned by Taxes into the Treasury, from which they issued; and perhaps in small Quantities may pass as Inland Notes, but are not fit for a Medium of foreign Trade.

Thomas Baxter,
A Letter from a Gentleman
at Barbados to His Friend
(London, 1740)



THIS SELECTION TELLS AN interesting tale about a confrontation between a new governor and a powerful provincial leader. The setting was Barbados and the central characters in the story were Governor Robert Byng, appointed in 1739, and Henry Peers, who had been a member of the Barbados Assembly since 1706 and a long-term speaker of that body. The author was Thomas Baxter, a confidant of the new governor who would himself serve in the Barbados Assembly in the early 1740s. The form was a letter, written to Jonathan Blenman, formerly the attorney general of Barbados, who was then in London at the Inns of Court. By the time Baxter wrote the letter in late December 1740, both of the protagonists were dead, and he wrote to counter charges then circulating in London that Byng had engaged in “great Oppression and Tyranny” during his short administration.

In his “Vindication” of Governor Byng, Baxter attributed the political altercations during Byng’s administration to Peers’s disappointment at being frustrated in his ambitions to become governor himself and to Byng’s insistence on maintaining his independence from Peers by resisting Peers’s efforts to encourage him to follow the example of several of his predecessors and resign “his Authority to Mr. P[eers]” and content “himself *with the Name of his Office*.” While Lord Howe, the previous governor, had worn “the *Demagogue’s Leading-Strings* till they galled him,” Baxter reported, Byng “disdain’d even to put them on,” thereby earning Peers’s

inveterate hostility. Peers's "undue Influence" in the Assembly enabled him to cut the governor's salary, to interfere with his efforts to put the island in a better state of defense, and, when Byng dismissed Peers from his militia office, to persuade the Assembly to adopt, without a single "dissenting Voice," the "severest Address . . . that was ever presented to a *British* Governor," so that Peers's adherents could send it along with a "Bundle of *Libels*" to London in a blatant attempt to force metropolitan authorities to recall him. Although Peers's death in early September 1740 and Byng's death in early October put a stop to this campaign, Baxter, who professed himself to have "no Partiality for Men in Power" nor "any Tenderness for Governors," praised Byng as "a Man fit to govern, and therefore would not be govern'd," emphasized Byng's remarkable moderation in the face of such unmerited opposition, and declared that Byng, so far from being guilty of one "Act of Mal-Administration," had taken "more Pains to do good than I ever thought of experiencing in a *West-India* Governor."

This pamphlet, to which Blenman contributed a preface, is remarkable for laying out the process by which settler leaders often co-opted royal officials and for its explication of the process by which political leaders won support and provoked popular opposition to enemies by circulating information at "Cock-fights and Funerals, Parties of Diversion and of Business." (J.P.G.)

A
LETTER
FROM A
GENTLEMAN
at Barbados
TO HIS FRIEND
now in London,
CONCERNING THE
ADMINISTRATION of the late
Governor *B——g.*

LONDON:

Printed for J. ROBERTS in *Warwick-Lane*, and sold at all the Pamphlet-Shops
in *London* and *Westminster*, 1740.

[Price One Shilling.]

Preface.

The following Letter was sent me, with full Liberty to dispose of it as I should think fit; and finding the same calculated for general Use, and indeed design'd for the Press in Barbados, I apprehended it would be altogether improper, if not unjust, to conceal it here; especially after an Address, taken notice of therein, had been dispersed throughout the Kingdom in our Weekly Newspapers. Natural Justice dictates, that each Party should be heard before either is condemned; which will hold as well on Appeals to the Publick, as with regard to Matters depending in established Courts of Judicature; and this is an Account perhaps which may be as fairly adjusted, now both are in their Graves, as before. I soon resolv'd therefore, to put the Performance into such Hands, as would not fail to send it abroad exactly as it came to mine; and it was judg'd most eligible to do so, without the Privity of the late Governor's Friends, because it manifestly relates to Transactions beyond their Inspection, and the World might, besides by such a Conduct, be sure of the genuine Sentiments of a very discerning Person on the spot.

But with this Publication of my Friend's Epistle, I must be allowed to declare, that as, I could not possibly have any share in the Disputes which are the Subject of it, so neither am I any way interested in them. For tho' I was necessarily engag'd in all the political Contests of that Island, for more than twenty Years precedent to these (which it were rather to be wished had been buried with the Ashes of the two Principals) I had yet the Satisfaction to leave it a few Months before Mr. B——g's Arrival, possess'd of the entire good Will of the Inhabitants, then in perfect Harmony amongst themselves. How far I might be instrumental to so desirable an Union, I cannot say; but am certain my constant Endeavours for that purpose were not wanting, since I ever had, as I shall always retain, a sincere Affection both for the People and the Place, where it has already been my Lot to spend the better part of Life; and having therefore no great Ambition at these Years, I shall not much grudge quietly to end it in the same Climate.

The Name subscribed to what is now offered the Publick, will undoubtedly be sufficient to procure the Attention which That deserves. But I can do no less, on this Occasion, than acknowledge, that a long Intimacy with the Author has give me the strongest Proofs of Veracity and Candour; as his Station, during my Absence, must of course have afforded him the best Opportunities of knowing the Facts he relates. However, to these I shall add no Remarks of mine, on one Side

or the other, but frankly leave every Reader to form his own impartial Judgment upon the whole.

Lincoln's-Inn-Fields, March 10, 1740.

J. B.

To Jonathan Blenman, Esq; In London.

Barbados, December 27th, 1740.

SIR,

In the last Letter I had the Honour to receive from you, there is something like a Complaint of my not being particular enough in the Account I formerly gave you of Mr. B——g's Reception, and the Disputes that have happen'd in his Administration. You are pleas'd to think my Experience in this Island enables me to form a tolerable Judgment of Persons and Things; and my present Station will not suffer me to be a Stranger to its publick Affairs. The Truth is, while that Gentleman was alive, I knew his Actions would speak for him daily, and justify him much better than any thing I could write. Besides, I really did not like the Subject. The Contest between the Governor and Mr. P——s was inglorious on the part of the former; because, tho' he was sure of Victory in the End, yet he despair'd of reaping Honour from it.

But after all, if one had ventur'd to trouble you with a tedious Story of the old Follies of *Barbados* acted over again (where you have seen an Assembly supporting one Governor in all things unlawful, and opposing another in all things lawful) yet he could never have thought of removing that Load of Calumny that has lately been thrown upon Mr B——: He might as well have anticipated a Charge of *Robbery or Coining*, as those Forgeries that have been so industriously transmitted home, and are now echo'd back, both in private Letters and publick Prints. As things stand at present, our late Governor can't answer for himself; and yet his Memory, his Family, and his Friends, call aloud to have the Account between him and his Enemies adjusted; and as nothing can be sufficient for this Purpose, but Facts that are either notorious, or well attested, so I shall be oblig'd to enter into Detail, exceeding the ordinary Bounds of a Letter; not doubting your usual Indulgence to an old Friend, who is neither fond of, nor us'd to this Way of Writing, which necessarily touches upon personal Character.

On the 15th of *December* 1739, his late Excellency arriv'd at *Pilgrim-House*, which he found in such Order as was far from denoting a hearty Welcome to his Government. He must have walk'd up to the Door through Grass and Weeds, if the Diligence of the *Treasurer* had not apply'd a hasty Remedy to this as well as some other Indecencies. The Garden was a mere Waste, and he never was allow'd a Gardener to put it in Order; a Trifle that has hardly been denied to former Governors. *The taking of his Baggage by the Spaniards*, had left him destitute of almost every thing but his Plate and his Cloaths; no small Disadvantage, besides the Loss, in a Place where he could not be supply'd for Money, and where Parade and Shew are esteem'd vital Parts of Government. The Inhabitants, thro' Fear, Dependence, Necessity or Example, were devoted blindly to the Will of one Man, whose imaginary Interest and real Intention it was, to distress a new Governor. This was so generally the Case, that it will hardly admit of any Exception, unless that of the Counsellors, Lawyers, some of the Publick Officers, and a few Planters, who were Men of Sense and clear Estates. Even the *Secretary*, who was at the same time* *Clerk of the Council and of the Assembly*, was the Bosom-friend of the Governor's determin'd Enemy, and enjoy'd those two incompatible Posts, for Reasons well known to his Patron. In private Conferences, as well as the Assembly's Address, the Governor was entertain'd with long Declamations upon the Poverty of the Country, the stedfast Resolutions of its Representatives concerning his Appointment; and was often told of the seasonable Notice that had been given him in *England*, to confine his Expectations within narrow Limits. Not a Word all this while of his Excellency's *consummate Wisdom and Justice, with all those shining Qualities that adorn Government and make it useful*. No more than a dry, forc'd Compliment or two, importing that he was early acquainted with Business; and that they expected some Good, because they never had heard any Ill of him. The Governor remonstrated, that the Country was now in a much more flourishing Condition than my Lord *H*— found it in; he was conscious of having brought with him as good Intentions as the best of his Predecessors; he was not sensible that his Character was blemish'd; his Design was to spend every Shilling he should receive from the Country (of which he

* *That Gentleman is now only Clerk of the Assembly; for being convinc'd, it seems, that both Posts were incompatible, he resign'd the other, and the Secretary here (in whose Patent it is) has appointed a new Deputy.*

gave solemn Assurances) and he hop'd to approve himself not unworthy of any Favour that might be shewn him. But if he were less consider'd than his immediate Predecessor, he could not avoid thinking it was setting a Mark upon him; an Indignity offer'd him, under which he could not sit easy. As his utmost Demand was a Settlement equal to L——d H——'s, so he should never desire or accept of more in any Shape whatsoever.

While the Event of this Negotiation was doubtful, the Governor's Affability, open Behaviour, and Hospitality, gain'd upon the Minds of all that came near him; and they did not fail to utter their Sentiments and hearty Wishes that he might be gratify'd; judging this the only Measure that could procure Peace and Happiness to the People. The whole Council, and most of the Assembly were of this Temper; and I can assure you faithfully, I did not meet with one thinking Man among Mr. P——'s best Friends who thought differently. But all these thought for the Publick, Mr. P—— for himself. To explain which, it will be proper to review some former Transactions, which you will easily recollect.

You may remember, Sir, that this Gentleman's first Notion of obtaining the Government of this Island was conceiv'd immediately upon the Death of L——d H——w. The Project, I am told, was form'd between him and my Lord's Chaplain, who found Means of persuading him, that if he made a Friend of Lady H—— she would be able to procure the Post for him, and the *English* Salary for herself. To work he fell immediately, and got a Present of 2500 *l.* voted to the Lady; which Sum was paid as the Price of his future Government. For you are sensible, he was liberal, without Measure, of the publick Money, when he could find his Account in wasting it; witness *the two memorable Country-Orders* for 810 *l.* A detestable Fraud! which exercis'd all your Vigilance and Sagacity in detecting and disappointing it. But this Chimera soon vanished, and made Way for something a little more substantial, tho' not more successful; upon which however he built such sanguine Expectations, that he could not refrain from expressing his Joy to you, who, he well knew, could share no Part of it. All his well-wrought Schemes being at length disconcerted, he resolv'd on playing an After-game. Accordingly he draws the then Assembly into such Resolutions as he thought proper, transmits the same to their Agent at *London*, and thereby beats down the Value of the Government so low, that he hoped no Person of Condition would accept of it; and the Ministry would be reduced to throw it away upon him, who was, of all Men living, the most unfit for it. But this Masterpiece of

Policy fail'd like the rest; for a new Governor was appointed at home, and shortly expected here.

What then must a forlorn, disappointed Gentleman do? Ambition was no more.—There was some Comfort still left. A Sacrifice was due to Rage and Envy; the Post was to be made bitter to the Man who had been hardy enough to supplant him; and what is more, there was a Way open for exercising the Powers of the Government, without having the Commission. Just in this Situation did Mr. B——g find our *Demagogue*, who was at the same time *Speaker of the Assembly, Master of the Ordnance, and Colonel of that Regiment which is nick-nam'd the Royal Regiment of Foot-Guards*; and this will serve as a Key to all the important Transactions of the nine Months following. Do but figure to yourself that extraordinary Personage stalking up, with his usual State, to the Governor, and carrying in his Hand a *Pair of Leading-strings* ready to put on; the one rejecting the Offer with Scorn, while the other persists in his Rudeness; protesting that his noble Predecessor wore the same honourable Badge; and that the best Lord in the Land might wear it without Disparagement. Keep this Image, I say, in View, and it will give you an adequate Idea of the Behaviour of both. Methinks you are ready to demand some Proof of this. A little Patience, Sir, and you shall have it. But first let us observe the Contrast between the publick Treatment of L——d H—— and that of his Successor, on their respective Arrivals in this Island, when they were both equally Strangers to the People, who had in truth no Experience of either.

On the 13th of *April, 1733*, my L——d H—— came on Shore, where he found a decent Provision made for him and his Family, and on the 8th of *May* following, the Assembly address'd him in these words, which are so extraordinary, that I chose to transcribe them from the *Council-Book*, lest you (who had no Hand in this Draught) should suspect I had mistaken or misremember'd something.

We the Representatives of the People of this Island, do with the most profound Respect congratulate your Excellency's safe Arrival in this Island, and beg leave sincerely to rejoice with your Excellency at your wish'd-for Happiness in the Safety and good Health of the Right Honourable the Lady H—— and your tender Family, after the Fatigues of a long and dangerous Voyage, which affords us the greatest Satisfaction, as it yields your Excellency the most sensible Blessings and Comforts of this Life.

It was, may it please your Excellency, with the greatest Pleasure we receiv'd the first News of his Majesty's great Goodness in appointing a Nobleman of *your distinguish'd Merit and Character* our Governor; and it was still with greater we receiv'd repeated Assurances from our Correspondents in *England*, that your Excellency's precious Time at such a Juncture was chiefly employed in the Service of this poor Colony; such an Instance of Generosity and Humanity affording us an early Presage of what still may be further expected from your Excellency's favourable Interposition and generous Solicitation for Redress of our Grievances, gives us likewise the greatest Hopes of your Excellency's Endeavours proving successful. And we are the more confirm'd therein from the several Resolutions of Parliament already agreed to in our Favour. This happy Turn in our Affairs we never could doubt of, from the known Goodness and paternal Care of our most gracious Sovereign, as well as from the Justice of a *British Parliament*, whenever a generous Advocate appear'd in our Favour to represent *the deplorable State and Poverty of this Island*. And who so proper as our Governor? A Nobleman for whom, give us leave to say, Providence seem'd to reserve the glorious Task; a Task fit only for the ablest Statesman of uncommon Generosity and consummate Parts and Experience; Qualities (we humbly beg your Excellency's Pardon for affirming a Truth unpleasing only to your Excellency) *all centering in the Lord Viscount H—— A Task, rescuing a distressed Country from Ruin; and which therefore must reflect with Honour, and add fresh Lustre to all your Excellency's other great and noble Qualities*; since all good Men agree, that the Glory of being a true and virtuous Patriot to a declining or distressed Country, is superior to, and far more excellent than all the pompous glaring Titles of the greatest Conqueror.

Now, Sir, tho' I have nothing to say against the *able Statesmanship, and the consummate Parts and Experience that center'd in that noble Lord*, whose Memory I honour for the Sake of his good Intentions and extensive Benevolence; yet it may be ask'd, I hope without Offence, how these profound Politicians were able to make this Discovery in the Space of Twenty four Days, when hardly any thing had been said or done, except Matters of Form.

More light will still be derived from the Preamble of the Act for settling that Governor's Appointment, which pass'd the Twenty ninth Day of the same Month, where there are these Words.

The Representatives of his Majesty's most dutiful and loyal Subjects, the Inhabitants of this Island, taking into their Consideration the present

State and Condition thereof, and having the greatest Regard and Tenderness to the Circumstances of the People they represent; but at the same time justly conceiving reasonable Hopes of having their Grievances redress'd from *the generous Endeavours of his Excellency the Right Honourable Viscount H*—— their present Governor, to retrieve the Trade and Condition of this Island, from the time his most sacred Majesty was graciously pleas'd to confer on him the Government thereof, and from *the many Steps his Excellency, out of his singular Humanity, has taken for the Relief of the People committed to his Care, and also reflecting on the great Advantages which still may be procured for them thro' his Influence, and faithful Representation of the many Hardships this Island still labours under, and weighing, above all, the happy Effects of a mild, just, and prudent Administration, which, with the utmost Satisfaction, the Representatives of the People do most assuredly promise to themselves from the excellent Qualities of his said Excellency, &c.*

How exalted the Hopes and Expectations of the good People might have been at that Juncture, I cannot take upon me to determine; and I profess myself at a Loss to know what *the many Steps* were that his Lordship had taken for their Relief. But I remember very well, and You have cause to remember, that my Lord, good natur'd Gentleman as he was, had some time before adopted the Passions of the Speaker, whose Resentment he made you feel, as much as he was able to make you feel it; and that without any Reason or Provocation on your Part. There are other Instances of the same Nature, that can hardly escape your Memory.

But the *Coup de Maître* of the Speaker is display'd in *the additional Act* to the former, which pass'd the twentieth Day of the next *November*, which take as follows.

Whereas the said Sum (3000 l.) of the Currency of this Island *is found by Experience not to be sufficient to answer the Ends and Purposes for which the same is intended*, the Representatives of this Island seriously taking into their further Consideration *the very great Charge and Expence his said Excellency hath already been, and still necessarily must be at, in his constant Endeavour, unwearied Application, Industry, and Diligence, to promote the Welfare and Prosperity of the People of this Island, &c.*

—Therefore they vote him another 1000 l. making all together 4000 l. *per Annum.*

The End and Purpose for which the first 3000 *l.* was settled, is declared to be for supporting the Honour and Dignity of the Government, which I can easily believe could not be done with that Sum; but pray, Sir, did you ever hear what those *great Charges and Expences* were, that attended my Lord's unwearied Application and Diligence in promoting the Publick Good?

But what do you think, Sir, *the Speaker himself* was to have had from his poor dear Country, in case he had obtain'd the Government instead of Mr. B——? A Gentleman of undoubted Credit, who was in the Assembly at that time, and whom I can always call upon, assur'd me that this Candidate, when his Hopes run very high, told him, he had been computing the necessary Charges that would attend his expected Promotion; that, inasmuch as he had several Advantages above a Stranger, in respect of his being settled in the Place, he should be able to live with tolerable Decency upon 25 or 2600 *l.* a Year, which *he thought the very least that would answer the Purpose*. But the same Gentleman concurs with several more of the Speaker's intimate Friends in asserting, that he would have had at least 3000 *l.* and probably another thousand; for there was nobody to oppose it, and he was never known to let slip an Occasion of getting as much Money as he could.

Mr. B—— however had 2000 *l.* a Year allotted him by an Act of Assembly, dated the 26th Day of *February*, 1739, because it was well known to be insufficient for affording him common Conveniences without a most strict Oeconomy; by which means he must have lived in a State of continual Dependence. Nay, there are many strong Reasons that induce others as well as myself to think, that if 100 *l.* more would have satisfied him, and that Sum could have been yearly dug out of a Gravel-Pit, it would have been denied him; because, if given, there would have been nothing more to ask, whereas the fix'd Intention was to keep him in a craving Condition.

The Assembly also voted him 2500 *l.* to repair his Losses at Sea; but he was far from desiring, nor did he at all relish it, tho' his Circumstances did not put him above accepting of it. He was, indeed, willing to take it as part of a Salary equal to his Predecessors; but that would not do with his Benefactor, who designed this as a Specimen of the manner in which he was to be supply'd; it was to shew him that he was to be fed from Hand to Mouth, in Proportion as he should continue to deserve favour at the Hands of the sovereign Disposer of the Publick Treasure. Thus you see, as one Assembly, govern'd by the Speaker, settled 4000 *l.* on Lord H—— at the

most distressful Period in all Respects that *Barbados* ever knew; so another refus'd, under the same Direction, to settle more than half that Sum on Mr. B——, at a time when the Island enjoy'd more solid Prosperity than it had done for twenty Years before. And here it may not be improper to remark, that they had acted the same Farce upon the Nomination of Lord H——, as they afterwards did upon that of his Successor, by entering into Combinations, Protestations, and Oaths, not to settle more than 1500 *l.* at the utmost. The truth is, the Speaker soon perceiv'd that Mr. B—— was a Man fit to govern, and therefore would not be govern'd; that as he grudg'd no Labour of his own, so he did not care to put others to the Trouble of thinking for him; upon which the other took his Leave formally at *Pilgrim*, as a Place where he could not expect to be Master any longer; nor did he ever come there again, except once to beg a Favour.

His next Step was going about and publishing his Sufferings in the Cause of his dear Country, affecting at the same time to have a greater Stock of Vigour and Spirits than was natural to him, and crying *he was grown young again*; the first Day his Age was come back to 45, and in a few Days more to 37, the Governor's Age: And thus he play'd Gambols thro' Town and Country for some time; while every Mortal who went to *Pilgrim*, without an immediate Call of Business, was an Enemy to the *Demagogue* and to *Barbados*.

But after all, did not this Gentleman propose to save, and actually did save 2000 *l.* a Year to the Publick, and is not this some Merit? Believe me, Sir, this was far from his Thoughts; for he was very willing to have loaded the Country with more, if the Governor would have put himself wholly under his Tuition, as is already hinted. And now you'll give me leave to shew how I certainly know this to be true.

Before any Settlement was made, I saw the Speaker by chance at a third Place; for he seldom came to me, and I never went to him. He thought fit to touch upon the reigning Subject of that Time, which gave me an occasion of hinting, that as the Whole of that important Affair roll'd upon him, so it behov'd him to make the best Bargain he could for his Country; but he would do well to consider, that it was not every Shilling a Man kept in his Pocket, that was so much really sav'd. His Answer was, that *there were great Reasons why the annual Salary could not be to the Governor's Mind, but that Means should be found of making him easy another Way*. The same Thing he has repeated on other Occasions. I understood him perfectly well, but knew

too he would find himself mistaken, as well on account of his Majesty's express Instruction against taking Money in that Manner, as against the Governor's unalterable Purpose of being Independent. Let me add to what is just now said, that those of his Faction made no Scruple of declaring, that Mr. B——g was very imprudent in breaking with their Leader, because he might have had more than 4000 *l.* tho' in another Shape than that of a yearly Settlement. And yet some of these Persons would go about, the same Hour and tell the ignorant People that the Speaker was their Saviour and Deliverer from an all-devouring Dragon, whose Hunger was not to be appeas'd with less than 4000 *l.* a Year.

I believe, Sir, you perceive already, that Mr. P—— had no Merit of this Sort; but if you desire to be past all doubting, please to cast your Eye upon the following Extract of a Letter, which was propos'd to the Governor to be sent by him to the *Demagogue*. The Original Draught, which is now before me, was pen'd by the Clerk of the Assembly, and by him put into the Governor's Hands on the 16th of *January* 1739, as the sovereign Balsam that was to heal all Sores, and without which nothing but Gangrene and Mortification could ensue.

If you believe me, Sir, to be sincere in my Professions, as I most solemnly declare I really am, you can't be insensible, how much it must affect me to have Disputes or Contests with one of your Character, and be forc'd to lay aside that Activeness I purpos'd to make use of for the Service of the Island; and instead thereof only to look upon myself sent here to exercise the Authority which my Commission, and the Laws of the Place enables me to do, *without considering whether the doing so may be beneficial or prejudicial to the People*; for if I am treated with Disrespect, and suspected, I can't help being jealous on my part; and when that prevails between Persons, little good can ensue. I am well satisfy'd that you, Sir, have no other Views than the Service of your Country, which has long experienced your great Abilities in the Stations you bear; and I can't help thinking myself unhappy in being appointed to this Government, (*which I assure you I was, without seeking for it*) after some Steps had been made to have you the Person; which had I known before my Appointment, I believe I should have lost the Pleasure of your Acquaintance, as my Interest, if I had known you, Sir, should have join'd your other Friends for your succeeding; and therefore *I flatter myself, that as I knew nothing of the Affair, you will not blame me for appearing here in this*

Station, but give me leave to afford you part of the Power, while I bear the Name of the Office.

What do you think, Sir, of this curious Piece? Don't *the Leading-strings* here stand confess'd? Surely such a shameful Prostitution of the Dignity of Government, as was here contriv'd, needs no Comment. And therefore I shall only observe, that Mr. B——g thought of it as it deserv'd; and leave you to judge whether the Penman dar'd to have made an Overture of this Kind, without the Privity of his Patron.

But to return to the Period when the Settlement was made. The Governor being now at the End of his Hopes, sat down calm and serene, enjoying his Friends, without shewing the least Mark of Displeasure against any one of the Faction. He was sensible he had no legal Claim to 4000 *l.* or any other Sum; yet he found himself distinguish'd from his Predecessor, much to his Disadvantage, without one plausible Reason to support the invidious Distinction. Yet he did not fail to separate the Innocent from the Guilty, not finding Fault with the Stone that hit him, but regarding the Hand that threw it. He clearly acquitted the People of *Barbados* in his Conscience, condemning only one Man, who he knew had oppos'd him from the basest Motives; and therefore it is but doing Justice to say, he never quitted his Hold till he brought him fairly to the Ground. He would sometimes say, they had reduced their Governor to live as a private Gentleman; but that was no great Mortification to him, who had always liv'd in that Manner. His Loss at Sea was now accounted a Blessing, because he was depriv'd of an Equipage, which he wanted the Means of supporting. But nothing of this Sort abated his natural Activity; for he was indefatigable in reviewing the Militia, visiting the Fortifications from one End of the Island to the other, preparing wholesome Laws, and reforming the Magistracy, which stood in great Need of a Reformation. In all these Functions, and many more, he shew'd a Zeal and Industry that never have been equal'd here, and perhaps can't be exceeded any where. This was what the other could not endure, that his Adversary should enjoy Tranquillity, and carry on an easy unexceptionable Administration, in which he had no Share, while himself was eat up with Indignation and Revenge. In short, he lost his Temper daily, in proportion as the Governor kept his.

One of the first Pranks he play'd was in this Manner: He had hurried the President into holding a Council of War on the 8th of *November 1739*, before

the Governor's Arrival, and even before the Declaration of War had reach'd us. On this Occasion, he, who took all upon himself, mov'd the President, that he would give the necessary Orders to have the Intrenchments repair'd and put into the best Order. The Expediency of the Thing was not to be questioned, had it been seasonable. But after the Declaration of War with *Spain* was published, and repeated Advices had rais'd strong Apprehensions of a War with *France*, Mr. B—g express'd his Intentions of having immediate Care taken of the Entrenchments. This Measure, however reasonable or indeed necessary it had been deemed a few Months before, when it was not certain there would be any War at all, was now, when a War actually subsisted, call'd a Piece of great Oppression and Tyranny, design'd to harrass the poor People, because the naughty Governor had been disobliged. The Speaker gets his Assembly-men together, and dictates to them a Message to be sent to the Governor, (not as an Act of their Body, but as their private Opinion) *that his Orders for repairing the Entrenchments, tho' lawful, would not be obey'd*; which insolent Message was accordingly deliver'd in Form by the Clerk of the Assembly, when I happen'd to be at *Pilgrim*. Judge you, Sir, whether it was high Time for Mr. B—g to try who was to be Governor, he, or Mr. P—s? The issuing such Orders which before had been highly proper in Point of Safety, was now become indispensible in Point of Honour. The Commissioners of Fortifications were called together, and directed to take the proper Steps appointed by the Law for effecting this useful Work; but withal to do it in such a Manner as would be least inconvenient and burdensome to the Inhabitants. When the Commissioners for *St. Michael's* Division met, Mr. P— represented to them, that as there was no Assembly then in being (for the Writs were not yet return'd) they could not proceed upon Business legally, before they were join'd by the Members for the several Parishes in their Division. The Act for appointing Commissioners of Fortifications was read, the Words and Meaning of which were clear enough to all, except a very few, who had an uncommon Share of Illumination. It was then resolv'd to take the Opinion of the Attorney General upon the Construction of the Act, which ordains, *that the Counsellors, Field-Officers, and Assembly-Men for the Time being, in each Division of the Island, shall be Commissioners of Fortifications, and that any three of them shall be a Quorum*. Upon a formal Reference of this Matter, the Attorney-General reported his Opinion, which unhappily differ'd from that of Mr. P—; *for he conceiv'd clearly that three made three*. But our Hero in Politicks, who was

not us'd to be stagger'd by Trifles of Law and Right, declar'd, that the Opinion of no Lawyer on Earth should weigh down his own, for that Lawyers construed Acts by the Rules of *Westminster-Hall*; but he knew what was the Meaning and Intention of the Legislature, tho' it could not be collected from the Words. But as the Commissioners in general were Men of Sense and Spirit, they agreed with the Lawyer, *that three made three*; so that the *Demagogue* was over-ruled once in his Life, and had no Resource but entering a senseless Protest against the Proceedings of the Board, without any Foundation of Reason, Law or Precedent. A grievous Defeat! owing chiefly to the Absence of his faithful Myrmidons of the Assembly, who were never known to deny him a Vote in any one Instance. In a Word, the Governor was obeyed, and the Work was done, without any Noise, Murmuring, or the least Hardship impos'd upon any one. Let me ask, Sir, if you think such a perverse Trifler as is now describ'd, was fit to be let into any part of the publick Business, from which he might lawfully be shut out, after discovering so untoward and childish a Disposition to embarrass every Thing that was propos'd by the supreme Magistrate, without any Distinction of Right and Wrong?

Soon after this, the Governor having observ'd at his several Reviews that most of the Regiments of *Militia* had been neglected to a scandalous Degree (many Soldiers appearing without Arms of any Kind, and even without Shoes and Stockings) order'd the Secretary to write Letters to the Colonels of the several Regiments, the Speaker being one, requiring them to make Returns of their effective Men, and of those who were absent, as also of those who were unprovided with Arms, and whether these last were unable to purchase Arms, or for what other Reason they wanted them. The other Colonels made Returns as satisfactory as could well be expected: but the only return that could be got from the *Lieutenant-General* was a saucy Letter to the Governor, which I have seen; nor could he ever be drawn into an *Eclaircissement* of the Reasons why so many Men appeared unarm'd, because he well knew it would have come home to himself, who was so notorious for disregarding the *Militia-Act*, in Point of Arms and Accoutrements, that one of the Appraisers who took an Inventory of all his Chattels, after his Death, assur'd me, that he was surpriz'd to find there were hardly Military Implements enough to equip one Foot Soldier; altho' the Quota, which he was bound by Law to furnish, surpass'd that of most Planters in the Island, and amounted to a great Number of Men. In a State of War and

publick Danger, such Remissness would hardly be thought, in any other part of the World, becoming a Patriot and a General Officer, on whose single Aid the Safety of his Country has been lately said to depend.

While this singular Gentleman was thus bidding Defiance to his Governor in the most lawful and prudent Acts of Government, he took care to inform him that no considerable Change for the better was to be expected. For this Purpose he made use of his usual Conveyance, the Clerk of the Assembly, who in his Letter of the 19th of *April 1740*, (which I have) wrote to the Governor thus;

From some Discourse I have had with the Speaker, he seems to be in a much better Temper with regard to the Publick, tho' *determined never to be in any great Confidence with your Excellency*; and which indeed I fear there is no Prospect of having again renew'd.

An unhappy Circumstance! that at a Time when an Invasion of the Enemy might be apprehended every Hour, no Confidence subsisted between the Captain-General and the next Officer in Command.

I choose to suppress the low Scandal and brutal Scurrilities that were every Day thrown out by the Faction, the mean Artifices incessantly us'd to render the Governor odious to the common People. Raking into such Filth would serve only to blot my Paper, and hurt your Attention. And therefore I proceed to ask, What Mr. B——g could or ought to have done in these Circumstances? If he had alter'd his Measures, it must have been for the worse; for the World could not charge him with one Act of Mal-Administration. Must he have resign'd his Authority to Mr. P—— and contented himself *with the Name of his Office*? This, indeed, might have made his Peace, because it was the only Bone of Contention; yet I imagine you would scarce have advis'd him to it. You will possibly think there was no Room for Deliberation; there being no other Expedient left, than to pull down this *Colossus*; at least Mr. B——g was of that Opinion, and accordingly removed him from all his Military Employments, on the 10th of *June 1740*. This you know, Sir, he might well do, out of the Fulness of his Power, without assigning any Reason, or being accountable. Yet he did not satisfy himself with doing it, because he could do it, but at the next Council of War enter'd his Reasons at large in the Minutes of that Board; the Truth and Validity of which Reasons were sufficiently obvious. The Governor at the same Time took Occasion to express his Approbation of Mr. Ap——te, who

is a much better Officer than the other, if you will take the Word of your old Acquaintance, who spent a Part of his Youth in the Army; and says, that tho' he never knew much of Military Affairs, and has forgot something; yet he remembers enough to satisfy him, that Mr. *P*— knew very little of the Matter. I have often heard him assert this in the Life-time of that celebrated General, and give what I thought good Reasons to maintain his Assertion.

The Removal of Mr. *P*— affords a remarkable *Æra* in the late Administration. The Governor had been hitherto no more than the most disagreeable of Mankind in Mind and Body, big with ill Intentions which he never discover'd, contriving mischievous Schemes which no body knew what they were, to be reduced into Action no body knew when. At Cock-fights and Funerals, Parties of Diversion and of Business, these had been the Topicks; and the Poison was swallow'd with the Punch, while no one was at Hand who had Understanding and Fortitude enough to apply an Antidote. Indeed, the less violent Part of the Faction could afford their Pity to the poor Governor, while he had no other Part allotted him than to bear Injuries with Patience. This, I say, had been the Case for some Months; but now the Governor had pull'd off the Mask; here was a flagrant Overt-Act of Tyranny, the Head was cut off from the People, and the Body was next to be mangled. The first Outrage which happen'd immediately on receiving the News of the Dismission, I desire to pass over, out of Regard to some well-meaning Gentlemen, who acted on that sudden Occasion without Thought; after just hinting, that the Behaviour of several of the Officers of his Regiment clearly shew'd, their Colonel's Talent lay rather in disciplining an Assembly than a Regiment. The Regiment, however, was left all at once without an Officer; and powerful Endeavours were us'd, at second hand, to bring the Officers of other Regiments to follow the laudable Example of these their Brethren; but the Phrenzy was not so general as the Faction wish'd and expected; for it stop'd where it began.

The great Mystery was, who could advise so unaccountable a Step as the displacing this great Man; till a certain Gentleman unfolded it, by asking some of the Faction, if they thought the Governor wanted any Advice in so plain a Matter; or if they thought he had not one Friend to advise him. To relate the Whole of what pass'd, would appear Romance to all but Eye-witnesses. Among Numbers who rejoic'd at this Event, it is strange how few they were who ventur'd to open their Minds. Besides those, whose Mouths were stop'd by Interest, Dependence, or Poverty (for you well know, Love

and Esteem had the least Share in Mens Attachment to the Speaker) many who were free Agents, preserv'd, notwithstanding, a strict Caution in speaking; for it really was the Fashion to be afraid of that Man, whose Resentment, like Death, would spare none, but mow down even whole Families. There can't be a better Proof of this, than the universal Reluctance that possess'd every body against succeeding him in the Command of the Regiment, which prevail'd to so high a Pitch, that the Governor himself was obliged to take it under his immediate Care, and then, by Degrees, he rais'd an excellent *Corps* of Officers. Yet this too was effected under great Difficulties; for the bare accepting a Commission in that Regiment, was Apostacy and Rebellion; Vengeance was denounc'd against all such Reprobates as would venture to do it, and no Pains were spar'd to intimidate or punish; of which let me give you two or three Instances among several others. Mr. B—— H——, who was put upon the new List to be a Captain, fell off suddenly, and desired to have his Name struck out. As he was a Man of personal Worth, and an independent Fortune, his Friends were alarm'd at this Change of Resolution, and desir'd to know the Cause of it. At first he excus'd himself upon his Want of Health; but being further press'd, frankly acknowledg'd, that he entertained well-grounded Fears for his Sister, who was so unfortunate as to be a Debtor to the Speaker, and would be made suffer for the Fault of her Brother; so that it was not without great Pains he was brought back. Mr. J—— L—— had been recommended by the Speaker to the Governor, soon after his Arrival, when all Favours pass'd through that Channel, to be appointed Clerk of the Courts of Common Pleas; in which he succeeded, because he happen'd to come an Hour before another, who was a Competitor for the Office. This Gentleman afterwards taking the Commission of a Captain, very innocently, and for the Service of his Country as he thought, was branded with the Imputation of black Ingratitude, and said to fly in the Face of his Benefactor. Mr. W—— M——, who was in the Assembly, and who had been one of the Speaker's *Aids de Camp*, (for I think he had six) suffer'd himself to be appointed Major to this Regiment. This in him was Treason; Woe and Destruction were to be his Portion; and from that Hour the Faction form'd a Design, which is now carried on with unrelenting Malice, of turning this Gentleman out of his Parish at the next Election; whose sole Demerit is, that of daring to assist in defending his Country in a Time of War, when the Politicks of our Patriot required that it should be defenceless.

The only Morsel of Comfort he had now left to subsist upon, was the naked Condition of this Regiment, stript of its Officers, without a Prospect of having them replac'd speedily; for it was not all the Activity of Mr. B——g and his Friends, that was able to find a competent Number of free Spirits, in less than several Weeks. And thrice happy it was for the disbanded General that this was the Case; because a *charming Address* had otherwise been spoiled. The Address I mean, is that of the 8th of *July 1740*, which you have seen, and will speak for itself. The Respect I owe to the present Assembly cuts short all Remarks of mine upon that extraordinary Performance. I know that Body consists, in general, of inoffensive well-meaning Men, who can have no Interest divided from that of their Country, and when fairly left to themselves, desire to do nothing but what is just and proper; but what Lengths such Bodies are capable of being carried by an undue Influence, don't need to be explain'd by the *Annals of Barbados*. I shall only presume therefore to enquire, if the Person who pen'd or dictated that Address, appears to have been in a Humour of sparing Mr. B—— and throwing a Veil over his Miscarriages? If not, why did he not state some particular Fact that was against Law and Right, and not content himself with an unmeaning Charge of unpopular Conduct? For my Part, I never heard that a Governor's misplacing a Militia-Officer was unlawful; how reasonable and prudent it was, in this Instance, must be submitted upon what has been already said. If it was unpopular, the greater the Governor's Misfortune, that a Measure unquestionably lawful in itself, and by him judg'd reasonable and prudent, should nevertheless hurt him in the Opinion of the Populace; but all this while there is no Crime. The Consequences of removing this Officer were plainly owing to his own factious Intrigues, and not to any Misconduct in Mr. B——: But further; if this was the severest Address (to say no more) that perhaps was ever presented to a *British* Governor, it must be supposed, in Favour of the Addressers, that this Governor had committed greater Faults than any other. Why then was there not a Charge exhibited against him in Form? Is there not a Way open to the Throne for all his Majesty's Subjects? And have not those of this Island in particular obtain'd Justice from that Resort too recent to be forgotten? But perhaps melting Tenderness for Mr. B—— prevail'd, and check'd the Pursuit of Justice.—Let those think so, who have read the Address, if they can. And here, Sir, I can't help expressing my Astonishment, that Gentlemen in *London* were capable of receiving those Impressions, which I find

they did, from such insignificant Materials as were put into their Hands. One would almost believe, that strong Resentments of the Abuse of Power had degenerated into a Dislike of the Thing itself, and that the People of *England* were come at length to think it impossible for any Man in Power to be in the Right.

Would you know, Sir, how Mr. B—— behav'd upon his receiving this Address? He put it in his Pocket without reading it, caress'd every Assembly-Man who came in his Way, and the next Day made one of them a *Judge*.

But though I don't care to offer my own weak Sentiments of this unparallel'd Piece, yet I can venture to affirm it was not relish'd by the Bulk of the People, according to the Expectation of the Author. They thought the Stile a little too delicate, and the whole too witty for a grave Subject. Some of the Assembly, who voted for the Address, had apprized the Governor of its Contents; and tho' it pass'd in a full House, where there was not one dissenting Voice, yet many of the Members have, in my hearing, and most of them (as I am inform'd) in the hearing of others, express'd their Abhorrence of the thing. Your old Acquaintance the Storekeeper could hardly sit in his Chair while it was read in the House, and express'd his Disapprobation by Shrugs, Distortions, and Interjections. And I must not omit telling you, that the next time he came to *Pilgrim*, the Governor rallied him on his voting for the Address, with a great deal of good Humour. To which he reply'd—*By G——d, Sir, I did not like one word of it, being convinc'd your Excellency had not deserved to have such things said to you; but your Excellency very well knows we are sometimes obliged to vote for things we don't approve of. Argumentum ad Hominem.*¹ It was owing, however, to the Moderation of the Speaker, or to something else, that it did not contain an Accusation of High-Treason, for even that would not have made it miscarry in the same House. But this was not all; for he had the Mortification presently after, to hear of the Regiment being well Officer'd, and in a fair Way of being put into better Order than when he commanded it. This was a mortal Stab, the Anguish of which could not be asswaged by all the Noise of Faction, and the Incense of Sycophants; for he was sick at Heart. The *Address* and the Bundle of *Libels* sent to *England* were no better than Palliatives. It is certain he declined visibly, and continued in a languishing Condition till the fourth

1. Literally, "Argument directed to the man." An attack or appeal to the character of the person making an argument, avoiding the substance of the argument.—Tr.]

of *September*, when he made his Country some amends by leaving it, I hope, for a much better.

His Death seemed no unfavourable Event for Mr. B——; yet he was far from being elated by it. The Fact is, he had lost all *Glee* for every thing the Country could do for him; he said they had degraded him, and taught him to live, as a Governor, upon 2000 *l.* a Year, and he was perfectly indifferent whether he should be put to the Trouble of spending more. His Sincerity, in this Respect, I could prove by something more than Words; let it suffice that I assure you I have as clear Evidence of it as one Man can have of what another thinks.—Neither he nor his Friends shewed any token of Joy or Triumph; no indecent Expression escaped from any of them, tho' he has been falsly charged with it. A Behaviour very different from what was shewn by some others but a few Weeks after. The worst thing he was ever heard to say upon the Occasion was, that he was only sorry the Speaker did not live some Months longer, that he might have made him more compleatly ridiculous; which I can say, of my own Knowledge, he had fully in his Power, and would have done to the Purpose. He had in truth a sincere and hearty Contempt of that Person almost from the first Sight of him, insomuch that I never have known him laugh so cordially at any other Subject, and that too in the very Article of contriving the means of coming up with him. It is with true Regret that I am urg'd to say so many things to the Disadvantage of the late Speaker's Character; I could have been well satisfied that his Faults had been buried with him; I have not wantonly or maliciously taken up my Pen to disturb his Ashes; but himself and his Friends have been the wicked, wilful Authors of my Trouble, and their own Reproach. Had they been so just as to speak nothing but Truth of Mr. B——, I had been so charitable as to say nothing of them. But when once it becomes unavoidable, that either Guilt or Innocence must suffer, an honest Mind can't deliberate long upon the Alternative. And yet the most partial of his Friends must allow, upon Recollection, that I have been far from indulging Ill-nature, or private Pique. Were I govern'd by Motives of this Kind, or were I to make Reprisals for the inhuman Treatment Mr. B—— and his Family have suffered; I could open a Field where the most inveterate Rancour might sport, without violating Truth, or resorting to any other means than a simple Narrative of Facts, which can be vouch'd by almost every Man or Woman in this Island. After all, one is really at a Loss which to admire most, the Wickedness or the Folly of this Faction. Could they imagine it feasible to blow up the King's

Governor with one Blast of Slander, without allowing him a Hearing, or any Means of defending himself? Did they believe there were no honest Men in *Barbados*, such as had never bow'd the Knee to *Baal*, who would be ready to vindicate his Integrity, and expose their Malice? What could be expected from so vile an Enterprize, conducted by Persons who had neither Parts, Learning, Address, Knowledge of the World, or in truth any Talents, except matchless Impudence, and an Intrepidity in Lying?

On the Death of the Speaker you'll imagine the Complexion of Things was chang'd. Some who seem'd to have forgot the Way to *Pilgrim*, came thither in Crowds, where they found a chearful Countenance, and a hearty Welcome. It was visible, that the Governor made a rapid Progress in gaining the Affections, and quieting the Minds of the Inhabitants, in spite of the most treacherous Efforts to the contrary; so that there was no room to doubt his Composing all Differences in due time, by over-coming Evil with Good. But this fair Prospect was soon marr'd; for he was snatch'd away, about a Month after his Adversary, by a malignant Fever, that had been fatal to Lord *Howe*, and many other Strangers. He died the 6th of *October*, with that Resignation and Fortitude, which is peculiar to Men of Sense and Probity; much too early for this Colony, as well as for his Family; esteem'd, belov'd, and lamented by all who knew him well; hated by those who knew nothing of him. Why was not the Publick Sorrow for the Loss of such a Magistrate as universal, as it was at the Death of his Predecessor?—The latter wore the *Demagogue's Leading-Strings* till they galled him; the former disdain'd even to put them on. A sad Example of the Lottery of Characters! But it is not for me to enter into grave Reflections, but leave that to you, who can do it much better.

Thus, Sir, I have given you a long History of a short Administration, in doing which I am not sensible that I have aggravated any thing on one side, or extenuated on the other. The two Persons, how unequal soever, who make the principal Subject of this Letter, are now in their Graves; so that I can't think it were possible to find a more infamous Employment, than sacrificing the Memory of either to that of the other, at the Expence of Truth. I fancy, Sir, you can hardly forget that I have no Partiality for Men in Power; and of all mortal Men in Power, I have the least Tenderness for Governors, whom I have had Occasion, more than once, to regard as Grotesque Figures, dress'd up to shew the ridiculous and weak Side of Government. But I must confess with the same open Sincerity, that I could plainly discover, in the

Magistrate so often mentioned, better Intentions, and a greater Alacrity in executing them, than I had ever seen before in the same Station. I shall not dwell upon his Affability, good Nature, his Readiness to oblige, with a happy Manner of conferring Favours; his Hospitality, which tho' supported by a Pitance, excelled every thing that you or I have seen in this Place; all these I regard only as the Trappings of his Merit. Allow me only to offer one Proof, among many of more substantial Worth. His Moderation was such, that he never would entertain a Thought of doubling the Number of the Matrosses, which he might have done at any time for eight Months together; being not only enabled, but seemingly required so to do, in a time of War, by a positive Law. Yet because it would have put the Country to a yearly Expence of 2250 *l.* which did not then appear to be absolutely necessary, he generously suspended the Execution of his Power in this Particular. Possibly, Sir, you will think some disoblig'd Governor, of a more vindictive Spirit, would have triumph'd in convincing the People, by making them feel that they had lost clear 250 *l.* a Year by their Bargain. I have sometimes thought a more harsh Temper would have better suited the rugged Task which Fate assign'd him; and I must own he wanted that happy Indifference for Good and Evil, which so eminently distinguish'd some of his Predecessors, who far'd much better; not by any superior Address, or Management of theirs, but by Conjectures so favourable, that they could not help being prosperous.

The Members of his Majesty's Council have unanimously born Testimony to the publick Acts of Mr. B——'s Government. The Lawyers to a Man applaud in him the patient upright Judge. The Wise and Virtuous, throughout the Island, give him their Suffrages. To him we owe the best, the only good Commission of the Peace that any Man living has seen here, and this his Enemies confess; for he effectually clear'd it of all the Rubbish with which the *Demagogue* had loaded Lord H——'s Commission. He abhorr'd from his Soul all unworthy Promotions, more especially such as concerned the Distribution of publick Justice. The Concurrence of your best Friends gives a Sanction to what I write. As they interest themselves in the Cause of Justice and Truth, so they recommend it to your Care, well knowing that such a Cause is worthy of your Character, and suitable to your Disposition; for you delight in doing Justice both to the Living and the Dead. The perfect Acquaintance you have, as well with the Scene of Action, as the Genius and Spirit of most of the principal Actors, enables you to form the most

exact Judgment of the whole, and to enlarge upon several Passages that are deliver'd only in the Way of Hints, and might therefore appear obscure to a Person less inform'd. Your Friends declare you'll run no risque in assuring those of Mr. B——, that he did nothing abroad to lessen the good Opinion they had of him at home; on the contrary, that many Parts of his Conduct must have rais'd their Esteem, had they been Witnesses of some Qualities, that can't be sufficiently display'd without being the first Man in a Place. They desire that his Cause may be try'd by Facts, not by general Assertions and equivocal Expressions. His Enemies are called upon to shew, that this *haughty imperious Governor* (as he has been called) ever treated those who came near him, even themselves, with Disdain, Anger, Distance, or indecent Language; that this *avaricious Man* ever made the least Attempt upon private Property or publick Treasure; that this *Tyrant* did one illegal or oppressive Act: Let them shew all or any of these things, and then I will give up all I have said for Slander and Fiction.

Is it then possible there should be found People so lost to all Sense of Virtue, and even of Humanity, who can study to reverse the Character of a Gentleman, and paint him black, when they know in their Consciences he is of a contrary Colour? to do this without Shame or Remorse, when there can be no Pretence of Mistake, Misinformation, or Surprize? The natural Answer is, there have been such very lately in this unhappy Spot; and I have no Scruple in pronouncing, from a certain Knowledge of what my Eyes have seen, and my Ears heard, that any Man in *England* would have met with Mr. B——'s Fate, had he come in his Place, and done his Duty; I am not certain, however, that many others would have born it with the same Equality of Mind. Hard is this Gentleman's Lot! that, he who took more Pains to do good than I ever thought of experiencing in a *West-India* Governor, should be at last beholden to a surviving Friend to prove that he did no harm!

I must not conclude, without apologizing to you for making this *Letter* publick before it reaches you. My Reason for so doing is this, as it contains nothing that ought to be a Secret, and has little or no personal Relation to yourself, I was resolved to give the Enemies of our late Governor that fair Play which they denied him. They have now an Opportunity of maintaining their general Charge, by descending to Particulars, and refuting what is here offer'd in his Vindication. This, I am sure, is what they can't do, and consequently they will be left without Excuse. I defy Mankind to answer the Facts that I have stated, otherwise than by a *Vote of the House*. It was judg'd

more than possible, that some Dirt might stick where so much had been thrown, and that this was the most likely Method to disabuse those who had given way to wrong Impressions. Be this as it will, I have endeavour'd to acquit myself of the Task with which you were pleas'd to charge me, without any other Merit than that of being,

SIR,

Your most Obedient Humble Servant.

Tho. Baxter.

Samuel Chew,
The Speech of Samuel Chew, Esq.
(Philadelphia, 1741)



THROUGHOUT COLONIAL British America, judges routinely delivered speeches or charges to grand juries at the opening of their sessions. Intended to be instructive, these charges usually consisted of discourses on the function of law and its relation to the protection of life, liberty, and property and the regulation of social behavior as it had emerged out of the English common law tradition over the centuries. They often contained specific definitions of crimes that informed juries about exactly what sorts of behavior came under what category of offense. Several of these found their way into print, and this speech by Samuel Chew, chief justice of the proprietary colony consisting of the three “lower counties” which had the same governor as Pennsylvania but a separate legislature and court system and in 1776 would become the independent state of Delaware, is one of the most interesting examples. It was somewhat exceptional among such charges because Chew used the occasion to argue the case for the “LAWFULNESS OF DEFENCE against an armed Enemy,” a subject then under discussion because of Quaker refusal to bear or support the bearing by others of arms in neighboring Pennsylvania. Himself a Quaker, he cited natural law and many biblical passages to make the case that “what is called Estate, or Property, was as absolutely essential to human Happiness as even Life or Liberty; and therefore [that] some Means of securing and preserving Life and Liberty, and what every Individual had purchased and made his own, by his Labour and Sweat of his Brow, were indispensibly necessary,” that willingness to use force was therefore “necessary to that Preservation,

and consequently, that War was allowable." This publication was one of the many attacks on Quaker pacifism that would occur during the midcentury intercolonial wars between 1739 and 1763.

Born in Maryland and a physician and estate owner by occupation, Chew moved to Delaware in 1738 when he was already in his mid-forties and was appointed chief justice in 1741, the year that this document was published. He died just two years later in 1743. (J.P.G.)

THE
SPEECH

OF

SAMUEL CHEW, Esq;

Chief Justice of the Government of
NEW-CASTLE, KENT and SUSSEX
upon DELAWARE:

Delivered from the BENCH to the GRAND-JURY
of the County of *New-Castle*, Nov. 21. 1741; and now
published at their Request.

PHILADELPHIA: Printed and sold by B. FRANKLIN.
M.DCC.XLI.

The Speech, &c.

Gentlemen of the GRAND-JURY,

It is with Pleasure I see, at this time, a Grand Jury that I am convinced do not require much to be said to them, to instruct them in their Duty, or the Occasion of their being called here: However, Custom makes it necessary that something should be said to you from the Bench: I hope therefore you will give me your Patience, if, instead of confining myself to Subjects that relate more immediately to your Office as a Grand Jury, I take up some Part of your Time in treating of a Matter of more general Use, and of the greatest Importance to the Publick Safety; the *LAWFULNESS OF DEFENCE* against an armed Enemy.

It may, perhaps, at first View, seem strange that there should be any Occasion to prove a Thing in its own Nature so evident: But whoever reflects, that this very Point has taken up a considerable Part of the publick Debates in a neighbouring Government; to which we are nearly related, and what a Number of Abettors the Assertors of the Unlawfulness of all kind of Defence have found, will be less surprized at it. For my own Part, I look upon this Doctrine not only to be without Warrant or Colour, either from Reason or Revelation; but in its Consequences pernicious to Society, and intirely inconsistent with, and destructive of all civil Government. But as Opinions, otherwise than as they are supported by Reason, ought to be but of little Authority; I will endeavour to discuss this Point fairly, and to set the Matter in a true Light. *First*, By shewing how the Case stood under the Law of Nature. *Secondly*, That no Religion whatsoever, founded upon any pretended supernatural Revelation of the Will of GOD, can be true, that is inconsistent with or repugnant to the Law of Nature: And *Thirdly*, I propose to examine some of the principal Authorities from Holy Writ, which the Patrons and Assertors of the Unlawfulness of Defence, under the Gospel-Dispensation, have adduced to prove their Point; and to shew that these Authorities are so far from supporting their Doctrine, that they are either quite foreign to the Case, or that they militate directly against the Adducers of them.

Some Men of great Learning and Knowledge have amused themselves and the World, with endeavouring to discover what great End the Supream Being proposed to himself in the Creation of the World, and of Mankind in particular; and have formed various Conjectures about it. Certain, however,

it is, that an Addition to His own Happiness could not be the Motive; because He must necessarily have been infinitely happy from all Eternity. And it is no less certain, that such a Being, as we all understand GOD to be, a Being of infinite Goodness and Benevolence, could not possibly intend the Misery and Unhappiness of a Number of rational Creatures, by himself to be brought into Existence out of nothing: On the contrary, no other End than the Happiness of Mankind in their Creation, can consist with the natural Notions we entertain of GOD. If then it be admitted, that GOD created them with a View to their own Happiness, it must necessarily follow, that he afforded them the Means of acquiring such a Degree of it as he intended them, and as was suitable to their Circumstances in the World wherein he had placed them. Accordingly, we find the great Author of our Being has so fashioned and contrived us, that a Desire of Happiness, which is of so much Importance to us and the End of our Creation, is made the very first Principle, or Law of our Natures. And it is reasonable to suppose, that in a State of Nature the first Things upon which Men cast their Thoughts, were the procuring Food to satisfy the Cravings of Appetite, Raiment and Houses to shelter them from the Injury and Inclemency of the Seasons, with such other Conveniences of Life as concerned their immediate Preservation and Comfort. But, alas! Experience must very soon have taught them, that these Things were vastly insufficient for their compleat Happiness; and that, were they to stop there, they would fall infinitely short of the End. Life and Liberty, the immediate Gifts of GOD, were common to all Men; and every Man had a natural Title to an uncontrouled Enjoyment of them, and, consequently, a Right to preserve and defend them from the Injuries and Attempts of others, as they concern'd his Happiness: And what is called Estate, or Property, was as absolutely essential to humane Happiness as even Life or Liberty; and therefore some Means of securing and preserving Life and Liberty, and what every Individual had purchased and made his own, by his Labour and Sweat of his Brows, were indispensibly necessary. If, indeed, all Men, from the Beginning, had acted up to the genuine Law of Nature, and had done what was perfectly right, all other Provisions or Laws would have been useless. But instead of this, in the Order of Time, a Spirit of Rapaciousness and Corruption appeared in the World; and some, by a fatal Mistake, endeavoured to find their own private Advantages and Happiness, by making a Prey of the Lives, Liberties and Properties of others, by Violence and a strong Hand. And it is more than probable, that Men

in a State of Nature, before they had incorporated themselves into political Societies, must have suffered much, as the more Innocent and Weak were exposed to the Insults and Invasions of the more rapacious and strong; and more especially, as it was no easy Matter for interested Persons, destitute of any other Rule than Moral Rectitude for the Determining Right and Wrong, to decide Disputes about Property and Jurisdiction. The natural Desire then of Happiness, and that Principle of Self-Preservation, common to all Men, must first have inspired them, for their common Protection and Safety, with Notions of Compacts, of Laws, and of Government, as absolutely necessary, and without which it was impossible for them to be happy in any Degree.

Now the Difference between Men in a State of Nature, and their being incorporated into political Societies, consists in this: That in a State of Nature there being no common Judge to whom Men could appeal, every Man had a Right to judge of and to punish Offences committed against him, according as the Heinousness of the Facts, in his Opinion, deserv'd: But in the other Case, having given up that natural Right of private Judgment into the Hands of the Community, he resorts to the Community, when he thinks he is injured, as to a common Judge or Umpire, and submits his Cause to be determined by the established Rules of the Society for deciding Controversies between the Members of it, indifferently. But Societies themselves, with regard to one another, having no common Judge between them to whom they can appeal, may be properly said to be in a State of Nature, and to retain that Right of private Judgment, that every single Man naturally had, to repel and punish Injuries committed against them. And it would be exceedingly ridiculous to suppose, that a Number of Men, formed and united into a political Society for their common Safety and Happiness, should thereby lose any Part of that natural Right, of preserving and defending themselves from a foreign Enemy, that every Individual had before such Union.

If then Men must have been miserable without the Aid of Government and civil Society; the Preservation and Defence of that Government or Society must necessarily have been right by the Law of Nature, and consequently agreeable to the Will of GOD, who was the Author of that Law, and had given Men no other general Rule. Let us then consider in what Manner any political Society can possibly be affected, so as to make any kind of Defence necessary for its Preservation. And it cannot possibly

happen but one of these two Ways, *to wit*, either from some of the Members of the Society conspiring against it, and acting contrary to the Laws and fundamental Constitution of it; or from some foreign Enemy, by Force of Arms. It will be readily yielded, by those that oppose the Lawfulness of Arms, that Rebels and Traitors ought to be punished according to the utmost Rigour of the Laws they violate, because they themselves are Parties to those Laws, and bound to the Observance of them by their own Compacts. But what is to be done in case of a foreign Enemy, seeing here is no Compact? I know of no Alternative, but the Relying upon Prayers and Tears, or resisting by Force. And if the Aid of Prayers and Tears may be relied on in such Cases, they may be depended on against Rebels and Traitors, and in all other Cases, and consequently all Government is useless. But the Usefulness and Necessity of Government has been already shewn, as also the Right of preserving it: And if Force is at all necessary or lawful, no Medium can possibly be assigned between the least and the greatest Degree of it; and there is no Way to resist an Army but by an Army, nor to repel Force but by Force. I believe it will hardly be insisted on, that an Indictment against the General and Principal Officers of an invading Army, would be any Security at all; and any Attempt of that Sort would serve only to be laugh'd at, and to be a standing Jest amongst the Rest of Mankind. If then Government is essential to human Happiness, as has been seen; if the Preservation of Government is equally essential; and if Force is necessary to the Preservation of Government; it very clearly follows, that War was lawful by the Law of Nature; because if it were otherwise, Men would be denied the Liberty of using the Means necessary to that Happiness which GOD designed them, and which was the End of their Creation; which would be absurd.

As I have mentioned the *Law of Nature* to you, and have proposed to shew, that no Religion, founded upon any pretended supernatural Revelation of GOD's Will, can be true, that is repugnant to the Law of Nature; it will be proper to explain to you what I mean by it. By the Law of Nature then, is meant the Law of Reason, or in other Words, it is such a Rule for the Doing what is fit and proper for rational Creatures to do as they are capable of discovering by the right Use of their natural Faculties, unassisted by supernatural Revelation. This Law of Reason is the general Law of our Natures, and claims GOD for its Author; and therefore may, with the greatest Truth and Propriety, be called the Law of GOD Himself. And as GOD

is infinitely wise and good, it would be downright Blasphemy to say, or to suppose, that he would give Men a Rule for their Conduct that was not adequate to the End for which he gave it; or that a Conformity of human Actions to this general Law of GOD, would not justify Men in his Sight; and much more to say, it would displease him. Whatsoever therefore was right, whatsoever was fit, whatsoever was lawful for Men to do, in order to procure Happiness, under the Law of Nature, must have been eternally so, as being founded in the very Nature and Reason of Things: And whatsoever is right, fit and lawful from the Nature and Reason of Things, must necessarily continue to be right, fit and lawful to all Eternity. GOD is the same to Day, Yesterday and forever: In him is no Change or Variableness at all; but his Ways are constant and uniform. Hence it most evidently follows, that any Religion, or any Part of a Religion, that is pretended to be built upon a supernatural Discovery of GOD's Will, cannot possibly be true, that is inconsistent with, or repugnant to the primary Law of GOD, or Law of Nature, which is the same Thing; because it would imply Imperfection, Change and Variableness in GOD, which are contrary to his very Nature. For Instance; the Practice of Morality is of eternal Obligation; and Part of the Law of Nature, and is so absolutely essential to Man's Happiness, that without it he cannot possibly be happy in any Degree: Justice, Benevolence and Gratitude are moral Virtues: Now, suppose it possible that any Person having a Power, or appearing to have Power, to work the most stupendous Miracles, should pretend an Authority from GOD to teach Mankind, that the Exercise of Justice, Benevolence and Gratitude was wrong and displeasing to GOD; would such a Person deserve any Credit? And would not all wise and good Men conclude him to be either a Devil or an Impostor? Surely they would! And the Reason is plain, because such Doctrine is diametrically opposite to right Reason, and contrary to our natural Notions of GOD. Now as Government and political Society have been clearly shewn, from the very Nature and Reason of Things, to be essentially necessary to human Happiness; that the Preservation of Society is no less essential; and that Force is requisite to that Preservation; If any Man, or even an Angel from Heaven, should pretend an Authority from GOD to pronounce all kind of Defence to be unlawful, he ought to be rejected as a Liar and an Impostor. Those therefore that pretend to make out from the Bible, that War, in every Shape, is forbidden under the Gospel-Dispensation, will infallibly prove the Bible itself to be wrong, or themselves to be very wrong Interpreters of it.

Let none, from this Manner of speaking, imagine that I intend to insinuate any thing to the Prejudice or Discredit of the sacred Writings, or to cast any Imputations upon the Bible: Far, very far, be that from my Thoughts. On the contrary, though I do insist that the Bible would be no Warrant, nor ought to be of any Authority to support a Doctrine inconsistent with human Happiness, by prohibiting the necessary Means leading to it; yet, I do likewise assert, that it cannot justly be impeached with any thing of this Nature. And I hope I shall be able clearly to make out, to your Satisfaction, that there is not the least Colour of Authority from the Scriptures, to prove that a just and necessary War is forbidden to Christians; but that those Texts of Scripture that are commonly made use of by those who deny the Lawfulness of Self-Defence to Christians, are either misunderstood or grosly perverted by them. It would detain you too long, *Gentlemen*, were I to examine and consider all the Parts of Scripture that have been frequently cited upon this Occasion. I shall therefore select some of the principal Texts that I find quoted by an Author of very great Note* and some others on the same Side of the Question, and endeavour to shew that they carry no such Interpretation as these People pretend.

Those Parts of Scripture that are alledged as Authorities in this Case, are said to be either Prophecies, importing an entire Cessation of War under the Gospel; positive Precepts, forbidding the Use of the Sword to Christians; or general Precepts, that prove War to be incompatible with Christianity, and opposite to the Temper and Spirit of the Gospel. To the first of these, the famous Prophecies in the Books of *Isaiah* and *Micah* are constantly cited, and great Stress has been laid thereon. In order therefore to the clear Understanding this Prophecy, I will trouble you with the Passage at large, which runs thus; *And it shall come to pass in the last Days, that the Mountain of the Lord's House shall be established in the Top of the Mountains, and shall be exalted above the Hills; And all Nations shall flow unto it. And many People shall go and say, Come ye and let us go up to the Mountain of the Lord, to the House of the God of Jacob, and he will teach us of his Way, and we will walk in his Paths; for out of Zion shall go forth the Law; and the Word of the Lord from Jerusalem. And he shall judge among the Nations and shall rebuke many People: And they shall beat their Swords into Plow-shares, and their Spears into Pruning-Hooks; Nation shall not lift up Sword against*

* *Barclay.*

Nation, neither shall they learn War any more. Oh House of Jacob come ye and let us walk in the Light of the Lord. Happy, happy, oh happy indeed will the World be in the blessed Accomplishment of this Prophecy! The true and genuine Construction of this Passage appears manifestly to be, That in the latter Ages of the World, or in the Fulness of the Gospel-Times, all Nations shall so universally adhere to the Law of GOD, that Righteousness shall be established in the Earth; every Man shall do what is right and just; none shall injure or violate the Right of his Brother, his Neighbour, or his Friend; and in Consequence of this, War will naturally cease and be abolished, as the Effect will naturally vanish when the Cause is taken away; Swords, Spears, and other warlike Implements will become useless Lumber, or in the Language of the Prophet, may be converted into Plow-Shares, and other Implements of Husbandry. Now as no Man can pretend that the Prophecy in this Sense is yet accomplished, but that these happy Days, this glorious Reformation is yet to be expected in GOD's due time, it is certainly a most unnatural Conclusion, to infer, that War, which was lawful in order to repel lawless Force, shall become unlawful before lawless Force is eradicated and extinguished from amongst Men. Let us, for Illustration of this Matter, suppose the Prophets to have said, That in the Fulness of the Gospel-Times the Earth shall spontaneously pour forth her Increase; Corn, Wine and Oil shall flow without the Hand of the Labourer; Plow-shares and Pruning-hooks shall then become useless; Labour and Toil, the sad Effects of the Fall of Man, shall utterly cease and be no more. Would not that Man, who in the Expectation of the Accomplishment of such a Prophecy, should neglect to cultivate and sow his Field, or to prune his Vineyard, before the promised Time, be in Danger of Starving? And might he not justly be reputed mad by the rest of Mankind? And yet upon no better Foundation do they build, who affirm the Unlawfulness of War, upon the Authority of the fore-cited Prophecy.

The noted Writer before-mentioned urges against the Lawfulness of War, "That CHRIST said his Kingdom is not of this World, and therefore that his Servants shall not fight": Preposterously inferring, that because CHRIST would not permit his Disciples to fight in a Case wherein Fighting would have been quite improper, that therefore those that fight in any Case are not the Disciples or Servants of CHRIST. I have wonder'd to find the Place here alluded to, so monstrously tortured and perverted by this Author, and others, contrary to the express Sense and Meaning of it! Our

Saviour being questioned by *Pilate* concerning his being King of the *Jews*, and of the Offence he had been guilty of towards the *Jews*, by whom he stood accused, and who had delivered him unto *Pilate*, answered, *My Kingdom is not of this World: If my Kingdom were of this World, then would my Servants fight that I should not be delivered to the Jews: But now is my Kingdom not from hence.* The Design of this Declaration seems to be in order to undeceive the *Jews*, who entertained gross and partial Conceptions about the End of *CHRIST'S* Coming; and believ'd it was to establish an outward Kingdom at *Jerusalem*, and to restore the House of *Israel*. But this was not the Case. He came to erect a spiritual Kingdom to be set up in the Hearts of Men, there to bear Rule and Government, to reform a corrupt World, and restore Men to their primitive Natures. Here Reason, Persuasion, and such Things as tend to convict the Judgment and inlighten the Understanding, were the proper Means, were the only ones used by him. Force would have been absolutely improper, and therefore is disclaimed by him. But he is so far from condemning Force, in all Cases, that he expressly tells *Pilate*, that were his Kingdom of this World, then should his Servants fight in Defence of his Person. As if he had said, Were my Kingdom a temporal Kingdom, to the Preservation of which Fighting is not only lawful but necessary, my Servants would then have done their Duty, and have fought for me, as the Servants of other temporal Princes do in the like Cases.

The Apostle saith, *That the Weapons of our Warfare are not carnal but spiritual:* But says our celebrated Writer, "The Weapons of outward Warfare are carnal, such as Cannon, Muskets, Spears, Swords, &c. of which there is no mention in the Armour described by *Paul*," and thence infers that War is noways lawful to such as will be the Disciples of *CHRIST*. A hopeful Inference truly! Here was a Question about a Matter of Fact; whether the Weapons made use of in the Propagation of *CHRIST'S* Kingdom were carnal or spiritual: The Apostle, who figuratively was a Soldier in *CHRIST'S* Cause, decides the Question, and declares *the Weapons were spiritual and not carnal;* Ergo, quoth our Author, the Use of carnal Weapons are unlawful to Christians. Is this a fair Conclusion? It is, no doubt, unlawful to propagate Religion by the Sword; but, surely, that does not render the Use of the Sword unlawful in all Cases. It is somewhere said, the same Apostle was a Tent-maker, and if it had been added, that he was not a Shoemaker; the Conclusion that therefore Shoemaking was unlawful, would be equally just, as to infer, that because carnal Weapons were not used by Christian Priests

in a Case wherein they could have been of no Service, that therefore it is unlawful to use them in any Case.

The Apostle *James* testifies, *That Wars and Strifes come from the Lusts which war in the Members of carnal Men*: But, says our Author, "true Christians have crucified the Flesh with its Affections and Lusts: Therefore War is unlawful." How does this Conclusion follow from the Premises? Every kind of Wickedness proceeds from the same Cause here assigned by the Apostle for Wars and Strifes: Does it therefore follow that no Sort of Wickedness is to be resisted or punished? If so, we may shake Hands with all Government: Treasons, Murders, Rapes, and every other Crime, shall go unpunished, seeing they all come from the Lusts that war in the Members of carnal Men. It is not denied but War is a very bad Thing, and brings dreadful Consequences along with it. The same may be said of Law-Suits. But does it therefore follow that an unjust Invasion of our Country, by foreign Enemies, is not to be opposed or resisted; or that we are not to contest an unjust Claim set up against our Estates. In either Case, one Side must be wrong; and it is the Aggressor, the Wrong-Doer, that is chargeable with the Consequences, and not those who innocently and rightfully defend their Lives or their Properties. And I should be glad to learn from such as infer the Unlawfulness of War from this Text, how any other Strife comes to be lawful; and in particular, how they will justify going to Law upon any Pretence whatsoever; for surely it will not be contended, that going to Law is not Strife.

Again, the Apostle saith, *That we fight not with Flesh and Blood*: But, says our Author, "outward War is according to the Flesh, and against Flesh and Blood: Therefore War is noways lawful to Christians." But how fairly is this Consequence drawn? Saint *Paul* was a Christian Priest, imployed to spread and propagate the Gospel: Preaching was his Profession, not War. This being the real Fact, the Apostle mentions it as such. And if he had said, *we dispute not about Men's Properties or Estates*, which was likewise true, he would thereby as much have condemn'd the Profession of the Law, as he does, in this Place, the Unlawfulness of War.

But, it is said, we are commanded not to resist Evil, *but whosoever shall smite thee on the one Check, to turn the other: And if any Man sue thee at the Law, and take away thy Coat, give him thy Cloak also, &c.* Now these Words are either to be taken in a restrained and qualified Sense, or in a literal and unqualified Sense. Let the Advocate for the Unlawfulness of War, upon this Authority, take them either way, and they will find themselves hooked

into a Dilemma. If the Words be taken in a qualified Sense, they will not prove the Point contended for: And taken the other Way, they will prove too much; for not only War becomes unlawful, but going to Law in Defence of Property, and all Punishment of Criminals, will be likewise unlawful, which is contrary to their avowed Principles and Practices. For it can never be pretended, that the Hanging a Thief or a Murderer is not resisting of Evil; or, that he that prosecutes another at the Law, for an unjust Violence committed against his Person or Estate, conforms to the literal Sense of the Text. The Truth is, that the Words cited, with all that follow to the End of the Chapter, were spoken by CHRIST to his Disciples only, and seem to be intended as Rules to them, for their Conduct and Behaviour, in the Discharge of their Ministry, in order to convert Men to Christianity. But if we admit that they were intended as Lessons to Christians in general, they can import no more than that it is not lawful to revenge Injuries, and that, in many Cases, it is better patiently to bear some Injuries than to seek Redress and Satisfaction by returning them.

When I consider the Abilities of the Author so often quoted, and how great a Master of Reason he appears to be when he has Reason on his Side; and compare therewith his Manner of Defending the Position, "That War is unlawful to Christians;" I confess, I am tempted to call his Sincerity in Question. His inferences and Conclusions are certainly unworthy his great Parts. And his constantly Coupling Revenge and War together, as if they were convertible Terms, seems to be a Piece of Craft, calculated to deceive and mislead the Unwary. No Christian, I believe, ever doubted that Revenge was unlawful to Christians: but how will it be made out that there can be no War without Revenge? As well may it be said, that putting a Malefactor to Death is Revenge, as that Killing Men, in Defence of our Lives, is so. Nay, it looks more like Revenge to put a Man to Death in cool Blood, after the Fact, than to kill him in the Attempt, in order to prevent him. "CHRIST," saith our Author, "the Prince of Peace, hath expressly prohibited his Children all Violence." Could this Man be ignorant that the Violence here prohibited is an unjust and forceible Attack upon the Rights of others; and not the Resisting of such unjust Force? I should be glad to know how Hanging a Murderer or Thief can be done without Violence? And if Violence is lawful after the Fact is committed, I should gladly be informed, by some distinguishing Head, how Violence comes to be unlawful (when all other Means fail) in order to prevent the Mischief.

Doing Good for Evil, Loving our Enemies, and Praying for those that persecute and calumniate us, are, no doubt, Christian Duties: So are Cloathing the Naked and Feeding the Hungry. But, as we are not required to cloath the Naked and feed the Hungry, and want ourselves; so neither are we obliged to strengthen the Hands of an Enemy against ourselves; nor to pray for his Success, when he aims Destruction at our Heads; nor to love him as if he was our Friend. We ought, indeed, to exercise Kindness and Humanity towards our Enemies, when we have them in our Power, and may do it with Security to ourselves; try to win and reclaim them, by Gentleness, Forbearance and Charity, and to pray that GOD may turn their Hearts; which is all that these Precepts require.

I proved to you in the Beginning, *Gentlemen*, that no supernatural Revelation of GOD's Will, can possibly be contradictory or repugnant to Reason, which is the natural Revelation of his Will. I laid it down, as a Ground-Work, that GOD intended our Happiness in our Creation. I have shewn that Government and Political Society are absolutely essential to human Happiness; that the Preservation of Government is equally essential; that Force is necessary to that Preservation, and consequently, that War was allowable under the Law of Nature. And, I think, it is so apparent, from what has been said, that the Scripture cannot be justly impeached with Altering the Law of Nature in this Point; or of having taken away Man's natural Right to seek that Happiness which GOD originally design'd him, by forbidding Christians to defend their Lives and Properties when they are unjustly invaded; that no intelligent Man, who examines it with an impartial, unprejudiced Mind, can have the least Doubt about it.

If the Right to use Force is not connected with and inseparable from Government, and included in the very Idea of it, I should be glad to know, how the lawful Commands or Mandates of the civil Magistrate can possibly be executed in Case of Disobedience? We see that these very People who assert the Unlawfulness of all Manner of Defence, willingly serve in the Legislature, consent to the Enacting Sanguinary and other Penal Laws, act as Sheriffs, serve upon Juries, sit in Courts of Judicature, and there try and condemn Men to Death. Is it not Amazing, that any Men should take it into their Heads that it is lawful for one Christian forcibly to put another to Death, after his Hands are tied behind him, and yet think it unlawful to bind him by Force, or even to kill him, in his unlawful Resistance? Suppose a Banditti of an Hundred stout, resolute Fellows should assemble together, commit

Murthers, Rapes, Robberies, destroy and lay waste all before them; what stead do you think the Constables and their Staves would stand you in, in order to subdue so many associated Villains; and more especially, if it be not lawful even for the Constables to make any Use of their Staves in Case of Resistance. If it be said, that a Constable, being an Officer of the Law, may be allowed to make Use of his Staff in Case of Necessity, seeing the Law has put it into his Hands; I ask why he may not make Use of a Gun, or a Sword in the like Necessity, put into his Hands by the same Authority. If it be answered, that a Gun or a Sword may kill: I reply, so may a Constable's Staff. And if Constables, or other Officers of the Law, may make Use of Guns and Swords, in Cases of Necessity, I would willingly be informed, why all other Men have not the same Liberty under the like Necessity. In a Word, *Gentlemen*, to admit the Usefulness of civil Government to Mankind; and yet to advance the Position, that Force and all Manner of Self-Defence is unlawful, is a System full of Inconsistencies, and big with Absurdities and Nonsense.

Perhaps some may think it strange, that I, who have been educated amongst, and have always profess'd myself to be of the Society of the People called *Quakers*, should, in this publick Manner, declare myself so opposite to their Sentiments, in the Point of Defence. I would have such to believe, that the Love of my Country, the Love of Mankind in general, but above all, the Love of Truth, is of greater Concernment to me, than what is called Uniformity, or the being so attached to any particular Party in Religion, as to espouse, or seem to espouse, any of the Errors of it. That of the Unlawfulness of Self-Defence to Christians, is, to me, a most capital Error; not only dangerous to Society in general, as I have already said; and inconsistent with the very Nature of civil Communities; but, more particularly, of extream Danger to ourselves, at this critical Conjunction. His Majesty is already engaged in a just and necessary War with *Spain*: And a War with *France* is generally look'd upon as unavoidable. The Province of *Pennsylvania*, and these Counties, are in the very Centre of his Majesty's Colonies in *America*. The *French* are settled within a few Days March of our Frontiers to the North-West of us: The Ocean bounds us to the Eastward, and will admit of the Landing of any Number of Men, almost every where. In Case then of War with *France*, so much to be apprehended; how dismal is our Situation! seeing we are so much exposed on each Side, and of all his Majesty's Colonies in *America*, are the only ones that are without Troops, without Arms, and without Ammunition: And all this owing to an Opposition in our several Assemblies, made by People whose religious Persuasion leads them to

condemn the Use of Arms in general. Military Provisions can only be made by the Legislature. Our Governor, from a Zeal to his Majesty's Service, and the Security of such of his Majesty's Subjects as he is by the Royal Authority appointed to protect and govern, has frequently, in vain, warmly recommended this Thing to the Assemblies of both Governments; and has been expressly answered by one of them, "that all Defence was, according to the religious Persuasion of the Majority of their House, unlawful." And here I profess myself at a very great Loss, in what Manner to justify, or even excuse, the Conduct of my Brethren. The being really principled against the Lawfulness of Self-Defence, is, in itself innocent, as proceeding from an ill-informed Judgment, and only shews the Unfitness of those who are so principled to be employed in Legislation. But when such Persons, by Plotting and Management, procure themselves to be chosen into the Legislature, at a critical Time, merely to keep out and tie up the Hands of others, whose religious Principles leave them at Liberty to provide for the Defence of their Country, in Case of a foreign Invasion; it amounts to a negative Persecution, and becomes highly blameable. The General Assembly of these Counties, at the pressing Instance of our Honourable Governor, hath, indeed, very lately pass'd a Militia-Law, in spite of the Opposition made, by those who affirm all War to be unlawful, who happened to be the Minority. This is so far right, as it is Doing all in our Power; but, in Truth, can be of very little Security to us, so long as the Province of *Pennsylvania* continues unprovided of all Means of Defence; and it must ever continue so unprovided, so long as nine Tenths of the Members of Assembly are such as are persuaded Defence is unlawful. I therefore thought it, *Gentlemen*, high Time to examine and expose a Doctrine so absurd in itself, and so ruinous in its Consequences. It has been with this View that I have taken up so much of your Time. How well I have succeeded in it, I leave others to judge.

New-Castle County, ss.

May it please your Honours,

The Grand-Inquest for the Body of this County return You their Thanks for the Charge deliver'd to them from the Bench. And as the same is intended for the Benefit of Society, we desire Your Honours will order it to be printed, for the Use of the Publick.

THOMAS NOXON, Foreman.

Novemb. 21. 1741.

“Remarks on the Maryland
Government and Constitution,”
American Magazine
(1741)



IN 1741, Andrew Bradford, a printer, and John Webbe, a Pennsylvania lawyer and political writer, published the *American Magazine*. It was the first magazine to appear in the American colonies, beating Benjamin Franklin’s rival publication to print by three days. Webbe intended the magazine to be, as the subtitle said, “a Monthly Review of the Political State of the British Colonies,” and in its brief run it printed the proceedings of several of the colonial assemblies, essays on paper money and land speculation, a report on the war with Spain, a warning about the threat of Catholicism, and an account of Native American religion.

The first and second issues of the *American Magazine* (January and February 1741) contained a long essay, “Remarks on the Maryland Government and Constitution,” which is one of the best statements of the argument that there was no social basis in the American colonies for quasi-aristocratic upper houses. Possibly written by Webbe, it sided with the lower house of the Maryland assembly in its battle with the governor and his supporters in the upper house over the powers of the Proprietor. Drawing on an impressive range of writers—Locke, Harrington, and Machiavelli, among others—the essay contended that the central defect of the Maryland constitution was that the upper house served at the “Pleasure” of the governor and thus “can never stand *equally* between the Governor & the People; but on the contrary must *in the Nature of Things*, always stand with the Governor,

whenever his Interest is against the People's." The essay also contended that the governor's power to appoint all officials (including judges) gave him, and by extension the proprietor, "the whole Legislative as well as the whole Executive Authority, and consequently his Government is of a pure despotic Kind." Although the essayist was willing to concede the legitimacy of the English House of Lords, he maintained that the unelected upper houses in the American colonies violated the Lockean doctrine of popular sovereignty and would in time lead to a hereditary aristocracy extracting "Fees, Perquisites, Rents, and Revenues" from the people. He also defended Pennsylvania's constitution from critics like James Logan, who thought it defective because, lacking an upper house, it did not conform to the mixed constitution of King, Lords, and Commons, which Britons in the eighteenth century thought was a perfect blend of the three classical types of government—monarchy, aristocracy, and democracy. In doing so, the essayist challenged the prevailing view that hereditary upper houses had a classical pedigree. Rather, he argued, "The *Aristocracy* which the *Ancients* speak so worthily of, was a Senate or Council of the Wiser or Better Sort elected by the People."

The second part of the "Remarks" ended with the promise that the discussion would be continued, but in the March issue the only essay on the controversy in Maryland was a vindication of the conduct of the colony's upper house. Webb's magazine ceased publication after this issue. (C.B.Y.)

Remarks on the Maryland Government.

{Part I}

There were several Points started, in the preceding Controversy, by their Honours of the Upper House, which merit a particular Consideration. The first, we shall take Notice of, is where They assert that their House is founded on the same Principles, as the *King's* Councils established in all the *Crown-Colonies*; and that, therefore, no Fault could be found with the *one*, but what would be applicable to the *others*. Now it was admitted, that the Legislators, who compose the Upper House of *Maryland*, are nominated by the Lord Proprietor, who has also the Power of annihilating any of them, and creating others at his Pleasure; nor was it denied, but that They hold the Places of the greatest Profit in the Government at his Lordship's good Will. A House of Legislators so created can never stand *equally* between the Governor & the People; but on the contrary must *in the Nature of Things*, always stand with the Governor, whenever his Interest is against the People's.

The Members of the Council in his *Majesty's* Colonies are nominated by the King; and tho' they may be suspended by a Governor, yet it must be with just Cause:* Neither can he *arbitrarily* remove them from other Posts in the Government, if they hold any such. He is moreover, in many Cases, restrained from acting without their Advice. They, therefore, seem, in the *Royal* Intention, to be designed as a *Check* on his Administration; and for that Reason may *naturally* stand against any Attempts made by him against the Liberties or Properties of the People committed to his Care. Such a Council, Then, in the *Nature* of it's Institution (the Perversion of it is out of the present Question) is as opposite to that of *Maryland*, as Dependency and Independency can possibly be.

It is true the *King's* Council have a Negative on Bills in such Cases where the Governor, by the *Royal* Instructions, is not to pass any without their Advice. But have They, therefore, a *distinct* Legislative Capacity from the

* *The present Governor of the Jerseys, in a Letter published in December 1736, says, that, being suspended from his Place in Council, by the Lord Cornbury, and that more than once or twice; his Lordship for that, and other Male-Administration, was recalled.*

Governor? Would it not be more *properly* said, that He with Them are *jointly* intrusted with the *King's* Negative Voice? If the Council in any of the Crown Colonies are Legislators to any *other* Purpose, it may be presumed They are so by *Virtue* of some Act of Assembly: But *if otherwise*, then it must be admitted, *that so far* They resemble the Upper House of *Maryland*.

Their Honours of that House, supposing their Lord Proprietor to be in Regard to his Province, what his Majesty is in Respect to any Crown-Colony; from thence infer, that, as the *King's* Council are removeable at the *King's* Pleasure, and the Council of *Maryland* being removeable at his *Lordship's*, the Constitution of each must be therefore alike. The Defect of this Argument does not lie in the Consequence, but in the Faultiness of the Comparison contained in the Premises, which, as we suppose, gave Occasion to the Mistake: For if his Lordship had been considered as the *King's* Deputy, as he is not less so for being vested with an hereditary Magistracy, whatever a courtly Complaisance may suggest to the Contrary; and had *then* been compared to a Governor under his Majesty in any of his Colonies: It would have been easy to perceive the Difference between the Constitution of a Council *dependent* on the *King*, but *independent* on the *Governor*; and of a Council *entirely* at a Governor's Devotion: The one being evidently instituted for a *public* Good, the other to support a *private* Interest; for, as it was strongly urged by the Gentlemen of the Lower House, *there is a wide Difference between the Appointment of the King, who can have no View but what concerns the general Welfare of his People, and That of a Proprietary or Governor, whose private Interest frequently clashes with that of the Community.* It is certain that no Society is well constituted, except it be *out of the Power*, as well as against the Interest of any Member to hurt it: For tho' the promoting the Felicity of the People be the chief Glory and Advantage of *unlimited* Monarchs; yet how rarely do they pursue their real Interest, or deny themselves the Gratification of an insatiable Avarice, and other boundless Passions, which are observed to be generally more violent in them than in the Rest of their Species.

Their Honours of the Upper House of *Maryland* seem to condemn the Form of Government in *Pennsylvania*, Because the Council there has not like them, a *legislative* Capacity. But on Examination it will appear, that the Constitution of the former has not, in the Point objected, any Advantage over the latter: For, as the Members of the Council of *Pennsylvania* are nominated by the Governor, he might therefore, were he so minded, make use of them, as the Governor of *Maryland* does of his Council, to give

the Negative to Bills; or under their Names manage any Controversy that might arise between him and the Assembly. But as all this may be done as *effectually* in his own Name, and by their Assistance, tho' they do not stile themselves a Branch of the Legislative; They must therefore answer all the Ends, that can be justly obtained by the Council of *Maryland*, tho' acting in the Upper House under the Title of Legislators. Yet that Title is disputed by the Representatives, who, in the printed Proceedings of the Sessions we are now in P. 336. insisting on their Privileges *as being duly elected, and convened according to the express Terms of the Royal Charter, and the Laws of the Country*, doubt, that their Honours of the Upper House cannot show the like Voucher's for taking a Share in the Legislature. If no such Vouchers can be produced, the Council of *Pennsylvania* has clearly the Advantage over that of *Maryland*, who have grasped into their Hands a Power, which the eternal Rules of Justice forbid them even to lay a Finger upon; whereas the other is not chargeable with a like Usurpation. Tho' an Innovation of the Kind should not be attended with any present *evil* Effects, yet it is a Precedent of such a Nature, as may prove of dangerous Consequence to Posterity: For by admitting the Upper House to be a Branch of the Legislature, a Power is thereby admitted in the Governor, who is a Subject, to appoint Legislators over the People, his Fellow Subjects, without their Consent.* Why he may not do so in other Instances as well as this will be difficult to show a Reason.

* *Without the Consent and Appointment of the People, no one Man, or Number of Men amongst them, can have the Authority of making Laws that shall be binding to the Rest. When any one or more shall take upon them to make Laws, whom the People have not appointed so to do, they make Laws without Authority which the People are not therefore bound to obey; by which Means they come to be out of Subjection, and may constitute to themselves a new Legislative as they think best, being in full Liberty to resist the Force of those, who without Authority would impose any Thing upon them. Every one is at the Disposure of his own Will, when those, who by the Delegation of the Society had the Declaring of the public Will, are excluded from it, and others usurp the Place, who have no such Authority or Delegation.* Locke on Government. B. 2. S. 212.

It may be necessary to caution some Readers, who may be unacquainted with the Principles of civil Government, that where the Author, we have cited, justifies the Lawfulness of Resistance against usurped Authority, he is always to be understood as speaking of an *independent* Soci[e]ty, above whom there can be no civil Judicature on Earth, to which they may appeal, when a Tyrannical Power is exercised over them. But the People in the Colonies, as they live under *dependent* Governments, are not justifiable in the Use of Violence against an evil Administration, Because they have an Appeal, and may lay their Grievances before the King or Parliament.

The Capacity of this House to act as a legislative Body, being, as before noted, called in Question by the Lower House; we therefore presumed that every Body was left at Liberty to examine into it.

But, waving any farther Inquiry, for the present, into the Legality of such a distinct legislative Power, as assumed in *Maryland*; it will be more generally useful to consider, whether the Circumstances of his Majesty's Subjects in *America* require the Establishment of such a Power at all.

The common Argument urged for it is grounded on a pretended Necessity of reducing the Forms of Governments in the Plantations to the Model of the Mother-Country. But tho' there be the strongest Reasons, for supporting a House of Peers in *Great-Britain*, yet if there appear no such Reasons, nor any Reasons, for erecting, in Imitation of it, *Upper Houses* in the Colonies; but that, without them, all the *Substantial* Ends of a British Government may be obtained; and that, with them, the Properties of the People will be dangerously affected: Then the Pretended Necessity of Conformity must fall to the Ground

Notwithstanding the History of the Origin of the *English* Constitution is dark and defective, yet it may be easily collected from the Facts and Circumstances handed down to us, that the three Estates of King, Lords and Commons took their Rise, not from any previous Contrivance, but from the Circumstances of the *Saxons*, in Regard to one another, when they first entered *Britain*. These Foreigners, for so they were in Respect to the Time we are speaking of, having invaded and subdued the ancient Inhabitants, divided the Lands of the conquered Kingdom among themselves to each Man a Share according to his Merit and Post. It is highly probable that their civil Government was derived from the Order, Discipline and, Subordination observed in the Army. On that Supposition the General became King or the first Estate, the Officers Lords, or the second Estate, and the common Soldiers in a collective Body made up the Third; but afterwards growing numerous and being dispersed all over the Kingdom, they were obliged to send Representatives to the General Council or Parliament, who, sitting a part from the Lords are now called the House of Commons. Thus three different Interests (throwing the conquered out of the Question) being equitably created, in Regard to the Conquerors; & the two first Orders, *viz.* that of the General, and of the Officers, becoming hereditary, the *English* Constitution was established.

The Probability of these Conjectures will be farther strengthened, if it be considered that the same Form of Government was introduced by the *Goths*, (under which general Name the *Saxons* are comprehended) in all the other Parts of *Europe*, where they made Conquests; but at this Day *England* only maintains the *Gothic* Constitution; the first Estate having every where else swallowed up the two others. Were it necessary many Instances might be produced of independent Armies from other Nations, who, after Conquest, formed themselves, or rather naturally fell upon the *Gothic* Model of civil Government. The *Norman* Conquest (if it was a Conquest) altered nothing in the Frame of the ancient *Saxon* Constitution; the Government of the *Normans* being pitched on a like Model, for they were originally *Saxons*.

Now if there be any Set of Men in any of the Colonies, who have a just Pretence to the same Superiority over their Fellow Subjects, as the *Saxon* Officers had over their Soldiers; Then such Men should be distinguished with Superior Privileges above the Rest, and erected into an independent legislative Order. But if there be no such Pretences, then there does not appear the least Necessity for distinguishing such Men with distinct Privileges.

Let us consider this Matter in another Light. Interests originally derived from a Wrong, may by Prescription, as well as by express Compact, be turned into a Right. This Maxim is universally acknowledged; were it otherwise Society would be open to continual Disturbances. Therefore, tho' the Manner how the Nobility originally became an independent Branch of the Legislature of *Great-Britain* cannot be clearly accounted for; yet inasmuch as they are acknowledged to be so by *Magna Charta*, and other subsequent Acts of Parliament, which include the Consent of the Whole; They have from thence as ancient and strong a Right to their Honours and Privileges, as any private Man can show for his Estate. The Rights of the *L. Spiritual* in Parliament commenced with the Conversion of the *Saxons* to Christianity; and have also the Law of the Land for their Support.

Many *Dissenters* have complained of the Hardships of Tithes, as being thereby obliged to give the Tenth of the Product of their Labour to the Clergy. This is not a fair State of the Case. No human Law can equitably oblige any Man to give away his Labour to another. Therefore personal Tithes, *quae debentur ex opere personali, ut Artificio, Scientia, Militia, Negotiatione, &c.* which arose purely from personal Labour, and was the tenth Part of the Profits made by Handycraftsmen, Scholars, Soldiers, Merchants, and

Tradesmen in their several Professions, and so declared by the judges in the Reign of *James I*, are now but *tenderly* insisted upon in some few inconsiderable Instances. But tho' the Father cannot by any Compact of his, no, not tho' it receives the Sanction of publick Consent, equitably bind the Son being no Party to the Contract, to labour for another; yet, in Regard that every Man may dispose of his Property and Acquisition as he pleases, where there is no positive Law to restrain him; the Ancestor may leave his Land to his Heir, under a Provisoe that he pays Tithes out of it to the *Church*. If the Heir dislikes the Condition, he is not bound to receive the Land; yet if he accepts of it, and in Consequence thereof gives (as every Man in *England* that holds Land there must give, by Virtue of that public Donation made, and often confirmed, by their Ancestors in Parliament) the tenth Part of the Produce, which, considering the Labour mixt with it, may amount to the fifth Part of the yearly Value of the Land, to the Clergy; he nevertheless gives them Nothing, that he has the least Pretence of Right to.

No Man can be injured in his Property, but by withholding from him what he may call his *own*; and as no Person can show the *least* Colour of Claim to any Part of the Lands or Revenues belonging to the Church of *England*; She therefore enjoys them without Prejudice to any Man's Property, and her Title to them must be indisputable.

Now forasmuch as in every well regulated Society, the Interests of all Parties are to be *sacredly* maintained; it was not only highly reasonable, but absolutely necessary, that the Lords *Spiritual* and *Temporal* should make a distinct Estate in Parliament; in order to preserve their Privileges, Honours and Estates from the Incroachments of the Prince on one Side, or of the Commons on the other, which, as History informs us, have been frequently attempted. It was on such equitable Considerations as these, as may be reasonably imagined, That, at the End of the Reign of King *James II*. who having the Supreme executive Power, neglected and *abandoned* that Charge;* whereby the Laws could no longer be put in Execution, and all were reduced to Anarchy and Confusion, so that the Government

* Vid. Locke's 2d. *Treatise of Government* S. 219. *The Author, in the Passage referred to, does not expressly mention King James's Abdication, yet must evidently allude to it; since in the Preface to his Discourse he declares it was wrote to establish the Throne of our great Restorer King William, and to make good his Title in the Consent of the People, as the only one in all lawful Governments.*

was effectually dissolved: Yet the People, tho' then in a State of Nature, and consequently at Liberty to *provide for themselves** by erecting a new Legislative differing from the other, by the Change of Persons, or Form, or both, as they should find most for their Safety and Good, did, nevertheless, establish the Government on it's old Basis; and the Nobility and Clergy retained their ancient legislative Power; for without It their Interests could not be secured and preserved; and being not preserved, the Government had been unjust, whose true End is to protect the various Rights of every Member of the Society, which, in *natural Equity* were lost to none on the Dissolution of the Government before mentioned, but only a security for them was lost till another was settled. Add to this, that Alterations, in the *ancient* Form of an independent Government, however reasonable in themselves, abstracted from Circumstances, are more often introductory to greater Evils, than what were designed to be prevented by them.

The whole of the Reasoning attempted in Relation to that AUGUST BODY, the Peerage of England is in Order to prove, *That where any Order like them have acquired an equitable and distinct Interest from the Rest of the People; it is necessary, that, for the Protection of it, they should have a legislative Power independent of the People:* Which being admitted, the Necessity of bestowing on any Body of Men in the Plantations a legislative Power, not deriveable from their Fellow-Subjects, cannot be maintained, until that Body shall have equitably acquired a distinct Interest from their Fellow-Subjects. Whether the King may not by Virtue of his Prerogative, create an independent Branch of Legislature, *different from his own*, in the Plantations, is a Point of too high a Nature for us to meddle with: Tho', as may be seen in the Reports, there is nothing more familiar with the Gentlemen of the Robe at the Bar of *Westminster*, than to argue upon the Bounds of the *Prerogative*; and if they have a Right to do so there, and publish it when they have done, any other Subject may exercise the same Right any where else. The Law makes no Distinction; neither, because of the *Difference* of Capacities, does it make any *Difference* in the Right. Under a Monarchy limited by the Law, every one may freely inquire into those Limits, because, *otherwise*, he cannot understand the Law; the *Ignorance* of which will not excuse the *Transgression* of it. However, as the PREROGATIVE

* *Ibid.* S. 220.

is a Power to do GOOD, without a Rule, in Cases where the Law is silent; we may be certain, That it will never countenance such a *distinct* Branch of Legislature, as we have been speaking of; were it made *manifest*, that it would have a *natural* Tendency to introduce *petty Tyrannies*, and *Oligarchies* in the Colonies; and thereby render them less serviceable to *Great-Britain*; whose Interest it *highly* is, as we hope will appear demonstratively proved in the Sequel of this Discourse, to guard them from Oppressions of all Kinds; which we think is impossible to be done otherwise, *on Account of their vast Distance from the Sovereign Seat of Empire*, than by granting to them in Parliament, a perfect *internal Liberty*, as to the Choice of their own Laws, and in all other Matters that are *purely provincial*; under a *Salvo*¹ of their inviolable Allegiance, and a punctual Compliance with the Acts of Navigation. But the mentioning the former Part was unnecessary; for the Colonies are yet but Babes that cannot subsist but on the Breasts, and thro' the Protection of their Mother Country. An Attempt to wean themselves is not therefore to be suspected, without looking *far* into Futurity; which is a Consideration too *remote* to deserve a *present* Attention. Yet *Great Britain* seems to be for ever secure in that Respect, by the Acts of Navigation, which is a Policy that was unknown to the ancient *Romans*. By Means of those Acts the Colonies, like Rivulets, must always discharge themselves into the *Great British* Stream, which will swell and rise in the same Proportion as those Rivulets do.

We shall resume the Point, which the preceding Reflections lead us from, and consider what has been asserted by some; *That the Government of King, Lords, and Commons is an equal Mixture of Monarchy, Aristocracy, and Democracy; and that, as the Ancients have rightly taught, all civil Institutions must be imperfect, where any of those three Orders are wanting; therefore a Constitution in the Colonies where there is not an Upper-House, in Imitation of that of the Lords in Great-Britain must be defective, because it is without an Aristocracy.* Much to the same Purpose, the learned and Hon. James Logan Esq; in a Charge delivered by him some Years ago, to a Grand-Jury at *Philadelphia*, seems to express himself by the following Words. *The general Distinction of Government has been into Monarchy, where one Person solely Rules; Aristocracy, where a Number of the Best have the Power, (for so the Word implies) and Democracy, where the Whole is*

1. ["A saving provision, reservation."]

lodged in the Voice of the People. Each of these singly have been useful, yet attended with Inconveniencies, degenerating severally into Courses of Oppression, which have also been distinguished by their respective Names, as the vicious Issues of more laudable Institutions. But it is the singular Happiness of Great Britain, celebrated for it's Constitution, in this Part, above most if not all others in the Universe; to be compounded of the best Parts of all these three. For the King, as Monarch, is supreme, yet limited by the Laws; the Power of which is vested in him jointly with the Lords, the whole Nobility of the Kingdom; and with the Commons, whose Representatives for every Parliament, are elected by the Votes of the Freeholders through the Nation. And Public Justice is administred by known fixed Laws, which cannot be infringed or altered by the Will of any Man, or by any other Power than the whole Legislature, which as has been observed is TRULY compounded of all those three Kinds of Government, Monarchy, Aristocracy and Democracy; all happily united, in their best Parts into One. The same Method of Government also obtains, not only in Britain, but in all it's Dominions abroad where regular Governments are established: This one Colony of Pennsylvania, and the adjacent Counties excepted. And this only thro' the Perversity of some few Persons, on a certain Occasion, much contrary to the Intention or Inclinations of the wiser Founder. Which I here mention on my own Knowledge; lest this Defect, which is to be found among us only, and is a Kind of Blemish and Exception to the Uniformity of the British Government, throughout it's Dominions, should be charged to the Memory of that great Man, whose Judgment absolutely condemned it. If this Passage only intimates that the Constitution of Pennsylvania is defective, because It's Aristocracy, for such it will be manifest it has in some Measure, is not vested with all the Powers, which the Ancients would bestow on it; the Objection seems perfectly just. But if the learned Gentleman suggests as his Words, without a farther Explanation, must lead every Reader to imagine; That such a Defect may be cured by creating a Power in Pennsylvania resembling that of the Peerage in Great Britain: We must beg Leave to dissent, but with the greatest Deference, from that Opinion. The Authority from which we appeal is great: Therefore a contrary Judgment cannot stand against it, that is only accompanied with Assertions, and is not supported with Reasons. What we shall principally insist upon is, that the Idea of an Aristocracy, as the Ancients conceived it in a mixed Government, is not to be found in the Constitution of the House of Peers. The Term, in the Use of it to express

a single Branch of Power, has been already defined. But that *Power*, in it's Relation to the two other Orders of *Monarchy* and *Democracy*, which is the Thing we are now to consider, cannot be so clearly understood by any Definition, as by a short Draft of those Forms of Government, in which It was most advantageously placed.

The *Aristocracy* which the *Ancients* speak so worthily of, was a Senate or Council of the Wiser or Better Sort elected by the People. They assisted the Executive Powers with their Advice in all Cases of Importance, had the Care of the Finances, or public Money, watched continually over the State, and prepared Laws for the Peoples Assent, whom they could assemble when it was necessary.

The Senate of *Athens* consisted of four Hundred annually chosen, who divided themselves into eight Parts; so that fifty sat one eighth Part of the Year, who were succeeded by the other Divisions. They could make Laws, but of no longer Duration than a Year, unless confirm'd by the People; and for that End they were published a convenient Time before their Meeting, that they might have an Opportunity of considering their Expediency, and debating thereon with one another. They first assembled in a Body, but afterwards by Representatives, which did not consist of a less Number than four, some say five, Thousand. Their only Business was to give the Affirmative or Negative to any Matter or Law proposed to them by the Senate. But the *Athenians* were brought off from this wholesome Institution, and unhappily persuaded by the Eloquence of their Orators, to pass Propositions made to them from the *Rostrum* or Pulpit immediately into Laws, without any Deliberation; when their Imaginations were inflamed, and their Judgments perverted thro' the Force and Deceitfulness of *Rhetoric*, whose Rules teach an Application to the *Passions*, & not to the Reason of Mankind, which belongs to another Science. Thus the Senate gradually became useless; and the People, being without a *regular Council*, fell into Confusion, and the Glory of *Athens* kist the Dust. Yet it should always be remembred, that this little *Republic*, in a lesser Period of Time than one hundred and fifty Years, produced more eminent and illustrious Men for Arms, Arts, and Sciences, (tho' there was no Hereditary Order amongst them with superior Privileges above the Rest of the People) than all the *unlimited* Monarchies, taking them together, ever did, by the Accounts transmitted of'em, from the Beginning of the World to this Day.

The Senate of *Sparta* consisted of *Thirty*, elected by the People, for Life. But none were capable of being chosen that were under *Sixty* Years of Age. The Elections must therefore have been frequent. The People moreover annually chose out of their Body, five Magistrates called *Ephors*, who had Power to try and condemn any of the Senate who were guilty of Male-Administration. Even the two Kings who were hereditary, yet had no greater Privilege from thence than single Votes in the Senate, were equally subject to that *popular* Tribunal. This Republic subsisted eight hundred Years without the least Faction or inward Disorder, except that which gave Occasion to the Institution of the *Ephors*, to watch and restrain the Ambition of the Senate.

Lycurgus who instituted this Commonwealth no doubt imagined, that Persons illustrious for their private Virtues, as the *Spartan* Senators must have been, otherwise the People would not have elected them; might be *safely* trusted with Power, when by the Course of Nature, they could expect to enjoy it but a few Years. Yet They most *scandalously* attempted to enlarge it; For, whereas like the *Athenian* Senate, they were intrusted to advise and deliberate on such Laws, as should seem most expedient, and then propose them to the People for their Assent; They would have ingrossed the *whole* Legislative into their Hands, and, not contented with the Trust reposed in them to *draw* up the Laws would have also *Enacted* them by their own Authority. But the People prevented the intended Usurpation; and, by the Help of their *Ephors*, brought Matters back, and settled them on the Foundation, that the wise *Lycurgus*, (who, as the *Learned* affirm, took his *imperfect* Scheme from the *perfect* Model, if he had lived to carry it into full Execution, of the much wiser *Moses*; the *Spartans*, by the Testimony of *Josephus*, being of the Kindred of the *Jews*) intended they should always rest upon.

To make a *useful* Application of those ancient *Aristocracies*, and in order to give a *fuller* Answer to the Reasons offered in Support of the Objection made, in the Charge to the *Grand-Jury* before mentioned, against the *Form* of Government in *Pennsylvania*; we shall now step back into *Maryland*, and take another *View* of that Constitution. (We hope it will not be deemed Treason, in any of his Majesty’s Subjects, to *look* at that Constitution.) Any *new* Discoveries, which, on such a second *View*, we may happen to make, will, if they seem worthy of public Notice, be also communicated to the Public in our next.

{Part 2}

When we broke off the Discourse that bears this Title, we initiated a Design to return immediately into *Maryland* from *Sparta*, where we then were. But our transition from thence has not happened to be so direct, as we intended. Moreover while we were preparing to take leave of our old *Greece*, our stay there was longer than expected, occasioned by some Reflections and Observations to the following Effect.

The Ambition and Corruption of the *Spartan* Senate, composed of such ancient and venerable Persons, bred up from their Infancy in a Love of Liberty, and among a People distinguished for an heroic and disinterested Virtue, above the rest of *Greece*; the Weakness, we say, which the most eminent People of that Age, discovered when trusted with Power, seems a most undeniable and *striking* Evidence that it is a Temptation too great for any Man, or any particular set of Men, to resist, who are not accountable for their Conduct to a public Tribunal. For the sake of this Remark, we have enlarged upon the Fact, which no Authors, as we know of, have considered in the List, that it has been placed.

In the foregoing Description of the *Spartan* and *Athenian* Republics, the Particulars whereof we have collected from the best Authors, may be observed the WISDOM of the People in their *Elective* Senate, or Council of Wisemen and Elders, consulting, which is an *Aristocracy*; the INTEREST of the People in their collective, or representative Body *resolving and enacting*, which agrees with *Democracy*. To which if we add one or more supreme *annual* Magistrates, as the two *Consuls* at *Rome*, *executing*, to answer the End of *Monarchy*; we have, in *Miniature*, the Picture of that Kind of mixt Government, which, *according to the Doctrine of the Ancients*, is, and, as They insist the only Sort that is, PERFECT.

But in the Picture above given, there is nothing to be observed resembling the Constitution of the House of Peers, who are not therefore an *Aristocracy*, in the Eye of Antiquity. The *Commons* come up much nearer to the true Notion of it, their Authority being derived from a *popular* Root. Yet the *Lords* are personally as much interested in the Welfare and Glory of the Nation as the *Commons*. Therefore it ought not to be presumed, that any Thing proposed for promoting those Ends by the former, will ever be opposed by the latter; provided their distinct but just Privileges be

preserved. Here again we are obliged to recur to the Reason offered before, and to the only true Reason, in our humble Apprehension, for we cannot possibly conceive any other (we mean on Mr. *Locke's* Principles) why the Lords *Spiritual* and *Temporal*, whose Number before the Union made up but about 170,* and who only represent themselves, should have a Negative on the Determinations of the *Commons*, who represent *ten Millions*. This Reason, which has its Foundation in *natural Justice*, and must certainly have been prevalent at the *Revolution*, clearly points out the Rules of Equity, which governed the great Patriots of that Time in agreeing (when the People, as before noted out of Mr. *Locke*, were under no controul, and, all positive Laws being silent or dissolved, at Liberty to chuse the Form of Government they liked best) that the *Lords* for the Preservation of their distinct Rights should always have a *Check* on the *Representatives*. Yet where the *Privilege* of the *Peerage* is not concerned, as in the Case of Money-Bills, they are not allowed, so speaks the Book before us,† by the *Commons*, in whose House such Bills must always begin, to *meddle*, or make any Alteration.

As an Engineer discovers the Height of *Art* and *Genius*, when, without pulling down valuable Buildings, he varies his Rules for the Accommodation of a Town that he would secure, and raises about it Fortifications that are impregnable, tho' something *irregular*: So the *Wisdom* of the *English Constitution* does not consist, as we most humbly conceive, in the Creation of various *distinct* Interests, there being Nothing in *ancient* Prudence to countenance it; but, *being* created, in the *admirable* Laws that are made for *ballancing* them, and to prevent them from *clashing* with, or *swallowing* up one another. But would not that *Engineer* be justly blameable, who should neglect the *exact* Rules of his Science, when he might pursue them without any one's Prejudice, to *imitate* an irregular Fortification, whose Deviations from *Mathematical* Principles, were *only* owing to the *Nature of the Ground*, and did not, otherwise, proceed from Choice or Design in the Artist? We shall submit the Application to the Architects, and Advocates for Upper Houses in the Plantations. We cannot omit in this Place a Story related by

* *Vid. the present State of Great-Britain* C. 34. P. 260.

† *Ibid.* P. 266.

a celebrated Author,* whose Wisdom (tho' of the most abstrusive Kind, yet, as managed by his Pen, appearing to be only plain and familiar Truths) has reached and instructed Worlds remote yet unknown to his.† Because we would not spoil the Story we shall give it in the Author's Words.

Some Hundred Years ago, when the Peers were so great that the Commons were looked upon as little better than their Dependants; a Bill was brought in for making some new Additions to the Power and Privileges of the Peerage. After it was read, one Mr. Drue, a Member of the House, stood up, and said he very much approved the Bill, and would give his Vote to have it pass; but however, for some Reasons best known to himself, he desired that a Clause might be inserted for excepting the Family of the Drués. The Oddness of the Proposition taught others to reflect a little; and the Bill was thrown out.

We incline to believe that the Plantations would as soon obtain *Aristocracies*, by establishing amongst them *Lords Spiritual*, as by filling Upper Houses with *Lords Temporal* only. Yet any Proposition in Favour of the first might not meet with a very easy Digestion; because the Revenues necessary to support their Dignity must be raised out of the immediate Labour of the People in the Colonies. The *Divine Right* to Tithes is fairly given up by *Prideaux* and the most learned and honest Part of the Clergy. Neither can the Tenth allowed to the *Levites* be any Precedent in this Case: For their Part of the promised Land, which they equally assisted in the Conquest of, being relinquished by them to be divided among the Rest of the Tribes, is allowed, by Commentators, to have been an Equivalent to the Tenth they received in Lieu of it. Those who have not Leisure to examine into Consequences may be under no Apprehensions of any Prejudice to their Properties from the Establishment of Upper-Houses, because the Members that compose them do not seem, as the *Lords Spiritual*, to require any immediate Revenues. Now tho' upon any such Proposition it might be sufficient to urge, that a distinct Legislative Power, without a distinct Interest to protect, is, as has been before shown, evidently useless; and that a Body-Politic with a superfluous Branch of Legislature ingrafted on it, must look altogether as unnatural and deformed, as a human Body with a redundant Arm growing from it: Yet let such a *distinct* Power be once created, more especially if it be

* *The Reverend Dean Swift.*

† *vid. Page 6.*

under a Governor’s Directions, as it is in *Maryland*; and it will gradually and imperceptibly, or perhaps at one Stroke, if the Representatives or Trustees for the People should at any Time drop asleep, or thro’ frequent Changes or Dissolutions prove faithless, create to it self, for that is one principal End of its Creation, a distinct *Interest*, as in Fees, Perquisites, Rents and Revenues. But these cannot possibly be obtained in *America*, but out of the Labour of the People; for a Tract of *unpeopled* Land, tho’ of never so great an Extent, can yield none of them. Now the Fruits of the Labour of the People, is the Property of the People, and there can be no lawful Power in Society which has not a Tendency to secure it. But that which we have offered our Reasons against, under the Correction however, & so we would be always understood, of better Judgments, will if it be not most carefully watched, instead of preserving Property, by an inevitable Consequence prey upon it. Therefore the Establishment of such a distinct Legislative Power, not only seems *useless* but *visibly dangerous*.

In arguing against the Establishment of an independent legislative Power in the Plantations, we have considered it as meant by those who are Advocates for it, either to be hereditary like that of the Lords Temporal, or for Life resembling that of the Lords Spiritual. But if it was meant to be dependent on the Governor, as it is in *Maryland*, the Objections against it are much stronger. For where a Body of Legislators is independent of the Prince, (we make use of that Word in the Sense the *Latins* did of *Princeps* to signify the Chief in a Community) as well as of the People; They will act against the Prince if he touches their Privileges, and for the Defence of them must take Part with the People. Yet if he takes Care to indulge his Nobility, they will be as careful to gratify him, and both will join to oppress those beneath them. But if a Nobility assuming a distinct Legislative Power, should nevertheless be absolutely dependent on the Prince, it cannot be supposed that the People could ever receive, in any one single Instance, the smallest Benefit from such an Institution.

We shall now apply the Rules of ancient Prudence before laid down, which we would observe are not copied from any one particular Republic, to the Government of *Maryland*; and in Order thereto must remind the Reader, that the *Aristocracy* of the Ancients had a Share not only in the Legislative, but also in the Executive Part, in Respect of which they were a Council of State.

The first Order observable in the Constitution of *Maryland* is the *Monarchical* or *Magistratical*, placed wholly in the *chief* Governor; the

Aristocratical, as to the executive Part of it, in his Council; but, being under his Directions, that must be referred to him; and for the same Reason the Half of the Legislative Branch of the *Aristocracy* for preparing and proposing of Laws, tho' *nominally* lodg'd in the Council, does also *in Effect* belong to the Governor. The Delegates have no Share in the executive Part of the *Aristocracy*, but they are the half of it's Legislative Branch, and the other half of it, as before observed, is assumed by the Council in Trust for the Governor. If it be asked where is the *Democracy*, or supreme Power of the People as the Ancients called it, we answer that it is *also* in the Governor; for he has the enacting Voice, and dernier Result on the Bills prepared for his Assent by the Delegates of the People. In this Answer we follow the Opinion of *Justinian*, who says; *The Prince's Pleasure has the Force of Law,* since the People have by the Lex Regia,¹ concerning his Power, made over to him all their own Empire and Authority.* On this Passage the Author[†] of the Treatise from which we have taken it remarks, That the Decrees of the *Roman Senate* that had Place allowed by *Justinian* in his Compliment of the *Roman Laws*, were not Laws, in that they were Decrees, or Propositions of the Senate, but in that they were allowed by the Prince to whom the People had given up their Right. The Difference between the *Maryland Constitution*, and the *Roman Government* under the Emperors seems to lie in this, That in the former the People have a Senate of their own Election, tho' not always sitting, and no Laws can be binding on them, to which they have not given their Consent: Whereas in the other the Senate, exactly like the Common Council for the City of *Philadelphia*, chose one another, and were independent of the People, who had no Voice in the enacting of Laws. This Privilege of being bound by no Ordinances, but to which they have assented, is a distinguishing Characteristick of a free People. But if they are without a Power to compel the Execution, and punish the Neglect or *wilful* Misinterpretation of the Laws, their Privileges in being Partys to them amount to just Nothing. Now as the Governor of *Maryland* has the Nomination of the Chancellor, the Judges, Sheriffs &c. who are all removeable at his Pleasure, the Interpretation and Execution of the Laws as well of those made under

* *Quod Principi placuit legis habet vigorem, quum lege Regia quae de ejus imperio lata est, Populus ei, & in eum omne imperium suum & potestatem concedat.* {Passage is translated in the text, "*The Prince's Pleasure . . .*"}

1. [Literally, "royal law"; defined in the text.]

† Harrington. p. 256.

that Government, as of *Magna Charta*, and the whole Statute and Common Law, which the People of the Colonies claim, in Virtue of their Birthright, as English Subjects, rest intirely in him; For he may constitute the Courts of Judicature in such a Manner as to dispence Justice as he pleases, and savour or oppress such Persons as he thinks fit.

He who hath a Power to interpret any written or spoken Laws, is truly the Lawgiver to all Intents and Purposes, and not the Persons who first wrote spoke or enacted them;

therefore the Governor of *Maryland* having clearly such a Power, were he disposed to exert it, is *really*, tho’ not *nominally*, vested with the whole Legislative as well as the whole Executive Authority, and consequently his Government is of a pure *despotic* Kind, and the more so for retaining the *Form* while it discards the *Substance* of a British Constitution. We shall here apply the Sense of what was said by Mr. *Trenchard*, on another Occasion in his History of standing Armies.

If the Marylanders under the Constitution they live, enjoy their natural Rights and Privileges, it is barely because they have a virtuous Governor that will not attempt to invade them. Yet to pursue the Words of the same Author, it is a most miserable Thing to have no other Security for our Liberty than the Will of a Man, tho’ the justest Man living; for that is not a free Government where there is a good Prince (for even the most arbitrary Governments have sometimes had a Relaxation of their Miseries) but where it is so constituted that no one can be a Tyrant if he would. Cicero says that tho’ a Master does not tyrannize, yet it is a lamentable Consideration that it is in his Power so to do: And therefore such a Power is to be trusted with none, which if it does not find a Tyrant commonly makes one, and if not him to be sure a Successor.

Why the Governor of *Maryland*, being in *Effect* possessed of the whole Legislative Power in the Manner before set forth, should chuse to make an *Appearance* of sharing it with his Council, seems difficult to account for; Except the Intention of placing them in so advantageous a Situation, was to give them an Opportunity to watch and lay hold of all favourable Dispositions in the Representatives, of procuring to themselves Places of Profit, to be held nevertheless at the Will of the Governor; whereby their Influence over the People might be enlarged, and his Lordship’s Principality or Prerogative, as it is called in *Maryland*, more firmly supported.

Machiavel* is positive that he who would set up a Monarchy, or Principality, where the Equality is great, must select the most considerable and unquiet amongst them; give them Castles, and Lands, and Preferments, and any Thing that may oblige them to his Side; by which Means they shall not only maintain the Power of their Prince, but their own Insolence and Ambition; & the People be forced to submit to a Yoke, to which nothing else could compel them.

Whether Machiavel was consulted in the erecting of this same Upper House in *Maryland*, we cannot pretend to say: But if Credit is to be given to the continued Complaints made by the Delegates, tho' frequently dissolved, who therefore must be presumed to speak the Sense of their Constituents; It has in it's Effects, answered the Intention of Machiavel's Scheme to a Tittle.

Yet the People might be able to defend their Liberties, if the Magistracy, who are intrusted with the Execution of the Law, were accountable for their Conduct to the Prescribers of it. That it *should* be so is perfectly agreeable to the Nature & immutable Relation of Things; for those, who have a lawful Right to give Commands, have necessarily a Right to see those Commands executed, and to punish the Neglect or Breach of Trust in those, that are charged with the Execution of them. Should it be *otherwise*, the Laws or written Commands given would be only a *dead* Letter, and the Right to give them only an *empty* Sound. Hence it is that the Legislative is superior to the Executive Power. This was freely, and in the fullest Manner, acknowledged by that learned Monarch, King *James I.* in his Speech to the Parliament in 1603, whose Words on that Occasion, which are here inserted, deserve not only to be ingraven in Letters of Gold, but on the Hearts of every Man.

I Do acknowledge that the special and greatest Point of Difference that is betwixt a rightful King and an usurping Tyrant, is in this: That whereas the proud and ambitious Tyrant doth think his Kingdom and People are only ordained for the Satisfaction of his Desires & unreasonable Appetites, *The righteous and just King doth by the contrary acknowledge himself to be ordained for the procuring of the Wealth and Prosperity of his People; and that his great and principal worldly Felicity must consist in their Prosperity: If you be rich I cannot be poor; if you be happy, I cannot but be fortunate; and I protest your Welfare shall ever be my greatest Care and Contentment. And that I am a Servant it is most true; for as I*

* D. B. 1. C. 55.

am Head and Governor of all the People in my Dominion who are my natural Subjects, considering them in distinct Ranks, so if we will take in the People as one Body, *then as the Head is ordained for the Body*, AND NOT THE BODY FOR THE HEAD, *so must a righteous King know himself to be ordained for his People, and NOT HIS PEOPLE FOR HIM*, Wherefore I will never be ashamed to confess it my *principal Honour to be the GREAT SERVANT of the Commonwealth &c.*

The first Law passed by the *Romans*, after they expelled Tyranny in the Persons of the *Tarquins*, was that which SECURED the Appeal to the People, and constituted them Judges of Life and Estate, over their Magistrates as well as over all others, who should attempt to introduce arbitrary Power, or subvert the Laws. Thus *Livy. Latae deinde Leges,—Ante omnes de provocatione adversus Magistratus ad Populum, sacrandoque; cum bonis capite ejus, qui regni occupandi concilia inisset*² {*gratae in volgus leges fuere*}. Lib. 2. c. 8. *Machiavel*, the great Patron of the People, has remarked in their Favour, That, so far were they from abusing this Power, notwithstanding the continual Provocations and Oppressions of a lawless and tyrannical Senate; that they seldom banished any accused before them, and seldomer gave Sentence of Death; and that, in either Case, during the Space of four hundred Years, They never once pronounced one partial or corrupt Judgment.

For this and many other Reasons He *positively* concludes, *That the Multitude is wiser, and more constant than a Prince*. Dis. B. 1. c. 58. He also notes out of *Cicero*, whose Opinion he also adopts, That the People tho' they are not so prone to *find out* Truth of themselves, as to follow Custom, or run into Error; yet if they be *shewn* Truth, they not only acknowledge and imbrace it very suddenly, but are the *most constant* and FAITHFUL Guardians and Conservators of it.

No Liberty ever subsisted but where the People, were vested with a regular Authority to judge and condemn great Offenders, whenever their Greatness placed them out of the Reach of the ordinary Course of Justice. This Right was exercised at *Athens*, *Sparta*, and *Carthage* as well as

2. ["Laws were then proposed. . . . Above all, the law about appealing from the magistrates to the people, and the one that pronounced a curse on the life and property of a man who should plot to make himself king, (were welcome to the commons" [*gratae in volgus leges fuere*]). Translation taken from *Livy, History of Rome*, vol. 1, Books 1 and 2, trans. B. O. Foster, Loeb Classical Library (Cambridge: Harvard University Press; London, William Heinemann, 1988), p. 243.]

at Rome: The same was always practised in England. The History of that Kingdom furnishes a great, perhaps a greater Number of Instances than any other, of *Grand Criminals*, pursued for their Crimes by the *loud*, the terrible and irresistible Cry of an injured Nation; a Nation that, with a more than Roman Spirit, has often hunted down the subtlest and fiercest Beasts of Prey, and brought to Justice the most exalted Oppressors by Impeachments and Bills of Attainder in Parliament. But the Person of the Prince, by the Law, is Sacred; unless (according to Mr. Locke) he will by actually putting himself into a State of War with his People, dissolve the Government, and leave them to that Defence, which belongs to every one in a State of Nature. And a Neighbour Kingdom [Ireland we presume is meant, which about the Time the Author wrote the Treatise vouched here, was in a Rebellion (if we may be allowed by some to say so, King James II. being at the Head of it) against King William, and the Parliament, and Kingdom of Great Britain] has showed the World an odd Example. In all other Cases the Sacredness of the Person exempts him from all Inconveniencies: Than which there cannot be a wiser Constitution. For the Harm he can do in his own Person [all under him being liable to be questioned in Parliament] is not likely to happen often, nor to extend it self far, not being able, by his single Strength, to subvert the Laws, nor oppress the Body of the People. Their Power, as conveyed to their Representatives in Parliament, was once doubted by no less a Judge of the English Constitution than the Earl of Shaftsbury* whether it was so extensive as

* I was one of those sorrowful Whigs, who bemoaned the sad Case of our Constitution, according to which the Power of Peace and War was wholly in the Prince; whilst the Tories saw plainly it was otherwise, and could impeach a Lord Chancellor for placing the Seal [to the famous Partition-Treaty, which was so ill relished in England, and rejected by the Parliament, which at that Time, as the noble Author intimates, was chiefly composed of reputed Tories] where I sincerely thought he could not refuse to do it at his Prince's Command. But let Lord Chancellors, and other Ministers look to themselves. If our Constitution was not so then, it is become so now: For not the absolute Command, the Obstinacy, the Rashness, or ill Judgment of the Prince himself (tho' ever so much a Principal in the Case, or tho' single or by himself) can justify or excuse the least Flaw in a Treaty; for which the Ministers are with their Heads to be answerable to the People, as by late Precedents it has been established. These Difficulties may easily show a wise Minister, that he has need of very discerning, bold and honest Friends; and such as are able not only by their Advice to assist him, but by their Interest and Credit, be as it were Hostages and Pledges for him to the Public, and to that concealed Party of sober and honest Men; who, as few as they are, and as little noisy, have a much greater Part in the Influence of Affairs, than Ministers are apt to think; especially those Ministers, who affect a high Contempt of Coffee-Houses, and Pamphlets. Earl of Shaftsbury's Letters to Lord Molesworth. p. 22.

asserted by Mr. *Locke*. But that great Nobleman on the clearest Evidence came over to the Opinion of the latter.

Since the Revolution we read of no Impeachments brought against Judges, which seems to be owing to those two Statutes that rendred them independent of the Crown, as well in Regard of their Salaries as their Places. Before those Acts we find the Patriots in Parliament, actuated by a noble Indignation, inveighing against the Corruption of Judges with the Thunder and Eloquence of *Demosthenes* and *Cicero*. With what Warmth did Sir *Henry Marten* express himself in the Debates of 1603 against the Judges of that Time who had eluded the Effects of *Habeas Corpus*'s?

Let it not be forgotten *says he*, how our Ancestors and Predecessors carried themselves in Parliament, when upon lighter Provocations, less would not serve their Turns, but new severe Commissions to hear and determine Offences against their Liberties; public Ecclesiastical Curses, & Excommunications against the Authors and Actors of such Violations, Accusations, Condemnations, Executions, Banishment; if a Worm, being trod upon, could speak, a Worm would say, Tread on me no more.

The Liberality of this worthy Knight deserves to be taken Notice of, in Regard to the bountiful Provision he was desirous to make for bad Judges in this World and the next.

When in the Year 1680 Complaint was made in Parliament against *Scroggs* Chief Justice for having illegally discharged a *Grand Jury* to prevent them from making a Presentment, several excellent Speeches were made on that Occasion. Some Extracts from them we hope may not prove disagreeable to the Reader. One Member addressing himself as usual to the Speaker says

Sir, I think we are come to the old Times again, when the Judges pretended they had a Rule of Government, as well as a Rule of Law; & they have acted accordingly. If they never read *Magna Charta*, I think they are not fit to be Judges; If they have read *Magna Charta*, & do thus so contrary, they deserve severe Chastisement—As Faults committed by Judges are of a more dangerous Consequence than others to the Public, so there do not want Precedents of severer Chastisements for them than others.

Another Member proceeded in the following Manner:

As our Ships, Ports, and Castles are for the securing us from the Danger of our Enemies from abroad, so our Laws from our Enemies at home; and if committed to such Persons as will turn their Strength upon us

are equally dangerous—In former Times several Judges have been impeached, and hang'd too for less Crimes than these; and the Reason was because they had broken the King's Oath as well as their own: And if what hath been said be fully proved, they shall not want my Vote to inflict on them the same Chastisement. The Truth is, Sir, I know not how the ill Consequences we justly fear from Judges can be prevented, as long as they are made *durante bene placito*, (during pleasure) and have such Dependencies as they have,

But Col. *Titus* offered an Excuse for them and said,

That whereas some have spoken ill of these Judges, I desire to speak well of them in one Thing; I am confident, they have herein shew'd themselves grateful to their Benefactors, for I believe some of them were preferred to their Places on Purpose because they should do what they have done.

On another Occasion it was urged

That if the Judges make new Laws by an ill Construction, or by an ill Execution of old ones, Parliaments would soon be found useless, and the Liberty of the People an Inconvenience to the Government.

This House of Commons having voted Lord Chief Justice *Scrogg's* Warrant to the Messengers of the Press, to seize unlicensed Pamphlets and Newspapers to be arbitrary and illegal; Sir *Francis Winnington*, a famous Lawyer, on that Occasion stood up and opened (says the Author^k to whom we are beholden for these Extracts) as *Cicero* would have done in the same Place, if he had been there to speak without Fear the Dictates of his Conscience:—

Mr. Speaker, The State of this poor Nation is to be deplored, that in almost all Ages the Judges who ought to be Preservers of the Laws, have endeavoured to destroy them, and that to please a Court Party: They have, by Treachery, attempted to break the Bonds asunder of Magna Charta, the great Treasury of our Peace—The two great and undoubted Privileges of the People have been lately invaded by the Judges that now sit in Westminster Hall. They have espoused Proclamations against Law.—They have grasped the Legislative Power in their own Hands, as in that Instance of Printing. The Parliament was considering of that Matter, but they in the Interim made their own private Opinion to be Law.—Mr. Speaker what we have now to do is, to load

k. Common Sense No. 65.

them with Shame, who bid defiance to Law. They are guilty of Crimes against Nature, against the King, against their Knowledge, and against Posterity. Tresilian and Belknap were Judges too, their Learning gave them Honour, but their Villanies made their Exit by a Rope. The End of my Motion therefore is That we may address warmly to our Prince against them; let us settle a Committee to enquire into their Crimes, and not fail of doing Justice upon them that have perverted it; let us purge the Fountain and the Streams will issue pure.

It appears from the foregoing Extracts that, during the Dependency of Judges, Princes in all Ages could find such as, notwithstanding the Dread of Impeachments hanging over their Heads, would mould the Law into any Shape they were directed, which evidently rendered the Government arbitrary: Neither were they at any Time deterred from pronouncing unjust Judgments, by the Bare-facedness, or notorious Illegality of them; as in the Case of Ship-Money, when they gave their Opinion of the Lawfulness of levying it, and in open Court defended that Opinion by long and elaborate Arguments, tho' every Standerby, says *Clarendon*, could swear they were not Law.

In *Maryland* the Judges are under no Apprehensions of Impeachments, which leaves the Law freely at their Mercy. Thence there arises a farther Proof of the despotic Nature of that Government, which must necessarily be tyrannical and oppressive, whenever a Governor is disposed to be so; except it may be presumed that the Persons advanced to the Seats of Judicature in that Province, are made of better Clay than Parliaments of England have found the Dispensers of the Law there to be made of.

It might probably look too much like a Jest, should the Representatives exhibit Articles of Impeachment before their Honours of the Upper House against Judges and other Officers under the same Dependence with themselves. The House of Lords, being independent, is therefore a *natural*, as it is for another Reason a legal Court of Judicature. But the Upper House of *Maryland*, tho' it's Judgments were warranted by Act of Assembly, yet, on Account of the Influence it is under, could never answer the End of the Institution of the Lords in their *Judicial Capacity*. Such a House, considered as a distinct Branch of Legislature, we have endeavoured to show not only the Uselessness, in respect to the Circumstances of the Colonies, but the Danger of it: But considered, as a Court of Judicature, it is, or something tending to the same Purpose, is absolutely

necessary; for otherwise we cannot conceive there can be either *Law* or *Liberty*, but *Right* and *Wrong* must be only that which particular Persons shall be pleased to call so. Here the Question occurs, who is to nominate the Judges to this Supreme Court, this *dernier* Resort? Not the Governor surely, as that would frustrate the End of the Institution. Who then? We shall leave it, for prudential Reasons, to the Advocates for Upper Houses to answer. Yet as the Representatives of the People in *Great Britain* are Judges and Accusers too in Acts of Attainder, so there seems to be an *inherent* Power in the Representatives of the People in the Colonies to judge and condemn Offenders, with the Consent of the Governor. Tho' he should reject all Bills inflicting Pains and Penalties on the Officers and Ministers of Justice found guilty of Male-Administration, whose Behaviour nevertheless, might be perfectly agreeable to his Directions or at least to his Inclinations; yet the Inquiries and Examinations necessarily previous to such Bills, against which the Accused may, if they please, be heard by themselves or Council before they pass, might probably, if the Practice became more frequent, for there have been Precedents of the Kind, render Judges more cautious in the Execution of their Charge; for the Apprehension of being liable to the public Censure and Reproach of a whole People, in the Persons of their Representatives, would have some Weight with Judges, however confident they might be, that the Governor, whom they served, would never join an Assembly in consenting to any Bill for the Punishment of their Breach of Duty.

We have hitherto supposed that the Authority of Assemblies in the Plantations extend no further in Regard to the People there, than that of a House of Commons in Respect of the People in *Great Britain*. Now if by some unforeseen Accident the House of Peers should at any Time come to a Dissolution, and, in such a supposed Case, it should be asked on whom would their judicial Capacity devolve? We think it may be first answered *negatively*, not on the Privy Council, because the Statute for taking away the *Star-Chamber*, has declared, *That neither his Majesty nor his Privy Council have or ought to have, any Jurisdiction Power or Authority &c. to examine, or draw into Question, determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels, of any of the Subjects of this Kingdom.* Tho' Cases of Property are only mentioned, yet the Words seem extendible to criminal Matters, according to the known Maxim, that *omne majus continet in se*

minus.³ The Parliament here not only declares what the Law is but what it *ought* to be, *viz.* That the Privy Council neither have nor *ought* to have such a Jurisdiction, plainly intimating that it would be inconsistent with the Nature of the *English* Constitution. Yet the judicial Power of the Lords would devolve somewhere, for the Exercise of it cannot cease without a Failure of Justice, which, would draw after it a total Dissolution of the Frame of Government. Therefore one might be apt to think, that on the imaginary Case put, the judicial Capacity of the Peerage would immediately devolve on the Commons. Admitting this Conjecture to be well founded, it *evidently* follows that Assemblies are not only to be considered as Legislative Bodies, but also as supreme Courts of Judicature from which there is no Appeal but to *Great Britain*. However, the Doubts and Uneasiness of the Subjects, under such a Defect of Justice, would be entirely removed, were the Point in Question determin'd, and the Mode of Proceeding, in a Matter of so high Importance, directed by Act of Assembly.

The Representatives of *Maryland*, as may be seen on their Minutes, have drawn up a List of their Grievances to be laid before the Lord Proprietor. They seem to expect, from the Nobleness of his Nature, a Remedy against the Oppressions, which, in their Apprehensions, they labour under, and a Security against the like Mischiefs for the future.

The greater the Difficulty is for human Nature to divest it self of an arbitrary Power, the greater the Honour he acquires that does so. We cannot give ourselves Leave to think, and surely we may *think* without Offence or incurring the Censure of dictating, that any Person of an accomplished Understanding would ever refuse to set reasonable Limits to his Authority, which, tho' unbounded, should never pass such Limits; Especially as nothing could more contribute to the lasting Establishment of that Authority. *Theopompus*,* one of the Kings of *Lacedemon*, was fully convinced of

3. ["Every greater contains in itself the less."]

* *Nam cum primus instituisset Theopompus ut Ephori Lacedemone crearentur, ita futuri regiae potestati oppositi quemadmodum Romae Tribuni plebis consulari imperio sunt objecti; atque illi Uxor dixisset, id egisse illum ut filijs minorem potestatem relinqueret: Relinquam, inquit, sed diuturniorem. Optime quidem: Ea enim demum tuta est potentia, quae viribus suis modum imponit. Theopompus igitur legitimis regnum vinculis constringendo, quo longius a licentia retraxit, hoc propius ad benevolentiam civium admovit. Val. Max. l. 4. c. 1. {Passage is translated in the text: "Theopompus, one of the Kings of Lacedemon . . . Regard of his Fellow Citizens."}*

the Truth of this Observation, when he consented to the Creation of the *Ephors*,* who were to be such a Check upon the Kings there, as the Tribunes were upon the Consuls at *Rome*; for when his Queen complained, that by this Means he transmitted the Royal Authority greatly diminished to his Children; I leave indeed, answered he, a lesser Power than I received but a more lasting one. The Historian, who records this Answer, highly applauds it; because, says he, that Authority is only safe that prescribes Limits to itself; and adds, that Theopompus, by restraining the supreme Power within known, legal Bounds, and thereby removing it from any Suspicion of its degenerating into Licentiousness, took the surest Method of recommending it to the affectionate Regard of his Fellow Citizens.

This notwithstanding, their Honours of the Upper House of *Maryland* seem plainly of Opinion, that a State of Slavery would be more suitable, more beneficial to the Colonies than the Enjoyment of their Liberties. This we take to be their clear Meaning,^(k) where admitting themselves to be subservient to the Governor, They endeavour to account for that Subserviency, and to show that no Inconveniency can arise from it, inasmuch as *Maryland* is a Government dependant on *Great Britain*; for say their Honours, our Sovereign being the Judge, He will never approve of any Act or Behaviour of any Branch of the Legislature, for any other Reason than that of its being just and reasonable. But if this be an Argument why the Upper House should depend on the Governor, it is also an Argument of equal Force to prove, that the Lower House should also depend on the Governor; and by the same Rule not only the whole Legislative but Executive Power, in every other Province as well as *Maryland*, may be finally resolved into the Arbitrary Will of the Supreme Magistrate, and justified on the same Principle namely, That, as our most gracious Sovereign is the ultimate Judge, who will never countenance any Act or Behaviour of any of his Governors, for any other Reason than that of its being just and reasonable, They may therefore be safely trusted with an absolute Power over the Lives, Liberties and Properties of the People in the Provinces where they preside. These are Consequences that necessarily flow from the Premises, which carry with 'em an Aspect equally dreadful and extraordinary; and therefore require an accurate Examination, which will be attempted in our Next.

* Vid. Sup. p. 33, c. 2.

(k). Supra. p. 22. c. 1.

[Jonathan Blenman],
Remarks on Several Acts of Parliament
(London, 1742)



WRITTEN BY Jonathan Blenman, who had practiced law in Barbados for over two decades and was the sometime attorney general of that colony, this selection is more a treatise than a conventional pamphlet. It consists of five discrete essays, which the author refers to as chapters, on the theme of the relationship between the provincial polities in America and the metropolis. Although the title suggests a wide concern for all “the *Colonies* abroad,” Blenman’s specialized knowledge of Barbados dictated that almost all of the evidence he presented came from that colony and most of the rest from the neighboring colony of Antigua. Two of the essays (Chapters 2 and 4) deal with defects in Parliamentary legislation concerning the sugar trade, but the other three chapters are what give the treatise special importance.

Chapter 5 provides a general history of the 4½ percent duty voted to the Crown by the legislatures of Barbados and the four Leeward Islands of Antigua, Montserrat, Nevis, and St. Christopher during the Restoration. Although the legislatures of these colonies clearly stipulated that the monies raised by these duties should go “towards the publick Expenses” of their respective islands, the Crown subsequently diverted those monies almost entirely to metropolitan purposes—with the exception, in the case of Barbados after 1698, of an annual sum to pay the “stated *English* Salary” of the governor. Long a source of resentment in all the islands in which these duties were collected, the diversion of “the Money arising on this Fund to other Uses than those for which the People had originally intended” had, as Blenman explained, at once frustrated the original design of the law and

“proved a Hardship on the People, who” had to find other funds to answer Barbados’s essential government expenses. Moreover, according to Blenman, the Assembly had used the need for these additional taxes to extend its authority over the whole colonial treasury, which had “been the source of most of the [island’s] political Disputes . . . and of the Spirit of Opposition so often exerted there, by the Representatives of the People.”

But Blenman’s treatise is most important for its detailed account of the process of transfer of English law to the colonies, a subject he treats at length in Chapters 2 and 3. Emphasizing that metropolitans needed to be “not only well-versed in the Trade and Commerce of the *British* Plantations, but also fully apprized of the particular Laws and Constitutions of them,” he used Barbadian legal practice regarding the seizure of personal estates for the payment of debts to show that colonial legal systems could deviate from English legal traditions without violating their spirit. He went on to argue two further points. First, he maintained that the effectiveness of provincial laws rendered metropolitan legislation on the question of debt payment in the colonies “quite needless with regard to” Barbados, where the enforcement of recent metropolitan legislation would both “prove highly inconvenient, and indeed a great Grievance.” Second, and more importantly, he argued that, in the colonies as well as in Britain, when “a Practice” became “general, and has long been continued,” it became “in a manner *Lex Loci*,” or local law, and “as it were, the *Common Law*” of the colony. Observing that “every Country has Circumstances peculiar to itself in respect of its Soil, Situation, Inhabitants, and Commerce, to all which convenient Laws ought to be adapted,” Blenman insisted that, whether or not there was “any written Law to countenance or support” them, “peculiar Customs and Usages” that had long been “*the Law, and constant Course* in Barbados and had thereby become the “*Lex non scripta*” or unwritten customary law of the colony could “not at once . . . be overthrown, merely because they happen to be at various from those of England.” “To attempt to turn a Stream which had for such a Length of Time took its course almost through every Plantation in the Island,” he suggested, “was in vain.” In his view, custom constituted “a strong Argument . . . against our interfering with the Laws of the Colonies in any Instances that do not directly concern the Mother-Country.” In these passages, Blenman made explicit a set of assumptions about the integrity of provincial laws and the competence of provincial law-makers to oversee them that had long underlain colonial presumptions about the nature of governance within the peripheries of the British Empire. (J.P.G.)

Remarks On Several Acts of Parliament, &c.

Price 2 s. Stitch'd.

The Publisher's Preface.

The following Pieces were wrote, at different Times, by a Barrister at Law, after having practised many Years, with a fair Character, in America. They were occasion'd by some Conversations he had on the Subjects, with two or three Gentlemen of the same Profession here, who happen not to think so meanly of the Colonies as many of less Discernment, and worse Information, would seem to do.

The Author was himself pretty indifferent as to what became of them, provided his Name was concealed.—He is not apt to set a Value upon his best Performances, much less such as were produc'd, for the most part, during a Period wherein his Want of Health seldom afforded him Spirits for Application to any thing which had not a probable Tendency to establish it. Yet he could not be quite indolent with regard to the Interests of his Majesty's Subjects in the West-Indies, where he had spent so considerable a Part of Life.

But when it came to my Knowledge that those Friends of his above alluded to, were of Opinion these Papers might be of more general Use, I was not displeas'd, I confess, with the Opportunity of being instrumental in making them so. The Truth is, I had form'd the like Judgment of what I had been favour'd with the first Sight of; and am now assured that some Matters of the utmost Importance to the People concern'd, are here set in a new Light, and others are more copiously handled than they have hitherto been. Nor can it be doubted but the Candid and Judicious will make all just Allowances to the Writer, who was delivering his explicate Thoughts, without any design'd Embellishments, as to a private Company only; and not addressing the Publick. Had this last been the Case, he might possibly have exhibited more Accuracy in Point of Style, Method, and otherwise throughout.

Several of the Topicks discussed in the subsequent Sheets may not, perhaps, be altogether unworthy the Attention of those of high Rank, amidst their other necessary Avocations. We do not, indeed, imagine such can have Leisure, or will be at the Trouble to peruse every Pamphlet; yet it must be acknowledg'd, that

even the busiest of them, if they are wise, will listen to all feasible Hints that are thrown in their Way; and if honest, endeavour to improve them for the Advantage of their King and Country.

Thus much however may be depended on, that what now comes from the Press was neither wrote at first, or sent thither afterwards, with the Views that are most commonly the chief Motives to both. And if such as belong to the Law should not meet with any thing to edify, which they will hardly look for, they may at least be amused thereby; whilst Merchants also, and other Persons of Curiosity, 'tis hop'd, will not be quite disappointed in their Expectations.

T. M.

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REMARKS

On Several

Acts of Parliament

Relating

More especially to the *Colonies* abroad;

As also on diverse

Acts of ASSEMBLIES there:

Together with

A Comparison of the Practice of the Courts of
Law in some of the PLANTATIONS, with those of
WESTMINSTER-Hall;

And a modest Apology for the former, so far as
they materially differ from the latter.

Wherein is likewise contain'd,

A Discourse concerning the 4½ *per Cent.* Duty
paid in *Barbados*, and the *Leeward Islands*.

——— *Noli haec contemnere.* ——— *Sicilia tota, si una voce
loqueretur, hoc diceret.*¹

Cic. in Q. Caecil.

LONDON:

Printed for T. COOPER at the Sign of the *Globe*
in *Pater-noster Row*. 1742.

1. ["Do not take these things lightly . . . The whole of Sicily, if it were speaking with one voice, would say this."]

Remarks on Several Acts of Parliament, &c.

CHAP. I.

On the Statute of 5 Geor. II. cap. 7. For the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America.

All Acts of Parliament which *expressly* include the Plantations (whereby alone they can be affected) will, no doubt, have a more immediate View to the Benefit and Advantage of the Mother-Country. But as the Trade and Commerce of the several Colonies abroad are on different Footings, and their respective Establishments very various, so that what would be proper enough with regard to some, might be highly inconvenient with respect to others, it were to be wish'd, that, before the making of any Statutes of that kind, such Persons could be consulted, as are not only well-versed in the Trade and Commerce of the *British* Plantations, but also fully apprized of the particular Laws and Constitutions of them. This would probably be a Means of preventing any from being enacted, that might prove either injurious to particular Bodies of his Majesty's Subjects, or perhaps, upon the whole, unnecessary; and likewise occasion the more Circumspection and Accuracy in penning such as may be really useful, and the better framing and accommodating them to the Purposes for which they are intended. Nor can it be deny'd, but there is such a reciprocal Relation betwixt this Kingdom and its Colonies, that what tends to promote the Good or Hurt of the latter, must in some measure also, in the End, have the same Effect on the former; which will always be in proportion to the Usefulness of those wherein the Alteration is intended to be made.

The Act at present under Debate, took its Rise, if we are not misinformed, from the Complaints of some Merchants of the City of *Bristol*, always mindful of their own Interest, and who perceiving, about that time, their Returns from *America* not quite so quick as they desir'd, found an Opportunity of representing the same to such Members of the House of Commons, as had Weight enough to obtain the Suffrage of Parliament in their Behalf; and it seems that the Bill went thro' both Houses without

Opposition. But what Foundation there was for those Complaints, as far as the *Carribbee Islands*, especially the Chief of them, are concerned; whether any just Reason, as to them, for the Remedy proposed, and how far it was adequate to the imagined Grievance, shall now be consider'd.

It must be confess'd then, that for two or three Years immediately before this Act took place, the *British* Sugar-Colonies had been in a declining Condition, owing not merely to the vast Improvements of our Rivals the *French* and *Dutch*, especially the former, in the same Trade, but partly also to more immediate Causes, *viz.* the successive dry Seasons which happen'd in some of the Islands, and to that, joined with a consuming Blast, which infested the principal of them. These Calamities, and other Difficulties not now to be specified, made it necessary for the Owners of Estates there, to require longer Credit than had been usual; and which, perhaps, all things consider'd, it was no less reasonable for the Merchants here to have given them. However, subsequent and better Years, together with some favourable Incidents advancing a little the Price of their Commodities, have since enabled the Planters to discharge most of their Debts, and which by their Readiness in doing, they have sufficiently demonstrated that it was hard Necessity, and no dishonest Principle, any more than an Imbecility of the Laws, that made them trespass on the Patience of their Creditors. Nor would it be difficult to shew, that had some of these cautious Gentlemen been less hasty in getting their Judgments executed, they might have fared much better than they did. For, besides the high Rate of Interest allowed in the Colonies, they, by pressing the unfortunate Planter at such a melancholy Juncture, brought on other prior Creditors to levy their Debts, and which being first satisfy'd, left little or nothing for those that were to come after; whereas, had they been content to wait for better Times, the Estate might have been preserved and kept together, so as to discharge every Demand (as several in the like Circumstances did) and the Owner have still continued in Possession of it, and been in a way of improving his own Fortune by his Industry and Labour thereon.

And this brings me to the Preamble of the Act before us, reciting that—His Majesty's Subjects trading to the British Plantations in America lie under great Difficulties for want of more easy Methods of proving, recovering, and levying Debts due to them, than are now used in some of the said Plantations: Which, if true, what follows cannot be denied, that—It will tend very much to the retrieving of the Credit formerly given by the trading

Subjects of Great Britain to the Natives and Inhabitants of the said Plantations, and to the advancing of the Trade of this Kingdom thither, if such Inconveniencies were remedied. But if it should appear, on the other hand, that those his Majesty's Subjects were not, in Fact, under the Difficulties here set forth, with respect to the Colonies above mentioned, it must be allowed there was no need of a Remedy, as to them, for the Inconveniencies said to arise therefrom.

In order to state this Matter fairly, it will be proper to enquire what Methods of proving, recovering, and levying such Traders Debts were before used in some of the said Plantations, according to the Laws then in being, and which are still so, as far as they may be supposed not repeal'd by this new Remedy.

But first let us attend to the Remedy given by the Statute, which enacts—That from and after the twenty-ninth Day of September, which shall be in the Year of our Lord 1732, in any Action or Suit then depending, or thereafter to be brought in any Court of Law or Equity, in any of the said Plantations, for or relating to any Debt or Account, wherein any Person residing in Great Britain shall be a Party, it shall and may be lawful to and for the Plaintiff or Defendant, and also to and for any Witness to be examined, or made use of in such Action or Suit, to certify or prove any Matter or Thing, by Affidavit or Affidavits in Writing, upon Oath; or, in case the Person making such Affidavit be one of the People called Quakers, then upon his or her solemn Affirmation, made before any Mayor or other chief Magistrate of the City, Borough, or Town Corporate in Great Britain, where, or near to which the Person making such Affidavit or Affirmation, shall reside, and certified and transmitted under the common Seal of such City, Borough, or Town Corporate, or the Seal of the Office of such Mayor or other chief Magistrate; which Oath and solemn Affirmation every such Mayor and chief Magistrate shall be, and is hereby authorized and impowered to administer; and every Affidavit or Affirmation so made, certified and transmitted, shall in all such Actions and Suits be allowed to be of the same Force and Effect, as if the Person or Persons making the same upon Oath, or solemn Affirmation as aforesaid, had appeared and sworn, or affirmed the Matters contained in such Affidavit or Affirmation viva voce in open Court, or upon a Commission issued for the Examination of Witnesses, or of any Party in any such Action or Suit respectively—

It would hardly seem credible, that soon after this Act took effect, Letters of Attorney should be sent over to the Colonies under colour thereof, with Accounts annext, and Affidavits of the Truth of them by the Creditors themselves only, as sufficient and legal Evidence of such Demands. But so, in fact, there were, not only from *Bristol*, but even from *London* likewise; tho' the Courts, in the *West-Indies*, thought fit to reject such *easy Methods of proving them*, as contrary to a fundamental Rule in Law, which neither the Words by any means import, or could it possibly be the Meaning of the Legislature to subvert.

As to the Method used abroad of *proving Debts* (for of *recovering* and *levying* them we shall have occasion to speak anon) owing to Persons residing in *Great Britain*, it is to be observ'd, that by one of the oldest Laws extant at *Barbados*, and made soon after the Settlement thereof, all Bonds and other Specialties attested to have been proved upon Oath under the Corporation-Seal of the Lord Mayor of *London*, or any other Mayor or chief Officer of any City or Town Corporate within the Dominions of *England*, shall be taken, deemed, and adjudged as sufficient in Law in any of the Courts of Justice in the Island, as if the subscribing Witnesses had been personally there, and proved the same. And by an *Act for establishing a Court of King's Bench, Common Pleas and Errors* in the Island of *Antigua*, made in the Year 1721, there is a Clause to the same Effect, and almost in the very same Words.

Here, 'tis true, Provision is only made for Debts on Specialties, and it does not extend to simple Contracts, and those on open Accounts, which are included in the late Remedy; yet I hardly remember any Instance of a Creditor's having suffered in this respect, because of the special Indulgence given to Agents and Factors, in the several Courts of Law in *Barbados*. Now the Merchants and Traders here, do not send their Effects directly to the Planters in the Colonies, but have generally their Correspondents on the Spot, who act as Factors for them, and dispose of the Goods amongst the Inhabitants, for which they are allowed Commissions. These Agents are presumed to be Men of Substance and Probity, in whom their Employers can confide; and if the latter are sometimes dubious as to the Circumstances of the former, or less acquainted with their Persons, they do not, I believe, fail to take Security here for their Conduct.—As these *Agents* and *Factors* are often obliged to give Credit to the Inhabitants till Crop-time, so they are allow'd to sue, *as such*, for any Debts contracted on account of their

Employers, and which, by the Course of the Courts, they may at the Trial prove by their own Oath, being previously sworn, that they *have no Profit or Loss in the Success of the Action, excepting their Commissions*. By which means there are no Debts more easily recovered than such as are so contracted; and which surely would not seem to leave room for any Complaints on this side the Water. However, as the *Agents* themselves may sometimes happen to prove deficient, and there are besides certain Restrictions in the *Barbados-Law* alluded to above, we will admit the Statute under Consideration to be not improper so far as relates to Debts on open Accounts, and also as it is more full, and inclusive of all the Colonies. I shall proceed therefore to another Part thereof, which is much more liable to Objection.

It goes on then farther to enact—That from and after the said twenty-ninth Day of September, 1732, the Houses, Lands, Negroes, and other Hereditaments and Real Estates, situate or being within any of the said Plantations belonging to any Person indebted, shall be liable to and chargeable with all just Debts, Duties, and Demands of what Nature or Kind soever, owing by any such Person to his Majesty, or any of his Subjects, and shall and may be Assets for the Satisfaction thereof, in like manner as Real Estates are by the Law of England liable to the Satisfaction of Debts due by Bond or other Specialty, and shall be subject to the like Remedies, Proceedings, and Process in any Court of Law or Equity in any of the said Plantations respectively, for seizing, extending, selling, or disposing of any such Houses, Lands, Negroes, and other Hereditaments and Real Estates towards the Satisfaction of such Debts, Duties, and Demands, and in like manner as Personal Estates in any of the said Plantations respectively are seized, extended, sold, or disposed of for the Satisfaction of Debts.

By which Clause, we perceive, two things are enacted: First, That all Real Estates in the Colonies shall be chargeable with Debts and Demands of every Kind, owing to his Majesty and his Subjects here, and be Assets for Satisfaction thereof, in like manner as Real Estates are to Debts on Specialties by the Law of *England*: And Secondly, That such Estates shall be subject to the like Remedies for seizing, extending, selling, and disposing thereof towards Satisfaction of such Demands, as Personal Estates already are in any of the said Plantations. Now the former of these, 'tis presumed, will appear to be altogether unnecessary; as the latter, I humbly conceive, was no less improper with regard to the Colonies, for which we alone are at present concerned; the one, because the same thing is already more fully

established, at least in the Chief of them, by the Laws on the spot; and the other, as quite inconvenient to all of them, and which therefore, by putting it in force, would probably, in the end, prove detrimental to the Nation in general.

By the Laws of *Barbados*, no Freeholder, *i.e.* one possessed of ten Acres of Land, can, 'tis true, be arrested (as all others may, for any Debt whatever not less than Six Pounds five Shillings) but being sued in the ordinary Way, and Judgment obtain'd against him, or any other Person, the Chief Justice of the Court is fourteen Days after to

issue a Warrant to the Marshal, or his sufficient Deputy, in the first Place to attach any of the Cotton, Tobacco, Ginger, Sugar, or Indico, belonging to the Defendant; if none such, then the Servants, Negroes, Cattle, Horses, or other Moveables; if none such, then the Lands, Plantations, or Houses of the Defendant; and lastly, if none such, then to arrest the Person of the Defendant, and him in safe Custody to keep until he hath satisfied the Plaintiff.

And this is the Substance of the *Execution*, which being prescribed by an early Act of the Island, has been strictly pursued ever since, without Variation, or any farther Direction whatsoever by any subsequent Law that is to be found.—It takes in then, we find, not only the Writs of *Fieri facias*² and *Elegit*³ but also the *Capias ad satisfaciendum*,⁴ and indeed comprehends more than all these together; because in virtue thereof, the Marshal may, by the Direction of the same Act, sell the Inheritance of the *whole* Real Estate, where there are no other Effects to be had; as will be more particularly mention'd hereafter. And thus much indeed *Westminster-Hall* seems to be appriz'd of, as appears by the Case of *Blankard* against *Goldy* in 4 *Mod.* 222.

2. [Literally, "You cause to be rendered," *i.e.*, a writ commanding the sheriff that "you cause to be rendered" the debt out of the property of the defendant according to the judgment.—Tr.]

3. [Literally, "Chooses." After the initial writ and judgment, a writ that the plaintiff "chooses" as an alternative to *fieri facias* as a means to recover debt or damages out of the goods and property of the defendant.—Tr.]

4. [Literally, "for the purpose of satisfying the claim you seize." If, after the original writ and judgment, a *fieri facias* or *elegit* is returned to the effect that the defendant does not have means to satisfy the debt, then the writ *capias ad satisfaciendum* may be issued directing the sheriff that "for the purpose of satisfying the claim you seize" the defendant for imprisonment until he discharges the debt.—Tr.]

where it was said by the Court, that *In Barbados the Freeholds are subject to Debts, and are esteem'd as Chattels till the Creditors are satisfy'd, and then the Lands descend to the Heir.*

In like manner, by the Law of *Antigua*, being of a much later Date, and wherein the *Execution* is set forth in *Form*, which it is not in the other, the same is made to run in these Words—*We do therefore hereby require and command you to levy the same of the Goods and Chattels, Lands and Tenements of the said C. D. in the manner directed and appointed by virtue of a certain Act of this our Island, in that Case made and provided; and, for want thereof, you are to attach the Body of the said C. D. and him safely to keep, until the said Debt shall be satisfy'd and paid.* So that, according to these Laws, all the Estate, of what Nature or Kind soever, which the Debtor is seized or possessed of, is made subject, as well as his Person, to satisfy the Demands of Creditors. Besides, it may be observed of *Antigua*, that,

in order to encourage Trade, and secure Debts due from Persons who have Effects there, and cannot themselves be got at, so as to be made liable to any Writ or Process out of the Courts of Law or Equity in the Island,

there was pass'd, in the Year 1723, *An Act for constituting a Court to hold Plea of foreign Attachments, according to the Custom of the City of London.* And I the rather take notice of these Particulars relating to that Island, because it had formerly, perhaps with too good Grounds, been charged with wanting proper Laws for the speedy Recovery of Debts; and the People were accused, I know not how justly, of having perversly declin'd making any such, when recommended to the Assembly by their *Generals*.

As to making Real Estates in the Colonies Assets according to the Law of *England*, and now prescrib'd by our Statute to be such, for the Payment even of Debts on Simple Contract; I need not stay to enter into a Detail of what the *Law* is here, but go on to shew how it stands in *Barbados*, with respect to this Point; which will, at the same time, prove the Statute to be therein quite needless with regard to that People. And seeing the same Island was the first, as it is the best settled, and by its Situation, and otherwise, the most important of all the *Carribbees*, it will not be unworthy, I presume, of a distinct Consideration under this Head, at least, independent of the rest, wherein we are not so conversant.

By the constant Practice then of that Colony, an *Execution* (the Purport whereof is above specify'd) taken out on a Judgment obtain'd against an

Executor, even upon the simple Contract of the Testator, may be levy'd on any of his Real Estate, where there are no other Effects, and being apprais'd according to the Method directed by the Act, and not redeem'd within the Time thereby limited, the Marshal does, of Course, pass his Bill of Sale to the Plaintiff. This conveys the Land or Tenement to him and his Heirs. who holds the same by a good Title in Fee Simple against all claiming under the Defendant, or his Testator, provided he had such an Estate therein at the Time of his Death; otherwise, according to the Estate he had, or could himself have convey'd. From whence it will follow, as the Fact is, that notwithstanding the Statute 3 and 4 W. & M. cap. 14. does not extend to this Island, the Debts of the Testator have always been satisfy'd out of his Real Estate in the Hands of his Devisee, when-ever there is a want of Personal Assets: And 'tis no less certain, that all Decrees for Legacies are in such Cases levy'd thereon, tho' not expressly charged with the Payment thereof by the Will; for Decrees of the Courts of Equity are levy'd in like manner as Judgments at Law, with some Variation only as to the Method, which will be explain'd anon.

All this must undoubtedly appear pretty extraordinary to the *English Lawyer*; and the more so, when it is acknowledged there is not to be found any written Law to countenance or support it. 'Tis no Wonder therefore that the most eminent Counsel here, have constantly censur'd the Practice; and that one of them, who was afterwards deservedly advanced to the highest Post in the Law, shou'd (not being wholly appriz'd of the Constitution of the Island) declare, in an Opinion given on a Case laid before him of this Kind, that *it is so little agreeable to natural Justice upon an Action against an Executor, who may be little if any thing concerned, to sell the Lands of the Heir, without making him a Party, or hearing him, that such a Practice will scarce be affirmed here.* The immediate and most worthy Successor of that great Man does not, indeed, go quite so far in his Opinion on the same Case; but says, that *this Method of Proceeding by Action against the Executor only, to affect Lands which descended to the Heir, or were devis'd (as in this Case) by Will, seems very strange to us in England: But if this be the Law, and constant Course in Barbados, That may support such Proceeding.* On a different Occasion, but to the like Effect, I have seen another celebrated Name, and who afterwards became a *Chief* in one of the Courts of *Westminster-Hall*.—

I can not see, says he, (since the Statute of fraudulent Devises does not extend to *Barbados*) how a Covenant of the Husband can affect Land

devised to the Wife; for at Common Law it cou'd not, and I never knew Equity, before that Statute, went so far as to charge the Debts by Bond or Covenant of the Devisor, in the Hands of the Devisee. But being inform'd that, in fact, the Practice in *Barbados* has been to levy such Debts nay even Debts of Simple Contract, of the Lands devised, in the Hands of the Devisee (tho' as I don't see on what Law it is founded, for I know no Act of Assembly that warrants it) yet I say, if the Practice has been so, it may be proper to attempt it in this Case.

The Truth is, (and I hope 'tis allowable with due Deference to say it a Practice when it is general, and has been long continued, becomes in a manner *Lex Loci*:⁵ And, as an ingenious Person has observed before me, every Country has Circumstances peculiar to itself in respect of its Soil, Situation, Inhabitants, and Commerce, to all which convenient Laws ought to be adapted; as 'tis from thence that particular Customs and Usages do arise: And I add, that having obtain'd, they are not at once to be overthrown, merely because they happen to be various from those of *England*. Nor will the present Case, I conceive, come within the Reason of, or be at all affected by the 7th and 8th *W. 3. cap. 22. Sect. 9.* because that Statute (relating to the Revenue) only makes *null and void, such Laws, Usages, or Customs in the Plantations any way repugnant to that Act or any other Law hereafter to be made in this Kingdom*, so far as such Law shall relate to, and mention the Plantations. And 'tis in this Sense alone, or perhaps where they are directly invasive of the Royal Prerogative, or plainly inconsistent with the Liberties of the Subject, that the Laws, &c. of the Colonies can, in my humble Apprehension, be deem'd *repugnant* to those of *England*; and which indeed seems to be strongly imply'd by the last-mention'd Words of the Statute.

The Reason however of the Practice we have been speaking of, must certainly have proceeded upon the Supposition that all their Estates were in the nature of, and no more than, Chattels for the Payment of Debts (tho' after the Creditors were paid, they descended to the Heir, and the Woman was to be endowed of them) a Doctrine probably set on foot in the Infancy of the Island, for the Encouragement of Trade to it; nor will the same be disrelish'd, I presume, by the Merchants here. And notwithstanding, as has

5. [Literally, "Law of the place," i.e., where the contract is performed or denotes the law governing the contract; usually formally *lex loci contractus*.—Tr.]

been already hinted, there is no express Law in Being whereon the Usage was at first founded, yet it is not unlikely that some such there was, and by the Casualties incident to that Place, is now lost, amongst several others that are missing. Or it may be farther accounted for from the pardonable Ignorance of those Times, when it being understood in general, as is above supposed, that Real Estates were subject to all Debts of the Owners (as they were soon made by an express Law, and for that Purpose to be sold outright, by the Marshal) it was afterwards inferr'd, that they might consequently become seizable in the Hands of the Heir, or Devisee, by Executions on Judgments obtained against the Executor or Administrator. This too would seem no very unnatural Conclusion in such as were not well acquainted with the Difference betwixt an Heir, and an Executor (a Distinction indeed unknown in the *Civil Law*) and where the Tenures arising from, and depending on the Reason of *Feuds*, had never been heard of. But be that as it will, so far has this *Lex non scripta*,⁶ if I may so call it, prevailed, that it was in vain for any of the *Profession*, of late Years, how sensible soever of the Incongruity thereof, to attempt to turn a Stream which had for such a Length of Time took its Course almost through every Plantation in the Island, and is become, as it were, the *Common Law* thereof. How proper it may be, or how easy to frame a full and explicit Act for the Purpose, I shall not take upon me to say; but I am afraid, that to go about to do it by any *other Means*, would now be of dangerous Consequence with regard to the Properties of his Majesty's Subjects in that Part of the World. And indeed we find, that the wise and august Board to which all these Matters must come, and where they are happily decided, have accordingly ever had an Eye to the known Practice of the Place from whence the Contest arose, as well as made large Allowances for the Mistakes in point of Form, too often to be met with in the Proceedings transmitted; and which are sometimes owing to the Want of proper Helps and Assistants in the respective Courts abroad.—But of this I may have Occasion to treat more particularly in another* Place. In the mean while, 'tis evident enough, I presume, that the *English* Statute was not wanting in *Barbados*, in order to remove the Difficulties complained of under this Head by the Traders thereto.

6. ["Unwritten law," common law.]

* *Vid. post* Chap. III.

But what has chiefly been objected to it from that Quarter especially, arises out of the Clause which seems to require a different Method of levying Executions on the Real Estate than has hitherto obtain'd, and is indeed directed by positive Laws there, as well as in the Leeward Islands, which, I take it, are so far, equally affected. The Clause is this—And shall be subject to the like Remedies, Proceedings, and Process, in any Court of Law or Equity, in any of the said Plantations respectively, for seizing, extending, selling, or disposing of any such Houses, Lands, Negroes, and other Hereditaments, and real Estates, towards the Satisfaction of such Debts, Duties and Demands, and in like manner as Personal Estates in any of the said Plantations respectively are seized, extended, sold, or disposed of, for the Satisfaction of Debts. Here we must observe that all Chattels (and, amongst the rest, Negroes, which are made such for the Payment of Debts, tho' in other Respects they are deemed Real Estate, and are, in truth, the most valuable Part of the Planters Possessions) are by the Law of *Barbados* to be sold at Outcry by the Marshal [or Sheriff] to the highest Bidder. But as for Real Estate, it is to be appraised, as directed by the same *Act for establishing the Courts of Common Pleas*; Part of the seventh Clause whereof, it may not be amiss to recite here, in the artless but well-meant Words wherein it was conceived, and refer to the printed Book of Laws for the rest. It runs thus—

And in regard the way used in *England* by Extent upon Land for the Satisfaction of Creditors, may not be so well practiced here, by reason of the tedious and slow Proceedings therein, and the great Disbursements the Plaintiff must be at in stocking the Lands deliver'd to him, before he can reap Satisfaction: And the Authority, here, being desirous to give a more speedy and certain Remedy, have enacted and ordained, and be it enacted and ordained by the Authority aforesaid, that eighty Days after the Attachment laid on Lands as aforesaid (in case the Debt, Damages and Costs be not fully in the mean time paid, or the Plaintiff otherwise satisfy'd) the chief Judge of the Court whence the said Attachment issued, shall, under his Hand and Seal, direct a Warrant of Appraisement to seven of the ablest Freeholders of the Parish where the attach'd Land lies (in case the Lands attached be twenty Acres, or more; but if under twenty Acres, then to five of the like Persons, no Man to be excepted but his Majesty's Commander in Chief for the Time being) thereby empowering and requiring of the said seven or any five of them, or the said five or any three of them, to repair to the said Land attach'd, and of the same to

make a just and conscionable Appraisement upon Oath, and the same to set down in Writing under their Hands and Seals, according to the best of their Judgments and Understandings.

Then the Chief Judge is directed to issue his Precept to the Marshal, for summoning the Persons, with a Power to swear them, and the Form of the Oath; and he is also required to appoint the most eminent, able and sufficient Persons for the Service, and to be cautious that they be not of Kindred, Affinity, or noted Friends or Enemies to either Party, or that have by any Words or Actions discovered any Partiality towards either of them. After which comes the Clause more than once adverted to above, that *if no Payment be made within the said twenty Days, then the said Marshal or Deputy that gave the Possession aforesaid, or his Successors, shall immediately after the said twenty Days, give a Bill of Sale under his Hand and Seal, of the said Land, to the said Plaintiff and his Heirs for ever; which Bill of Sale shall be good and valid to the said Plaintiff and his Heirs, against the said Defendant and his Heirs, and all claiming from, by, or under him, them, or any of them.*

Now if by the Words in the Act of Parliament—In like manner as Personal Estates in any of the said Plantations respectively are seized, extended, sold, or disposed of, are to be understood that Real Estate is also to be sold at Outcry, instead of being apprais'd according to the *Barbados-Law*, which is the Construction generally made of them, it is apprehended the same would prove highly inconvenient, and indeed a great Grievance, if put in force in that Island. But before I go on to make this appear, I am not displeas'd to find that the Grievance will luckily enough turn out, as I imagine, to be less extensive than it would seem, at first sight, to threaten; and that, on account of the Wording of the Statute, compar'd with the Practice of the Island with respect to the seizing and disposing of Personal Estates.

It is to be noted then, that by the constant, uninterrupted Course of the Court of Chancery in *Barbados*, Chattels and Personal Estate of every Kind, seized by virtue and in satisfaction of Decrees, are not, nor ever were, as I could learn, *outcry'd*; but they are all, conformable to the Purport of the *Writ* issuing on the Decree, to be *apprais'd* in the same manner as Real Estates only are, on Executions at Common Law.—How far the Chancery in that Island had Power to establish such a Practice, contrary to the Method of the Courts of Law, and the Act for establishing them (which does not mention the former) is not now the Question; yet were it necessary, I could easily,

I think, shew, that it is not more than the Courts of King's Bench, Common Pleas and Exchequer here, have all, in some Instances, done, without the Sanction of a Law.—But to let that pass—Seeing the Statute therefore barely requires, that *Real Estates shall be subject to the like Remedies, Proceedings, and Process in any Court of Law or Equity, in any of the said Plantations, for seizing, extending, selling, or disposing, &c. as Personal Estates in any of the said Plantations respectively are seiz'd, &c.* it is humbly submitted, whether it does not leave the Course and Practice of the Court of Chancery in *Barbados* just as it was, with regard to the levying of Decrees. Were this otherwise, as it would have been liable to the same Objections, and introduced the like Inconveniencies we are now to shew will arise from the levying Executions at Common Law, according to this Statute, so it would, in Consequence, have greatly encreas'd the Mischief; because of the Numbers of Decrees that are usually carry'd into Execution there.

But to confine ourselves to Executions at Common Law; it is to be known, that in *Barbados* (and the same, I believe, may be said of the *Leeward Islands*) there is generally but a very small Currency of Cash, the whole by Computation a few Years ago amounting to little more than 10,000 *l.* So that if a Man of the most opulent Fortune has an Occasion for any considerable Sum, upon an Emergency, he is not able, sometimes, to raise it in Specie to answer his Purpose; and there are very few Purchasers of Estates in the Place. Now it is usual for the Owners of some of the best Plantations there, to be indebted largely either to some Relation or Friend, with whom he has a good Understanding, and who being secur'd by the first Judgment, and having high Interest for his Money, is very easy with his Debtor. But this last, living above his Income, or meeting with Misfortunes, contracts many other smaller Debts, which he continues to do, till being no longer able to withstand the Importunities of his Creditors, who have most of them, perhaps, obtain'd Judgments against him, and many taken out Execution, there is at last a Necessity for extending his whole Real Estate, after having sold at Outcry the Bulk of his Moveables. In such a Case, while there was to be an Appraisement of the Lands, in Pursuance of the Laws of the Country, the same being valued upon Oath according to its intrinsic Worth, was apply'd in Satisfaction of the several Creditors Demands, in the Order as their Judgments stood in Priority of Date, whereby every one had his Proportion, and perhaps all were fully satisfy'd. But let us change the Scene, and view an Estate under such Circumstances, and to be sold at Outcry as required by the *English*

Statute. This, as has been seen, directs the same Method as is already practised abroad in the Sale of Chattels. Now the Law of the Island, for that Purpose, obliges the Marshal to give due Notice, in Writing, of the Things to be sold, the Place where, and Time when; and after requiring him to make a Certificate of every Sale, under his Hand and Seal, which he is to return and file in the Office of the Precincts from whence the Process issued, it farther enacts,

In Case any Person, who shall buy any of the said Goods or Chattels, and does not pay for the same within five Days after, or otherwise content the Plaintiff, the Judge of the Court where the said Certificate is filed, is hereby authorized and required to issue Execution against the said Buyer for the Sum which it appears on the said Certificate he contracted to pay, and 20 *per Cent.* more, in proportion, for what he hath not paid; for which the said Marshal shall attach, expose to sale, and sell at the next Market, in manner as aforesaid, and the Proceeds thereof to deliver to the said Plaintiff for his Satisfaction.

We are then to behold a Plantation set up to Sale, as Personal Estate. The *junior* Creditors are, no doubt, all desirous it should be sold for the most that can be got; but he who has the first Judgment, and is the principal Creditor (being willing, and having now an Opportunity, to get easily into an Estate) may bid, or appoint another to bid for him, any Sum he pleases, under his own Debt, without being obliged to advance a Penny; or, if he goes a little higher, he is only to pay the Overplus, and by that means, of course, purchaseth the Estate almost at what Price he pleases. For if any of the younger Creditors should offer to bid more, as it would be morally impracticable for him to raise the Money, so if he does not pay it within the Time prescribed, a Writ of 20 *per Cent.* is forthwith taken out against him, and he in Danger of *utter Ruin*, by the honest Endeavours he is using to avoid it. This is almost sure to be the Case, even without the Supposition of any Collusion betwixt the Owner and the Purchaser, which may often be an Ingredient in it. Whereby a fine Estate will be sold for a Trifle, many honest Creditors, such as Shopkeepers and other Tradesmen, who were themselves indebted also, and perhaps to Residents here, may be obliged to run off the Island, and leave their Families in Distress, who might, had they received their Due, continued in Credit, acquired Wealth, and proved beneficial Correspondents to the Trader in *England*.

Now these Inconveniences are, for the most part, prevented by an Appraisement, and very rarely happen, in any degree, by the Sale of Chattels; because, as there is seldom a Want of Bidders for Moveables that are almost every body's Money, so they being generally sold in small Lots, the Buyers are able to pay for them without the Hazard of 20 *per Cent.*—But notwithstanding the most provident Care of the Legislature, there is an Opening in some Instances for a Fraud of this Kind, even on the Outcries of Chattels, as the Law now stands in the Colony, and which I shall the rather take notice of, because it will be a strong Evidence, at the same time, of what I have been endeavouring to prove.

It has already been hinted that Negroes, tho' they are *Real Estate* in all other Respects, by a Law of the Island, are yet continued *Chattels* for the Payment of Debts, and consequently outcry'd as other Personal Estate is. But it was observed by the Legislature there, that great Inconveniences happen'd to Debtors having their Negroes, Cattle, and other Effects attach'd, and carry'd to Market; on account of the Marshal's selling them in great Lots, so that only a few money'd Men were able to buy, whereby the same were often purchased at under Rates. For the Prevention of this for the future, an Act was made in the Year 1688, whereby it is provided, that on any Attachment in virtue of any Execution for upwards of 100 *l.* Sterling, the Debtor himself should be at liberty to dispose of the Effects seized, in such Lots as he should think most for his Interest. And it is farther enacted—

That if the Debtor shall neglect or refuse so to do, the Marshal is hereby required to dispose the Negroes and other Chattels aforesaid into Lots, not exceeding the Number of five Negroes in one Lot, unless it happen that there be more than five of one Family of Negroes; in which Case it shall be lawful for the Marshal to sell a whole Family in one Lot. And also the Marshal is hereby required not to sell above five Head of Cattle, and one Copper, or one Still in one Lot, unless otherwise appointed by the Debtor. And all other Chattels the Marshal shall, to the best of his Judgment, estimate and dispose of into Lots, not exceeding the Value of 50 *l.* Sterling in each Lot, *unless therein also otherwise directed by the Debtor.*

Now it must be admitted, that this Law, which was with good Reason made for the Benefit of Debtors, who had before been really injured, has been sometimes greatly turned to the Prejudice of Creditors, by a secret Confederacy betwixt the principal one and the Debtor himself. The latter

being conscious, that he ow'd more than his whole Estate was worth, so that it became indifferent to him how it was disposed of, has, on lucrative Considerations, and in pursuance of the Liberty here given him, set up all his Negroes to sale in one Lot, and which have consequently been sold for less than half their Value, to the apparent Loss of the rest of the Creditors, who yet were left without a Remedy. From whence it is easy to foresee, what numberless Instances of the same Nature must be expected, and what an Inlet to such like Frauds would ensue, if the Statute, which is the Subject of our present Remarks, were to take effect, where there are so few able to purchase Estates on the square, and whilst these are besides already, by the Laws of the Country, merely Chattels for the Payment of Debts.

Nor will it be urged in the Case just put, that the Inconveniencies suggested might be effectually guarded against, by providing, that a Plantation shall be set up, and sold in Parcels, when it is consider'd, that, by dividing the Estate, the whole would be render'd of far less Value than when it is kept together with the Buildings and Out-Houses, which in a *Sugar-Work* are many and vastly large, and often stand the Owner who erected them, in much more than all the Lands belonging to it, but which by that means too would become useless and lost. So that a Plantation torn to Pieces, and falling into many Hands, (if Bidders could be found, which is hardly to be expected) would probably, for the most part, be an Incumbrance to the Purchasers, by making them subject to pay the *Parish Dues*, without being able to rent out, or, by reason of its Distance, to cultivate their respective Shares themselves. To which may be added, that if a Remedy for any the like Evils we are speaking of, were ever so obvious, the Legislature there, 'tis presumed, would not be at liberty to apply it, in direct Repugnancy to the Letter of an Act of Parliament. From whence indeed, I humbly conceive, a strong Argument will arise against our interfering with the Laws of the Colonies in any Instances that do not directly concern the Mother-Country, because of the Difficulties it must lay them under, and the Length of Time it will require to obtain a Repeal or Alteration, where, on Trial, it may appear to be necessary.

But enough, I presume, has been said, tho' much more might be urged, to shew how inconvenient the outcry of Lands would be in the *Sugar-Colonies*; and I need not surely take Pains to convince any one who knows the Importance of those Islands to this Nation, that what were so manifestly injurious to the former, would, in some Proportion, be also detrimental to

the latter; nor consequently be concern'd to make any Apology for the Liberty now taken on the Subject.

CHAP. II.

On the Statute of 6 Geo. II. cap. 13. for the better securing and encouraging the Trade of his Majesty's Sugar-Colonies in America.

I propose little more, in relation to this Act, than barely to take Notice of the Consequences it has produced with regard to the People in whose Favour it was chiefly made, and to that Trade, for securing and encouraging whereof it was professedly calculated. I take it, indeed, to be the Duty of every Subject (who has an Opportunity) to observe the good or bad Effects of any New Law, especially such as, like the present, is tentative and probationary only; and to point them out with the utmost Freedom; to the end that the Law-makers, who cannot possibly foresee all untoward Events, nor at once sufficiently guard against them, may know how to amend Defects, and to make any farther Provision that may be requisite, or the Nature and Circumstances of the Case may require.

The Act now before us, which was at first for five Years only, has been since continued, by 11 Geor. II. cap. 18. for seven Years longer. But tho' scarce any Law ever pass'd with greater Difficulty, and there was the strongest Opposition given to it by the *Northern Colonies*, yet so unfortunately has it turn'd out for the *others*, that it is now become a Question whether they be not in reality rather the worse than the better for it, excepting only with respect to what is contained in the fourth Section, which permits the Importation of their Rum into *Ireland*. Nor is it therefore to be wonder'd at, if, after five Years Experience, those on the Continent did not think it worth while to renew their Efforts against its Continuance.

By this Statute, besides that all *foreign* Produce is prohibited from being carried into *Ireland*, there is to be paid to his Majesty, upon all Rum or Spirits of the Produce of any Colonies in *America*, not under the Dominion of his Majesty, which shall be imported into any of the Plantations in *America*, under his Majesty's Dominion, 9 *d.* for every Gallon; and upon Molosses, or Syrups of foreign Produce, 6 *d.* for every Gallon; and upon Sugar and Paneles of foreign Produce, 5 *s.* for every Hundred Weight; which Duties

are much higher than what are charged on the same Species of our own Produce. But it is now notorious, that the Act, how salutary soever in itself, is quite eluded, and render'd entirely ineffectual, and that the Duties and Penalties arising therefrom, do not amount to a tenth Part of the Charge in appointing Persons to see the Law put in Execution; which besides is affirmed to be absolutely impracticable by *Civil Officers* only, because of the Situation and vast Extent of the Country, and the Interest all that reside near the Sea-Coasts have in preventing it.

The constant and well-known Method of Trading safely with the *French*, which our Fellow-Subjects of the Northern Colonies have found out, and established, is this: They go loaded to *Barbados* and the *Leeward Islands*, sell their Cargoes, or such Part as is in greatest Demand there, for ready Money, which they carry off (without purchasing any of the Produce of those Colonies) and steer away directly to *St. Eustatia*, a *Dutch* Settlement lying in the very Center of the *Leeward* and *Virgin* Islands, where sometimes may be seen forty or fifty Vessels together; and at which Place, large Quantities of *French* Sugar, Molosses and Rum, are always lodg'd, ready for Sale. Thus they furnish themselves, and load their Vessels quite free from any Molestation or Restraint; and by which Means the Inhabitants of his Majesty's Sugar-Colonies are not only deprived of a due Vent for their Commodities, but also drained of their Cash, whereof, at best, there is no great Currency; and which therefore, of itself, is a very pernicious Evil.

In this manner it is, that these Traders in *North-America* would be supposed at the same time not to contravene the Treaty of 1686 (whereby the Subjects of *England* and *France* are restrained from all Trade with each other in *America*, and only allowed in Cases of Distress, to repair and refit) because, as is most shrewdly alledged, they do not go to the *French*, but to the *Dutch*, with whom there is no such Treaty subsisting. The Truth, however, is (without contesting their *Logic*) that this wretched little Place, as it was always known to be, till the illicit Trade, now spoke of, made it considerable, does actually furnish a larger Magazine for the Commodities of the *French* Islands, than even the *Dutch West-India* Company have there, for those of the *States*. And so it happens, that, notwithstanding our well-meant Statute, and in Defiance thereof, immense Quantities of foreign Sugar, Molosses, and Rum, are clandestinely carried into the *Northern Colonies* (besides what are imported for a *British* Consumption) without

yielding more Duties than those of his Majesty's own Subjects, and too often without paying any at all.

But 'tis impossible to forget, moreover, the secret Wounds that are given to this Law by those small Islands abovemention'd, call'd the *Virgins*, some of which I think are in the *Commission* of the General of the Leeward Islands, and all, if cultivated, capable of producing the Commodities specify'd in the Act. They are, 'tis to be fear'd, at present, generally inhabited by such as can hardly be suppos'd to scruple any Measures that may tend to procure present Profit; and as there are but occasional and no stated Officers residing upon them, have the better Opportunities of effecting their Purposes. But so it is, that these People likewise frequently go to purchase Cargoes of the *French*, at *St. Eustatia* (being but a few Hours Sail) and then return again, where they sometimes find Means of procuring collusive *Clearances*, with which they sail to the Northern Colonies, and boldly enter their Vessels, as if loaded with the Produce of the *British* Islands. Some Instances of this Kind have been detected, at *New-York*, where in particular, I understand a Ship and a Sloop very lately arrived from *Aniguilla* (one of those petty Islands, under an *English* Government) the former carrying 260 Hogsheads of Molosses, and 30 of Rum; and the latter 50 Hogsheads of Sugar and 80 of Molosses; when by all Accounts, that Island, whose Growth is chiefly *Cotton*, has not in seven Years, nay perhaps from its first Settlement, produced one third of the Quantity of either Species for Exportation.

Now such flagrant Actions as these, 'tis true, may in a good Measure, with due Precautions, be prevented; and 'tis to be hoped Care will accordingly be taken to enquire after such Officers and Persons in Authority, if such there be, at any of those little Settlements, under his Majesty's Dominion, as would give Assistance to, or suffer such egregious Frauds to be practised with Impunity. But that must be supposed as *one* of their Artifices only, which they could not expect to succeed in long, or often; and there is no doubt but they also are well acquainted with the Methods of *running* the same Commodities, and that they do not fail putting them in Practice. In a Word, so barefaced have been the Endeavours, and at length so successful, to frustrate the good Intentions of this Statute, that the *British* Sugar-Colonies do now totally despair of any Benefit from it. If therefore the Legislature have that Concern for them, as their Usefulness and Importance would seem to demand, it cannot be doubted but suitable Relief will speedily be given on that Head, and some Measures found out to remove the Grievance

so loudly complain'd of. What may be adequate thereto, is not so easy to lay down; tho' that which bids fairest for it, as I learn from others, would be an absolute Prohibition of the several Species of foreign Produce, with a Power to Commanders of Ships of War to seize and bring in all Vessels on the Sea Coasts, or in the Roads, having such Commodities on Board; which however, considering the Abuses that have sometimes been heard of, and which may otherwise happen, cannot be too cautiously framed. This I am the more embolden'd to hint, because I had the Honour to know some Eminent and Judicious Persons that had Seats in Parliament when the Act, we are speaking of, lay under Consideration, who tho' they inclin'd to make a Tryal thereof in the Shape it was then conceiv'd, were yet of Opinion, that if, on Experience, it did not prove effectual, such Amendments as are now proposed, wou'd be highly proper, and not very difficult to obtain.

But if a Prohibition may not happen to be relish'd by some, and I might have Liberty to intimate another Expedient, it shou'd be what has been suggested to me by a good Judge of these Matters, who has been many Years residing abroad; namely, to oblige all Northern Vessels, that load at the *Dutch, Danish, or French Colonies, to clear from some considerable British Island.* For Example, if they go to Windward, let them clear at *Barbados*; if to Leeward, they may clear at *Antigua* or *St. Christopher's*, where they shou'd give in a Manifest of their Cargoes both at the Custom-House and Naval Office; and also give Security at one of them, that they will enter and fairly land the same at the Custom-House in the Collony, Port, or Place, to which they pretend to be bound. All which may be done without any Risque or long Delay; and it is better they shou'd be embarrass'd a little, than that so destructive a Trade shou'd be carry'd on, and the King lose his Duties.

Having now offer'd what occurs on this Statute, I will only observe farther, that many Years before the making thereof, *viz.* in 1715, an Act of Assembly had pass'd in *Barbados* of the like Import, but with Duties equal to a Prohibition; which being confirm'd at Home, is still in force, so far as it stands unrepeal'd by the *English* Statute. But it was the Sentiment of the most sagacious in Trade there, at the Time, as well as of many since, that such a Law was no Proof at all of the good Policy of the People. For how useful soever an Act of Parliament, which is general, may be, it was thought ill-judg'd to exclude themselves alone from a Trade, which was open to all others, and who did not fail to embrace it. For it cannot be deny'd, that as the Commodities of *Martinique* wou'd in such Case find their Way to *Europe*, so

it must have been for the Advantage of that Island to have had the Carriage thereof, and been the Market for that Purpose, which its Situation would certainly, for the most part, have made them. Nor cou'd those that knew the Attachments of the then G——r (whose Influence procur'd the Act) and were apprized of his implacable Dislike to some Men at that Time living on the Spot, be easily persuaded, that he did it purely out of a conscientious Regard to the National Treaty above-mention'd, though they were ready enough to account for his Conduct another Way. However, about six Years afterwards, the Example of *Barbados* was in some Measure follow'd by their neighbouring Fellow-Subjects at *Antigua*, who also made a Law imposing a *Duty* on the *French* Commodities, though not so high as that of the former.

CHAP. III.

Concerning Executions issuing from the Courts of Law in Barbados, and the Manner of levying them.

We have* elsewhere taken Notice of a Practice of the Courts of Law and Equity in that Island, which, how different soever from ours, has been too general, as well as of too long a Standing to be alter'd, without a special and express Act of Assembly for that Purpose, fram'd with an Eye to, and a perfect Knowledge of the Constitution; and which, though we should be well pleas'd to see, there is no Reason to expect it, in haste. The bare Penning of such a Law would indeed, besides the Difficulty there might be in getting it pass'd, require a more comprehensive Genius than is usually to be met with in those Parts; and I fear it will not be easy to persuade such as are capable, with due Helps here, to think so closely about an Affair, which is to take Effect at so great a Distance from them.

I am now to treat of another Matter, which has occasioned no less Speculation amongst the Learned in this Part of the World; and having also obtained from the first Settlement of that Colony, seems to have continued without Interruption ever since: It is the Practice there, of taking out Executions merely as a farther Security for the Debt, and levying them at any Time after the Death either of the Conusor or Conusee, according as the Circumstances of the Parties render it necessary. Whether this was

* Ant. Chap. I. p. 14.

originally owing to the Want of a proper Form given to the Writ at first, which is not returnable at all; or whether the establish'd Form of it was not rather designedly given, in order to induce the Practice we are speaking of, I shall not pretend to determine. But what would seem to favour the latter Supposition is, that other Writs, such as those of *Dower* and *Partition*, are returnable, and, in Fact, duly return'd, though of as ancient Use, or very near it, as the Execution. However, so it is, that as far back as we are able to trace it, this Writ concludes without the usual Words requiring a Return; and conformable hereto, the Marshal (or Sheriff) never does make any Return thereof. For Proof of this at present, we need only produce the Authority of All the Judges of the Island, in Conjunction with the Attorney-General, who in their Report on a Reference to them by the Governor, of some Complaints made against the Provost-Marshal in the Year 1727 (which I find has lately been printed here) express themselves thus.—

Mr. K. admitted that he did not make Returns into the Clerk's Office, of Executions, after their being levyed, for that he apprehended it never was the Practice so to do; and indeed we don't find that it has been usual to make any such Returns, or that the Marshal is obliged to do it, our Laws being, for any thing we can learn, altogether silent in that Respect.

*And in another Place they say—*For it is usual here, generally to take out Execution, in order to bind the Personal Estate, though the Plaintiff has no Design to proceed on it, the same not being returnable, &c.*† From which last Words, as well as from what is suggested before, it may be inferr'd, as the Truth is, that the Common Law takes Place with regard to the binding of the Goods: For the Statute of *Frauds* does not extend to that Island; nor have they any Act of Assembly of the like Import.

But it will not be amiss to observe, as we go along, that the Law is otherwise at *Antigua*; for there, the Act for establishing a Court of King's Bench, &c. has in it the Execution at large, and which, after mentioning the Goods and Chattels, Lands and Tenements [*the latter being subject to Debts with them, as well as in Barbados*] it goes on—

And for Want thereof you are to attach the Body of the said C. D. and him safely to keep until the Debt shall be satisfy'd and paid; *and of your*

* *Vid.* Caribbeana, Vol. II. p. 353. in which Book may be seen the whole Report.

† *Ibid.*

Proceedings herein you are to make Return within 30 Days from the Date of this our Writ, &c.

Now as this Act is of a recent Date, if the Law-Makers deem'd the Omission of those Words in that of their neighbouring Island (from which yet they seem to have received great Lights) a Defect, they were, no doubt, in the right to amend it. But at *Barbados*, their *Act for establishing the Courts of Common Pleas* only sets forth what was to be the Purport, or Substance of the Execution; and though no Variation at all is to be met with in it, from the oldest Records to this Day, the Form thereof *in haec Verba*⁷ does not appear to have been ever settled by any Law.

The known Practice however is, that although if the Conusee die anterior to the Execution, or it has not been taken out within the Year, a *Scire facias*⁸ is always brought before the Judgment can be executed. Yet if, Execution once duly issued, which, with the Time when, must appear in the Clerk's (or Prothonotary's) Office, if it should afterwards be pocketed for many Years by the Conusee, he, or his Representatives may whenever they please, deliver it to the Marshal, and it will of Course be levy'd, preferable to any of a later Date. This had been ever done without regard to any Length of Time, till an Act of Limitation was made a few Years ago, wherein Executions are particularly named, and of which we shall speak farther hereafter. In the mean while, it may be worth remembering, in order the better to shew what Notions prevailed there, on this Head, that formerly, if an Execution had been casually lost, it was usual for the Person interested to prefer a Petition to the Chief Justice of the Precincts, who on hearing thereof, and Notice given the other Party, if it appear'd to be unsatisfy'd, would order a new Writ to issue, of the same Tenor and Date; which last mention'd Practice, however, has been discountenanc'd of late Years, and is now, I think, quite disus'd. But the Indulgence of the Courts in this Particular was probably introduc'd, not only for the Sake of saving Time and Expence, but to prevent the Party from losing his Advantage of Priority with respect to other Creditors. For though the Real Estate wou'd be affected, according to the original Judgment, yet as the Chattels are bound by the Execution, it might

7. ["In these same words."]

8. [Literally, "That you cause the party to know." A writ based upon a record directing the sheriff "that you cause the party to know" the charge brought against him and require him to appear in court and show cause why the record ought not to be enforced.—Tr.]

be suppos'd That cou'd only take Effect from the Time of its *Teste*, which, in the regular Course, must be after a Judgment obtain'd on a *Scire facias*.

From what has been already said then, there are evidently two Things, relating to our present Subject, greatly liable to Objection; *viz.* the want of a Return to Executions; and the levying them long after the Death of the Conusor or Conusee. I shall therefore now proceed, with all Submission, to offer a few Considerations on both those Points, not so much with a Design to justify either, in every Respect, as to shew the Necessity of supporting the Practice till a better can be establish'd, without disturbing the Titles of most, if not all the Estates in the Island, and weakening at least nine Tenths of all the present Securities for Debts there, as well as totally destroying many of them.

1. As to the *first*; I am sensible that the Gentlemen of the *Profession* will be apt to foresee many Inconveniencies arising from the want of the Marshal's making a Return of Executions; but as I do not understand that these have been hitherto discover'd by Experience on the Spot, so they will perhaps appear not quite so formidable to the *English Lawyer*, when he comes to view the Matter in a just Light. In order whereto, it is necessary that he shou'd know the Nature of the Execution itself, and the Method of proceeding thereon, which shall now be explain'd in as concise a Manner as I am able.

The Execution then (as I had Occasion to mention in another Discourse) directs the Marshal, to *attach any the Cotton, Tobacco, Ginger, Sugar, or Indico, belonging to the Defendant; if none such, then the Negroes, Cattle, Horses, or other Moveables, if none such, then the Lands, Plantations, or Houses of the Defendant; and lastly, if none such, then to arrest the Person, and him in safe and strict Custody to keep until he hath satisfy'd the Plaintiff.* So that it contains all that for which there are three several Executions here. It is in some Respects like our Statute-Staple, or a Recognizance in the Nature of it; and seems, as well as they, to have been originally intended for the Benefit of Creditors, and the Encouragement of Trade.—The Officer's Business is to observe the Order prescrib'd therein, and to take Care not to invert it; *i.e.* that he do not levy on Negroes, Cattle, Horses, or other Moveables (as it is there express'd) when there is Cotton, Tobacco, Ginger, Sugar, or Indico; nor attach Lands, Plantations, or Houses, when there are Negroes, &c. nor take up the Body when there is any visible Real Estate.

If the Execution be levy'd on Chattels of any Kind, which is the readiest Way for the Creditor to get his Money, the same must be sold at publick

Outcry, as directed by the Act which institutes the Execution. This, amongst other Things which I pass over, as not so directly to our Purpose, provides, That—

In Case the Buyer shall be at any time sued for any Goods or Chattels which he shall so buy of the Marshal or Deputy aforesaid, in such Actions the Buyer shall plead the said Sale in Bar, which shall be accepted by the Court as a good Bar in that Action; and of every such Sale, the Marshal or Deputy shall make Certificate in Writing under his Hand and Seal, which shall be return'd and filed in the Office of the Precincts where the Recovery is had.

Now this is in the Nature of a Return, and so far as relates to a Levy on Chattels, may be suppos'd fully to answer the Ends thereof. But at the same Time it plainly suggests the Reason why the Writ itself is not return'd, namely, because there may be still something more to do upon it; since tho' the Chattels were perhaps all exhausted, part of the Debt might still remain unsatisfy'd; and therefore as the Real Estate is equally liable to the same Writ, it was necessary that the Marshal should keep it in his Hands in order to seize by Virtue thereof. For it is to be observed, that the Law has fixt the Execution precisely as is above set forth; so that notwithstanding the Body, Goods and Lands are all liable, yet the Conusee cannot (as, if I mistake not, may be done in the Case of a *Statute Staple*) take them all, at his Election, either together, or at different Times, by several Writs; but they are always, and ever were, compriz'd in one. And we know very well that even here, in a *Fieri facias*, if the whole Debt be levy'd on the first Writ, it need not be return'd; and the Reason given is, because no farther Process is necessary. 1 *Salk.* 318.

This brings us to the next Stage of the Marshal's Progress.—As it often happens that there are no Personalities of any sort left, or not sufficient to pay the whole Debt, the Officer is then to look out for *Lands, Plantations, or Houses of the Defendant*, concerning which, the Law has given very different Directions; yet such as, 'tis apprehended, do not leave room for any Want of a formal Return of the Writ, but rather make such Return improper.—If Real Estate be seiz'd in satisfaction of the Execution, there must be an Appraisement thereof by Neighbouring Freeholders, upon Oath; and after putting the Party in Possession, and a certain Time limited for Redemption, the Marshal is to execute a Bill of Sale, of so much thereof, if so much

there be, at the Appraisement (which is run off by a Surveyor) as will satisfy the Debt, and whereby the same is convey'd according to the Interest the Debtor had therein. This Bill of Sale reciting the Judgment, Execution, and Proceedings thereon, is put upon Record, and allow'd to be a good Title against the Debtor, and all claiming under him. And in this Manner whole Plantations are sometimes extended, and under that Title generally held.

Now either there is Real Estate sufficient to satisfy the whole Debt, or there is not; if there be, the Reason seems to hold, as in a *Fieri facias*, why the Writ need not be return'd, and with more Force, because of the Marshal's Bill of Sale, which will always be an Evidence of the Proceedings, besides the Entry that is made thereof in his Office. But if the Debt be not yet fully satisfy'd, the Writ ought to be retain'd, as before, in Order to be fully executed.—And this we are now to suppose the Case.

When there are neither personal nor real Effects to be found, or the Debtor refuse to shew any, the Marshal is, in pursuance of his Writ, to take up the Person, which accordingly he does, and carries him to Gaol, whereof he is himself the Keeper. On the Back of the Writ is then signify'd what was done by Virtue thereof; and that is kept in the *Marshal's Office*, which is look'd upon as a kind of Office of Record, to which all do, or may have Recourse. And now it is, if at all, that it would seem requisite to return the Execution; but as it is not in itself returnable, nor the Marshal by any Law directed, even in this Case, to make a Return, so neither have I understood that its remaining with him has occasion'd any Failure of Justice with regard to the Debtor, Creditor, or any third Person; since no Injury can in general arise, but what may be redressed on a proper Application to the Court of the Precincts from whence the Process issued; at least no remarkable Instance has yet appear'd to the contrary.

2. I come now to the *Second* Thing to be consider'd, which tho' of the greater Importance of the two, is yet no more than a Consequence of the other. For if the Execution is not made returnable at any Time certain, so as to limit its being executed to that Day, what should hinder the Marshal's proceeding to levy it, notwithstanding the Death of the Conusor or Conusee,⁹ when he has Directions so to do from the Representative of the latter, and can find any Real or Personal Estate, of which the former died seiz'd, or possess'd?

9. ["Defendant or plaintiff." (French)—Tr.].

It is allowed, and so it has been long since, and often ruled, that if a *Fieri facias* be sued out, and the Defendant dies before it is executed, it may be yet serv'd on his Goods. *Cro. Eliz.* 181. 1 *Leon.* 304. 1 *Mod.* 188. 2 *Vent.* 218. And so likewise, if the Plaintiff dies, the Execution does not abate, but the Sheriff may notwithstanding proceed in it, because, as the Book says, he has nothing to do with the Plaintiff, and the Writ commands him to bring the Money into Court, which the Plaintiff's Death does no way hinder. *Salk.* R. 322.

But to return to our *Barbados*-Execution as it affects the Lands.—They are bound by the Judgment; and as the *Lien* could not be discharged by a Descent, on the Death of the Ancestor, so neither is there any Law in being that declares the Execution taken out by the Conusee in his Life-time, void. On the contrary, there is one enacted so lately as in the Year 1732, which plainly admits Executions to be good for 20 Years. This Act had been long call'd for, was made with great Deliberation, and gave the utmost Content to the Inhabitants; and since it will indicate the Sentiments of the Legislature of that Island concerning the Subject in Debate, as well as farther confirm what has been here historically advanc'd thereon, I will now cite from it so much as is proper for those Purposes. It is entitled, *An Act for Limitation of Actions and avoiding of Suits, and for the better securing to the Inhabitants of this Island the peaceable Possession of their Estates.* The Preamble begins thus—

Whereas Complaints have often, and more especially of late, been made by many of the Inhabitants of this Island who have already suffer'd, and others who are in Danger of suffering through the unjust Pretensions of ill-minded and avaritious People setting up a Right, and laying a Claim to Mortgages, Judgments, Executions, &c. of very old Dates, which may well be presum'd to have been fairly and honestly discharg'd in so great a Length of Time, without any Demand made, or Interest received for the same; but by reason of the known Deficiency of our publick Offices, the want of having enter'd Satisfaction on the Records (which, till of late Years, has not been usual here) the Loss of Records, and other Vouchers, &c.

—And after a Recital of many other Things, it enacts—

That from and after Publication hereof, all Mortgages, Judgments, Executions (which writs according to the form here, are not returnable) Decrees, Legacies, Bonds, and other Specialties of what Kind soever

(except such as are in their Nature future and contingent) being, or which shall hereafter be of twenty Years standing, to be computed from their respective Dates, if payable immediately, otherwise from the Day any such Debt or Duty is payable, and where no Suit has been prosecuted for the Recovery thereof, nor any Interest, or other Sum or Sums of Money paid or received, or other Satisfaction made on Account thereof, during the said Time, shall be deem'd and adjudg'd, as they are hereby declared, absolutely void to all Intents and Purposes whatsoever, and such Debt or Duty shall become wholly discharg'd, &c.

Now here the Legislature has, indeed, limited the Force of an Execution to 20 Years; but who will say that any Execution not within the Purview of this Act, is void? Shall any of the Courts of Law or Equity in *Barbados* declare the Debt due on an Execution of less than twenty Years standing, discharg'd? or can the Marshal refuse to levy such an one put into his Hands, under that Pretence?—I should think not.

But leaving this Act out of the Case, and to touch a little upon the Necessity of the Thing, we must observe, that if a Person willing to accommodate the Owner of a good Plantation with a considerable Sum, were to take a bare Judgment for it, he might often be in danger of losing great part of his Debt, in regard all the whole Personal Estate, including Negroes, which are Chattels for Payment of Debts, might be taken away by Executions issuing on Judgments of a later Date; and naked Land, without Negroes, Cattle, &c. in those Parts, is known to be of little Value. Besides, considerable Sums are often lent upon Personal Estate only, which, as has been before hinted, will soonest procure Money by a Sale; whereas Land is sometimes of little Use to the Creditor, who yet may not be able to sell it again. Let it then be suppos'd, that the Practice we are speaking of, was to be so far discountenanc'd here, that a Person having a Judgment and Execution of several Years standing, against one of no Real Estate, should think it unsafe to proceed to a Levy, without previously bringing a *Scire facias*; might not the Debtor, in the mean time, confess a Judgment to another? and might not Execution be taken out, and actually lev'y'd on that very Interest on which alone the prior Creditor advanc'd his Money, and he be thereby entirely defeated of his Debt?—The Mischief is the same in proportion, where there is some Real Estate, but not sufficient to satisfy the whole Debt. And such Cases may frequently happen without leaving room for any Relief in Equity, which at best, is but poor Comfort to the first, fair, and honest Creditor.

For this Reason it is that whoever lends Money, which is generally a scarce Commodity there, seldom fails to take out Execution on his Judgment, in order to bind the Chattels; and if the *Lenders* therefore were to be deprived of that which is their best, and sometimes the only Security, as it must be highly injurious in the present Constitution of Things, so there would be but few such to be found, hereafter, and the Plantations consequently of the *Borrowers* would often go to Ruin for Want of them.

However, in a Word, so general has this Practice been, that it may be questioned whether there is a single Estate in the Island that has not, in the whole or in part, been some time, or other, sold by the Marshal, on Executions liable to the Objection now made, and held under that Title to this Day. If therefore, as Sir *Edward Coke* says, 2 *Inst.* 26. 399. *constant Allowance does in many Cases make Law*, it may well be supposed to do so in this.

Upon the whole, I must humbly beg Pardon in thinking, that if there were less to be said in favour of this Practice than there really is, the Universality thereof, ought to give an unimpeachable Sanction to it; since otherwise, 'tis obvious, the Titles of many hundreds of the Inhabitants, which have been confirm'd by innumerable Judgments of the Courts there, must be sap'd and render'd precarious. The total Disallowance thereof would indeed overturn the most solemn Acts of that Legislature, and occasion such a general Confusion, as, I fear, could not be reduced to order without infinitely worse Consequences than ever yet arose from the *Practice*. In fine, if this were to be absolutely discouraged here, the People of the Colony must not only be provided with other *Lawyers*, but other *Laws*, before they can expect to be safely advis'd, either in the Purchase of Estates, or in the taking Securities for Money lent upon them.

Some learned Gentlemen at the Bar, have notwithstanding, I am aware, on certain Occasions, been pretty sanguine in their Opinions to the contrary of what has been now contended for; but owing, I am persuaded, to a Want of being rightly appriz'd of the whole Merits. However, I will here cite a few Cases (applicable to the other Piece of Practice formerly taken Notice of, as well as the present,) to shew that the Courts of *Westminster-Hall* have, on the very Consideration just now inforc'd, given their Suffrage in support of Matters no less erroneous in themselves, than what we are speaking of; and for which yet, instead of being censured, they have, I think, always been applauded.

The first Instance of this Kind which occurs, is that concerning the twelve Counties of *Wales*. By the Statute of 34 *H.* 8. Ch. 26. it is enacted, that there shall be held Sessions twice every Year, in every of the said twelve Shires, and which shall be call'd *The King's great Sessions of Wales*. In *Trin.* 34 *Eliz.* a Fine was levy'd of Lands in the County of *Carmarthen*, and the Writ of Covenant was *coram Justiciariis nostris Magnae Assisae in Com. Carmarthen*;¹⁰ and because all the judicial Proceedings were in that Form, ever since the making of this Statute, it was adjudg'd to be good, upon this Reason, that *Communis Error facit Jus*.¹¹ 4 *Inst.* 240.

So in the Case of *Argenton* against *Westover* and *Lucas*, in Error to reverse a Fine, it was assign'd for Error, that it appear'd by the Record, that the Caption of the *Conusans*¹² of the Fine was before Sir *Roger Manwood* Chief Baron, 27 *Martii*, 27 *Eliz.* and the Writ of Covenant and *Ded. Potestat*.¹³ bore *Teste* the 9th of *April*; so the *Conusans* was taken without Warrant; and by the Statute of 23 *Eliz.* the Day of the Caption is always to be certify'd. But the Court overruled it, and would not have it argued; for they said, it is good enough, and otherwise they should reverse divers Fines. *Cro. Eliz.* 245.

In like Manner in the Case of *Skeat* and *Oxenbridge*, *Trin.* 12 *Jac.* 1. a Writ of Waste, brought by *Cestuy que use* of the Lands, was agreed by the Court to be defective in Substance, and yet was allow'd, and Judgment given for the Plaintiff, because the Clerks of the Chancery affirm'd, and shew'd their Books, that they had used this Form always in that Case since the making of the Statute 27 *H.* 8. of Uses. *Hob. Rep.* 34.

Of the same Kind is that of *Oliver* against *Collins*, *Pasch.* 6 *Jac.* 1. In an Action of Debt brought upon the Statute for setting forth of Tythes, on *Nil debet*¹⁴ pleaded, and Verdict for the Plaintiff, it was moved in Arrest of Judgment that the Statute was misrecited. For whereas the Plaintiff declared, that it was enacted the 4th of *Nov.* 2 *E.* 6. it was urg'd, that there was no such Statute, for the Parliament commen'd 1 *E.* 6. and continued

10. ["Before our justices of the Grand Assize in the county of Carmarthen." (*comitatus*, "county").—Tr.]

11. ["Common error makes law."]

12. [A document asserting jurisdiction (probably French).—Tr.]

13. [Literally, "We have given power." *Dedimus potestatem*: A writ directing named persons to perform specified actions; to take testimony.—Tr.]

14. [Literally, "He owes nothing." A defendant's plea in an action of debt of simple contract in which he denies the debt.—Tr.]

by Proclamation until the 4th of *Nov. 2 E. 6.* and therefore the Plaintiff was mistaken. But that Exception was not allow'd. For it was said, there were an hundred Precedents against it; and in respect of the continual Use in that Form, as the Plaintiff had declared, the Court would not alter it; for that were to disturb all the Judgments ever given in that Court. 1 *Brownl. Rep.* 100.

But lest I should be thought to affect the Appearance of much Learning, I will conclude with one Case more, which is very modern; being that of the *Queen* against the *Bayliff's* and *Burgesses* of *Bewdley, Michael. 12 Annae.*¹⁵ It was upon a *Scire facias* brought in the Petty Bag, to repeal Letters Patent. After Verdict in the King's Bench, it was moved that the Verdict should be set aside, for the *Venire*¹⁶ was wrong awarded, being *de Vicineto de Bewdley*;¹⁷ whereas by the 4th and 5th of *Queen Anne, Chap. 16.* for the Amendment of the Law, it ought to have been *de Corpore Comitatus.*¹⁸ Upon this Objection the Judges of the Court of *King's Bench* consulted all the rest of the Judges, who were unanimously of Opinion (which was delivered by the Chief Justice *Parker*) that tho' the Clause in the Statute might extend to the Case in question, yet the constant Practice ever since the making of the Act having been otherwise, and all the Precedents both in the *Crown-Office* and in the *Exchequer* (in Cases not expressly excepted) being *de Vicineto*;¹⁹ to make a contrary Resolution in this Case, would be in some measure to overturn the Justice of the Nation for several Years past, 1 *P. Will.* 207. 223.

By all these Authorities, and others that might be produced, it is evident, that tho' the Judges were satisfy'd of the Errors pointed out, and that some of them were even contrary to the Directions of Acts of Parliament, yet they thought a Course of Precedents, and constant Usage, such an Obstacle as could not be safely removed; and that it was better therefore to confirm an erroneous Practice in the Case before them, than, by disallowing it, to shake many former Judgments, and overturn great part of the Justice of the Kingdom for the Time such Practice had prevailed. But if this was thought so

15. ["The twelfth year of Queen Anne."]

16. [Literally, "You cause the jury to come." A writ, usually *venire facias*, directing the sheriff that "you cause the jury to come" to court for a trial.—Tr.]

17. ["From the neighborhood or county of Bewdley."]

18. [Literally, "From the body of the county at large," i.e., rather than a particular neighborhood, concerning the composition of the jury.—Tr.]

19. ["From the neighborhood."]

powerful an Argument with respect to what had happened here, in particular Instances only, and for the Space but of a few Years; how much greater Weight will it have, when apply'd to the Case of a whole Island in the *West-Indies*, where the Practice has obtained from the first Settlement thereof, and where Ignorance and the Want of skillful Officers might, at first, make an easier way for Error to enter? If such Allowances were judg'd necessary with regard to Mistakes that had crept into the Courts of Justice in this Land of Learning and refined Knowledge, how much rather on account of those in a distant Colony, for the most part deprived of such Helps and Advantages? And if this might be done in the very Teeth of an Act of Parliament, how much more reasonable when there is not one Law of the Place to discountenance the Practice complained of, and it is, on the contrary, admitted by some; and which besides is not like Precedents passing *sub Silentio*²⁰ (of little Authority) but avowedly supported by the solemn Judgments of all the Courts of Justice in the Island?

CHAP. IV.

On the Statute of 15 & 16 Geo. II.—To impower the Importers or Proprietors of Rum or Spirits of the British Sugar-Plantations, to land the same before Payment of the Duties of Excise charged thereon, and to lodge the same in Warehouses, at their own Expence.

By this Act (which is for seven Years only) all such Rum, or Spirits of the Growth, Produce, or Manufacture of the *British Sugar-Islands*, as shall be imported from thence into the Kingdom of *Great Britain*, may; upon the Entry thereof, and before Payment of any Part of the Duty of Excise, be landed and put into such Warehouses as shall be for that Purpose provided (at the Charge of the Proprietors or Importers) and approved of by the Commissioners; upon the Proprietors or Importers first giving Security for Payment of the Duties of Excise, which such Rum or Spirits is charged with, and liable to pay, as soon as the same shall be sold, in case it be sold in six Months after Landing; and if not sold within that Time, then to pay the

20. [Literally, "Under silence," i.e., without formal recognition; passing a thing in silence can be understood as consent.—Tr.]

same at the End of such six Months. The Duty or Excise to be computed according to the Gauge to be taken of such Rum, or Spirits, at the Time the same shall be loaded and lodg'd in Warehouses.

This is the whole Benefit granted by the Statute, which, while under Consideration, several eminent Men in the *City*, did not scruple to declare wou'd never answer the Hopes of those that were solliciting for it; and others were so fully satisfy'd thereof, as not to be at all anxious about its Success. Before the Law was made, 'tis true, as the Importers were obliged to pay the Excise immediately on the Entry, few of the Merchants cared to advance so large a Sum, being uncertain when they shou'd be reimburs'd by a Sale. Some therefore had more than once refus'd Consignments of Rum; which was undoubtedly an intolerable Hardship upon the *Planter*, and a great Discouragement to the Importation of that Commodity, which, tho' the Produce of our own Colonies, was therein set on the same Foot with a *foreign* one, far inferior to it in all Respects.

The Purport of the Bill appear'd too reasonable, at first Sight, to admit of any Opposition *within Doors*, though some Difficulties were started from *without*, which yet were soon got over by the Noble and Judicious Persons whose Suffrage had been previously sought, and readily obtain'd. Whether the Relief now given, which is an immediate Ease to the *Merchants* only (in allowing them six Months to sell the Rum, or pay the Excise) will be an Inducement to their taking Consignments when offer'd, for the Future, after what some of them had dropt, as before hinted, Time will shew. But however that be, it is too obvious that so minute a Privilege, without even an Allowance for Wastage, cannot make it worth the *Planters* while to import much of their *Rum* hither, on the Terms they are still subject to; since *French Brandy* may notwithstanding, be afforded cheaper, on Account of its Proximity to our Markets, and the vast Distance the other is from them.

Many therefore were very desirous, that those who set on Foot, and promoted the Act, wou'd have extended their Views somewhat farther, and taken in a Liberty also of Exportation, with a Drawback, and a small Abatement of the Excise.—That they did not, however, I am sensible was owing to the Fears they had entertain'd of the Objections that might have arose thereto, which yet the former thought were, on due Consideration, as easily obviated as those made to it in the Shape it had been conceived. This was, indeed, supposed to have been pretty clearly evinc'd, by *two Letters* printed at that Time, tho' very incorrect, in one of our News-Papers; and since I

cannot pretend to offer any thing better on the Subject, I am glad the Originals were preserv'd, and the following Transcripts allow'd to be carefully taken from them. Perhaps these may now fall into some Hands that never had them before, and who will find an Opportunity of considering them with Impartiality and Candor.

In the mean Time, I would only add, that since the Sugar-Colonies do really want, and well deserve Incouragement, being, as a late* Act of Parliament has it, of great Importance to the Trade, Navigation, and Strength of the Kingdom, it is pity, methinks, they should ever apply for any Law but what might be adequate to such their Importance. The contrary Conduct (if I may have leave to say it) is too often the Means only of taking up the Attention of the Publick, and multiplying Statutes to little Purpose; whilst it throws additional Obstacles in the Way of every subsequent Application, and makes our Senators, and those at the Helm, less dispos'd to exert themselves in Favour of the same Interest, when there is a manifest Necessity for it. This, however, is suggested without the least Design of throwing any Imputation on the *Agents* for those Islands, who are only to negotiate, and transact such Matters as are given them in Charge; and who, were they to be employ'd in others that might sometimes perhaps be better concerted, and of more Consequence, wou'd no doubt use the same Industry, Skill and Address, with which they are known to execute Business on all Occasions. And as for the Gentlemen of Estates in the *West-Indies*, they will not take it amiss that any one should happen to differ from them in a particular Instance, with regard to what may be thought the most effectual *Means* of serving the Colonies; when they must be assur'd at the same time, that it could only proceed from a Desire to promote the *End* all are aiming at, and which cannot be too closely pursued.

LETTER I.

March 20, 1741.

SIR,

The late excellent Mr. *Addison*, in his 41st *Freeholder*, observes,

that the best and wisest of our Monarchs have not been less industrious to extend their *Trade* than their *Dominions*, as it manifestly turns, in a

* 12 *Geor. II. Cap. 30.*

much higher Degree, to the *Welfare of the People*, if not to the *Glory of the Sovereign*.

To which I would subjoin, that if, among the *Grand Committees* appointed at the Opening of every Parliament, that for *Trade* were to sit constantly, in order to receive Proposals and Instructions relating thereto, it would not fail, in my humble Apprehension, of being vastly advantageous to the Nation. Be that, however, as it will, there is no doubt but every private Person is at Liberty to suggest his Sentiments on so useful a Subject; and, in Truth, every one ought to do it, who has any Ground to believe they may be of Service to the Community, whose Interest, it must be acknowledged, you seem to have much at Heart; and consequently your Paper may be looked upon as a proper Canal for conveying to the Publick what is wrote entirely with that View. This shall be my Apology for the present Address, as well as for any Intention I may have of troubling you farther hereafter; and that I choose to begin with our Trade to the *Sugar-Colonies* will not be wondered at, whilst it is unquestionably allowed to be by far the most beneficial one that we possess.

The immense Riches indeed, and Power, which those Colonies continue to bring to *Great Britain*, are now so well known, that it would be Injustice to suspect Opposition to any reasonable Scheme or Proposal for their Advantage, from a Legislature and Ministry who have already given such Proofs of an Inclination to encourage them. All hitherto done, I am sorry to observe, has proved but of little Service. The Act in particular for laying Nine Pence *per* Gallon on Foreign Rum, and Five Shillings *per* Hundred on Foreign Sugar, had scarce any Effect at all, as not being within a Possibility of Execution on that vast-extended Coast of *America*, where chiefly it was intended to operate. The Freedom of direct Exportation of Sugar from the Colonies to foreign Parts, has hitherto occasioned only the sending of two or three Ships laden with Sugar, by a forced Subscription, to the *Streights*, by way of Experiment, whose Fortunes, I doubt, are not sufficient to settle any natural Trade on that Bottom. The One Shilling *per* Gallon additional Excise on *French* Brandy, intended as an Advantage to Rum, has proved far short of the Design of setting Rum upon a better Footing than the former. For Brandy may be, and commonly is, lodged in a Port of *France* not three Days Sail from this, where it is kept without Custom or Excise, until it is wanted, or perhaps sold here; whereas Rum is brought above three

thousand Leagues, at a Venture, to an uncertain Market, and must be soon landed with all those heavy Loads (being above four Times its first Cost) of Customs, Excise, &c. and perhaps lie leaking in the Warehouse, until the Profit, sometimes the whole prime Cost and more, shall be lost, before it can be sold, and in the mean Time the Owner is out of his Money from eight to twelve or sixteen Months: All which clearly evinces, that some farther Assistance from the Legislature is wanted, to give Rum a Preference to *French Brandy*.

I would therefore humbly propose, that Rum be permitted to be landed here, on Payment of the *Customs* only, and lodged in the King's Warehouses, from whence it may be exported in any Quantity not less than one hundred Gallons, with the customary lawful Drawback, as Coffee, Tea, or Cocoa, free from all *Excise*, which shall be paid only upon so much, and at such Time as the Owner shall think proper to clear, by Payment of that Excise for Home-Consumption; and that, moreover, the Excise be reduced one Shilling below what it is at present.

To make the Reasons of this Proposal the more perspicuous, I shall consider it in its several Relations to the four principal Parties interested in this Matter, *viz.* The King, the landed Gentlemen of *Great Britain*, the Merchants, and Planters; and in each regard the Home-Consumption as well as the Exportation.

First, As it relates to the *King*, from whose known Royal Bounty and Affection to his People, it can be no Presumption to suppose, he would readily give up a small Part of his Revenue to procure a greater Benefit to them, if that were necessary: But I apprehend this Proposal will be so far from wanting any such Aid, that his Majesty's Revenue will be thereby increased. As to the Home-Consumption, if one Shilling *per* Gallon was taken off the Excise, it would not only remove a great Part of the Temptation and Gain of running it, but also bring it so much in Use among the middling sort of People (the great Consumers of such Liquors) that it is more than probable the Revenue would hereby receive a considerable Augmentation; for if one Third more shall pay Excise then, than what does now, it will much more than answer that Supposition, and which, I think, can hardly fail. 'Tis well known, that the lower the Duties are on any Commodities, the more of them is entered: Witness *Pepper*, which now, at a Trifle to what it paid formerly, brings to the Crown a considerable Revenue; whereas the former high Duty on it was hardly worth collecting. And I

could instance other foreign Goods, which are sold here daily and publicly for less than the Duties, which are never paid, because so high. Then as to the Exportation, there can be no Supposition against the Proposal, but a less Home-Consumption, which could never be the Case. Let that exported be what it may, the *Sugar-Islands* will still be able to furnish enough for Home-Use, and would not fail to do so, when they found their Account in it: From whence it is plain, that a larger Quantity would then pay Excise than does now; that the Excise effectually prohibits Exportations; and what would then be exported must still leave some Part of the Duty behind it, as the whole cannot be drawn back, which would compensate any small Deficiency that possibly might be supposed to arise from the Shilling abated on the Excise; which, however, I am persuaded, could never happen. From all which it is evident, that it cannot be the Interest of the *Crown* to oppose such a Law. But I proceed to consider the Point.

Secondly, As it relates to the *Landed Gentlemen of Great Britain*: And first, in regard to the Home-Consumption, it can only affect them, inso-much as it may be used in the room of Spirits made from their Produce; but that will appear to stand then upon the same Footing as now, if we admit that after all these Allowances, Rum will still continue so much above their Prices, that their Customers can never reach it. For suppose it hereby reduced from eight Shillings to six Shillings and Nine-pence, or in any other Sums Fifteen-pence *per* Gallon cheaper than at present, which is the most can probably happen, the Difference can never bring it to the Prices of those People, who starve themselves and Families to buy Malt Spirits at Twenty-pence or two Shillings *per* Gallon. Add to this, that the private Confederacies of Distillers (to be spoken of under the next Head) reduce the Price as low under the present pressing Circumstances, as probably it would be with all these new Advantages; so that Rum can only then be more used in lieu of *French* Brandies and foreign Wines, which surely ought rather to be excluded. Nor can Exportation, in the Quantities proposed, affect them more, which will appear thus: All the Malt Spirits exported, are either for Sea-Use or Merchandize; and what Seafaring Person carries out above a hundred Gallons of Rum for Sea-store? Or what Ship's Company will join for that Quantity of Rum, or indeed take out any Malt-Spirits, when they can have *French* Brandy and the best Rum, in the *Downs*, for a less Price than they must pay for Malt-Spirits in *London*? Nay, to what Country can *English* Spirits be sent, as Merchandize, but to the Coast of

Guinea, where Rum from hence can never sell at the same Market with that brought directly from the *West-Indies* at half the Price it will stand in from hence? But if this general Way of Reasoning does not satisfy particular Gentlemen, I refer them to the Custom-house Books; where, as there is a Bounty upon *British* Spirits exported, the Quantities will exactly appear, and they may there soon be convinced how small a Trifle they contend for, which I am confident cannot be shewn to be five Shillings a Year Profit to the greatest Landed Man in *England*.

Thirdly, The *Merchants* will hereby in every Shape be benefited; they will not be obliged to lay down such large Sums, before they land Rum, as amount to four times the original Value of the Goods; which is so heavy a Load, some are not able to bear it, and have actually refus'd such Commissions; nor would any accept them, were they not accompanied with others more lucrative. They will not then be at the Mercy of a few great Dealers in that Commodity, who, by ungenerous Combinations, reduce its Price to their own Pleasure; because they must know Merchants and Owners will rather sell as they can, than pay down such Sums, and risque the whole upon an uncertain future Contingency. The Merchants will then likewise have the additional Commissions on what more shall, in that Case, be consum'd at home, than now; as also on the whole to be exported; and all this without their being obliged to advance such vast Sums as at present they must.

Fourthly, I come next to the *Planters*, whose Merit with *Great Britain* I shall pass over, it having been demonstrated to the Satisfaction of all, as is already hinted, that the *West-Indian* is the best Branch of Trade belonging to their Mother-Country, and that whatever is gained by the Planters is, in effect, so much acquired to *Great Britain*. They will hereby be able to vend double the Quantity, and at an advanced Price: The Merchants will then thankfully accept Commissions, and the more readily honour their Bills: In short, it will be a greater Benefit to them than all the others they have received from the *British* Legislature in our Times; for, however specious were the Pretences, and sanguine were the Hopes, of what has been hitherto done for them, I fear very little Fruit has been gather'd from those mighty Labours.

Upon the whole, I presume, it has been shewn, that the King's Revenue will hereby be rather increased than diminished; that the Landed Gentlemen of *Great Britain* cannot suffer by it; that the Merchants will receive great Ease and Benefit, and that the Planters will hereby get sufficient Advantage to encourage them to support and inlarge their Plantations; and, therefore,

that *Great Britain* in general will have an Increase of Wealth and Power. And this will appear yet stronger, when we consider that Payment for all Rum exported will center in *Great Britain*, and serve, in the East Countries particularly, to lessen the Ballance of that Trade now so much against us; which will be a real Saving of so much Money to the Nation, wherein the Landed Gentlemen must share with their Country.

I shall now submit what has been offered to the unprejudiced Consideration of your candid Readers; and I flatter myself, that such of them as have been used to turn their Thoughts on this Subject, will perceive, that I have purposely stated the necessary Means of Relief as moderately as possible, in order to avoid Obstacles on every Side; and that, therefore, they will be of Opinion with me, that (how much higher soever it might justly have been carried) to ask for any thing less than what is here proposed, were, as has been done before, to throw the Line into the Water for a Fish which would hardly be worth catching.

I am, Sir, yours, &c.

LETTER II.

June 11, 1742.

SIR,

In my last of *March* the 20th, which you was pleas'd to publish *April* 1, I took the Liberty of giving my Opinion concerning the Expediency of some farther Assistance from the Legislature, to give *Rum* a Preference to *French Brandy*, by suffering it to be exported clear of all Excise, and by reducing the Excise on so much as shall be consumed at home, one Shilling *per* Gallon, &c. Amongst other Reasons to support that Opinion and answer Objections, I endeavour'd to shew in how very small a Degree the Landed Interest of *Great Britain* (from which Quarter some Difficulty was started) could be affected by such an Encouragement; and then add,—

If this general Way of Reasoning does not satisfy particular Gentlemen, I refer them to the Custom-house Books, where, as there is a Bounty on *British* Spirits exported, the Quantity will exactly appear, and they may there soon be convinced how small a Trifle they contend for, which, I am confident, cannot be five Shillings a Year Profit to the greatest Landed Man in *Great Britain*.

But as this was given only as my private Judgment, unsupported by Proof of the Reality of the Fact, I could not expect such full Credit as Demonstration always compels; and, therefore, I have since procured the following authentick Paper, being

An Account of Money paid, by the Receiver General of the Custom for the Bounty of British made Spirits, exported from Christmas 1733 to Christmas 1741, viz.

From Christmas 1733 to Christmas 1735	Nil.		
From Christmas 1735 to Christmas 1736	23	4	1
From Christmas 1736 to Christmas 1737	356	15	6
From Christmas 1737 to Christmas 1738	91	4	11½
From Christmas 1738 to Christmas 1739	69	15	11½
From Christmas 1739 to Christmas 1740	21	10	1
From Christmas 1740 to Christmas 1741		11	10½
Total for 8 Years	563	2	5½

Which, at a Medium, is but seventy Pounds ten Shillings and three Pence Halfpenny.

Now, Sir, if this whole Bounty, which is above Twenty *per Cent.* of the Value of the Spirits exported, were clear Profit to the Trader, or the Landed Interest, or both, such large Gains would undoubtedly increase that Trade to the Conversion of all the spare Grain of the Nation into Spirits for Exportation. But so far is Experience against this, that the Bounty appears to have decreas'd in one Year, from three hundred fifty-six Pounds fifteen Shillings and Six-pence, to ninety-one Pounds four Shillings and eleven Pence Halfpenny, and was in 1741 reduced to eleven Shillings and ten Pence Halfpenny, which I think pretty clearly shews the Profit on the Trade to be very small, if any. But to add some Weight to the Objection, for it really has none in itself, I will, *ex abundantia*,²¹ suppose the whole Bounty to be clear Profit, and admit the Medium thereof, seventy Pounds ten Shillings and three Pence Halfpenny, to be divided equally amongst the Landed Gentlemen, in Proportion to the Value of their respective Estates, and after that, I desire any one of them to stand forth, and shew his Share to be *five Shillings!* Yet such a precious thing is *Self*, and the mere Phantom of it so dear to us, I doubt whether even this Demonstration, though it must force Conviction,

21. ["From reason of abundance."]

will prevail on Gentlemen to give up that darling Child of their Imaginations, of which People are often more tenacious than of Realities.

In Subjects of Opposition, I deem those the best, because with the Bulk of Mankind they are the strongest Reasons, which are drawn from the present and future Interest of the contending Parties. Nevertheless, I hope, the true virtuous Principles of natural Humanity and generous Benevolence, are not so far extinguished in this polite Age, as to discourage all Trust in, or Expectation from them; and if Gentlemen will but listen to the Voice of Reason, if they have any of that ancient Piety to their Country, and Goodwill to their Fellow-Subjects, what can prevail with them to put a Negative on so immense a Benefit, as Liberty to export, free from Excise, would be to so many Thousands of industrious and necessitous People?

Whether it be that the Managers for the Colonies know not what to ask, or to subjoin convincing Reasons to obtain it; or that a malignant Spirit of Interest, perhaps Blindness, traverses their best Designs, or from what other Cause, I, who am quite a Stranger to them, can't say; but so it is, as I hinted in my former, that small, very small Succour, has yet been obtained from their repeated, or rather continual, Applications. Nor can I (with due Deference) discern much Help, from what I understand, is to be the Purport of a Bill at present under Consideration, unless it be carried somewhat farther; for who will bear such certain Expences and Losses as Warehouse-Room, Leakage, and Pilferage, loaded with so heavy an Excise, merely for the uncertain Contingency of a future rising Market? Whereas a Liberty of Exportation, without the Excise, would open a vastly extensive and profitable Trade, without injuring any, but enriching thousands. This indeed, with the proposed Abatement of the Excise, seems to be the most easy, natural, and effectual Expedient, to enable our Planters to retain that invaluable Prize, the *Sugar-Trade*, which their Labour and Industry first wrested out of the Hands of *Portugal*, but who are now in the utmost Jeopardy of suffering the same Fate themselves, from *France* and *Holland*, supported not only by many natural Advantages, but also most tenderly nurs'd by careful and indulgent Mother-Countries; while our poor Colonies are begging the Crumbs that fall from their Mother's Table, although they daily furnish the best Dishes she has.

I beg leave to use this Occasion for a Word to the Officers of the Revenue: These Gentlemen, I observe, in all Matters of this Nature, seem to be most strictly govern'd by one Maxim, that is, *to oppose every thing which,*

by any Possibility, or for any the least Time, may diminish any publick Taxes. I have as much Honour for the Crown, and Regard for its real Interests, as any Subject his Majesty has, because they are ever inseparable from, and dependent on, the Prosperity of the People. But surely no body will say, there may not be certain Times and Circumstances, when an Abatement of a Tax would be a real Benefit to the Crown, as well as the Nation in general; nor is every Penny received by the King's Officers so much Advantage to the Crown, when the same shall probably be of such infinite Damage to the People. I am certain they can have no Authority for such a Maxim as that above, from the wisest and best of Kings, who would be far from giving his People Reason to imagine he prefer'd his own smallest, to their greatest Benefit. But I fear many publick Officers, conscious how little true Merit they have to recommend them to Preferment, or support them in their present Employments, catch at every Opportunity of supplying their Defects of better Qualities with an Appearance of a warm, blind, officious Zeal for their Master's Interest; by which, without giving the People, or their Affection for their Prince, any Place in this Account, they understand nothing but a present Increase of Power and Revenue; of whose smallest Particle they would seem to be as tender, as if the whole Weight of the Crown rested upon it.—But the Coward by an over-care of Life is often more exposed to Dangers than the Brave.

As I have no sinister Views of my own to serve by the Hints here given, I hope to be excused the Freedom of them; and if you should think fit to insert this, as a Sequel to my former, it will be an additional Favour to,

SIR, Yours, &c.

CHAP. V.

Concerning the 4½ per Cent. Duty.

This is a Duty (or *Impost* as it is called) paid in Specie at *Barbados* and the *Leeward Islands*, out of their Dead Produce; having been granted at different, but not very distant Times, by the Acts of their respective Assemblies, and is collected there, and ship'd to *England* by Officers appointed by the Crown for that Purpose, as also to take Care of the other Branches of the Revenue arising in those Parts on Statutes made here. But by the *Leeward Islands* must be understood *Antigua*, *Montserat*, *Nevis*, and *St. Christopher's*

only; for *Barbuda*, *Anguilla*, *Spanish Town*, and *Tortola*, are not subject to this Duty; nor will they, perhaps, be thought important enough to deserve mentioning on the Occasion.—However, one cannot help observing, by the Way, that *Jamaica* also, a large, populous, fertile, and flourishing Island, and by far the best situated for an advantageous Trade of all under his Majesty's Dominion, does not pay this Duty. On Account whereof, some have been ready to wish, that instead of it a small Subsidy of about 3 *d. per C. wt.* were charged on all Sugars imported; as it would at least, put all the Colonies on a Level in that respect, and yield considerably more to the Crown than the Duty has hitherto done, without being perceptible to the Consumer.

But my Design is to treat on the Subject I have enter'd upon, more immediately as it relates to the Island of *Barbados*, though I am far from opposing any Steps that may be taken in favour of the *rest*; and indeed I am the rather led thereto, because the Duty in Question was, in fact, given by these last, on very different Considerations from what appears to have been the Intention of the Representatives of the People residing in the former. This will be sufficiently manifest by comparing one Law with the other, without the Trouble of searching far into the History of either. And as Truth ought always to be set in the most open Point of View, what is proposed seems to be the fairest Method of doing so, in the present Case.

I shall have Occasion to take particular Notice of the *Barbados*-Law hereafter. Here, I need only insert Part of the Preamble to an Act past in *Antigua* the 10th of April 1668, entitled, *An Act for Indemnity, and declaring all old Titles to Land, void and lost, by reason of the French King's Conquest*; and then mention a Clause or two of the Act made there (the Case of the other *Leeward Islands* being, I suppose, much the same) for Settlement of the Duty we are speaking of. The first takes Notice of the *French War* under the Command of *Monsieur Le Ffaburn De la Barr*, who, with the Assistance of the *Indian Cannibals*, made a *Conquest of the Islands in those Parts*, and particularly that of *Antigua*, holding the Possession thereof till the Inhabitants were happily relieved by the Forces of his Majesty King *Charles II.* whereby they were freed from their former Oppressors. And then goes on thus—

Now, forasmuch as it is of great Import to his said Majesty's Affairs, that a firm and good Re-settlement may be made of this his Island, to which End it is of absolute Necessity, that the Minds of his good People here be quieted, and many litigious Controversies perioded that might

otherwise happen, by reason of many Acts done during the said Conquests, if Indemnity and Oblivion were not vouchsafed in that Behalf. Be it therefore enacted, &c.

What those many Acts done, were, which required *Indemnity and Oblivion*, is not our Business at present, to examine. But it is certain, that the very next Month after this Law was made, viz. the 19th of May 1668, an Act pass'd for the Settlement of the Custom or Duty of four and half per Cent. wherein, after a Recital to the same Effect with the former, to which it refers, there is a full Acknowledgment in the following Words—*By Means whereof all the Lands within this Island became forfeited unto his Majesty, &c.* alluding, as must be presumed, to the many Acts said to have been done, during the Conquests of the French. And then it proceeds to enact—*Know ye, that for and in Consideration of new Grants and Confirmation of our said Lands, &c. We do give and grant to his said Majesty, his Heirs and Successors for ever, and most humbly desire your Excellency to accept these our Grants, and we do humbly pray your Excellency that it may be enacted; and be it enacted, &c.* Nor is there any Condition or Reservation whatsoever, except only as to the Collection of the Duty, which is to be at the King's Expence, and in such Manner as shall be most for the Ease of the People; wherein both this and the Law of *Barbados* agree.

Before I come to the *Barbados*-Act for granting this Duty, which was made near five Years anterior to the other, and wherein there is not the least Suggestion of any Forfeiture of their Lands, it will be proper to touch a little upon some Occurrences that happened previous thereto, in *England*.—Soon after the *Restoration*, the Sugar Colonies being far advanced, and now sound well worth looking after, Disputes concerning that of *Barbados* (especially, the most valuable and best settled of them) arose between the *Earl of Marlborough*, whose Grand-father, Lord Treasurer at that Time, had the first Grant of this Island; the *Earl of Carlisle*, who had a subsequent Grant thereof, by the Consent of the first Grantee, on paying the latter 300 *l. per Annum* for ever; the *Lord Francis Willoughby* of *Parham*, who had a Lease of the Island from the *Earl of Carlisle* for 20 Years, of which there were 8 or 9 then to come; the *Creditors* of the said *Earl*, for Payment of whom he had by Will charged his Interest in *Barbados*; the *Earl of Kenoul*, to whom the Son of the former had devised it; and the *Planters of the Island*, by their Agents here. These had all appealed to the King in Council, in relation to their respective Rights and Demands; and

of which the Lord Chancellor *Clarendon*, who was privy to, present at, and concern'd in the whole Transaction, has given a very particular Account. It is in his Discourse by way of Vindication of himself against the 9th Article exhibited against him by the House of Commons, in the Year 1669, whereby he is charged *with introducing an arbitrary Government in his Majesty's foreign Plantations, and causing such as complain'd thereof before his Majesty and Council to be long imprisoned for so doing*. By his Lordship's Narrative of the Affair it appears, that the Determination thereon (after the Earl of Kenoul's Surrender of his *Patent*, which the King's Council at Law had, on mature Deliberation, and hearing all Parties concern'd, reported to be void) was grounded on the Supposition that the Lord *Willoughby*, who was to go over Governour, in pursuance thereof, should obtain an Act of the Island for raising an annual Tax sufficient to answer the Pretensions of the respective Claimants, as they had been settled by the Royal Order. But it is remarkable, that those who represented, or rather appear'd for the Planters here, though they were well pleased that his Majesty had taken the Island under his Protection, which was what they had been seeking for, having all along insisted that the Earl of *Carlisle's* Patent was void in Law, yet they would not be persuaded to enter into any Engagement, or make any Promise or Agreement on their Behalf, relating to such a Tax. On the contrary, they declared, that whatever was to be done of that Kind, must be transacted by an Assembly of the Island. That the People alone had been at the Charge of settling it; many Citizens, Merchants, and Gentlemen who were willing, or forced to leave their native Country, having, with that View, transported themselves thither, where they had for a long Time, planted, and us'd their Industry, without asking Leave, or being oppos'd, or contradicted by any body; and by whose Means a vast yearly Revenue had accrued to his Majesty, whom they readily acknowledged as Sovereign thereof.

Whatever therefore might be expected by the Grantees of the Crown, their Creditors, or Devises, or by the Governour himself, besides a handsome Support, the People still thought themselves free, and their Estates their own, having never forfeited either. It is to be consider'd too, that this Island was not originally acquired, either by *Conquest* or *Purchase*; for as *Ligon* in his History of *Barbados*, p. 23, says, *It was a Country not inhabited, but overgrown with Wood*. It was settled by *Englishmen* (whose Rights, as such, had been recogniz'd in every Commission hitherto granted, and) who had enter'd upon it, as a waste and desolate Place, and at their own Trouble

and Expence brought it to such Perfection, to the great Emolument of the Kingdom, as well as their own private Profit. So that we are not to wonder the Inhabitants should conceive it a good deal in their Power to apply the Uses of any Money to be rais'd, in such Manner as they should think proper, as well as to fix the *Quantum* thereof. And it would seem that the Lord *Willoughby* himself was pretty much in these Sentiments, by his having given his Assent to that *Law*, which was, I suppose, afterwards confirm'd, and is now to be the Subject of our Consideration.

This Lord then (who had before been Governour of *Barbados*, and on its being reduced to the Parliament, sent Home by that Party, where he remained till the King's Return) arrived in the Island with a Commission dated the 12th of *June*, in the 15th Year of King *Charles* the Second, and in the Month of *September* 1663, procured an Act of Assembly, entitled, *An Act for settling an Impost on the Commodities of the Growth of this Island*. The Preamble to it recites King *Charles* the first's Grant to the Earl of *Carlisle*, his then Majesty's Purchase of that, and all Rights by Virtue of any other Patent whatsoever, his taking the Island into his Royal Protection, and the Lord *Willoughby's* Commission, as Governour, with a Power of confirming the Titles of the Inhabitants, to their Lands, &c. After which there is mention made of a Duty on Cotton, which with all other Duties, Rents and Arrears of Rents, are releas'd, and made void, and the Inhabitants declar'd to hold their several Plantations to them and their Heirs in free and common Soccage, under the yearly Rent of an Ear of *Indian* Corn to his Majesty, his Heirs and Successors for ever, if demanded. And then comes the following Clause.—

And forasmuch as nothing conduces more to the Peace and Prosperity of any Place, and the Protection of every single Person therein, than that the publick Revenue thereof may be in some Measure proportioned to the publick Charges and Expences; and also well weighing the great Charges that there must be of Necessity in the maintaining the Honour and Dignity of his Majesty's Authority here, the publick Meeting of the Sessions, the often Attendance of the Council, the Reparation of the Forts, the building a Sessions-House and a Prison, and all other publick Charges incumbent on the Government, do in Consideration thereof give and grant to his Majesty, his Heirs and Successors for ever, &c.

So that the Intention of the Assembly in granting this Duty, is hereby evident enough; and 'tis as plain from what has been said, that other Uses had

been laid out for it at *White-Hall*, in order to satisfy the several Claimants in *England*. To these therefore it must be suppos'd the same was applied; since no Part thereof appears to have gone towards the publick Expences of the Island till 1698 (being 35 Years after) when 1200 *l. Sterling per Annum* only was directed by the Royal Instructions to be paid to the Governour, for his Salary. This indeed was afterwards, *viz.* in 1703, augmented to 2000 *l.* which has been from that Time, and is now the stated *English Salary*. And though *the maintaining the Honour and Dignity of his Majesty's Authority* be indeed one of the Uses pointed out in the Act, under which Words such Salary may well be thought comprised, yet that is no more provided for by the Law than some other publick Charges specified therein, which it is said *conduce so much to the Peace and Prosperity of any Place, and the Safety of every single Person in it, to provide for;* and for which yet nothing rais'd by this Fund has hitherto been appropriated.

But seeing the Duty in Debate has been constantly paid from the Year 1663, some of the Demands under King *Charles* the second's Order must unquestionably have been discharged before now. I have seen it asserted indeed in Print, by a Gentleman whose Intelligence may perhaps be much better than mine, that there is payable out of the four and half *per Cent.* 1000 *l. Sterling per Annum* to the Heir of the first Proprietor; and if so, to be sure it is with good Reason and on a just Foundation. But as I remember, he does not tell us whether that Sum be taken out of such Part of the Duty as arises in *Barbados* only, or whether out of the whole Produce of all the Islands. Nor does he say, who he means by the *first Proprietor*. If the Earl of *Marlborough*, it is plain from Lord *Clarendon's* Account, as is already observ'd, that his Contract, on which he consented to a new Grant to the Earl of *Carlisle*, was for no more than 300 *l.* a Year. And as for the then Earl of *Kenoul*, whose Claim was under the last mentioned Grant, the same noble Writer states it as depending merely on his Majesty's Grace and Favour, the Grant under which he claimed, having been looked upon as void; and it being indeed obvious, that besides what other Defects there might be, King *Charles* the first had been *deceived* in it, since it is most certain that the old Earl of *Carlisle* did not, in fact, *settle the Island at his own Expence*, on which Consideration, it seems, the Grant was obtained. So that whatever the Regnant Prince might be pleas'd, out of his Royal Grace and Favour to allow that noble Earl, it is apprehended there was no Colour for such a Claim, at least, as a Matter of Right, on any of the Royal Successors to the Crown.

Be those Matters, however, as they will, which I do not presume to enquire minutely into, it must be acknowledged that the Duty of four and half *per Cent.* not having been applied to the publick Uses of the Island, has proved a Hardship on the People, who have been obliged therefore, from Time to Time, to find other Means of raising Money for those Purposes; and which I shall shew anon has been the Source of most of the political Disputes that have happened in that Island, and of the Spirit of Opposition so often exerted there, by the Representatives of the People. In the mean while, it must be admitted, that the Weight has been the more sensibly felt, because of the unequal Manner it is charged by the Law, which makes it payable only by the *Planter*, when there are Numbers of other opulent Inhabitants that bear no Share thereof.

By the Act which imposes the Duty, the Method of levying it is left to the Governour with these express Words—*In full Confidence that your Excellency will take such Course for the collecting and gathering the said Impost, without any Charge, Duty or Fees, as may be most for the Ease of the People of this Island.* Now, although agreeable hereto, such reasonable Allowances were at first made, and generally indeed continued, as render'd the Collection no more troublesome to the Shippers than the Nature of the Thing would necessarily occasion, yet this not being precisely ascertain'd by any Law, or the Directions of any of the Governours of the said Islands, there were various Instructions occasionally sent over from the Board of Customs here, to the Officers of the Revenue there, according to the Lights they received, at so great a Distance, and by which a good deal of Trouble hath sometimes fallen upon the People. The most remarkable Instance, however, of this Kind, happened about the Year 1734. And I chuse to relate it as a pregnant Instance of the unspeakable Inconveniences that may be brought on a whole Country (and in this, five important Islands were at once concerned) by an ill-judg'd, tho' well-meant Zeal of publick Officers for what would seem to promote the Interest of the Crown, in some minute Degree, but which often proves, as here, of no real Benefit to it.—Certain new Regulations were then made, (on the Representation perhaps of some *meddling Person* who hop'd to find his Account thereby) which not only alarm'd the Merchants and Planters, but were indeed hardly practicable for the Officers themselves to execute, without occasioning such Delays as must, besides other Mischiefs, prove highly prejudicial to all here, who had any Concern in Ships that used that Trade. The most obnoxious of them, however, were

partly occasioned, as the Commissioners of the Customs afterwards say, in their Report to the Lords of the Treasury, *by a Dispute which happened between the Head Collector at Bridge-Town, and the Collector of the Hole in Barbados, in relation to the Right of granting and executing Cocquets for the Sugars and other Goods exported from the Outbays.* But it is a cruel Reflection, that the only Consequence resulting from the *private* Wranglings of *publick* Officers, concerning their respective Rights, and in order to encrease their own Profits, should be that of loading the *People* with more Difficulties, and greater Hardships.

In this Situation, and when the Island was but just quieted, after the general Discontents that had long subsisted, about the Arrears due on the Act for raising Governour *Worsley's* additional Salary, the Officers of the Customs found it expedient to lay a full State of the Case before his Majesty's Attorney-General for that Colony, by whose Means the said former Disturbances had at last been happily appeas'd. His Opinion I will the more readily transcribe, because of his known Attachment to the Crown; and it was as follows.—

The Commissioners of the Customs in *England*, who have Power by the Statute of 7 and 8 W. 3. Ch. 22. Sect. II. to appoint Officers of the Customs in the Plantations, may also, no Doubt, direct and regulate the Method of collecting the Revenue here, so far as is consistent with, and agreeable to the Laws for establishing the same, and therefore great Regard ought to be had to such Instructions as they may from Time to Time think convenient to frame and send over hither. But the Law must notwithstanding determine both the Power of the Officer, and the Privilege of the Shipper; and as the Act stated in the Case hath a particular View to the Ease of the People in the Collection of the Impost or Duty thereby granted, and which hath hitherto been observ'd, it would seem that an Alteration of so different a Tendency as what is represented, must proceed from some Mistake, or the want of a full Information concerning the Nature of the Collection, and of the evil Consequences attending such an Alteration. And since the Country is manifestly less able at present, to bear any new Difficulties of the Kind under Consideration than formerly, I think a Remonstrance should be drawn up, and sign'd by the chief Planters and Shippers (in behalf of themselves and the rest) to the Commissioners, or rather the Treasury; for which there is the greater Encouragement from what is expressly acknowledged in these very Orders and Regulations,

viz. that they are not intended to lay any Hardships on Trade, or the Planter, but design'd for the better Encouragement of both. I am of Opinion too, it will be proper in the mean while, to apply to the Surveyor-General, desiring his good Offices in favour of such Remonstrance, so far as may be compatible with the Character he bears, and the Interest of his Majesty's Revenue.—That Gentleman is, indeed, himself the best Judge of the discretionary Power he has in Cases of this Kind, but I should apprehend, that if he is convinced of the Truth of the Facts herein set forth, and that it can be no Way prejudicial to the Revenue, but will probably prevent great Contests and other Mischiefs that would ensue from a strict Execution of the Orders complained of, he may well suspend the same till he hear farther from the Board. There are several Acts of Parliament relating to the Duty of the Officers of the Customs in *England*; and the Statute of King *William* already mentioned puts those in the Plantations on the same footing, as well as Subject's Ships coming in and going out, to the same Regulations. But this last, I conceive, must be understood according to the different Establishments in the respective Islands. And therefore, if the Duty be paid or tendered to the Officer here, in pursuance of the Act, and conformable to what has been the usual and allow'd Practice, I doubt it will not be easy to support a Seizure made merely in Compliance with those Instructions.

As the Matter in Question equally affected all the Islands, it should be mention'd here, that a Case, to the same Effect, having been stated to the Gentleman usually consulted in the King's Affairs at those to *Leeward*, did in his Answer thereto express himself thus—*I do really think the Officers of the Customs here, in point of Discretion, had better not push their Instructions mentioned in the following Queries, by too strict an Execution, lest an Action should be brought against an Officer for refusing to receive the Duties at every paying Place; for if there should, I am afraid, it is so popular a Topic grown, that the Officer would have no room to expect any great Success.*

In pursuance of the Advice I have set forth at large, and that last adverted to, of the same Import for the *Leeward Islands*, the Surveyor-General of the Customs (whose District includes them all) did every thing in his Power to ease the Shippers, for the present, and took the first Opportunity of representing the whole Affair to the Commissioners of the Customs here, signifying in the strongest Terms, *that a strict Observance of the new Regulations would be attended with a great Encrease of the Charge of Management,*

and the Obstruction of Trade; wherein it must be own'd, that he acted like an honest, judicious and faithful Officer. Nor did the Merchants and Planters of *Barbados*, and the other Islands, omit to join in a suitable Memorial to the Lords of the Treasury on the same Head.—The Consequence was, that the Instructions complain'd of, were at length recalled, and the usual Method, with very little Variation, was restored; for which the whole Legislative Body of the Island of *Barbados* thought fit, in an Address to the Throne, to return *their most humble and hearty Thanks*.

But as all Laws ought to be observed while they continue in Force, so there happened soon after this, to be a Seizure made of some Sugars intended to be ship'd and clandestinely exported, contrary to that now under Consideration. This I the rather incline to mention, as it will exemplify at once the powerful Influence of *Prejudice*, and, what appears to me, a strange *Inconsistency of Conduct*; the one as it happen'd Abroad; and the other, at Home, though I had much rather there were no Occasion for taking Notice of either. The Seizure was prosecuted on the Advice of the Attorney-General abovementioned; and as he himself declared, in a Report to the Commander in Chief, *in pursuance not only of the obvious Meaning of the Law itself, but of some formerly adjudg'd Cases thereon*; yet the same was now (to his great Surprize) adjudg'd in the Court of Exchequer in favour of the Claimant or Defendant. Whereupon a Writ of Error being brought, the Cause, which became a general one, was carried, against the Bent almost of the whole Country, into the upper Court, who were pleas'd to affirm the former Judgment. But as this Determination was entirely repugnant to what had been made an incumbent Duty on the Officers of the Customs there, they represented to the said Attorney-General, as he in the Report just mentioned further adds, *the very great Difficulties which they were like to be brought to, by Means thereof; in regard that it directly clashes with the establish'd Method of collecting the Duty imposed by the Law*. It was therefore deemed absolutely necessary to pray an Appeal, which (after many Difficulties started and much Trouble given) was at last allowed. Whereupon the whole Proceedings were transmitted hither, under the publick Seal, in order to a final Decision; and as the Interest of the Revenue was so immediately concerned in the Event, Mr. R. the honest Officer who had already been at an Expence very disproportionate to his Circumstances, was advised to lodge them with the C——rs of the C——ms here. But though the principal Question in the Cause was no more, in effect, than whether the Duty for *Clay'd* or improv'd

Sugar ship'd, may be paid in *Muscovado*, i.e. whether the worst that is made, may be paid for the best that is ship'd, according to the Meaning of the Law, which directs that all shall be paid in *Specie*; notwithstanding this, I say, the Appeal-Papers lay a long Time at that B——d, without any Step taken, or the least Notice given of what was intended to be, or they would have done with them; whilst yet the Officers in the *West-Indies* remained altogether in Suspense, and were utterly at a Loss how to discharge their Duties in their respective Stations. This was thought a little extraordinary, especially considering the unusual Care which had been so recently exhibited from the same Quarter, on Account of the very same Branch of the Revenue: But I never heard it accounted for, any otherwise than that the Opinion of the S——ll——r of the C——ms unluckily stood in the Way, who happened to think differently, it seems, from his Majesty's Council at Law abroad, and that the Seizure could not by any Means be supported. Some of the Prosecutor's Friends, however, not concurring therein, resolved, at last, to apply for the Appeal-Papers, which having procur'd, they were immediately put into the Hands of a Solicitor, who never neglecting his Clients Affairs, soon obtained, on a solemn Hearing before a Committee of the Lords, &c. a Reversal of the Judgments given in *Barbados*; whither the Royal Order for that Purpose, was accordingly forwarded. And it must be own'd, that without this Redress, the *Impost* (as *Muscovado* sold at that Time) would hardly have been worth collecting; since most of the Planters in *Barbados* improve the greatest Part of their Sugars by claying them, and every one would, of course, have thought himself safe when he conform'd to the Suffrage of the supreme Court of Judicature in the Island, by paying the Duty in *Muscovado*. Nor ought it to be forgot, that the honourable B——d more than once mention'd on this Occasion, were afterwards so fully sensible of the Importance it was to his Majesty's Revenue, that on the Application of the Person who made the Seizure, they thought it but just that he should be reimburs'd the Charges he had *bonâ fide* expended in the Prosecution thereof. And in a Letter to the Collector and Controller of the Customs in *Barbados* relating thereto, they say, that

As this Matter is now fully determin'd, whereby his Majesty has a Right to his Duties in *Goods* of the same Species and *Goodness* with those ship'd, you are to give it in strict Charge to all the Officers concern'd, to take Care the Duties are *carefully* collected, accordingly, in the Manner directed by the Instructions sent from hence.

On which, I shall only take leave to observe, that if it had been before apprehended the King was not entitled to the *Duty* in Commodities of the same Species and Goodness with those that are ship'd, it would seem not quite so congruous to give such Instructions to the Officers, as obliged them to insist thereon; and if it was known that his Majesty had such Right, why was there so little Countenance afforded to a Seizure made on that Supposition, and in pursuance of such Instructions? Or how came the Officer that made it, and indeed all the rest, to be left so long under the Necessity of subjecting themselves to the Charge of a continued Breach of Duty, or of being liable every Day to Actions at Law for doing what was peremptorily made an indispensable Part thereof? One or the other of these must certainly have fallen out, had not due Precautions been taken on the Spot.

But it is now Time, that I proceed to shew some evil Consequences of a different Kind that have accrued to the Island, from the fatal Necessity there was for diverting the Money arising on this Fund to other Uses than those for which the People had originally intended it. These Uses, as set forth in the Law, were all so essential to the Support of Government, that the Assemblies of the Colony have ever since, from Time to Time, found it necessary to furnish other Funds for answering them. The ordinary one for that Purpose has been by an *Excise on strong Liquors*, for which there is a Bill brought in by every Assembly, who are chosen annually by the Freeholders, two Members for each Parish, whereof there are Eleven. The first Thing they do, after making Choice of a Speaker, their Clerk, and Marshal, and naming a Treasurer (who must be approv'd of in Council) is to prepare an *Excise-Bill*, which being pass'd, is forthwith sent up to the other House. But as the Representatives of the People have the framing it, so they insist on their Right of appropriating the Money to be rais'd thereon, and declaring how it is to be applied; the Uses being always enumerated at large in the Bill. By this Means, as they never fail to provide for the Salaries of their own Officers, and all such other Matters as favour their Inclinations, so they will often leave out others equally, or perhaps far more urgent, and necessary to the good Government of the Place. On these Accounts the Members of Council have sometimes judg'd it proper to return the Bill with Amendments, whereby such warm Contests have arisen, as have occasion'd the Want of an Excise-Act for a considerable Time, to the great Detriment of the Publick. And though several of these Disputes have come Home, and been decided here, as every thing is, in the most just and equitable Manner,

yet new ones of a similar Nature have started up, or the old again been reviv'd by subsequent Assemblies, whenever an Opportunity has offer'd; and all suppos'd to proceed on a Principle of Patriotism, and pretended at least to arise from a Desire to save the Publick Money.

In the midst of such-like Misunderstandings, and when the Circumstances of the Country required an immediate Law, which all have agreed to be needful, it has been a stale Practice for the Assembly to pass a Bill for that End, clog'd with such palpable Encroachments on the Prerogative, or some other Impediment, as they knew would make it proper for the Council to reject it, or which the Commander in Chief could not give his Assent to, without a manifest Breach of his Instructions. Thus they were sure either to gain a favourite Point, in prejudice of his Majesty's Authority, or to throw an Odium on one or the other, for the Refusal of so necessary a Law.—An Instance of this Sort happen'd so lately, that I think it ought not to be pass'd over, since it will serve instead of many others that might be mentioned, but which for particular Reasons, I rather chuse to suppress.

Soon after the breaking out of the War with *Spain*, it was deem'd high Time to look to the Fortifications of the Island, which had been a long While neglected, and gone much to Decay; the Country not having, in truth, been able, under the many Difficulties that attended it, to repair them. But now, as there was besides some Expectation of a Rupture with *France*, it became necessary; and since it was obvious that the *Excise* would be exhausted by other Drains, a farther Expedient was to be fallen upon. Accordingly a Bill pass'd the Assembly for that Purpose, and was sent up to the Council, who were very desirous of concurring therein; but on its being read, there appeared such labour'd Touches of Encroachment upon the Prerogative, and the Privileges of their Board, that they were forced, notwithstanding the urgent Condition of the Island, to reject it. After a considerable Interval, another Bill came up, with Uses somewhat differently express'd from the former, but no less liable to the same Objection, and which therefore met with the same Fate. At last, however, the lower House finding the other inflexible, in the Point of the Uses, they sent up a third Bill, wherein that Obstacle was indeed removed, but another substituted in its Room, which the Necessity of the Case alone could justify the President and Council in passing, and which on that Consideration, and to avoid the Clamours of the *People* in such an Emergency, they did. Their Representatives however (being the same that on the Death of Mr. *B*——g Resolved not

to make a Settlement on any future Governour) were herein disappointed; for they did not scruple to acknowledge afterwards, that they expected their Bill would have miscarried again; and the Extract we shall make from it will soon evince their Expectation was not ill-grounded.

But before I transcribe the Clause I am adverting to, it will be requisite to take Notice, that besides the stated Fund instituted for raising Money (in lieu of what would arise on the four and half *per Cent.* Duty) to answer the Exigencies of the Government already mentioned, a Tax hath sometimes been laid on Negroes Heads, &c. in order to pay such additional Salary as is settled there, on the Governour, over and above the 2000 *l. per Ann.* received here; and which additional Salary he is allow'd, by his Instructions, to take, provided the same be settled upon him during his whole Administration. This was the Case of Col. *Worsley*, on whom 6000 *l. Sterling per Ann.* (a monstrous Provision! though by a free Act of the Representatives, and which with all its Concomitants, had well nigh ruin'd the Island) was so settled, and which the People refused to pay the last three Years of his Residence there, on a mistaken Notion that the Act for granting it, had determin'd by the Demise of the late King. But as there was no Foundation for this Opinion, in point of Law, the Governour, on his Return Home, obtained an Order of the King in Council, obliging the Attorney-General of the Island to sue all Defaulters that were liable, and did not pay their Arrears by a Day therein limited. Accordingly several Suits were commenced, and Recoveries made thereon; but all possible Indulgence having been shewn, most of the rest voluntarily comply'd, as fast as they were able, at a Time when the Island had reap'd several successive bad Crops, and what was made, would sell for little more than the prime Cost. However, some Suits were depending, and many Persons still liable to be prosecuted, when the Bill for *Repairing the Fortifications* pass'd into a Law.

And now let us see the Part of this Act objected to; which, with the Facts before related, will shew to what Extravagancies a Sett of Men of good natural Understandings may sometimes be carried, when they implicitly yield themselves up to the Conduct of narrow-minded Persons, of low selfish Principles, destitute of all substantial Knowledge, and quite void of every extraordinary Talent, but what consists in disguising their own vicious Purposes, and finding out the Foibles of others. Such, as, wanting sufficient Merit to become distinguish'd any other Way, will be eternally

employing their little Arts in embarrassing Government, even under its least blameable Administrations, and in keeping up a *Faction*, purely for the Sake of gratifying their Vanity, Avarice and Ambition, by insolently strutting at the Head of it.—The Clause, in View, regards the Power thereby vested in the Treasurer, who, as has been already hinted, and it must not be forgot, is chosen by the Assembly.—

Be it further enacted by the Authority aforesaid, that the said Treasurer shall, and is hereby impowered and required, under the Penalty of fifty Pounds, current Money, to award and issue out one or more Warrant or Warrants, Execution or Executions, under his Hand and Seal, directed to any Constable or Constables, for the raising of all and every such Sum or Sums of Money, as are by any Ways or Means due, owing, or in Arrear, for or on Account of any Levies, Duties, or Cares formerly laid and imposed for the publick Use, within one Month after the End and Expiration of the Calendar Month allow'd for Payment, &c.

So that here is a general Power given to the Treasurer, not only to compel the Payment of all Duties arising by Virtue of this Act, but in respect to all Monies due to the Publick on any Account whatsoever. By this the Court of Revenue there, is ousted of its Jurisdiction, and the Royal Order before-mention'd, at once entirely vacated, and render'd of no Effect; or else many of his Majesty's Subjects in the Island must be liable to a double Vexation by being subjected to the Jurisdiction of the Treasurer, while they are Impleaded for the same Matters, in the ordinary Course of Law, before the Barons of the Exchequer, as directed by the said Order. And how boundless such Jurisdiction of their Treasurer is, let the Act itself farther declare; for the like surely is no where else to be met with; and the bare Recital thereof, as it will anticipate all Remarks, so it cannot fail to place silent Admiration in their room.—

And if in any respect whatsoever there is not sufficient Provision herein made for the Discovery of the Number of Slaves, Mills and Potkilns in this Island, or to compel the Payment of each Person's Arrears, Duties, Levy or Tax, the Treasurer for the Time being is hereby fully authorized, and impowered, to use and take such proper Ways, Means and Remedies, as he shall think fit, for supplying and remedying such Omissions or Defects; which shall be deemed, adjudged, taken and observed as fully as if the same was herein particularly mentioned.

But to return from whence I may perhaps be thought to have a little digress'd.—Though publick Parsimony was too often a Pretence only, and private Interest, Pique and Resentment, have, in reality, had the largest Share in the political Contests so frequently arising betwixt the several Branches of the Legislature in *Barbados*, yet the former always gave a Colour to them, on one Side; and it must be confess'd, that some Gentlemen there act upon more generous and laudible Principles, whose Behaviour has been perfectly conformable to the just Rights of Society, which are ever carefully to be preserved. Nor can it be denied, that all ought to be very cautious in the Disposal of the publick Money, as long especially as the Necessity continues for letting any Part of it go in the Channel it has hitherto run. I must therefore now observe, that if this Obstacle were removed, the whole Produce of the four and half *per Cent.* in that Island, yielded up, and some other Way found to satisfy any of the old subsisting Demands thereon, if any such there still are, it might be of infinite Service to the Place, in the adverse Circumstances under which it has long laboured. This, as it would prevent many of their intestine Feuds, and consequently save a great deal of Trouble both there and here, so it is humbly submitted whether in such Case the Crown might not soon be abundantly recompensed in the additional Improvements which the Colony would thereby acquire; a Colony (allow me to say it) on whose Support, the rest of the *British* Sugar-Islands do in a great Measure depend. Nor would such a Concession be so great as may be imagined, since 2000 *l.* Sterl. is already allowed the Governour yearly, besides 200 *l.* towards the Charge of the grand Sessions; and what comes to the Treasury is but a small Proportion (I think about 3500 *l.* only) of what is actually paid by the People (computed at 10,000 *l.*) who could find much more easy and less expensive Ways of raising the Money. By this Means they might be able, without Complaints and continual intestine Jarrings (sometimes attended with popular Commotions) to pay their Governour, and other publick Officers, such as the Secretary, Attorney-General, &c. for their publick Services; keep their Fortifications, Sessions-house, and Prison, in constant Repair; provide for the holding of the Grand-Sessions, and the Meetings of the Council, with all other Charges incident to the Government. And thus the publick Justice might be maintained, and every one concerned in it duly supported, as the Honour and Interest of his Majesty require they should always be.

This might be done too in such a Shape, and on such previous Terms, as would put the immediate and necessary Officers of the Crown upon a

Certainty, by reserving such a *Quota* for them as should be judg'd proper. Whereas some of them are at present, from the Nature of their Stations, obliged to do Service for the Publick, without any Reward at all for their Labour. 'Tis a poor Situation that of one of them especially, who has been reckon'd there, as a Kind of *Middle Counsellor*, like what the Lord *Verulam* recommends to Princes in order to keep *Things Steady*; without which, he says, *the Ship would roll too much*. But so it happens, that in this Place, he is bound in Duty to gain the Ill-will of those he opposes, without being in the least consider'd for it by those whose Rights he maintains. And I may be bold to affirm, that no Man can behave as he ought in that Post, without rendering himself obnoxious to the Leaders of the People, while such Leaders happen (as will often be the Case in the present State of Things) to be espousing an Interest contrary to that of the *Council-Board*.—If this last had not always (with the Assistance of the Officer we are now speaking of) some Regard for the Prerogative, and the Order of Government, what Confusion would soon ensue, they can best tell whose Business and Duty it has been to prevent it! The Consideration of these Things lately induc'd a Person of Note, and good Sense in that Part of the World, to affirm on a very publick Occasion, *that it was owing to certain Professors of the Law, some of whom were still living, that there were any Remains of the Constitution left in Barbados*. To which I would add, that it will be but Justice to such Lawyers, for others to suppose that They had no Hand in any publick Instruments where so much gross Ignorance, as well as worse Ingredients are sometimes to be found.

What is above propos'd in favour of *Barbados*, was, I think, mov'd the last Parliament in either House, with respect to all the Islands subject to the Duty; but as I have shewn considerable Difference in the Case of the former, so it will perhaps appear still the more reasonable, when it is considered that *Jamaica*, at first a *conquer'd*, but now a very thriving Colony, is allow'd to apply its whole publick Revenue to the Uses of the Government. The Law for this Purpose is worthy of Notice, and entitled *An Act for granting a Revenue to his Majesty, his Heirs and Successors for the Support of the Government of this Island*, wherein is the following Clause—

And it is farther enacted, &c. that as well his Majesty's Quitrents, Fines, Forfeitures, and Escheats, and every Part and Parcel thereof

arising within this his Majesty's Island, as the Impost and Revenue hereby granted, or which hereafter shall grow and become due by Virtue of this Act, or any Thing herein contain'd, shall be collected and received by the said Receiver-General for the Time being, or his lawful Deputy only, and shall be apply'd and appropriated, and the said whole Revenue is hereby appropriated to the Support of the Government of this Island, and Contingent Charges thereof, and the other Uses in this Act mention'd, and to no other Use, Intent, or Purpose whatsoever.

At the End of the Act there is an Estimate of the several Branches of the Revenue, and also of the usual Expences of the Government, the Former being computed to answer pretty near to the Latter; but if there should happen to be a Deficiency or Overplus, there is Provision made in either Case, by the following Clause—

And tho' it hath been found by Experience, that the Monies arising by the like Duties impos'd by this Act (no Branch of which has been found burthensome) doth exceed the Computation aforesaid: Yet, be it enacted by the Authority aforesaid, that in Case the several Funds, Duties and Imposts in this Act mention'd, should at any Time hereafter prove deficient, or fall short of the clear yearly Sum of eight thousand Pounds, that then and in such Case, such Deficiency, or Sum that shall be wanting, shall be made good, rais'd, and appropriated according to the Uses in this Act mentioned, by the Assembly then in being, or any Assembly thereafter to be convened. And if there should be any Surplusage, or Sum of Money arise by the said Funds, Duties and Imposts, over and above the said Sum of eight thousand Pounds, that then the said Surplusage, shall be applied to the Use of Parties to be raised for the Reduction of Rebellious Negroes, or to or for such other Use or Uses, as the Governour, Council and Assembly for the Time being, by any Law or Laws, shall think proper, and to and for no other Use, Intent or Purpose whatsoever; any Law, Custom or Usage to the contrary thereof in any wise notwithstanding.

From whence it is evident, that not only what is immediately raised by Virtue of the Act, [which is therein before provided for] is applied to the Use of the Island, but that also every Shilling of his Majesty's Quit-Rents,

&c. goes the same Way. And whatever Reasons might formerly have been assigned, for not allowing *Barbados*, at least, the same Indulgence, it cannot be denied that it now stands in far greater Need thereof, and which may be a very good one for withholding it no longer.—Let us suppose all the Colonies to be ever so much in the Power of *Great Britain*, yet, to use a familiar Instance, a Carrier who has an absolute Property in his Horses, and may therefore load them as he pleases, would not be thought prudent if he lay the heaviest Burden on the weakest Horse; which notwithstanding is the present Case of the four and half *per Cent.* Duty paid, especially in *Barbados*, when compared to *Jamaica*.

But it will not be amiss to insert here, the *Estimate* annex'd to the Act I have been speaking of; whereby the Particulars both of the Revenue and the Charges of the Government may be known.

Estimate of the present Branches of his Majesty's Revenue in Jamaica, and the several Heads of the present Expences chargeable on the said Revenue.

Charges on the Revenue.

		l.	s.	d.
To the Captain-General's Salary		2500	00	0
To the Forts and Fortifications		1250	00	0
To the Chief Justice's Salary		120	00	0
To the Officers and Gunners of Fort <i>Charles</i> ; viz.				
To the Captain 6 s. <i>per Diem</i>	109	10	0	
To the Lieutenant 4 s. 6 d. <i>per Diem</i>	82	02	6	
Twelve <i>Montrosses</i> in actual Service, at 2 s. 6 d. <i>per Diem</i> , to be Inhabitants of <i>Port-Royal</i> , and continually resident there, and not to be inlisted in either of the Independent Companies	547	10	0	
The Armourer	40	00	0	
For Water	24	00	0	
		803	02	6
To the Captain of the Train in <i>Spanish Town</i>		45	12	6
To the Auditor General, 150 l. Sterl. at 35 <i>per Cent.</i> Exch.	202	10	0	
To Waiters Salary		120	00	0

Estimate of the present Branches of his Majesty's Revenue in Jamaica, and the several Heads of the present Expences chargeable on the said Revenue. (continued)

Charges on the Revenue.

	l.	s.	d.
To several ordinary Charges, <i>viz.</i> Publick Buildings, Attorney-General's Fees, Clerk of the Council, Provost-Marshal, Clerk of the Crown, Clerk of the Chancery, for issuing Writs of Election, Deputy-Marshals for Prisoners, executing Writs of Election, Receiver-General's Commission, King's Evidence, and other small Expences, computed at a Medium for nine Years past <i>per Annum</i> }	2390	00	0
To contingent Charges <i>per Ann.</i>	568	15	0
	8000	00	0
Branches of the Revenue.	Cr.		
By Impost, at a Medium of nine Years last	2966	02	01
By Quit-Rents	1460	14	03
By Fines, Forfeitures and Escheats	437	13	03
By Wine Licenses	200	00	00
By Gun-powder	257	02	11
By a new Impost including Indico at 3 s. <i>per</i> Pound, and Sugar at 3 d. <i>per</i> Hundred, at a moderate Computation }	3000	00	00
	8371	12	06

I shall make no other Observation on this, at present, than that at *Barbados* the King has no Quit-Rents; but *Fines, Forfeitures and Escheats* (one of the Articles mention'd) are distinguished there, as his Majesty's *Casual Revenue*, and paid to an Officer of the Crown specially appointed to receive it. Nor is any more thereof applied to the publick Uses of the Island than 200 *l. per Ann.* as already hinted, which the Receiver has, of late, been directed by his Instructions to pay towards the Expences of the Court of Grand-Sessions, held twice a Year for the Trials of Criminals, who are all prosecuted by the Attorney-General.

And now, if it were proper, before I conclude, to enforce what was at first rather meant to be little more than transiently drop'd, as incidental to my Subject, and a Consequence naturally to be deduced from it, I might, amongst other Arguments, urge the many Encouragements given by the

French, for more than twenty Years last past, to *their* Sugar-Colonies (and particularly the neighbouring Island of *Martinique*) with a manifest View of out-rivalling us in the *Trade*; wherein it must be acknowledged they have bid very fair. But as these Matters are already pretty notorious, so the discussing them does not seem to come within the Bounds of the Task that was set me; and which I can only wish had been better executed.

I must, however subjoin, in behalf of the Sugar-Colonies, in general, and to prevent a Mistake about them at the present Juncture, that although since the War with *Spain*, it is acknowledged their chief Commodities have advanced considerably above what they had yielded for many precedent Years, which has animated the Planters a little, and made them shake off that Despondency to which they had been reduced before, yet it would be a very false Conclusion to infer from thence, that they want no farther Assistance from their Mother-Country. The principal Cause of the late Turn in their favour (which is manifestly the War itself, tho' there may be some others in a less degree assigned) cannot be supposed to subsist long; and as that has little more than kept them *above Water*, after having been almost ready to *sink*, so when it is removed, the Effect will likewise cease, and they soon return to their old State; at least if the Policy of *France* continues with equal Zeal to cultivate the same Trade.—It may be added too, that if some of his Majesty's Subjects from the *West-Indies* have acquired by their own incessant Industry, or by that of their Ancestors, are possessed of affluent Fortunes; and particular Persons may have been observed to live here more expensively than their Neighbours; the one surely is not so common as to administer just Occasion for the Envy of such as never inclin'd to go abroad for that Purpose; or the other so extraordinary, as to make the Bulk of the People distinguished for Prodigality. There are but few Instances of the former, when compared with the Numbers that unsuccessfully spend their Time, waste their Health, and lose their Lives in a distant and scorching Climate; and as for the other, it ought to be considered that most of this Class come with a Design of returning again soon, and may well be presumed therefore to allow themselves more liberally during their Stay, than if they had a settled Residence. Nor is it a Reproach to them, that they all propose one Time or other to bring their whole Substance to *Great Britain*, and (as hath generally been the Case) to leave it there, at last.

FINIS.

Thomas Stephens,
The Hard Case of the
Distressed People of Georgia
(London, 1742)



THOMAS STEPHENS was the son of William Stephens, secretary to the Trustees in Georgia. Thomas spent several years in Georgia before he concluded that the Malcontents were correct in stressing the impracticality of the Trustees' plans, and in 1739 he returned to London to present their case. He subsequently published two pamphlets lobbying for the Crown to take Georgia under its direction. This selection was the first, published in London in 1742 under the signature of "*Agent for the People of Georgia.*" Noting that "*Nine Years Experiments*" had proven the Trustees' schemes to be "*utterly impracticable*" and had left what little population remained in "*the very Miseries and Wants, which they were*" originally sent to Georgia "*to extricate themselves out of,*" he contended that the Trustees had distributed land without consideration of "*the Planters['] Ease and Advantage,*" had denied the planters the "*Use and Labour of Negroes,*" who had everywhere "*been found indispensably requisite for the Climate and Cultivation of Lands in America,*" and provided a "*Constitution and Government*" for the colony that had deprived the settlers of their basic rights as English people. "Should it be said, that *Englishmen*, whose free Spirit rises at the least obscure, oblique Attempt on their Liberties and Properties at home, shall impose such Yokes, the very Badges of Infamy and Slavery, on their own, tho' unfortunate, Countrymen abroad, who have common and unalienable Rights to the same Privileges with them?" Stephens asked. "Should they be

envied or denied the Benefit of their native Laws, while they are gratefully and honestly struggling in an inhospitable Climate and Land, to *relieve* their Families, and be *useful* to their Mother Country?" On the grounds that "such discouraging Circumstances" had "fundamentally destroyed, to all Intents and Purposes, his Majesty's gracious Designs and Expectations in the settling of this Colony," he asked that the Trustees account for the donations and public funds "consumed" in this ill-fated venture and that the public money annually granted to Georgia be used to transport the unhappy settlers to other colonies. The effort to discredit the Trustees led the House of Commons in 1742 to reject the Trustees' annual petition for public funds, to reject as well the demand for the introduction of slavery into Georgia, and to censure Stephens for his malicious charges. (J.P.G.)

The Hard Case of the Distressed People of Georgia.

In the Year 1732, his Majesty being graciously pleased to grant a large Tract of Land, now called *Georgia*, lying between the Northern Stream of the River *Savannah* (bounding on *South-Carolina*, Northward, and the Southern Stream of the River *Alatamaha*, Southward) to several Noblemen and Gentlemen, incorporated by the Name of the Trustees for establishing the Colony of *Georgia* in *America*, with full Powers and Authorities for settling a regular Colony thereon, and governing the same. And this Colony being designed for a Barrier and Place of Strength for our Northern *British* Provinces of *America*, as well as a Provision for Numbers of the distress'd industrious Poor of *Great-Britain*, who by raising such Produces and Commodities used here, which were of foreign Growth, such as *Silk, Wine, Oil, &c.* great Sums might in time be saved to this Nation, and the *Trade, Navigation, and Wealth* of his Majesty's Realms be greatly increased; annual Supplies were granted to it by Parliament, together with great private Benefactions and Donations.

Upon this View, and at the Expence of *Part* of this Money, Numbers of Unfortunate People were sent over by the *Trustees* on the *Charity*, and Numbers of Gentlemen and others who became Adventurers on their own Private Stock and Fortunes, went over with Servants, to settle and improve this Colony upon the *Plan* laid down by the *Trustees*; so that neither Industry nor Money was wanting to pursue and perfect the Scheme.

And Attempts have been made accordingly; but after *Nine Years* Experiments, 'tis evident, that the most zealous industrious Planter is incapable of making out a Livelihood by the Return of his Labour and Expence, *this Scheme being utterly impracticable* upon the Footing it has been attempted, and the farther Persons have endeavoured to pursue it, the farther they have pursued the *very Miseries and Wants*, which they were here placed to extricate themselves out of.

And this Disappointment is owing to the particular Circumstances in the Constitution and Government of the Colony, which have defeated all the *Intents and Purposes* of it; and the great Discredit which is grown upon it, by the Restrictions and Oppositions that have infested it, has not only

discouraged its Increase by preventing Numbers from transplanting themselves hither, but also obliged Numbers to look for that Security and Ease in other Colonies which has been deny'd them here.

The Discouragements first complained of, and which were so prejudicial to the Fortunes and Encrease of *People* and *Trade* here, were the Conditions of the Tenures, in which the Lands were granted in Tail-male only, and the Daughters and younger Sons, as tho' illegitimate, deprived of the Right of Succession and Inheritance. And these Grants, filled with so many Conditions impossible to be comply'd with, made them all liable to Forfeiture, and raised very just Fears and Opinions of Uncertainty in their Possessions, and consequently an Unsteadiness in the Improvement of them. And as in many Instances, Advantage had been taken of these Forfeitures; and every Possessor made to depend so much on the Courtesy of the Trust, for being restored to the *Freedom* of his Lands, &c. no Man, in common Prudence or Justice to his Family, could any longer think of going on and laying out their Fortune on such a fluctuating Bottom as the Humours and Integrity of frail Men, and of sending his Children to beg that Bread and Inheritance, (the Purchase of his own Industry, &c.) as a Mercy from the gracious Hands of the Trustees, which they ought naturally and legally to succeed to, as the Sons of *Britons*, and Heirs to the Properties and Liberties of their Fathers.

And the Trustees more effectually to *secure* to themselves the Reversion of the Lands and Houses built and improved there, deny'd the Possessor the Liberty of selling or letting his Improvements: So that, though he should find it necessary to turn to any other Way of Life, or remove to another Country, he must forfeit all, and lose the Benefit of so much Labour and Money expended on them, or be content at last, to sit down and return to the same hopeful Measures of Industry, which, with his last Penny, and his last Breath, he must resolve (since he has once began) to spend in the Service of these Gentlemen.

If it be said, that 'twas necessary to tie up the Hands of their unthrifty Progenitors for fear of their selling and disposing of their Lands from their Families; such a *moral* Pretence, and *conscientious* Regard, no doubt, is truly justifiable, and will abundantly apologize for any Evil arising from it. But have our Children any better Security than the same good Pleasure of the Trustees, on which they are made absolutely to depend for every Thing they shall inherit of their Fathers? Moreover, are there not many who have no

Families at all, and should not they have Liberty to adopt Heirs to succeed them? Should this Law, upon any Pretence, have extended beyond those sent over on the *Charity*, for whose Security alone it could be thought necessary to be enacted? Do not these Gentlemen hereby also sap a main Foundation of Civil Government, when by losing thus the Tie of filial Dependence, they dissolve that of paternal Authority, a Duty which from its Tendency, is a Matter of as much real Moment to the well being of Society, as any other moral or civil Ordinance whatsoever?

Besides, is it natural to suppose, that these Gentlemen can have greater Tenderness and Anxiety for the future Happiness of the growing Generation, than their Fathers, who could resolve to quit their dear and native Country, Friends and Relations, tempt the Dangers of the Seas, unnatural Climates and uncultivated Wilds, without having any Regard or Attention to making that comfortable and secure Provision for their Families here, which their unfortunate Stars, against all their Endeavours, had defeated them in at home?

But, as there has been many Instances of unthrifty, unnatural Parents, and not one of a *Breach of Trust* in a charitable incorporated Body, 'tis but reasonable and fit, that Men, who were not to be trusted with their own *Laws, Liberties, and Families*, should have *Guardians* and *Fathers* assigned to their *Estates* also.

The Planter moreover has been indispensably confined to the Assignment and Culture of such Lands, as by a regular Plan were annexed to the several Lots and Divisions in the Townships, *indiscriminately*, without any Regard had to the *Nature* of the Soil or *Conveniency* of the Planter; so that often these Lots fell upon Grounds ever under Water, often upon an ungrateful Sand, and often upon such Places as neither suited the Humour or Design of the Planter. Should this be imposed barely for the Hazard of an Experiment? Is it reasonable, where so much good Land lies unoccupied? Are the Planters Ease and Advantage Circumstances that ought not to be considered? Why are they wantonly put under such *insuperable*, yet unnecessary Difficulties? For whom are the Reservations of the best and improveable Lands thus kept up? Or by what better Right and Service can any, besides the first Adventurers, make Pretensions and Titles to them?

The Quit-Rent of 3 s. *per* 100 Acres reserved for the Crown in the Royal Charter, in the Grants issued by the Trustees, amounts in some to 10s. and in others 20s. *per* 100 Acres; a Sum much greater than any other Lands in

America are charged with, or are capable of paying. This surely can be only designed as an Acknowledgment for the blessed Security the People enjoy here, from the Advantage of a Frontier Country, and the Favour of having their Lands, &c. restored, as often as the *Long-suffering* Trustees shall please not to be tired out with the repeated Remittances of their Forfeitures.

Besides these Discouragements in the Nature of the Tenures, and the Planter expending his Time, Money and Labour, on Lands, which, in a Course of Years, must revert to the Trust, he is even excluded from the necessary Means of raising a present Sufficiency of any kind of Produce for his Subsistence. The Use and Labour of Negroes has been found indispensably requisite for the Climate and Cultivation of Lands in *America*; and if in a Point of publick Utility so much contested, it may be allowed to produce in its Favour an Authority, which it is presumed none will object to, General *Oglethorpe*, a Gentleman of the Trust, (and one, who to all Appearances was as obstinately prejudiced against Negroes as any Man could be) is offer'd; who, 'tis plain, is now become reconciled to their Usefulness, as he keeps a Number of them on his Plantation, bordering on *Georgia*.

And indeed the extraordinary Heats here, the extraordinary Expences in maintaining, hiring and procuring White Servants, the extraordinary Difficulty and Danger there is in clearing the Lands, attending and Manufacturing the Crops, working in the Fields in Summer, and the *poor Returns* of *Indian* Corn, Pease and Potatoes, which are as yet the only chief Produces of the Land there, make it indisputably impossible for White Men alone to carry on Planting to any good Purpose. Besides, our Neighbours having such an Advantage, as the Privilege of Negroes, can always under-sell us in any Manufacture or Produce, which they are as well qualified for as we, should we be ever able to raise more than is necessary for home Consumption without them. The poor People of *Georgia*, may as well think of becoming Negroes themselves (from whose Condition at present they seem not to be far removed) as of hoping to be ever able to live without them; and they ought best to know, and most to be believed, who have made the Experiment.

'Tis objected, indeed, that the Introduction of Negroes might destroy the Colony; this, as it has never been tried, is but an idle Insinuation. That the Colony is already ruined is certain and evident; and it can't be said, that the Introduction of Negroes has brought this about. Besides, they were never

intended to be admitted, but under such Limitations, as the *Safety*, as well as the *Improvement* of the Colony, would be equally consulted and provided for.

'Tis said also, that Negroes being so near *St. Augustin* would desert thither. If they are as well and better treated in *Georgia* than they can be there, where is the Temptation? besides, their Desertion can affect but a few Individuals out of the Whole, except we admit it to be total; and their Labour is of general Use. Moreover, have we not a Land Army, Forts and Marines, and may not they be as honestly and usefully employed hereafter in *hunting* and *running down* fugitive Negroes, as they are now the distress'd *Georgians*, flying for Bread and Liberty to other Countries? May not these Troops also be of as important Service hereafter, as they have hitherto been judg'd, in defending Towns, &c. without Inhabitants, and protecting a People who have no Properties? Besides, it can be proved, that for every Negroe that has run away from *Augusta* in *Georgia*, or the Parts of *Carolina* bordering thereon (which are one hundred Miles distant from any Settlement on the Coast) that five to one white Servants have deserted their Masters, and even fled to *Augustin*, from the *meagre Hunger* and *frightful Oppressions*, which stared them in the Face in *Georgia*.

It is also presumed, that the admitting and substituting Negroes to the laborious Parts of Culture, &c. would make the white Men grow idle and lazy. It has been already shewn, that white Men are unequal to the Task, and yet it must be done. If, therefore, others may be found much fitter and abler for this Work, and who besides doing it better, shall save a Man all the Trouble, and put Money into his Pocket, is this a criminal or unreasonable Piece of Luxury? And as the Labours of the Field here supply but a small Share of that Variety and Stock, which goes to answer the common necessary Demands, may not white Men be still industrious, and to better Purpose, each Man furnishing that Part for which he is best qualified? Moreover, as the principal Springs to that Industry (which the Trustees so much contend for) besides Necessity, seem to be the *Possibility* of raising those Commodities which are necessary for Life, much cheaper and better at home; the Labour and Money therein employed, being thus turned to better Account, and the Assurance of Men enjoying themselves what they get, or of leaving it to their Children; has not this Government, in the very Foundation of it, entirely relaxed or broke off those Springs in every Motion? The only Difference between an industrious Man in their Sense, and an idle Man

hitherto, has been that the former has taken the shortest Way to be ruined, and the latter may possibly hold out till he is put in a better.

It is lastly said, That this Colony, by the Numbers of white Men alone who should inhabit it, was design'd to be the Barrier and Strength to the Northern Provinces in *America*, whose Safety was apprehended, from their Negroes. It were better, indeed, that it could be so established; but besides the Confirmations of an Experiment already made, it may be asserted, that there is no visible Way of doing it, but by making it a Garrison, and taking every Landholder, &c. into Pay; which could not be made effectual neither, for a much greater Sum every Year than has been given to the Trustees hitherto.

The Prohibition laid against the Importation of Rum, tho' from whatever moral Motive, is greatly prejudicial to Trade, and injurious to the particular Circumstances of the People: For Lumber being the only Export the Planter is capable of making, and which, by clearing of his Lands for Planting, he is consequently supplied with, he must lose the Benefit of it, by being thus prohibited to barter it for the Growth and Manufactures of the *West Indies*, the only Market for Timber, and whose Commodities, such as Rum, Sugar, Molasses, &c. make so great and necessary a Part of the Consumption of his Family; and a considerable Branch also of the *Indian Trade*. Besides, it is a wrong and unreasonable Prejudice, to object that this Liquor is hurtful to the Healths of the People, as it is well known, that the Waters of these Countries require to be corrected by some Spirit; and Experience has approved no Liquor so universally agreeable to *Americans* as small Punch, which both in Point of Health and Cost, is better, and near as cheap, as small Beer. And what farther proves a *Weakside* herein is, that we have, instead thereof, adopted Wines, which are of foreign Growth, which come excessively dear, and can be paid for but in ready Money only by us.

The People have often humbly represented the injurious Nature of these Tenures, which, tho' they have been often alter'd by the Trust, remain yet so obscure and perplex'd, that no safe or free Title is convey'd in them; and the same *terrifying Forfeitures* are still annex'd; but for what honest Purpose, or good Meaning, is yet inexplicable. Nor can it be conscientiously answer'd, 'tis presumed, why the People have not been made easy in so reasonable, so just Demands; or, when Alterations were about being made, they were not early and effectually done, for establishing the Peace and Safety of the Province, and removing such ill-boding, such unavoidable Apprehensions.

Can it be thought more proper to reserve and defer those Alterations, till there are few or no People left in the Colony, to take the Benefit of them? Will any, even among these Gentlemen say, he had honestly discharg'd his Duty to himself and Children, when, by his own Act, he suspended their Birthright, on the mere Favour of a Set of Men, whom no Law could oblige to be honest in such a Trust; and whom no overt Act of their own has shewn they were willing, or designed, to approve themselves such.

Should it be said, that *Englishmen*, whose free Spirit rises at the least obscure, oblique Attempt on their Liberties and Properties at home, shall impose such Yokes, the very Badges of Infamy and Slavery, on their own, tho' unfortunate, Countrymen abroad, who have common and unalienable Rights to the same Privileges with them? Should they be envied or denied the Benefit of their native Laws, while they are gratefully and honestly struggling in an inhospitable Climate and Land, to *relieve* their Families, and be *useful* to their Mother Country? And this, perhaps, is the *only Blessing* she can impart to them, without impairing her own in some Measure; and the *only Security* which they can have, of their not being made Properties to the Avarice, as well as Slaves to the Ambition and Government of designing Men in a foreign Land.

It is now humbly submitted, whether such discouraging Circumstances, and which are made to arise from the *Nature of the Constitution*, and have the Countenance of Laws, however equitable or political, to support them, have not fundamentally destroyed, to all Intents and Purposes, his Majesty's gracious Designs and Expectations in the settling of this Colony?

Whether these Gentlemen qualiter Trustees have Powers and Authorities for making such Laws, and whether these Laws are not repugnant to the Laws of *England*?

Whether the Trustees are not inexcusably culpable in not making those necessary and just Alterations in their Laws and Tenures, which the Success and Safety of the Colony so much depended on, and which, by the repeated Address and Remonstrances of the People, were humbly set forth and petitioned for?

Whether the Trustees, by their inflexible Adherence to these pernicious and impracticable Schemes and Maxims of Government, should not compensate for the Fortunes of so many Thousands of unhappy Adventurers, and account for the publick Money and Donations consumed therein?

Whether this Colony, the better to answer the Design, and to enable it to arrive at sufficient Strength of becoming a Frontier, where the Lives and

Fortunes of People are necessarily more exposed, should not have principally conferred equal at least, if not superior, Rights, Privileges and Immunities, than other Provinces in *America* enjoy?

Whether 'tis reasonable and just that People should be placed here for no other Consideration than the mere Danger of such a Situation, and to fight for the Liberties and Properties of other People, when they have none of their own to lose? and lastly,

Whether the distress'd People of *Georgia* have not a Right to complain and to be heard, and should be stiled mutinous and rebellious, for seeking for a Redress of those intolerable Grievances which have entirely ruined them, and which, for many Years past, have been as lightly regarded, as they were wantonly imposed, by the Trustees?

Hitherto indeed it may be said, that the People have been legally ruined: But 'tis humbly hoped no insinuating Expediency of Government can be pleaded in Favour of those Oppressions, Violences, Frauds, Impositions and wicked Exercises of Power, which have fatally also concurred to the Destruction and Desolation of this Colony; and which, 'tis presumed, no provisional Acts have yet been made for their Countenance and Support. Wrong Measures in Government, tho' they may be great Evils, when they proceed from real Errors in Judgment, have somewhat pardonable in them; but if they proceed from *Principle*, against Conviction, against Remonstrance, against known and established Laws, against publick Faith, and publick Declarations to the contrary, they have somewhat too flagrant and criminal in them to interest themselves in the favourable Opinion of Mankind.

And if it be consider'd what Numbers have been sacrificed to the Ambition, Avarice, Tyranny and Pleasure of Men in Power there, that the Trustees have obstinately supported them in their Measures against the Complaints of the People; that false Accounts, both of the State and Expences of the Colony have been published to impose upon the World, and this Nation and Parliament in particular; that honest Men's Characters have been wickedly impugned, *designedly* to weaken their Authority and Evidence in these Matters; that the Trustees have not wanted good Information and personal Testimony to set them right, but have haughtily and contemptuously rejected them; that many People, by indirect Influence and Compulsion, signed the Petitions against Negroes, &c. which the Trustees have printed in their own Favour, especially the People of *Ebenezer*, by the Means of their unworthy

and base Minister, who has made them belie both themselves and him; and the People of *Darien* by Threats and Promises from General *Oglethorpe's* Officers and others; that the Trustees themselves, 'tis said, have ordered their Servants in *Georgia* to send none but good Accounts of the Colony to *England*; that Magistrates have been intimidated in the Execution of their Office, &c. and Officers removed for daring to do their Duty: That the Magistracy has been filled with *mean, illiterate and dishonest Men*, whereby Justice has been partially administered, and many Cruelties exercised on the People; that in some Towns Magistrates or Courts of Justices could not be obtain'd, tho' Application has been made for them: That Imprisonments and corporal Punishments have been illegally and arbitrarily inflicted by Persons acting under the General without legal Process, any Commission, or legal Qualification; that the Laws of *England*, whether *Common or Statute* Laws, were declared upon the Bench to be no Laws in *Georgia*; that there are no Body of Laws prepared by the Trust for the Government of the Colony, nor Records duly kept; that the Verdicts of the Juries have been falsified by the Magistrates; that no Appeal is allowed from *Georgia* to the Trustees; that the People's Lands and Houses have been taken from them arbitrarily, and disposed of by the General without Pretence of Forfeiture; that some Inhabitants could get no Lands at all; that People of Substance who might strengthen the Colony have been ever discountenanced; that Numbers could get no Instrument of Writing, whereby to shew they have any Titles at all to their Lands, &c. that the Magistrates have been made the Storekeepers and Cashiers, which has supported an arbitrary Power; that an injurious Trade has been carried on with the Money granted by Parliament, &c. that the Profits arising from such Trade do not appear to be accounted for to the Trustees; that the publick Account Books are blotted, erased, interlined and torn, and the Vouchers destroyed by Mr. *Thomas Jones*, the Trustee's Storekeeper, Magistrate and Accomptant; that the said *Jones* has been heard publickly and frequently to declare he would give the Trustees 1000 *l.* a Year for the Profits of their Stores; that the Labourers and Artificers, &c. in the Trustee's Employment have been obliged to take their Debts out in Goods from the Stores at an extravagant Price; that the publick Debts contracted by the Trustees or their Agents are not paid; that the Accomptants in *Georgia* refer the People to the Trustees for Payment of their Bills, &c. and the Trustees refer them back again to *Georgia*; that Bounties or Premiums promised on Produces rais'd are not paid; that

the People have been charged, in their private Accounts, for the Cattle and Servants which were given to the Colony and People *gratis*, and likewise for the Supply of Provisions out of the Stores; that the People's Cattle are taken from them by the Trustees' Agents and killed, and the Flesh thereof carried into their Store and sold to the People; that not only the live Stock of the People is arbitrarily ordered to be killed by the General, under false Pretence of Damage done by them, but Money is also exacted from the Proprietors as a Reward to those who killed the same; that Grand Juries have been arbitrarily dissolved by the Magistrates while the Court continued to sit, and while Matters of Felony lay before them; that the General, in Capital Cases of Felony, has sat upon the Bench as a Judge, examined Witnesses, and solely summ'd up and given the Charge to the Jury; that Magistrates, after they have been dismissed by the Trustees, have sat as Magistrates on the Bench for a Year or more, without any other than a verbal Commission from the General, who removes and creates Magistrates at Pleasure; that there is no Church built, and seldom a Clergyman in *Georgia*, notwithstanding the Money given here for Support thereof, except the *Lutherans* at *Ebenezer*, whose Expences are born by their own Country and the Society here; that there are not those defensible Forts and Fortifications in *Georgia* as have been mentioned in the printed Accounts, most of them are become useless, and were never perfected; that no Roads have been completed; that the Publick Buildings were suffered through wilful and apparent Neglect, to run to Decay, tho' erected at a great Expence; that a Guard of Soldiers and Marines is set on the People to keep them in the Colony against their Inclinations; that People who were taken in making their way out of the Colony, were obliged to enlist; that an *Indian* War is threatned, the *Indians* being disgusted, notwithstanding 'tis said that much more than 10000 *l.* has been expended on them, and great Embassies made amongst them; that if these Things *are so*, surely the People's Case of *Georgia* is very hard, and deserves as much as the Attention and Assistance of their Mother Country to rescue them from these Chains, as the miserable Captives in the Dungeons, of the *Spaniards*.

Notwithstanding it is not to be suspected that the Trustees are in a Confederacy to ruin so many People, and that *some* of them have *distinguished* themselves by openly shewing their Dislike to the *Proceedings in Georgia*, yet as the Grievances of the People have been often represented to the Trustees, it is humbly submitted, whether it be not reasonable for such as have more

immediately taken upon them the Administration thereof, to give Reasons for suppressing the Representations of the People, and giving no Answer to them, and persevering in Measures so apparently destructive to the Colony, instead of applying proper Remedies whilst they had sufficient Power and Means in their Hands for effecting the same.

Of all these Things the People in *Georgia* (now equally reduced, as well those who went thither on their own Bottoms, as they who were sent on the Charity) are so sensible, that they make it their Prayer,

That unless the Constitution be altered, the Money which may hereafter be granted for the Use of the Colony, may be applied for removing them to some other Part of his Majesty's Dominions, where they may be able to support themselves and Families, and be of use to the Publick, instead of a Burthen to it as they are now.

THOMAS STEPHENS,

Agent for the People of Georgia.

London, April 26th, 1742.

[Edward Trelawny],
An Essay Concerning Slavery
(London, 1746)



THIS REMARKABLE PAMPHLET represents the most detailed analysis of the tensions between colonial enslavement of Africans and British traditions of liberty published in the British world before the antislavery crusade of the 1770s and 1780s. Anonymously published in London in 1746, it was obviously the work of a person deeply familiar with Jamaican society yet sufficiently detached to achieve some perspective on it. One historian has plausibly suggested that the author may have been Edward Trelawny, Jamaica's royal governor between 1738 and 1752. The title announced the author's purpose: to persuade Parliament to cut off the slave trade to the British colonies and to persuade Jamaican planters to manage their slaves more carefully, perhaps even to take measures that would lead to the gradual emancipation of some privileged slaves. As the title made clear, the author's principal concern was the security of white settlers, who, in their avid quest for profits, had so filled the island with slaves that they were outnumbered by as much as ten to one and had thereby turned Jamaica into a place where whites lived "under the greatest Apprehensions . . . from their own Slaves."

But the author also moved cautiously beyond the security concerns to what he called "the moral one." Denouncing the slave trade as a commerce "in human flesh, in the Lives and Liberties of our own Species," he invoked natural rights theory to condemn the British nation for actively encouraging both the slave trade and the brutal violation of human rights in the colonies. In the process, he called attention to the contradiction between Britons' self-conceptions of themselves as a free people who loved liberty

and their willingness to participate in and condone a system of trade and labor that made Britons “instrumental in depriving others of a Blessing” that they themselves held so dear. As he emphasized, the impulse of free people to draw a sharp distinction between themselves and the enslaved in a society composed mostly of unfree people provided an especially powerful impulse for vehement settler claims to an identity as free-born Britons. (J.P.G.)

AN
ESSAY
CONCERNING
SLAVERY,
AND THE
DANGER
JAMAICA

Is expos'd to from the
Too great Number of SLAVES,
AND THE
Too little CARE that is taken
to manage THEM.

And a PROPOSAL to prevent the further
Importation of Negroes into that Island.

*Let Men beware how they neglect, and suffer Matter of
Trouble to be prepar'd; for no Man can forbid the Spark,
nor tell whence it may come.*

Lord BACON's *Essays*.

LONDON:

Printed for CHARLES CORBETT, at *Addison's-Head*,
over-against *St. Dunstan's-Church* in *Fleet-Street*.

(Price One Shilling and Six-pence.)

The Introduction.

The Island of *Jamaica* being of the greatest Importance to its Mother Country, and at the same Time so insecure, that the Inhabitants are not only alarm'd by every trifling Armament of the Enemy, but under the greatest Apprehensions frequently from their own Slaves, it becomes a Matter of publick Concern to consider how to render so valuable a Possession safe and sure, and free from the Dangers with which it is so manifestly threatned. The meanest Capacities may furnish Hints useful to the greatest; in this Perswasion, I humbly offer, in the following Sheets my poor Thoughts, and make some Proposals which I am far from thinking adequate to the Occasion, but I hope they will be sufficient to excite Men of greater Abilities to propose better and more suitable ones; for something must be done, and that speedily, or this valuable Colony will be undoubtedly lost, and the *British* Empire in the *West-Indies* much curtail'd, if not totally ruin'd.

The first Thing Physicians do is, to enquire into the Cause and true Nature of the Distemper; one lucky Circumstance, and perhaps the only one in the present Case, is, that ours cannot be unknown, our Danger being plainly owing to the too great Number of Negroes in Proportion to white Persons, being at least as ten to one, and the too little Care that is taken to manage those Negroes. To show the Necessity of being more careful and bringing our Slaves under Discipline, is the End of this small Tract; the Means propos'd are very few, and indeed reducible to one Point, *viz.* that of having a due Proportion of Freemen (of one Colour or another, white, black or yellow, since white Men enough cannot, at least immediately be got) to Slaves. My Design in hindering Slaves from being bred to Trades, or employ'd in the House being, that there should be no more than what are necessary for the Field or such kind of Drudgery as cannot be carried on but by them, and that white, or at least Freemen, should be employ'd in all other Services, and that even in the Field the Drivers should be free, and not Slave put over Slave.

I may seem inconsistent with my self, in first of all proving Slavery to be contrary to the Law of God and Nature, and then implicitly allowing it, by proposing how Slaves should be regulated. I cou'd wish with all my Heart, that Slavery was abolish'd entirely, and I hope in Time it may be so; but to do it at once, would be itself a great Evil, and a Ruin to Thousands whose Wealth is wholly, or chiefly vested in them. Therefore I shall

be content, if no more Slaves be imported, and those we have put under good Regulations,—Time will do the rest, which is the best Mender, when Things are put in a good Train, as it is the gentlest one, doing its Business by imperceptable Touches and Degrees.

Nor is it from a moral View only that I am for hindering the further Importation of Slaves, and making the other Regulations, but from a political one too; it being sincerely my Opinion, that the Island must otherwise be inevitably ruin'd. We have escap'd many Dangers, Symptoms usually forerun the Distemper, Providence always gives sufficient Warnings, we have had ours; Providence has done its Part, we should do ours, in taking Warning and altering our Course.

I lay the greatest Stress upon the Point of Security, which is a Consideration I should think would affect every one. I own I am affected with the moral one; but if the Parliament should still think that no Branch of Trade whatever (tho' it be in human Flesh, in the Lives and Liberties of our own Species) is to be parted with upon any Account; let them go on buying in *Africa*, to sell in *New-Spain*, but let no more be sold in our Colonies—let us be Wicked still, but let us not be Fools. When we have already more Slaves than are consistent with our Safety, let us not bring in more and more to make our Perdition sure.—And since the Planters themselves have not the Head or the Heart to find out or make use of proper Remedies, and cannot forbear indulging themselves both in their Indolence and fond Desire of more and more Negroes, surely the Parliament at Home should interpose, were it only out of Pity to these their Children, who know not what they do, who are playing with Edge-Tools, which they cannot manage, and should be prevented from cutting themselves. And since white Men cannot be got, (and never will be got till other-guess Measures are pursu'd) I think the Planters shou'd be made to manage as well as they can with the Materials which they have at Hand, throwing their Negroes into such a Form and putting them under such a Discipline, as that instead of there being any Danger of their rebelling, they might be made useful in withstanding a Foreign Enemy, and what then would hurt the Island?—I know this is far from being palatable to the Planters, their Humour, Pride and silly Prejudices being against it, but I am sure it would be wholesome, and for their Good; and I cannot think that the Parliament of *Great-Britain* ought to risque the Security of so valuable an Island as *Jamaica*, and defer doing what is absolutely necessary

for its Safety, out of a Deference to the Humour of a few Planters, and until they are pleas'd to think rightly themselves.

Let it be consider'd besides, that one Regiment would then be sufficient for the Security of the Island, and the *Jamaica* Squadron might have other Views besides that of merely defending the Island and getting a few Prizes, they might go wherever some national Service call'd them, to Leeward, if they pleas'd, and be absent for Months together, and the Island in no Fear of being swallow'd up in the mean time; this is likewise a Consideration methinks not unworthy even the Notice of the Parliament.

I have introduced in the Dialogues but two Persons, a *Planter* and an *Officer*, as I thought them sufficient fully to express my Sentiments in the Matter; and I should have been glad to have done without them, not perceiving in myself any Talents for that kind of Writing, but I found I could not discuss some of the Points so thoroughly and minutely any other Way. The Reader therefore must not expect to find either of the Characters drawn with any Niceness or Accuracy. I have put many Things in the Officer's Mouth, that might as well have been spoken by a Merchant, a Lawyer, or a meer Gentleman of no Profession; but I chose the Character of an Officer, as such a-one might be supposed to have seen more of the World, and to have freer Notions of Things than a *Jamaica* Merchant, and to be more idle, and more apt to indulge himself in unprofitable Speculations than a Lawyer. I have given him a strong Air of Enthusiasm, which seemed necessary to me, as one of another Turn could not, with any Propriety, be made so very zealous as he is, in an Affair which regards his private Interest so little.—But to deal ingenuously with my Reader, another and truer Reason may be (as he speaks my Sentiments mostly) that I am myself not a little ting'd with that Passion, so that I may have drawn my own Picture unawares, only exaggerating the Features, being as like the Officer, as Sir *Roger de Coverly* in the *Spectator* was to the *Saracen's Head*; to which the Reader will be apt to add this further Similitude, that they are both Sign-Post Paintings.

Believe me, Reader, however lightly and indifferently I may have treated this Matter, I know nothing more serious, or more worthy the Attention of the Legislature, unless it be to pay off the publick Debts, and to revive the Militia of *England*, that a Parcel of *Highlanders*, with the Scum of the *Lowlands*, may not range as they list through a once warlike Land with Impunity, proclaiming a Popish Pretender, on *English* Ground, where their most

regular and royal Armies never put their Foot formerly without Trembling, and seldom without due Chastisement.

A Dialogue in Spanish-town between an Officer and a Planter,

- P.* I am afraid I interrupt you; you are so surrounded with Books;—for an Officer to be so studious is something extraordinary.
- O.* Nobody that I am acquainted with is in Town, I must be at my Post, so I amuse myself as you see, and I think myself happy in having some Taste this Way, not being obliged to go into Company I don't like; but Nobody loves to see a Friend more than I do, so away go Books; and I assure you I am heartily glad to see you.
- P.* You will give me Leave to look upon them; bless me, what are here! *Puffendorf, Locke, Woollaston*, and I know not who: I think I see a Bible too; what the Duce can this be for? Some Point of Divinity or Politicks, something for the Press sure!
- O.* Why, don't say any thing and I'll tell you; between Friends I am a little crazy; I have a Crack, that is certain, and yet I cannot find in my Heart to be sorry for it;—there is a Pleasure in being mad, which we mad Men only know, as a mad Poet has sung, having found it out experimentally. I am writing, and for the Press, tho' not Messrs. *Baldwin's*, as you will guess by the Subject. I am endeavouring to prove, don't be surpriz'd, that Slavery, as it is now practised amongst us, is contrary to the Law of God and Nature. I confute by right good Arguments, the Authorities by which the Christians of these latter Days have been induc'd to admit of that State, which was condemn'd by the primitive Fathers, and is so entirely opposite to the whole Tenour, and very Spirit of Christianity.
- P.* But you have not only the modern Christian, but the ancient Heathen, *Greek and Roman*, as well as Custom against you; it is thought to be agreeable to Law by the greatest Men at present of that Profession, whatever Opinion *Holt* and others might have had formerly; and I never heard it was condemn'd by our present Divines.
- O.* That is the Reason why I said I was a little crazy, I know the Difficulties I am to encounter; when Wit, Learning and Eloquence design to display their Talents in Favour of prevailing Errors that tend, or are thought to

tend to Mens Interest, plain down-right Reason has little Chance to get the better of Prejudice and Interest thus supported: I know the Abuses I must suffer, as Madman, Visionary, Enthusiast, &c. yet knowing this, I will on; I feel an Impulse;—

Perhaps 'tis Sacred, and I must obey.

Let others toil to be at the Top of Affairs, do you Planters labour on, buying more and more Negroes, getting more and more Land, though already you have more than enough of both; let those of you that retain a Taste for your own Colour, intreat to get this and that Woman, I will go on scribbling and combating this Error. Do you build fine Houses, after your Fashion, for yourself or Mistress, I will have as much Pleasure with my Castle in the Air.

- P. You will allow however, the Pleasure you have assigned me and my Countrymen, to be more real and substantial, not so chimerical as yours.
- O. Your Objects are real indeed, but your liking depends upon Fancy, the most fickle Thing in Nature; mine is founded in Reason, for I endeavour to do good, and Reason you know is invariable, always willing and nilling the same, so I shall hold out the longest.
- P. You at first own'd you were a little crazy, and you now talk of your Reason; one would think you had found out the Art of reconciling what Terence thought so contradictory, *Insanire cum ratione*.¹ But pray let's see what you have wrote.
- O. Since you have caught me in the Fact, and will have it, there take it as it is, you will see 'tis not finish'd.

SECTION I.

That Slavery, as it is now practis'd in America,
is against the Law of God and Nature.

That, in a State of Nature, Men are equal in respect of Dominion, is a Maxim uncontested by any Writer of Note upon Politicks, and is indeed as evident, as any Proposition in *Euclid*. Since then Men are free by Nature, how come they to lose their Birth-right? the Ways are three,

1. ["To become insane in the midst of reason."]

1. Some have sold it for a certain and more plentiful Maintenance (as *Esau* did for Pottage) which is *Puffendorfs* Opinion of the Origin of Slavery.
 - 2dly, Some have forfeited it by their Crimes.
 - 3dly, Some have had it taken away from them by Force.—

The two first Ways are agreeable to Nature; for, as to the first, a Man may certainly part with his own and exchange it for what he thinks better;—and as to the second, it is for the Good of Mankind in general, that those that offend against the Peace of Society, should suffer for their Offence by Loss of Liberty, Life, or Goods, as shall seem meet to the Legislature. These two Ways are likewise agreeable to the Old Testament, as appears by several Texts; I shall mention but two. *Exod.* chap. xxii. ver. 3. speaking of a Thief that is breaking up, *He should make full Restitution, if he have nothing, then he shall be sold for his Theft.* And *Leviticus* chap. xxv. ver. 47. *If a Sojourner or Stranger wax rich by thee, and thy Brother that dwelleth by him wax poor, and sell himself unto the Stranger, &c.*

But as to the third Way, which is call'd the Right of War, that there is no such Right in the Reason of Things; that, however it may have been practis'd and allow'd of by many and great Nations, and thence been introduc'd with great Solemnity into the Law of Nations, and supported by grave Authorities; yet, that it is contrary to the Law of Nature, and likewise to the Law of God, as contain'd in the Old and New Testament, is what I shall endeavour to prove.

The Arguments of those that maintain this Right of War, as it is call'd, run thus; one Nation they say, with Respect to another, is as one Man in the State of Nature, would be to another.—Now two Men in that State, that should fight for the Possession of something they both had a Mind to, would certainly each have a Right to kill the other during the Conflict; and as the Conqueror would of Course have the Power, he might put his Power in Execution.—From whence they infer, that he might enslave him, arguing thus;—Life without Liberty is better than no Life; therefore, he that has a Right to take away the greater good, and only takes the less, does a Favour, can do no Injury; for should the conquer'd Party happen to prefer dying, he may oblige his Conqueror to kill him, and so have his own Choice. This Argument being built upon a false Foundation must fall to the Ground; for tho' it is an undoubted Right of War to kill one's Adversary, and two Combatants may kill the one the other, *during the Combat*; yet as soon as the Combat is over, and one yields up the Thing in Dispute, the

State of War ceases, and consequently its Rights cease with it. While the Battle lasts, Self-preservation gives the Right to each to secure his own Life by taking that of his Adversary; but the Battle being over, the Danger is over, and Self-preservation can no longer be pleaded. And I appeal to the Common-sense of Mankind, whether to take away in cool Blood the Life of those that surrender, is not reckon'd cruel and inhumane. Our brave *Edward the Black Prince*, indeed kill'd his Prisoners, but not till the Enemy rallying, and the small Number of his own Men made it absolutely necessary, and upon that Footing he is justified by all Historians. Had he had enough Men to have guarded the Prisoners and fought the Enemy, he would have been inexcusable. I instance in this, to shew, according to the common Sense and Judgment of Mankind, that nothing justifies the taking away another Man's Life but to preserve your own. It is plain therefore, that a Conqueror, after the Conquest, has not that Pretence of Danger, and therefore cannot, by the Right of Conquest, take away his Adversary's Life, and consequently cannot take away his Liberty, his Right to the latter being founded on his Right to the other.

*Mr. *Locke*, who seems to allow Slavery, allows it upon the Supposition, that the Life was forfeited first, and indeed it cannot be supported upon no other Principle: But that Supposition being proved, if I mistake not, by what I have said before, to be without Foundation, his whole Argument falls with it to the Ground. It is plain therefore, that Conquest gives no Right; and that the only Reason why it has been thought to have done it, is for want of making the true Distinction between the Right of War and the Right of Conquest, which have been confounded and blended together as if they were the same, tho' indeed they are very different Ideas.

To me the preceding Argument seems conclusive; but we will suppose, for Argument Sake, that Conquest doth not put an End to the State of War, which being once entered into never ceases, but that it and its Rights always continue. In that Case it must be owned the Conqueror has a Right to kill the other, but the other has likewise the same Right, though not the

* The Captive having deserved to lose his Life, *as we suppose*, it is no Injury to him to make him a Slave; and if he finds his Slavery more insupportable than Life is sweet, he may procure his Death at any Time, by disobeying his Master. *Locke* in his second Treatise of Government, cap. iv. § 23.

same Power to kill him. Their Rights over the Life of each other are equal, though not the Power; but Power gives no Right. Should it be alledged, that he who has the Power, and forbears to make use of it, must do it upon some Terms; I answer, those Terms must be explicit, they are not implied, they must be agreed to, and known before they can be agreed to. It is not a necessary Consequence, that if a Conqueror spares the Life of his Adversary, he must do it for the Sake of his Service. I appeal to any one what he would think of that Man, who having his Enemy down, should hold his Sword at his Throat, and say, if you do not instantly promise that you and yours shall serve me and mine, as I, my Heirs and Assigns, their Heirs and Assigns for ever shall think fit, I will put you to Death, you Villain, this Moment: And whether, in case the other should out of Fear, promise and swear perpetual Fealty and Service, for himself and Children: Whether, I say, such a Promise would be binding in Equity and good Conscience, whether it would not be in its Nature void, as obtained by *Duresse*.

Thus, I think it plainly appears, even upon the Supposition that the State of War still continues after Conquest, that no Right to a Man's perpetual Service can be founded upon it; and indeed the Thing speaks itself, for all social Rights must be founded upon Compact, and the State of War must cease before the Compact can begin; for there cannot be any Compact or Agreement but between Persons that are free, and in their own Power.—In short, to sum up all, no one has a Right to take away the Life of another, but to preserve his own, or to punish some Crime; the Right to punish which, every one has in a State of Nature; but the Magistrate is alone invested with it in a civil Society.

If I should be asked, what the Conqueror gains then by his Conquest, and if he has not a Right to the Person, what Right he has acquired? I answer, a Right to the Thing in Dispute, to that which occasioned the Quarrel, or Restitution with ample Costs and Damages, if it was for an Injury received; this is plainly all the Right the Conqueror acquires, and one would wonder how any other came to be thought of, if we did not find by Experience, that whatever Princes, or great Men think convenient, Civilians are ready to prove lawful. For I would appeal to any one, whether he can in Conscience really think, that he has a Right to the perpetual Service of every one he is able to beat, with whom he quarrels, or picks a Quarrel. But surely one's Nature will not suffer any one to allow that another has a Right to him, because that other happens to be stronger, and picks a Quarrel with

him, that he may enter upon, and take Possession of his Person by divine Right. Yes, says *Itornius*, the Conqueror has a Right, and a divine Right;

for (as we find him quoted by *Puffendorf*, Lib. vi. c. 3.) since all Victory is from God, and by his Providence the Conqueror gets into his Hands the Person of the Enemy, it follows that the Life of the Captive might be immediately taken away; but since Humanity would *scarcely* have suffered, that the Victor should always exercise this Rigour on an unarmed and supplicant Person, it was thought convenient to forbear Execution, and to retain his Power over the Prisoner, who might thus be of good Use in the Affairs of Life.

What Stuff! for I must appeal again to common Sense, whether, in every Quarrel between two Men in a State of Nature, or every War between two Nations, and in every Battle or Skirmish during that War, it can without the greatest Presumption and Impiety be said, that God sits in Judgment, deciding and decreeing the Possession of one Man to another, just as the one happens to be stronger or weaker than the other. It is a very good and noble Metaphor to say, when two independent Powers are forced to have Recourse to Arms, that they appeal to Heaven, that God is their Umpire, there being none upon Earth. But to found a Right upon a Metaphor is something odd, tho' not uncommon; witness Transubstantiation, and indeed almost all the Pope's Pretences, as well as those of absolute, indefeasible Monarchs; which well considered, have, most of them, no other Foundation. But no one seemed to have understood the Force of this Figure better than one of the *Roman* Emperors, who, by Dint of it, proved himself to be of a different Nature from his Subjects, they being, metaphorically, Sheep, and his Imperial Majesty, by the same Figure, a Shepherd.

Having thus shewn the Falsity of the vain, tho' subtle Arguments, by which it has been pretended, that Conquest gives a Right of making Slaves, I shall have no Difficulty in proving it to be contrary to the Law of Nature: I need only for that refer the Reader to *Woollaston's* Chapter of Truths respecting Mankind; and I appeal to his own Conscience, whether it is not contrary to every one of them. Indeed there is an Assertion in one of them, that would make one tremble to think of, *viz.* that he that begins an Injury, is the Cause of all the Mischief that ensues: Upon which Reasoning we are answerable, not only for all the Murders the Negroes commit on White Men, in endeavouring to recover their Liberty, but likewise for

all the Executions we make of them, whether in the Field, or on the Gibbet: But this will open so disagreeable a Scene, that I chuse to let down the Curtain, and see no more of it. That it is contrary to the New Testament, the Gospel of Peace and Love, which makes us all Brethren, and teaches us to love our very Enemies, will be allowed at first Sight. That it is likewise contrary to the Old Testament, will appear by one or two Texts that I will quote, after premising what cannot be denied, *viz.* that the New Testament, having broke down the Bounds that separated the *Jew* from the *Gentile*, all Nations that believe the Gospel are obliged by it to observe the same Rules of Behaviour towards those of other Nations, as the *Jews* were obliged to observe one towards the other, when some of the Tribes were at War with the other Tribes, as when the two of *Judah* and *Benjamin* were at War with the other ten. In short, the Old Testament being a Rule to *Christians*, as far as it is not altered or abrogated by the New, and both together, as far as they agree, making but one Rule,—a *Christian* is obliged to treat every one, of what Nation soever, as a *Hebrew* was obliged to treat a *Hebrew*. Now it doth not appear, that when the Tribes were at War with one the other, they made their Captives Slaves; but the contrary seems most plain, for even those they bought were to be free in seven Years, *Exod.* cap. xxi. ver. 2. If thou buy any *Hebrew* Servant, six Years shall he serve, and in the seventh he shall go out free for nothing. The same is repeated in *Deut.* cap. xv. ver. 12.

SECT. II.

That the Sugar Colonies must be ruined, if Slavery is not put upon a better Footing.

I have heard of a Presbyterian Teacher at *Edinburgh*, one, that like our *Daniel Burges*, did not disdain to enliven his Precepts with familiar and merry Instances, who having often declaimed against the expensive and debauched Way of Living of the young People of that Town without any Effect, and being resolved to try a new Argument, said one Day from his Pulpit, Brethren, I have often told you, that if you did not leave off these Practices, you would certainly be damn'd; but behold! I now tell you what is worse, you will surely go to the Abbey.* In Imitation of this worthy Divine, I having

* The Place for Debtors.

considered this Matter with regard to Right or Wrong in Morality, will consider it with respect to Profit; whether it is for the Interest of *England*, or even this Island, that Things should go on as they do, and it is my Opinion, considering the Inclination, or rather the Rage that Planters have for buying Negroes, and the little Care or Conduct that is used in the Management of them, that if some Stop be not put to it, or if better Discipline be not observed, the Island must be over-run, and ruined by its own Slaves, even tho' the Enemy should not take the Advantage of joining with them.

By the Poll-Tax in 1740, it appeared that the Negroes were ten times more in Number than the white Persons, reckoning the Inhabitants exclusive of Sea-faring, and other transient Persons, could, by the best Computation, amount to. Few large Plantations have one white Man to every thirty Negroes, as appears by the large Sums that are paid annually by those that are deficient in that Respect. Negroes go on increasing by Importations every Year; the *Whites* rather diminish yearly, certainly do not increase—What must this come to in the Course of a few Years?

One would imagine that Planters really think that *Negroes* are not of the same Species with us, but that being of a different Mold and Nature, as well as Colour, they were made intirely for our Use, with Instincts proper for that Purpose, having as great a Propensity to Subjection, as we have to command, and loving Slavery as naturally as we do Liberty; and that there is no need of any Art or Discipline to subject ten Men or more, to one, no need of any Management, but that of themselves they will most pleasantly submit to hard Labour, hard Usages of all kind, Cruelties and Injustice at the Caprice of one white Man.—Such, one would imagine, is the Planter's Way of Thinking.

There were a great many good Laws for the Government of Slaves made upon the first Settlement of the Island, but which are seldom or never executed;—the first Planters minded their own Business, saw themselves the Inconveniencies that naturally spring from Servitude, as they arose, and adapted their Laws to redress them.—There are some good Laws still wanting, but they clashing with the Planter's immediate Interest, which is all most of them mind at present, the Assembly have not been induced to enact them; in which however I must own they are not so much to be blamed; for what signifies making new Laws until the old ones are obey'd?

As no People are more thoughtless of Danger at a Distance, so I must own they are apprehensive of it enough when it is at hand.—Upon the

Conspiracy in *St. John's* Parish (and since I have given it such a sounding Name, it may be proper to inform the Reader, that about a Dozen Head Negroes of a few adjoining Plantations, were the Conspirators; but they had such an Influence over the others, and managed so artfully, that it was universally thought, that if they had not been providentially discovered, the Day before the intended Execution, and the Ringleaders seized, that Parish certainly, and probably Part of the neighbouring ones, would have been entirely ruined, and the Peace of the whole Island would have been broken by it. Upon this Conspiracy, I say) the Civil and Military Officers were alert, and no Negroes allowed to pass without a Ticket, (which Regulation alone, had it been duly observed from the Time it was enacted, would in all Probability have hindered the Growth of the rebellious Negroes) but in a Month's Time, or less, the Masters and very Overseers were weary of signing their Names; the Caution was neglected, the Conspiracy itself forgot, and looked upon as a Dream, though several poor Negroes were in reality burnt alive for it. A very few Months after, thirteen Men and seven Women from *Kingston* and *Port-Royal* took it in their Heads to endeavour to live in the Woods and be free; they kept the Mountains for a Month, committing many Murders with Impunity, in spite of the Soldiers and Militia that were sent against them, till they were first routed by the late rebellious Negroes that submitted in 1739. These thirteen Men only, with the seven Women, put *Kingston*, and the adjacent Parishes, under the greatest Alarm; and during the Alarm, the Tickets were again thought of, and some other Laws put in Execution in those Parishes; but no sooner was the Danger over, than these Things were forgot again, and *Kingston* and the other Parishes, took t'other Turn and fell quietly fast a-sleep again.

What shall we say is the Cause of this? Have they not Sense to know how precarious their Condition must be, when thirteen Rogues only out of so many thousand are able to bid them Defiance and give them such Alarms? Can they be ignorant that their whole Constitution must be quite crazy, their whole Mass of Blood vitiated, when such small Eruptions can endanger so much the whole Body, and when they break out so fast one after another? To what, I say, can we attribute this, to Indolence in some, and perhaps Stupidity in others; but in far the greatest Part 'tis owing to a narrow Selfishness, and total Unconcern for every Thing that doth not regard their immediate Interest. Many see the Symptom of a Country

approaching to its Ruin, but they fancy it may last their Time, they may sell out and get Home first, and what comes afterwards they care not. They don't desire any thing to be mended, oppose every Scheme, cannot bear to hear any propos'd which may cause Examinations into our real Condition, the Weakness of which being discover'd, might hurt the present Price of Estates; so all is well they cry, 'till they have sold and realiz'd. All that bought *South-Sea* Stock at the exorbitant Prices it sold at in 1720, were not bad Calculators, many knew it could not hold, but all they wanted, was, that it should hold till they could sell out at still greater Prices. This is at present pretty much the Case of many a *Jamaica* Planter, and the End must be the same if some strong Remedies be not applied. And what is that Remedy? Truly I know but one that would be effectual, and that is, that the further Importation of Negroes for Sale in the Island should be forbid by a *British* Act of Parliament.

Many other Regulations I own might do and be better, could they be executed; nay, the Laws in being, with very few Additions, would be entirely effectual, were they executed; but it's plain they never were, nor never will be. Now, the good of the Law I propose, consists in this, that it must be executed, it is so plain and simple it cannot be evaded; there is no room for Tricks or Concealments, the Sale of imported Negroes being forbid, and declar'd void, if made, will effectually hinder People from throwing away their Money in such Sales: And this once being establish'd, the People will of themselves fall into Methods and Regulations to make the most of the Negroes they have, when they find they cannot have more. And surely one may venture to say that not one half of the Work is done by our Slaves, as might be with good Management. Most of the lazy House-Slaves that now stand in one the others Way, would be sent into the Field, their proper Place; Business within Door should be done by White and Free-People. The Slave is for the Field only. As Drudgery in the Sun cannot be borne by the *Europeans*, therefore the Parliament hath indulg'd the Subject in the Colonies with the Power of having Negro-Slaves, that the Sugar Manufactory might be carried on; but it never was the Intent of the Legislature to indulge the Pride and Insolence of a few private Persons, who shall have some twenty or thirty Negroes about their Houses, to do what might very well be done by five or six. It was not for this, I say, that the Subject was indulg'd with a Liberty contrary to the Laws of God and Nature; Nothing less than a Manufactory, a Branch of Trade, can dispense with those sacred and eternal Rules. There

may be some indeed so scrupulous as to think, that they should not be dispens'd with at all, even for the best Manufactory, or most beneficial Trade in the World: But I own the Almighty Ship of Trade, and if my Scheme, calculated immediately for the Security of the Sugar Colonies, does not in the End prove beneficial to Trade too, all Things and their Consequences thoroughly consider'd, I give it up as a Romantick Euthusiastick Vision. But surely the securing the Sugar Colonies cannot but be of Service to Commerce, and without this Regulation which I propose, I am confident *Jamaica* will not be long secure: How it is with the other Islands I do not know.

We read in the *Persian Tales*, that there was a Nation (between the Tropicks I think) that caught hold of every Foreigner that came near them, and kill'd them for the sake of their Grease, which it seems was useful in boiling their Soap, by which Means they surpassed all their Neighbours in that Commodity, human Tallow giving it a Beauty and Fineness which that of no other Animal could do. As the Author is far from being dull, we cannot take him literally, what then shall we think he alludes to? I think 'tis plainly to Slavery, nor is the Type unapposite. To kill a Man for the sake of his Grease, or to make him melt it away in hard Labour for another's Profit, is not so very unlike. An ingenuous Man might perhaps say as much for those Savages who *kill* to better their Soap, as for us who *inslave* to make our Sugar, and might defend their Practice of dispatching a Man at once, and clapping him in their Cauldrons, as well as we can ours of forcing a Man to consume away his Life in Attendance upon our Coppers. And both no doubt in Policy are right, for what signifies the Life or Liberty of an Outlandish Man, if you can but send better Goods to Market?

It is well known, that the Devastations made by the *Spaniards* among the poor *Indians* (whole Nations being cut off from the Face of the Earth) gave Birth to the Slaving Trade, that the Place of those whom with less Cruelty they push'd out of this World, might be fill'd up by those whom they oblig'd to live miserable in it. One Cruelty begot another, one horrid Barbarity engender'd another as horrid. Cruel Off-spring of a most cruel Parent! Yet allur'd by *Spanish* Gold, the Trading Countries did not disdain the Office of Carriers, or rather Bawds and Pandars to this cruel Lust!— that the *Frenchman*, a Slave himself, should think it no great Matter to make others so, is not at all surprising; that the *Dutchman* should sacrifice every thing to Gain is not to be wonder'd at; but that the generous Free Briton, who knows the Value of Liberty, who prizes it above Life, who loves and enjoys it, and loves

it the more he does enjoy it, that he should for vile Lucre make a Traffick of Liberty, that he should be instrumental in depriving others of a Blessing he would not part with but with Life, that he should Slave, this doth surprise, grieve and torment me!

The Dialogue continued.

Of. Well, tho' I am almost afraid to ask; have you read my Stuff, what say you to it?

Pl. Why to be free, it is as odd as one can desire, if Oddity will please. You seem'd to begin at first methodically, but in the End you fall into a rough rambling manner, to avoid I suppose being thought Pedantick, and to give your studied Piece a frank, and if I may so say, military Air. Your savage Soap-makers will by no Means bear your Allusion, nor soon be forgiven you, I can tell you. As to the rest, I must confess there is a great deal of Truth in some Parts, particularly as to our Indolence, and total Unconcern, nay, a perfect Aversion to every new Regulation, however well adapted. But, upon the whole, I wish I had not read it, it puts a great many melancholy Thoughts into my Mind; I think you must be sorry yourself for having thought of it, but that you are so run away with by your Enthusiasm: For, to what Purpose is it to trouble yourself and the World with all this? You may as well stop the Tide at *London-Bridge* with your Thumb, as they say, as alter the Course of Trade and the whole Scheme of Planting by this Paper-kite of yours. Human Affairs will take their Course, *fluminis ritu*,² as *Horace* says, wise Men go along with the Stream, and do not ridiculously try to turn it. All States have their Periods, which no human Care can prolong; even *Great-Britain* it is thought tends to its Ruin, if some strong Medicines and good Alteratives are not applied.

O. To regulate and direct the Affairs of *Great-Britain* requires more Skill than I can pretend to, and suits not my small Capacity. By good Luck they are in the Hands of good Men, Men of large Property, and of known Worth and Honour, and we do expect that they will put Things into a new Course, purge away some of our corrupt Humours, correct the bad Juices by a good wholesome Regimen, and restore Health and Vigour

2. ["In the manner of a river."]

to our crazy Constitution. There can be no other good Reason why the *Pelham's* or Duke of *Bedford* should accept of a Lead in the Ministry; should they fail our Expectations, they would justly incur the Censure of all honest Men. To them therefore, I leave the Affairs of *England*, and shall be glad if I can think rightly of those of this Island, and indeed I am vain enough to think I am a Master of this Subject, and am sure that what I propose will do.

- P. Will do! no doubt, and so there are many Things in *England* we know will do, could People be brought about to do them. If the Sinking Fund had been kept inviolable, we should have been now almost out of Debt, and do you think Sir *Robert Walpole* did not know this then, as well as you and I do now; think you that he, and most of those that voted with him, did not foresee what would be the Consequences which we now feel?
- O. Well; but now we may expect better Things.
- P. I hope so; but what I mentioned the Sinking-Fund for, was, to show that People in general, Country Gentlemen as well as Courtiers, (for the former were as willing as the other to make free with that Fund to save the Land-Tax) will go on in a Way they know must be ruinous at last, rather than encounter present Difficulties.
- O. I am so much of your Opinion in what you say now, that it is the Reason why I would have this Law made in *England*; for to think that the Legislature of this Island would enact it, would be indeed ridiculous.
- P. It is almost as much so to expect to succeed in *England*. The Merchants of *London*, *Bristol*, *Liverpool*, and all the trading Towns will be against you; all the Makers and Dealers in Goods sent to *Africa* or the *West-Indies*, and all the several Tradesmen that depend again upon them, will be alarmed and summoned to oppose you; the Pen and Ink Men will be ready with their Calculations, start a thousand Difficulties you are not aware of, prove it to the Satisfaction and entire Conviction of many Thousand well-meaning Men, that your Scheme is chimerical, ruinous, and absurd, the Product of a crazed idle Brain. You will be the Joke of the *Exchange* and City—do you like that?
- O. No; but I like it better than not to dare to speak out the Truth: Nor is the Matter to be decided by them, but by the Parliament. And I cannot but think I shall have the Countenance of the Ministry.
- P. And do you think the Ministry, will, to favour your Project, disoblige so many thousand Traders?

- O. If they think it right, they should, or else they are not fit to be Ministers, in my Mind. What Motive can a Man of Sense and good Estate (but put the Estate out of the Question; for certainly being a servile Courtier, is the worst Way in the World of getting Money) what Motive I say, can a Man of Sense have to trouble himself with the Administration of publick Affairs, but to do Good according to the best of his Abilities? If he is only to follow the Humours of the People, or even the Sentiments of the King himself, when they in his own clear Judgment tend to the Prejudice of the Nation, what is he but a miserable, wicked, hired Servingman, who has the worst Place of any in the whole Kingdom. If he dares not do what his Reason approves of, is he not a Slave? If either of the Dukes of *Newcastle*, or *Bedford*, (I have a good Mind to dedicate it to one of them) should tell me, Sir, your Scheme is good, highly beneficial, will hinder the Ruin of the Sugar Colonies, which otherwise is inevitable; but if I appear in it, I shall disoblige the Merchants and *West-India* Planters, and why look so far forward? and what is it to you or me? I should out of Indignation—but I beg their Grace's Pardon for making so impossible a Supposition; and I think I was wrong in allowing, that all the Merchants and Tradesmen would be against me; for I cannot think they would be Losers by it in the End.
- P. Not in the End perhaps, but the Merchant and Tradesman consider only the present Profit and Loss.
- O. Even that will hardly be against them, but should it be more so than I imagine, I can't think so bad of them, as that they would oppose a publick Benefit, because it might a little prejudice the Trade they are engaged in; can't they follow other Branches of Trade?
- P. But there is another more material Objection, if no more Negroes are brought in, no more new Estates can be made; Planting will be at a Stand, or rather fall back; for it is notorious that in most Plantations more die than are born there.
- O. That is one great Evil that I aim at mending; Negroes are as fruitful as white People, and I cannot see why they would not encrease and multiply by the Course of Generation, if they were not over-wrought. When I hear it cited as a Maxim among the *French*, that if a Negroe is well work'd, it is no great Matter if he lives but three Years, in which Time he will pay sufficiently for himself, my Blood rises at it. I am glad it is a *French* Maxim, and indeed I believe few *English* are guilty of such Cruelty.

What chiefly contributes to there being so few Children among the *English* Negroes is the Practice of the Wenches in procuring Abortions. As they lie with both Colours, and do not know which the Child may prove of, to disoblige neither, they stifle it in the Birth.

- P. Have you a Secret then to make the Negroe Wenches chaste, and constant, tho' but to a Colour?
- O. Good Sir, I don't say I have; but it is certain, that as the Encrease of Cattle, and their Fruitfulness in Breeding, depends much on good Husbandry, so does that of Mankind depend in a great Measure upon prudent Regulations. As whimsical as it may seem (not more whimsical however than many of the *Spartan* Institutions) if a little Linnen, or other Necessaries, were given to every Wench that was brought to Bed, and all the barren ones whipt upon a certain Day every Year, I fancy the Negroe Ladies would yield better, and at least keep up the present Stock. To prevent your Archness, I don't lay any Stress on this Device of mine, tho' if I had a Mind I could well support it. I remember somewhat in the *French Persian* Letters to this Purpose, that the Fruitfulness of Mankind depends upon a mere Trifle, a small Turn given to the Imagination; and he instances in the *Jews*, who, in hopes of producing a Messiah, marry young, and fall to it with great Earnestness; the Messiah never comes, but young *Jews* are brought into the World in Abundance.

Without having recourse to Sacred History, and telling you that the World that was drowned came all from one Pair; and that the present Race of Men that were so soon after the Deluge, spread over all our Globe, sprung from *Noah*; and that the Sons of *Abraham* in particular were in a Century or two like the Sands of the Sea: It is most certain, that Men, as well as all other Creatures, will increase if there are no outward Causes to prevent it, as War, Pestilence, and Famine, or what is worse than all, debauched Manners: And that the Manners of Mankind might be mended by wholesome Laws, and People encouraged to propagate, has been the Opinion of the wisest Legislators. The *Julian* Laws against Adulteries, and other Enormities, and the *Jus trium Liberorum*³ are Instances of the Kind. What may be the proper Laws in our Case, I need not trouble myself or you with considering, the People themselves will fall into such when they are under a Necessity, and can have no Supply of Negroes otherwise; and that is the

3. ["The right of a father of three children."]

chief Good of my Law to put them under that Necessity. It will take away that foolish Imagination, and Hopes the Planters now have, that if they can, by hook or by crook, Money or Credit, get Negroes enough, they shall have Mountains of Gold, and that let them be in ever so great a Distress, the buying more Negroes will bring them out of it; more Negroes, is, like the *grand Arcanum*, to work Wonders, do every Thing, supply every Want, and answer every Expectation. If a Man can't pay his Creditor this Year, it is but the next to lay on so many more Negroes, and so many more Hogs-heads will be made, and the Debt is paid. Nay, some have carried the Matter so far, that upon the Conspiracy in St. John's Parish the other Day, they bought new Negroes to check and keep in Awe the old ones. Strange! that People that were driven to this Expedient, should not bethink themselves of their dangerous Situation, and apply themselves heartily to get out of it. For to say no worse of it, it is the Case of a Debtor, who to pay off one Man who presses him, borrows of another at a higher Premium; the Time of Payment is indeed a little protracted, but the Debt is increased, and the Ability to discharge it less. 'Tis certain, besides that out of a Rage to push on their Estates, as their Term is, many buy more Negroes than they have taken care to get Provisions for; some of the poor Creatures pine away and are starved, others that have somewhat more Spirits, go a stealing, and are shot as they are caught in other Provision Grounds; others are whipt, or even hang'd for going into the Woods, into which Hunger and Necessity itself drives them to try to get Food to keep Life and Soul together.

Are Men's Lives so to be sported with? Are Men to be so much at the Mercy of another Man? Are the Lives of human Creatures, I say, to be play'd with in such a Manner, just as a giddy thoughtless Planter thinks fit? Is it not something to prevent such shocking Proceedings? If I gain nothing else by my Law, that will be worth while.

[Here they are interrupted by the squawling
of a Negroe under a Correction.]

He goes on; Zounds! what a Howling is there! I hear every now and then from that House such Shrieks as pierce my very Soul; that Jew is eternally whipping and tormenting his Negroes, I will be damn'd if he doth not crucify them out of downright Mockery; 'tis intolerable!

*To see the Sufferings of my Fellow Creatures;
They that bear this are Villains, and I one,*

*Not to rouse up at the great Call of Nature,
And own myself a Man.*

No! I'll not be a Villain, as you term it rightly, *Otway*;—Negroes I will befriend you,—ye poor black Devils, I will redress you.

- P. Well; but sit down, don't rant away so much; to return to our Discourse concerning the Propagation of Negroes.
- O. I think I have said as much as I can on that Head, to prove that with Care you may at least keep up the present Number; and why you should not be obliged to that Care, I do not see. And if no Slaves for the future are allowed to be bred to Trades, nor any to be kept in the House, I dare say you will have by that Means four or five thousand more for the Field; not less I believe than that Number being employed in both those Ways. Besides, that your *Creol* Negroes are worth two or three Salt-water ones, as you call them; so that I really think your Plantations will rather be forwarded in a Year or two by my Scheme.
- P. You go on a little too fast: As to the House Negroes I give them up; but if we had not Slaves of our own to mend our Mills and our Coppers, and hoop our Casks, and do many other Works, we must often stand still, and could not send our Sugars to Market. There is no Dependance on white Men, and they are so extravagant in their Prices.
- O. As to their extravagant Prices, I question much whether that is not occasioned greatly by the very Thing that you are contending for; *viz.* the allowing Slaves to be bred to Trades. Two or three white Men with their Slaves, and about a Score of free Negroes and Mulattoes, with their Slaves, seem to do all the Masons, Bricklayers, and Carpenters Work in and about this Town. Suppose the Slaves employed by these white and Negroe Freeman to be about two hundred; and that one of these white Artificers shall have about thirty or forty, it is plain he must monopolize all the Work, and in Fact it is monopolized. I never have employed but one Man since I have been here, and never see any other employed go where I will. The others can only get such Jobs as he cares not for, or cannot attend to, and must be in a manner dependant upon him, and will at least join with him in keeping up the Price of Labour. Whereas were there two hundred free Tradesmen independant one of another, that had no Way of getting their Livelihood, but by their own Work, such a Number could not combine together to extort high Prices, and Necessity

would force them to seek out Employment; by which means the Price of Provisions would in a great measure regulate the Price of Labour, as in all other Countries almost it doth. Now you cannot hire a Negroe Labourer for less than three Bits a-day, tho' his Master allows him but three, and some but two a Week to live upon.

Were Artificers not allowed to breed up Slaves to their Trades, they would be obliged to work themselves; now the free Negroe works no more than to buy two or three Slaves, which he teaches; by their Work he buys more, and never afterwards touches a Stroke; and that is the Ruin of your free Negroes and Mulattoes, who are by this means, a lazy debauched Race, a very Nuisance to the Community; whereas, were they obliged to live upon their own Work, they might be made extremely useful, and a very good Part of your Militia.

- P. Suppose I allow you that it would be right to debar the free Negroe or Mulattoe from having Slave-Tradesmen, yet why debar the white Man? If so few Artificers come to us now, when those that do, and happen to be able to procure Slaves, get so greatly, if they were to be debarred from that Privilege, and could work only for themselves, we should certainly have still fewer.
- O. I own I am not clear in the Matter; but I rather think the contrary, and that we should have more settle and live with us, (as for their coming to us, that would be the same, for no body now comes that can live tolerably in *England*) my Reason for my Opinion is this;—when a new Artificer arrives, he must be content at first, till he can look about him, to be a Drudge to some of these old Standers and grandee Tradesmen, if I may so call them, or he will get no Employment; and it is ten to one if these Grandees will encourage any one of Genius; whereas, if all the Tradesmen were free, out of a great Number, far the greatest Part would be fit only to be Drudges, and would necessarily hire themselves to work under those of greater Skill, who were able to lay Plans, and undertake Works by the Great. Now an *Englishman*, just arrived, would be as able to hire as well as the best old Stander, and he would be as likely to be thought, or really to be as good a Genius as any of them. As Things are now, the Master of Slave Tradesmen alone get Money, then the Man of Skill would be chiefly encouraged: So that I am really of Opinion it would be better for the Tradesman that is a new Comer, that no Slaves should be allowed to be bred to Trades. I know with regard to Pilots in

particular, that the Assembly having allowed the Governor to license Slaves to exercise that Function, upon a Pretence that white Men could not then be got (which I can hardly believe was the Case, it being so beneficial a Business) it has so happened since, that now white Men cannot be got; the Reason of which I take to be this. A white Man doth not care to be put upon the same Foot with Negroes, and serve with them under another; he will be now nothing less than a Master Pilot, nor can he as such without licensed Slaves get Bread himself; he cannot be always out himself; whereas he whose Slaves are licensed, can lie a-bed and get all the Business himself, by sending out his Slaves. I am apt to think there is some such Cause as this with respect to all other Trades that makes the allowing Slaves to exercise them so fatal: For it is Fact, and may be laid down as an infallible Maxim, that whatever you allow to be done by Slaves, you will never afterwards get white Men to do. Let us therefore take Courage once, and see whether we cannot carry on our Trades without them for the future. You would soon in my Opinion have free Artificers enough.

I don't know what time it takes up, whether three, four or five Years, for a Man to learn a Trade, but whatever it be, the Regulation I propose, would not be felt till the Expiration of that Term, and if by that Time it should be found that Freeman could not be got, an Indulgence might be given for a limited Number of Slaves in each Plantation; tho' where would be the Harm if you were to free every Negroe you thought fit to make a Tradesman, indenting him for fourteen Years, or some large Term. The Difference would not be much to the Master, but a great deal in the Ease and Satisfaction of the poor Negroe. If you would do the same by such as you use for Drivers, making them free upon Condition to serve such a Number of Years, it would be no real Loss to the Master; it would effectually secure their Fidelity, and they would keep the rest in Obedience. If it should be ask'd why I am so impertinently for hindering People to do with their own Slaves as they think fit; I answer, I do it for their own Good and Security; for the same Reason for which any Laws are made at all, which are all Restraints upon private Liberty for the general Good. To me it is a perfect Solaecism to trust a Slave with Power; the *St. John's* Conspiracy show'd the Absurdity of that Practice, it being you know carried on by about a Dozen Drivers of different Plantations, who would by the Power they had over the rest, most certainly have got them to join

with them, if they had not been providentially discover'd. The Head of them all was a Favourite, a kind of Overseer, rather over the White Man of the Plantation than under him. As that Conspiracy gives us Warning not to employ Slaves as Drivers, or trust them with any Power, so the last little Rebellion teaches us to beware of Slave-Tradesmen, almost all that Gang being such; the chief was a Bricklayer, and some of the others, Smiths in the King's own Yard.

- P. I suppose then when you can get the Parliament to pass such a Law as you desire, you will be for forbidding Slaves to be bred Trades.
- O. Indeed shall I, as likewise for forbidding House-Slaves, but the main Thing, is, to prevent the Importation of more for Sale,—that is the Burden of my Song. Let no more Negroes be brought in, and you will make the best of those you have.
- P. Since you lay such a Stress on there being no more Negroes imported for Sale in the Island, I think you may be pretty easy; for if the Price of Negroes goes on increasing as it has done, or even keeps as it is, there will be an End to buying without your Law.
- O. Now then is the Time for my Law, none but the very richest will be affected by it; a poor or middling Man can't afford to give near 50 *l.* for a new Negroe, nor can it answer but to very few, who must have very good Land, not Negroes enough to cultivate it, and have Money to spare. And were once my Law in Force, if I am not greatly deceiv'd, all other Regulations, both those I have mention'd and others that may be still better, would follow as it were of Course. And were your Slaves once brought under Good-management and Discipline, were there a proper Number of Freemen, White, Black, or Yellow, mix'd with them in every Plantation, one to ten or twelve at most, they would be better kept to their Work and do twice as much, there would be no Fear of their running into the Woods, they would not have the Power if they had the Inclination, but probably they would not have a Thought of it, for 'tis Slackness of Discipline and Cruelty both together, which fill the Woods with Rebels; the latter puts the poor Creatures upon the Thought of it, and the former gives them the Hopes of effecting it.
- P. But can you think that the Planter will consent to make one in ten or twelve of his Negroes free?
- O. Not altogether free; but in the manner I propose, I am sure he would if he thought rightly, and save by it too. Besides, there would be free

Negroes or Mulattoes to be hir'd, and so long as there is one Freeman to ten Slaves in a Plantation, I do not care which way it is. A Friend of mine that has a Pen and a few Negroes took it in his Head a Year ago to try what I am now proposing, and finds it answer to his Expectation. Perceiving his Driver was diligent, he told him one Day he would make him free, provided he would serve him still as a Driver for seven Years. The Fellow was overjoy'd, had his Manumission, and put his Mark to the Indenture for seven Years the same Day, and since has prov'd a most industrious Officer, and the other Negroes are industrious too, hoping one Day or other to merit the same Reward. And what has my Friend lost by it? For the first seven Years he loses nothing, 'tis plain, but gains by his Negroes being more industrious, and by the Chearfulness with which Work goes on;—the Whip is not heard in his Pen. And at the End of the seven Years, will not this Driver be made happy by the Grant of fifteen or twenty Acres, (of which almost every Planter has enough to spare) at an easy Rent, or some Service in Lieu of it. Will not this Man when he becomes a Freeholder and Tenant, under certain Conditions to the State, be still useful to it? Won't he be ready to go out upon Parties or against a Foreign Enemy (for Parties against the Rebels would be at an End if such Methods were pursued) and could he not be trusted? Which the Slave cannot be so well, at least surely. Was such a Method to be taken in every Sugar Plantation, there would be in every one almost a tolerable Company of free Negroes fit for Arms, which would be of vast Service, and what would the Owner lose? For the first seven Years, as I said before, he would lose nothing. At the End of the seven Years indeed, he would be oblig'd to give each of the freed Negroes some Land, but as all Estates almost have more than enough to spare, that would be parting away with nothing, and yet he might reasonably demand a Rent or Service for it, so that he still would have some Good out of the freed Negroe, very near as much as he has from his Slave, only by giving Land that is useless to himself. And as to Land, must it not be given to the Slaves too, in which I have heard they are seldom stinted as to a particular Quantity, but only in general to such a Place among them, where they may range as they list, and love to be spreading and opening new Ground. The only Difference then with respect to the Land, is, that the Master can turn out the Slave when he pleases; and tho' Masters are fond of that Power, and have not the Heart to part with it, it is a foolish Fondness or Covetousness,

for they never ought to make use of that Power, and never do without giving a general Dissatisfaction to all their Negroes, and instead of keeping them in greater Dependence, as they foolishly imagine, or having a greater hold on them by it, they have less, for there is no such sure Way of holding a Man as by his Interest; as that is certain or precarious, so will be the Hold or Attachment. A free Negroe that has fifteen or twenty Acres of his own that he can't be turn'd out of, will defend it with his Life against the *French* or *Spaniards*; he has his little All to lose if the Enemy prevails, and will be in Danger likewise of being made a Slave. And on the contrary, the Slave has nothing to lose if the Enemy prevails, and if he goes over to him may get his Liberty.'Tis plain therefore, you may be sure of the free Negroes standing by you, whereas you will be in Danger of every Slave's turning against you, that is not well watch'd and kept under by good Discipline.—What a Difference then would there be in our Situation in Point of Security, were my Friend's Example to be follow'd, and the Property we should part with for it would be trifling. What a Satisfaction would it be, when we heard of an Enemy's designing to invade us, if such a Method should have been taken before-hand. People would not need then, as they did lately, insure their Estates at 10 *per Cent.* and that for six Months only, and some could not insure at that Rate. Make one of your best Negroes out of every ten free, as I have propos'd, that is the best 10 *per Cent.* Insurance, you will need no other. But to wind up my long Discourse, since the Advantage in Point of Security would be so great, and what you part with for it so inconsiderable, can one help wondering that there should be so much Trouble in persuading you Planters into it; is there not something in being secure, which is worth paying a little for? What say you, Sir, to all this?

- P. I can't answer immediately off hand, upon a Point which one can perceive you have been long thinking on: But I am very sure you will get no one to follow your Friend's Example; tell me Truth, is he not a little whimsical, somewhat of the same? hah! whatever he may expect, he will find at the End of the seven years, that this trusty Driver of his will leave him, for when he is free, will he not do as he pleases, go where he will; how can you fix him to the Plantation when he is free?
- O. Spoke like a *West-Indian*, (you will forgive me in Return to your Supposition of my Friend's Whimsicalness, and Innuendo on myself) you know no Medium in Things; a Man with you must be either absolutely a

Slave, or licentiously free, free from all Restraints of Law.—I remember how a Bill for taking up all Vagabonds and such as had no visible Way of Livelihood, was treated and scouted a Session or two ago, and prov'd to be a manifest Invasion of the Liberty of the Subject, who had a Right to be as idle and profligate as he pleas'd.—How shall I fix him do you say? I will fix him by Law. No free Negroe should be allow'd to be in the Towns that was not an Artificer, no Land shou'd be given by the Governor to any such freed Negroe. Where could he go, or where would he be so well as about the Estate, which he probably would be fond of too, as having been bred in it: There he should have Land, but not without reasonable Conditions, to pay Rent or do Service, or partly one, partly the other, all which might be regulated by Law, nor would there be any Difficulty at all in it. I warrant when the Law past in *Henry* the VIth's Time, enacting, "That all Houses of Husbandry that were used with 20 Acres of Ground or upwards, should be maintain'd and kept up for ever, together with a compleat Proportion of Land, &c." Many murmur'd and others laugh'd at it, some objecting against the Restraint, others that it could not possibly be put into Execution; calling it whimsical, as you do my Friend, (the Word sticks you see) for what an odd Conceit is it! why must a House because it has once been built be kept up, with such a Quantity of Land, not less than 20 Acres? May not a Man change his Mind? Must he go on tilling the Ground he once has till'd, and maintaining a House eternally because he once thought fit to build it? In short, may he not do what he thinks fit with his own? These, and many more such shrewd Objections I doubt not were made then by our Fore-fathers; yet this Law was put in Force, and to it, both Lord *Bacon* and *Harrington* (no bad Politicians neither) attribute the Goodness of the *English* Infantry and the Superiority we had over the *French* in our Battles. As this Law provided a House and a Competence of Land about it to maintain a Yeoman in good Heart, fit for his King and Country's Service, Lord *Bacon* look'd upon it as making a Nursery for Foot-Soldiers, and calls it very prettily, if I remember right, "Secretly sowing *Hydra's* Teeth, (according to the Poet's Fiction) from which arm'd Men should rise up for the Service of the Kingdom." Let me sow some of these Teeth in this Country, we want them much; and surely if we had some of them scatter'd about in each Plantation, if some of these *Hydra* Teeth-Men (if I may so call them) should start up and place themselves between every ten Slaves, they would not only be

ready for the Service of the Island against a Foreign Enemy, but they would effectually hinder the Possibility of more Rebellions from your Negroes, which you find you are still in Danger of, and yet will take no Steps, no cautionary Measures to prevent, notwithstanding what you suffer'd before the late Rebels submitted in 1739. I am told it did not cost the Country less than ten or twelve Thousand a Year in Parties before that Time, besides the Lives of some Hundreds of white Men in the course of a few Years, who were harrass'd to Death, not many kill'd, but dying by mere Fatigue in that hard Service; so that the Island must have been almost depopulated or ruin'd by this Time, if that Accident had not happen'd. What has been, may be, nay, must be, in the loose undisciplin'd Manner, in which all Things are in this Island. Then, you wou'd wish for my black Sons of *Hydra*, then, more than one Negroe in ten would be wanting, to be employ'd in your own Defence, and the Pursuit of the Rebels; so many at least would be taken from your Plantations and sent into the Woods, and yet they would do no good, and yet they would be sent, to seem to be doing something, or to put some Money perhaps in some-bodies Pockets. Many of them would desert to the Rebels, the others would not be hearty or obedient, and all for want of being duly prepar'd by some such Regiment as I propose. Don't you know that it happen'd so formerly? Did any Party hardly ever go out that did not add some Recruits to the Rebels? Awake, for Shame, ye Planters awake! I will not trouble you or myself to show that even in Point of present Profit in the meer Plantation-way, one trusty Man that look'd after ten, would make those ten do twice the Work they do now; for this must be evident at first View, to any one that ever saw Negroes work, unless in some very few Plantations: And besides, I am quite tir'd, and desire to adjourn the Debate.

P. With all my Heart, adjourn, for I am quite tir'd too.

The Dialogue continued.

P. I Have been talking since with some of my Brother Planters about your Notion of hindering Slaves from being bred to Trades, and they are almost all to a Man, tooth and nail against it, and no one more so than a Gentleman whom you must allow to be very publick-spirited, entirely disinterested, and extremely clear-headed.

- O. I know who you mean; he has surpriz'd me much when I have talk'd with him on the Subject; but there is no one in the World, that has not some Prejudice, which there is no Possibility of removing. He knows he can't now get white Tradesmen as often as he would, and that if he had not Smiths, Carpenters and other Tradesmen of his own, his Mills would very often stand still: But he doth not, I think, consider enough what it is owing to, and the Difference there would be as soon as my Law took place. There would then be enough free Tradesmen to be had, before his own could die away;—now a few Freemen are bred to Trades, the whole Business being ingross'd by a few Masters of Slaves, who find such Profit in teaching them Trades. But that pernicious Power being once taken away, you would soon have Freemen enough of one Colour or the other, for all your Trades. There are the Negroe Towns, which would supply you with many Children fit for some Trade or another. They would then be sought after, now no-body will care to take them as Apprentices, when he can get so much by teaching his own Slaves. The breeding the wild Negroes to Trades would have another good Effect in assuring their Obedience. The Children would be in a manner Hostages for the Fidelity of the Parents; and they would besides be taken by Degrees out of that savage Way, and made useful to the Community. There is another Thing I would propose; I would open an Asylum for all *French* and *Spanish* Negroes, who should be declar'd free the Moment they touched the *Jamaica* Shore: This would afford you another Supply out of which Tradesmen might be got.
- P. But you could not do that, if we were at Peace with them; would it not be against the Law of Nations?
- O. If it be wrong and oppressive, as I think I have proved, to make People Slaves, it cannot be wrong to contribute to their Delivery, and give Refuge to the Oppress'd. The *Spaniards* have always done it by us whenever it suited them, as at *St. Augustine*, where all the *Carolina* Negroes have been always sure to meet with a good Reception. Our *Moskito-Shore* Negroes too, meet with a sure Asylum in *Guatemala*. It doth not suit the *French* to begin such a Practice, as they in *Hispaniola* have a greater Number of Negroes in Proportion to the *Whites* than even we have in this Island, and besides are remarkable for their Severity, and being to Windward our Negroes could not get to them.

Of this I am perswaded, whatever Nation in *America* declares first for Liberty, and absolutely abolishes Slavery, must be Masters of the whole Continent, or as much of it as they please. It was strange Stupidity in us to make the *Indians* Slaves;—I don't believe, when the Law that put a Stop to it took Place, there were above fifty in the whole Island, and they not good for much, and yet we got the Hatred of all the *Indian* Nations by it, being more odious to them than the very *Spaniards*: Whereas otherwise they would naturally on all Occasions have assisted us against them; and I am perswaded that in about some twenty or thirty Years hence, when all the Slaves we have of their Nation shall be dead, and the *Indians* will be sure they may rely on us, that we shall make the *Spaniards* Hearts ake, whenever we please to make a Descent on the Isthmus of *Darien*, or any other Part of the *West-Indies*. Could I but see, at the same time, the Regulations I have proposed, or better, take Place, one Free-man over every ten Slaves, each Free-man to have a fixed and sure Property in the Estate, no Slave punished arbitrarily at Caprice, but by the Consent of the Majority of five at least of these Free-men. Could I but see, I say, some such Regulations made, and no more Negroes (which I can never omit) to be imported for the Use of the Island, I should then think *Jamaica* as secure as *England*; your Lands would be doubled or trebled in Value, and this Island would be a Jewel in the Crown little inferior to that of *Ireland*.—How charmingly are we situated for Trade! Were a proper Convoy of Men of War to go with every Fleet of Merchant-men over to the Coast, between *Carthagene* and *Porto-bel*, we might hold a Fair there, and a rich one too, whenever we would, which would bring in Dollars and Dubloons, my Friend, to send to *England*, and refresh their empty Coffers.—But what is the Matter with you, you don't mind me?

P. I was thinking I own of your Treatise, and after all, seriously I think, upon considering the Matter fully, you would do better to suppress it;—do, let me send for a Candle and burn it; or, according to the Song, as a Man would serve a Cucumber, let me throw it away. I would not disparage your Performance, it is well seasoned enough, the Oil and Vinegar, Pepper and Salt, tolerably well mixed, nothing remains now in Form, but to throw it away; do, take my Advice, you cannot imagine what Trouble you will otherwise expose yourself to.

O. I don't care.

- P. The whole Island, instead of thanking you for your Care, should they suspect you for the Author, will have you in Abhorrence.
- O. I am resolv'd.
- P. You will repent.
- O. I'll die a Martyr first. Could *Caesar* and *Catiline* undergo such infinite Labours, encounter such immense Difficulties and Dangers, doing Mischief, and subverting the Liberties of their Country, for the Sake of Power only; and shall not I, do Good, to render the Miserable happy, to secure a Colony, and make it flourish, venture the Scorn, or utmost Malice of Mankind? I will die with Pleasure to carry such a Point.
- P. Always romantick and visionary! What the Devil of Similitude is there between the grand Scheme of those two, tho' wicked, yet great Commanders, for the Mastery of the World, and your future Project for the Regulation of a few Slaves. I warrant, great Sir, you think of dying fiercely at the Head of an Army like the one, or composing yourself with great Decency in your Fall like the other; your very Enemies applauding the Grace and Dignity with which you go off the Stage.—No, Sir, nothing like it,—all that will happen to you, is, that if you should happen to show your Head upon the 'Change, either at *London* or *Bristol*, or any great trading Town, the Masters of Ships, and others concerned in the *Guinea* Trade, will crowd about you, get you among them, hustle, squeeze, and trample you to Death, as some had like to have served Sir *Richard* for his Excise Scheme, if he had not been well supported by his *Scotch* Guards who were about his Person.
- O. I am not such a Stoical Coxcomb as you would make me, to be concerned about the Manner of my Death; the End one is in Pursuit of is the Thing, and since you drive me so hard, I must tell you, and if I am tedious, (as who is not who talks of himself?) you must thank yourself for it. I was always, even in my young Days, of a serious, melancholy Disposition; not such a Melancholy as was sorrowful, sour or uneasy, but such a one as had a Mixture of sober Cheerfulness with it, and was altogether pleasing and agreeable to myself, however gloomy it might appear to others. Now my Youth is gone, the Heat and Passions of Youth are gone too, and better Affections have taken Place. I find in myself an Inclination to do, and a vast Pleasure in doing Good. I cannot express to you the Pleasure I had when I first perceived distinctly this Inclination within myself; I hail'd, I welcom'd, I address'd myself to it, as if it was some other Being

or Spirit within me, and not a Part of myself. But I must own, I find my Inclination very faint and small; I have endeavoured wrongly, I think, to separate and refine it too much from a Desire of Glory, by which I may perhaps have render'd it purer, but certainly have made it weaker. I think indeed of doing Good, I muse about it, I will it, but it is but a bare Velleity, no strong Impulse, no Force driving me on; afraid therefore to check it, I give way to it as oft as it comes upon me, that by thus encouraging, I may at last improve it to something; I indulge in it, that it may grow by Indulgence; if I should check it I am afraid I should lose it, which I would not for the World. No, good Spirit! let me never lose thee, never resist thy sacred Motions;—to resist thee, is to resist, methinks, and sin against the Holy Ghost, for sure thou art the Comforter; thou hast made me happy. Lo! a Son of *Adam* is happy, happy to his own Heart's Desire; but thro' thee alone, without thee worse than the Beasts of the Field. O sacred Spirit, by whom I am ally'd to superior Natures, and even to the Supreme himself, take up thy Residence within me; possess me whole, drive away all base Inclinations, all corrupt Affections, all Fear, all Cunning, and every thing that is grievous to thy righteous Nature; fill me with generous Resolutions, and a noble Ardour to do Good; to do the Thing I ought, what is right and becoming my Nature. Oh! never leave, never abandon me; for without thy heavenly Light, it is Darkness all; dark, dark, dark, comfortless and dark! I will never offend Thee, never cease to follow thy divine Inspirations; I am determin'd, yes, where'er Thou lead'st Thy faithful Soldier, I will on; no Toils or Dangers shall obstruct my March.

[Here he went on with a great deal of rapturous Stuff, while the Planter was staring all the Time, till he began to recover, and went on.]

But I forgot myself, where was I?

- P. In the Clouds, or somewhere above them; how many Thousand Conferences have you had with *Gabriel* or *Michael*? I think *Mahomet* had ninety-nine Thousand in less Time.
- O. Well said my Friend, since you laugh at me, it is Time to give over—but will you go along with me to Col. ——— who has invited me to drink some *Burgundy* just come. After a Glass or two I shall forget my Scheme, and think no more of what will become of *Jamaica*, than you Planters do.

FINIS.

Samuel Nevill,
Mr. Nevill's Speech
to the House of Representatives
of the Colony of New-Jersey
(*New York Weekly Post Boy*, May 19, 1746)



NO OTHER British American colony experienced the sustained level of political conflict exhibited by New Jersey in the 1740s and early 1750s, rooted in disputes over land titles. In the mid-1660s, at the same time that the earliest English settlers, coming mostly from New England, were purchasing lands from local Indians and bringing with them to New Jersey a system of free simple land tenure, Charles II was granting the colony to a group of proprietors, who intended to grant land to settlers in return for payment of annual quit rents, and when the Crown assumed control of the government of New Jersey in 1702, in the process reuniting what had developed into the two separate polities of East and West Jersey, the proprietors retained title to the land. Sporadic altercations between settlers and proprietors over the validity of Indian titles and payment of rents occurred throughout the early decades of the eighteenth century, but they escalated dramatically during the 1740s when a younger generation of proprietors, mainly from East Jersey, aggressively sought to enforce proprietary claims to title and rents over more than 600,000 acres of land. In response, large numbers of landholders organized themselves into ad hoc bodies and used intimidation and force to frustrate proprietary efforts. These groups enjoyed considerable support in the New Jersey Assembly and among juries

in property cases, and proprietary interests repeatedly demanded the suppression of the rioters and recognition of proprietary property claims.

In the spring of 1746, in response to a petition from a committee of representatives from anti-proprietary groups asking for legislative action to secure their land titles, Samuel Nevill, an English immigrant lawyer who had inherited a share in the proprietary interest in East Jersey and, for a time, became an articulate spokesman for the East Jersey Board, spoke at length in the House of Representatives in opposition to the petition and in defense of proprietary claims and actions. Published in a New York newspaper shortly thereafter, this speech is one of the best publications to issue from this long controversy, not only vigorously arguing the proprietary case in this dispute, but also providing a reasonably good summary of the opposing view. (J.P.G.)

Mr. Nevill's Speech

to the House of Representatives of the Colony
of New-Jersey, on the Second Reading of
the Petition, from a Number of Persons,
stiling themselves Inhabitants chiefly of the
Northern Part of the Province of New-Jersey,
on Saturday the 26th of April, 1746.

Mr. Speaker,

I look upon the Petition now read, as *a scandalous, false, abusive and inveterate Libel*, upon a Set of Gentlemen who are more immediately under the *Protection* of his Majesty, as will appear by the Instructions given by the Crown, to the several Governors of this Colony, ever since the Surrender of the Government; I mean, Sir, the *Proprietors of East New-Jersey*, who are by the Petitioners traduced as guilty of *Unjust Molestation, Virulent Oppression, Pretenders to Propriety, Invaders of the Rights and Properties of the People, and Encroachers upon the Heathen and Indian Natives, and True Proprietors of the Lands, under whom the Petitioners claim their Titles and Rights to their Possessions*; and thereby deny the Right and Property of these Parts of the *English Dominions to be vested in his Majesty*, and charging the Crown of *England with a Royal Fraud*, and as guilty of the greatest Injustice; for the Proprietors cannot come under these opprobrious Denominations, they having *honestly paid* for the Lands which they claim Title to, and fairly obtained *good and sufficient Conveyances* for the same from the Crown, as manifestly appears by the Records of this Province. How this Honourable House will treat this *Bold Attempt upon the Prerogative of the Crown*, by calling in Question his Majesty's *Right and Title to the Soil of New-Jersey*, who is the Proprietors immediate Warrantor and Defender, I must submit; and shall now only beg Leave (in Behalf of those injured Gentlemen, the Proprietors) to answer the said libellous Petition, Paragraph by Paragraph. The Petition begins thus.

We, our Ancestors, Predecessors, &c. having (as we suppose) made a Full and Just Purchase of sundry Tracts of Land (situate in this Province) of the Heathen Native Proprietors and Owners thereof, and of and from them, obtained Good and Lawful Grants or Deeds of Conveyance of the same, some of which Lands having been possessed by our Fathers and us some Scores of Years, we thought our Rights and Properties secure from Invasion, &c.

This, Mr. Speaker, I conceive is a *Notorious Libel* upon the *Crown of England*; for if the Purchases and Conveyances made and obtained by the Petitioners be *Full and Just, Good and Lawful*; then consequently the Purchases and Conveyances made and obtained by the Proprietors from the *Crown of England*, must be *Void and Unjust, Bad and Unlawful*, and of Course a *ROYAL FRAUD*. But that the *Crown* fully intended to make good their Right and Title to the Lands of *New-Jersey*, and to confirm them to the Proprietors, (to whom they had conveyed them) plainly appears by the Instructions given by *Queen Anne*, to the *Lord Cornbury*, the First Governor of *New-Jersey*, after the Surrender of this Government to the *Crown*. And this Set of Instructions, Sir, agreed on at that Time to be granted by the *Crown* as their *Concessions to the People*, may be justly deemed the *Magna Charta* or *Great Charter* of the Colony of *New-Jersey*; and to break through any of them, I esteem as an Infringement upon the Liberties and Properties of the People here; they being founded upon the *Royal Word* or *Grant*, and being Part of the Condition of the Surrender of the Government. I shall beg Leave, Sir, to read that Part of the Instructions relating to the Proprietors. [See the Substance in the Proprietors Publication, pag. 3, Column 1, Line 12 to 56.]

These Instructions, Sir, have always been continued to the several succeeding Governors, and I doubt not are continued to His Excellency our present Governor to this Day; and were also recommended by His Excellency the *Lord Cornbury* to the first Assembly of this Colony after the said Surrender, in his first Speech to them, which I beg leave to read from the Minute Book of the said Assembly, now lying upon the Table, in the following Words, viz.

I am likewise commanded to recommend to your Care the preparing one or more Bill or Bills, whereby the Right and Property of the General Proprietors to the Soil of this Province may be confirmed to them, according to their respective Titles, together with all Quit-Rents, and all other Privileges as are expressed in the Conveyances made by the Duke of York; except only the Right of Government, which remains in the Queen.

In Consequence of which Recommendation, the first Act that appears in the printed Laws of this Colony, and the first and only Law that pass'd here in that first Assembly after the Surrender as aforesaid, related to Indian Purchases; which I crave leave to read from the printed Book, it is entitled, &c. [See printed Book of Laws, Page 1. Chap. 1.]*

Now, Sir, by the Petitioners own Words it plainly appears, they have only Indian Purchases, which (by the Act of Assembly now read) are absolutely void. And as a further Demonstration of the Illegality of the Indian Purchases, I desire to read some Abstracts from the Proprietors Publication. [See Proprietors Publication, P.2 C.2, L.1 to L.9; D° L.17 to L.25; D° L.29, to P.3, C.1, L.5; D° C.2, L.13 to 29.]

This, I think, Sir, is a full Answer to that Part of the Petition; for by the *Concessions* and *fundamental Constitutions*, and by the *Laws of the Province* these *Purchases* are VOID. The Petitioners go on thus;

And whereas divers Persons, pretending Propriety in the said Lands, have, in the late Years past, given us great Uneasiness, by surveying great Part of our purchased Lands, with many Improvements and Settlements, selling some, and offering the rest to Sale, serving sundry Ejectments on the long possessed, as aforesaid, and threatning to dispossess all the rest, who would not either purchase their Lands of them (at a very dear Rate too) or become their Tenants, &c.

As to this Part, Sir, I say, that the Indian Purchase being *Void* (as before observed) they can have no *lawful Pretensions* to these Lands; and by what has been already read, I leave it to the Honourable House to judge, whether the Proprietors have not an *undoubted Title* to the same, and a *Right* to survey those Lands, and to bring *Ejectments*, or any other *Suits*, against such

* *The Substance of it is in the Publication of the Council of Proprietors of East Jersey, of March 25th, 1746, Page 3, Column 2, Line 13 to 29.*

N. B. *The Publication referred to in this Speech, is that Edition of it printed by it self, consisting of 11 Pages in folio.—The same Publication was reprinted in each of the three New-York News-Papers, divided into four Parts. The first Part, printed in the News-Papers of April 7th, 1746, contains the first three Pages of the separate Edition, here referred to.—The second Part, printed in Papers of April 14th, contains from beginning of pag. 4, to pag. 7, Col. 1, Line 31.—The third Part, printed in Papers of April 21st, contains from pag. 7, Col. 1, Line 30, to pag. 10, Col. 1, Line 49.—The fourth Part, printed in Papers of April 28th, contains from the third to the End.—By the Help of this Note, any one, who has only one of the Editions in the News-Papers, may nearly find the Places there corresponding to the separate Edition here referred to. Note also, That a Copy of that Edition of the Publication referred to, was delivered to each Member of the Assembly of New-Jersey, on the 9th of April, 1746.*

as wilfully withhold the Possession from them, and to make Sale of the said Lands at their Pleasure. But to go on with the Petition:

And withall to bring a Resurvey upon all the Lands, even such as were of themselves bought or patented, &c.

I beg leave to say, Mr. Speaker, That these poor ignorant People have been very much imposed upon by some designing Persons: For this Part of the Petition is an *absolute and wicked Falshood*; tending only to disquiet and terrify the People, and to amuse this Honourable House, by endeavouring to prepossess them in Favour of their unjust and illegal Proceedings. For I have for many Years past, Sir, sate with the Council of Proprietors of *East New-Jersey*, have examined all the Minutes from the Year Eighty-five (being their first Meeting in these Parts) to this present Time, and have never met with any Motion, or the least Hint of that Kind in their Minutes, or in their Books of Record; nor have I ever heard any of the present Council of Proprietors make mention of any such Thing, but on the contrary, when they have heard of such base Stories being spread abroad, they have all declared their Detestation of any such Practice. The Petitioners say further:

And make all Persons who have Patents, &c. pay unto them Quit-Rents, contrary to the True Meaning and Intent of the same, &c.

This is both False and Ridiculous in itself: Can it be supposed the Proprietors would be so foolish as to demand Quit-Rents where there are none due by the Patents? And where the Grantees hold their Land by no other Service but paying such Rents as are specify'd in their Patents, have not the Proprietors a Right to demand them? Can a Person renting a Farm a Hundred Years upon Lease, condition'd for the Payment of such an annual Rent as is specify'd in his said Lease, justly say he is injured, if his Landlord permits him to make use of his Rent Money for Fifty Years without demanding it? Or has the Tenant any Right to refuse the Payment of it when demanded? Or to claim the Farm as his own without any Acknowledgement, because of such an Indulgence? But to proceed.

And moreover to load them with Multiplicities of Law Suits (which as Experience shews) exposes, especially Men of quiet Minds, to exorbitant Expence and Costs as well as Fatigues, &c. By which Acts and Threats as aforesaid, which we imagine to be Unjust Molestation and even Virulent Oppression, &c.

The Proprietors in general have brought no Suits against these Men, nor threaten'd any: Two of that Board, *viz.* Mr. *Alexander* and Mr. *Morris* have brought Suits against some of them; their Reasons they set forth in the said

Proprietors Publication, from P. 7, C. 1, L. 31, to P. 10, C. 1, L. 26, to which (as every Member hath been presented with one of the said Answers) for Brevity Sake, I refer.

By that their Answer, Mr. Speaker, the House may see, that these Gentlemen have acted fairly and candidly by these People, have put them to no exorbitant Expence and Costs, as they alledge, nor even to one Farthing Expence: And it is well known, that in Cases of Ejectment, when no Defence is made, no Costs can be recovered; and if a Title is defended, and no Right appears in the Defendant, is it not reasonable he should pay the Costs? However, let us hear further;

We were animated to seek the Transmission of our Affairs and Circumstances (relating to our Invaded Rights and Properties) Home to England, and lay them before the King in Council, hoping in such a due and regular Way and Manner of Procedure, to have our justly purchased (as we suppose) and possessed Lands and Inheritances to us warranted, secured, and defended by the Laws and Liberties of our Nation: To which End and Purpose, we chose a Committee to act for us, &c. who have endeavoured (maugre all the Projections of the adverse Party) to cause a Supercession in that Affair, &c.

By those Gentlemen's Reasons, Sir, set forth in the Proprietors Publication, before mentioned, it plainly appears, that they were so far from hindering these People from transmitting their Circumstances home to *England*, or causing a Supercession (as they term it) in that Affair, that Mr. Ogden offer'd them fair Proposals for that Purpose, nay even to lend them Money, to defray the whole Charge of it. The Petitioners further say,

The Prosecution of our Design to Effect, tho' by slow, yet we hope by Regular and Sure Steps, &c.

I must confess, Mr. Speaker, that I know not what these Gentlemen mean by REGULAR and SURE STEPS, unless it be by a CLUB LAW, (which is now become a By-Word, and is too much encouraged by inconsiderate People) and that is a *Sure Step* indeed, to try a *Man's Property* by *Knocking out his Brains!* Or unless it be by *Flying in the Face of the King's Authority, Breaking Gaol, and Terrifying and Abusing the Officers and Magistrates, who endeavoured to put the Laws in Execution:* And these are such REGULAR and SURE STEPS, which must certainly end in the Destruction both of the Constitution and the Colony; and which, I am sure, this Honourable House will never countenance. The next is a very modest Paragraph, I must confess, especially considering the Petitioners are suing for the King's Mercy!

It is humbly confessed and declared, the Oppressions and Fraudulent Dealings we have met withall, from and by the Proprietors so called, their Threatnings, commencing of Suits, and carrying on such Prosecutions against us, on such Pretences as theirs is, and under such Circumstances as ours are, is the only Ground of that Exasperation, which hath been in this Part of the Country generally, and hath occasioned the late Stirs among us, particularly at Newark, &c.

This, Sir, is certainly an Original in it self, and deserves a more particular Remark! What do the Petitioners mean by the *Proprietors so called*? If they deny the *King's Supremacy here!* If they deny his *Right and Title to the Lands of New-Jersey!* If they deny the *Holding of Lands* in this Colony by the *Laws of England* to be *Good!* And so consequently deny *their Dependance* upon the *Crown of England* for their *Properties!* Then are the Proprietors *Pretenders*, and may be stiled the *Proprietors so called*: Property carries no double Face. Sir, it is either *Property* or *Not-Property*; and the Dispute now is, *whether the Property in the Soil of this Colony is vested in the Crown of England, or in the Indian Natives?* A dangerous Dispute to be disputed, Mr. Speaker! Again; *Carrying on such Prosecutions against us on such Pretences as theirs is, and under such Circumstances as ours are: On such Pretences AS THEIRS IS*, that is, an *absolute Conveyance* of all the *Lands in New-Jersey*, both mediately and immediately from the *Crown of England* to the *Proprietors* and their *Heirs* and *Assigns forever.* AND UNDER SUCH CIRCUMSTANCES AS OURS ARE, That is, a *Multitude of People*, treading upon the very *Heels of Rebellion*, if not actually engaged in it, (as is the *Opinion of the King's Attorney General*) and setting up the *Heathen Indians* as true *Owners of the Soil*, under whom they claim and so of Course their *Lords Paramount*; and this, Sir, they urge as *the only Ground of that Exasperation which hath been in this Part of the Country generally, and hath occasioned the late Stirs among them, particularly at Newark.* A very plausible Excuse truly, and worthy the Consideration of this Honourable House! In short, I pity the *Ignorance of the poor deluded People!* They seem to be in a *Maze!* And endeavouring to find their *Way out*, they plunge themselves further in, by signing these *Petitions*: But I think, Sir, the *Draftsman* (be who he will) is without Excuse; First, for craftily advancing such *traiterous* and *seditionous Tenets* to this Honourable House, in *Hopes* to have them countenanced here; and, secondly, from behind the *Curtain*, drawing these poor *People* into his *pernicious Principles*, and *dangerous Measures*, by inducing them to sign these *Petitions*. As to that Part of the Charge, viz. *The Oppressions and Fraudulent Dealings*

they have met withall from and by the Proprietors so called; I refer you to the Proprietors Publication already mentioned, P. 4, 5, 6, to L. 30, which I think a full and sufficient Answer. I shall now go on with the Petition.

For sure it is, should we attempt to enter and engage our Opponents in the Law here, who sees not the Difficulties attending our making a legal Defence, where the Interest in general is on their Side, rendering the Case so difficult with us and on our Side, That we cannot think any Cause between us and the Proprietors so called can have a fair and impartial Hearing and Determination, unless we suppose Men in their own Cause will act uprightly, against their own Interest, which both the Law of Nature and of the Nation rejects, as a Matter not to be depended upon, &c.

This, Sir, is a heavy Charge indeed! Laid upon the whole Body of the People; Governor and Governed! Judges and Juries! All Tainted or Corrupted! But by the Laws of England no Judge can sit upon his own Cause; and the Chief Justice (being concerned in Interest) cannot sit upon these Trials: Yet what should hinder a fair Trial before Mr. Justice Allen? or even before Mr. Justice Bonnel? for if the latter is concerned in Interest, it is certainly on the Petitioners Side of the Question. I was myself in Court, Mr. Speaker, last March was Twelvemonth at Amboy, when the Chief Justice absolutely refused to sit, even whilst the Common Rules were made upon these very Ejectments; and Judge Bonnel being sick at that Time, an Express was sent for Judge Allen, who came from Burlington to Perth-Amboy, only to sit alone in Court whilst the said Rules were enter'd. So cautious was that Gentleman, the Chief Justice, of leaving the least Room for Reflection that Way! And is it not both unfair and unjust for the Petitioners to suggest, that the Chief Justice would sit as a Judge in his own Cause; and therefore they could not have a fair and impartial Hearing and Determination? But we are highly obliged to the Petitioners for the great Compliment paid to us in the next Paragraph!

For which Reason we humbly and earnestly beg (having our Eyes to the Legislative Powers, from and by whom our Rights, Properties, and Privileges have their RISE and SUPPORT, &c.

This Petition, Mr. Speaker, cannot have its Spring from those poor deluded People; some crafty subtle Incendiaries must be at the Bottom of it; for this Parenthesis attributing to the Legislative Powers (which must be to the Legislative Powers to whom this Petition is directed) I say attributing to the Legislative Powers here the Rise and Support of their Rights, Properties,

and *Privileges*, is absolutely denying that they have any other *Source, Foundation*, or *Rise and Support*, and consequently denying their *Dependance* upon the *Crown of England* for their *Properties*, under which all our Land, by the *Laws of England*, must mediately or immediately be held: And should this Attribute conferred on us by the Petitioners, be passed over in Silence by this House (and thereby made their own) I leave it to their serious Consideration, whether it may not be esteemed elsewhere a *Consent to that Attribute*, which I am far from thinking this House aim at; and whether it may not be incumbent on us to demonstrate so to the World, in the most express and explicit Manner, I humbly submit. To go on,

That Way may be made for our Relief here, or Liberty of Application, by our Committee or their Substitutes, to the Head and Fountain of Justice, in order to seek the Redress of our Wrongs and Injuries we have already received, and prevent the like for the future, &c.

As to this, Mr. Speaker, Mr. Ogden's Letter in the Proprietors Publication, before mentioned, shews clearly, that the Petitioners have been no Ways hindered from applying to his Majesty, in such Manner as they thought fit: Nay, so far from hindering, that the best Advice that could be given, was given to them by Mr. Ogden, (as they themselves will find, when they advise with any good Lawyer.) And why have they not now, in near a Year and a Half, since these Men were animated against the Proprietors Title, I say, why have they not in that Time applied to his Majesty? And why they did reject all the Assistance offered them for that Purpose, they best know; but, I think, that Delay shews, that that Application is a mere Pretence. The Petitioners further pray thus,

And in the mean Time, that all our past Misconduct, If SUCH, and intemperate Zeal we have any of us been guilty of, may pass away under an Act of Indemnity, &c.

I shall be far, Sir, from opposing a Pardon to the Petitioners, but shall rather promote it, and heartily wish it may (if obtained) have the good Effect to reduce them to their Duty and Allegiance to his Majesty for the future, which they have certainly (tho' many of them, I believe, ignorantly) violated; but I wish they had shewn themselves to have been more deserving of it, by a Sense of, and Sorrow for the Crimes they have been guilty of. And indeed I am sorry to find them to betray their Ignorance so much, to this Honourable House, as to question, Whether appearing in Arms; terrifying the King's Subjects; breaking open Gaol, and rescuing the Prisoners

legally committed by the Governor's Warrant; assaulting and resisting the Sheriff and his Assistants, in the legal Execution of his Office, and beating and wounding them; I say, Sir, I am sorry to find them so ignorant, as to question whether this be a *Misconduct* or not. The Petition goes on;

And may all Writs and Processes against any of us, relating to our Liberties and Properties, have a Cessation, at least until such Time as his Majesty's Pleasure may and can be known concerning them, &c.

As to this, Sir, his Majesty's Pleasure is already known, *to wit*. That his Courts of Justice (both of Law and Equity) should be open for every one of his Subjects to have Recourse to; and its the Right of the Subject that it should be so. *Nulli negabimus, Nulli deferemus, Justitiam vel Rectum: We will deny to no one, We will delay to no one, Justice or Right*, is what the King is sworn to; and that Oath he keeps by keeping his Courts open: Nor can the King himself do what the Petitioners pray this House to do, to stay the Proceedings of his Court. If a Title be just and equitable (tho' not legal) there has the King appointed his Courts of Equity to be apply'd to, to stop Proceedings in Law, till the Equity of the Cause be determined; but that the King himself ever stopt the Course of the Courts of Law, I believe no Instance can be assigned, since *Magna Charta*, and if it could be, it would be only proving that King to have broke thro' his Coronation Oath. The Petition concludes thus;

And may it please the Honourable House, that this our Petition be laid before his Excellency in Council. And your Petitioners as in Duty bound shall ever pray.

This, Sir, I shall observe upon, in my Answer to the next Petition, because that concludes much in the same Manner.

I have only now further to observe, that five of the Names signed to this Petition, are the same with those who stand indicted by the Grand Jury of *Essex County*, for breaking open Gaol, and committing a very great Riot in the Town of *Newark*, and against whom the Governor's Warrant was issued; and above thirty more of the Names signed to this Petition, are the same with those recorded as Rioters, by the Magistrates of the County of *Essex*, as being aiding and assisting in the second Riot at *Newark*, when the King's Gaol was again broke open, and the Rioters apprehended, by Virtue of the Governor's Warrant, rescued, and the Sheriff Magistrates, Officers, and those assisting them in putting the Laws in Execution, beat and abused; and these very Fellows are either fled, or are screened from Justice by these

Petitioners. Therefore what Encouragement, Sir, this Petition ought to receive from this Honourable House, I must submit.

*Mr. Nevill's Speech to the House of Representatives of
the Colony of New Jersey, upon the Second Reading
of the Petition from the Rioters Committee, &c. on
Saturday the 26th of April, 1746.*

Mr. Speaker,

I must confess these Petitioners appear with a little more Modesty; this Petition is not so abusive and reflecting as the former; perhaps the Draftsman (for I verily believe them to be done by one and the same Person) considering these Gentlemen as a Committee or Superintendants over the rest, confined himself the more within the Bounds of Decency and good Manners; but nevertheless this Petition is a little tinctur'd with Sedition, as I shall shew by and by; and there are also many Absurdities and Untruths contained in it, as I hope I shall be able to make appear plainly to this Honourable House, by my Answer to the same, which I shall without more Delay enter upon as before, Paragraph by Paragraph. The Petition begins Historically, *viz.*

That his Majesty King Charles the Second, did, in the Sixteenth Year of his Reign, March 12th, grant to his Royal Highness James Duke of York, all that Part of the Country in North America, situate even from Nova Scotia Eastwards unto Delaware River, &c. with Power to govern and rule the Inhabitants thereof, by himself, or such Deputy Commissioners or Officers as he should appoint for that Purpose. His Royal Highness, by Commission to Richard Nicholls, Esq; (April 2d following) constituted him his Deputy Governor, to execute (within the above granted Territories) all the Powers granted to himself, &c.

Situate even from Nova Scotia Eastwards unto Delaware River, &c. These Bounds, Sir, (by the Petitioners described) of the Grant to the Duke of York, shew, That they either recite Facts upon Hearsay, or do falsely recite them; for were the Bounds so as they say, then would the Colonies of *Massachusetts* or *Boston*, *Rhode Island* and *Connecticut* be included in that Grant; but the Fact is not so: For the Truth is, That a Tract of Land, called *Pemaquid*, bounding on *Nova Scotia*, is thereby granted, then *Long Island*, then all the Land from *Connecticut River* to *Delaware River*. But to go on:

Said Nicholls (Anno 1664.) issued Proclamation, &c. setting forth, That the Lands should be purchased of the Indians, and that no Purchaser should contract for himself without Consent of his Associates, or Grant from the Governor: That the Purchasers should be free from Assessments or Rates five Years, and then should only be liable to the publick Rates, &c. according to the Custom of other new Planters and Settlers: And that all Lands so purchased and possessed, should be the Purchasers and their Heirs, to dispose of as they pleased, &c.

This Proclamation, Sir, I never saw, nor heard of before, and if any such was, I make no doubt (if they'll produce it) it will appear to be no less falsely recited than the King's Grant to the Duke of York: But what Relation those two Things have to *New-Jersey*, I cannot see; nor has the Petition told any Use they were to make of them: They clearly shew either the Falsehood or Injudiciousness of the Drawer of the Petition. However to proceed.

That his Royal Highness gave to Lord Barclay and Sir George Carteret the Province or Colony of New-Jersey so called, with Power of Governace, which caused a Supercession in the Commission and Powers aforesaid. Lord Barclay and Sir George Carteret, by Virtue of the Power invested in them, constituted Philip Carteret their Governor, who (Anno 1666) granted Licence to sundry Persons by Name and Company (under which your Petitioners claim) under his Hand and Seal, to purchase from the Indians within this Government, what Quantity of Land they should think convenient, Beginning by the Bay, &c. and thence Westward, or in any other Places in the Province. Pursuant to which your Petitioners Ancestors made several Purchases, by and with the Advice and Consent of said Governor Carteret, as is in the said Deeds or Grants asserted; the which were taken and acknowledged before him; the Testimony whereof he has left under his own Hand, &c.

What Licence this is, Mr Speaker, and to whom granted, I am at a Loss to know, from any thing in the Petition, seeing its not expressed, nor do they offer to shew this Licence, if any such was, nor tell us where it is recorded: But if any such ever was, I think I can be bold to say it's falsely [one line missing] refer to the Concessions of the Proprietors expressly, that the Persons shall comply with all the Directions thereof: And I think I dare safely challenge the Petitioners to produce any Licence from him to purchase, without such Reference to the Concessions; and if any such Licence be, and it has such Reference, I submit to this House how different a Light it will appear in from what by this Petition it is represented: For tho' they had made purchase from the *Indians*, it plainly appears from the Concessions, That that

was not to be their Title; but their Title was to consist of a Warrant, Survey, and Patent, at a *Half penny sterling per Acre*; and in the Second Concessions, in 1672, and Third Concessions, in 1674, it's expressly forbidden, That *Indian Deeds* should be taken in any other Name than the Proprietors.* The Petition Proceeds thus.

As the Inhabitants increased, &c. our Ancestors, their Associates, and some of us, were constrained to make further Compositions with the Indians, about their Lands, who (as they were the Native Owners, true Proprietors, and Possessors of the same) would not permit either Survey or Settlement thereon without a precedent Purchase made thereof, &c. Accordingly, (the Right to Purchase being vested in our Ancestors and us) sundry Purchases have been made of the Natives, &c. by those under whom we claim, and by some of our selves; as per sundry Grants or Deeds duly executed from March, 1678, to March, 1703, for sundry Tracts of Land, situate in the County of Essex, viz about Newark, and West of the Mountains unto Passaik River, and in the adjacent Parts and Places within this Colony, as namely Acquack, so called, Whipponung and Pesiponung, &c. may appear: All which Lands have been by us, our Associates or Ancestors, fairly purchased; and a great Part of them planted, settled and improved, for which we have paid Rates and Taxes, as an Acknowledgement to the Crown, &c. The which your Petitioners look upon as a just Foundation of a Title to them, against those especially, who have not been at any Expence in Purchasing, &c.

If the Petitioners Ancestors, Sir, had a Licence to purchase, and that License had a Reference to the Concessions, as before; yet, as the Concessions directed what should be the Title, viz. Warrant, Survey and Patent, and directed all *Indian Deeds* to be in the Proprietors Name, and as the Act of Assembly, of 1683, made it criminal to take such Deeds in any other Name than the Proprietors, how can they say that those Lands have been *fairly purchased* by their Ancestors, from *March 1678, to March 1703*? For if *fairly purchased, by License*, pursuant to the Concessions, the Deeds are in the Proprietors Names; if not so, and since 1683, they not only are not *fairly purchased*, but *Criminally*; and if *fairly purchased*, yet no Title (according to the Concessions) could they have, without Warrant, Survey and Patent, at a *Half penny sterl. per Acre*, as the Concessions direct. And I make no doubt,

* Copy of one of Governor Carteret's Licences to purchase of the Indians & as recorded in Lib 1, Fol.9.

but that great Numbers of the Ancestors of the Subscribers to the first Petition, have Warrants, Surveys and Patents, for all the Lands that they were intitled to by the Concessions; and if they had them not, it was their own Fault. These petitioners say further,

Whereas Mr. *Isaac Tenna*, alias *La pierre*, hath requested my Leave, for the purchasing of a certain Tract of Land from the Indians, on the East Side of *Delaware River*, within this Government, with an Intent to inhabit and plant the same; These are therefore to permit and suffer the said *Isaac* to purchase the said Tract of Land from the Indians,—*Upon Condition, that he truly perform all such Acts and Things, as are contained in the Lords Proprietors Concessions*, and to be conformable and obedient to the Laws of this Province. Given under my Hand and Seal of the Province, the 24th *June*, 1666.

PHILLIP CARTERET.

1666, Nov. 4th, to *Eliakim Wardell*, and Associates a like: Lib 3, Fol. 10.

1666, November 15th, to *Peter Alricks* a like, Lib. 1, Fol. 6.

1668, June 25th to *Peter Jeggow* a like, Lib. 1, Fol. 21.

1668, September 10th, to *Luycas Peteres* a like, Lib. 1, Fol. 21.

1668, September 10th, to *Jan Jansen* a like, Lib. 1, Fol. 22.

1669, April 3d, to *Michael Barron* a like, Lib. 1, Fol. 33.

1671, November 8th, to *Israel Helme* a like, Lib. 1, o. e Fol. 37.

1672, December 7th, in second Concession, Rule that all Lands be purchased of the Indians by the Governor and Council, in the Name [one line missing].

And since it appears, both by the Law of Nature and Nations, that the Indian Natives had a Right to and in the aforesaid Lands, and could not justly be deprived of them, without a voluntary Agreement to part with them; and seeing Purchases of them must necessarily be made, in order to vest the Fee and Soil in the Crown, consonant unto the Practice of even all his Majesty's Subjects (or the most of them) in these Parts of his Dominions, the which is manifest by the Directions given by his Majesty, and Licences granted by his Governors unto this End: And who sees not (saving only such of whom it may be said that the Dust of earthly Profits has put out their Eyes) how directly and necessarily it will follow, That those of his Majesty's Liege Subjects, who have duly made such Purchases, may truly be accounted and acknowledged the Lawful Owners and Proprietors of the Land so purchased. Hence therefore we having made the Purchases, Settlements and Improvements, and paid all due Acknowledgements as aforesaid, even for some Scores of Years, &c. do humbly conceive ourselves justly

intituled to the quiet and peaceable Possession and Enjoyment thereof; the Claims and Pretences of our Adversaries notwithstanding, &c.

Upon this, Sir, I shall beg Leave to read so much of the Proprietors Publication as is upon this Head, viz. P.10, C.1, L.49, to the End; and P.6, C.2, L.5, to 50. To go on with the Petition:

And consequently the commencing of Suits, and carrying on such Prosecutions by our Adversaries, on their Pretences, and under our Circumstances, your Petitioners humbly conceive must be looked upon as unjust, illegal and oppressive. But so it is; (not to mention the Circumstances of this Colony, and the Officers thereof, many of whom appear our Opponents, as being on t'other Side of the Question) notwithstanding the Justice and Equity of our Right and Claim, and the unjust and unwarrantable Pretence of the contrary Party, divers Persons, seeking to make Gain of our Improvements, as well as Lands, claiming by mean Conveyances from the said Duke of York, without so much as a Pretence of any Purchase having been by them (or any others for them made, or Grants obtained of or from the Native Owners and Proprietors, have commenced Multiplicities of Suits against many of us for Recovery of our Possessions and Monies, whereby they have obtained some Possessions and more Judgments; the Consequence of which is, and will be, (unless a Way may be found and taken for our Redress) the Depriving us of our Lands and Livings, which we have spent our Strength and Substance upon, and burdening us with heavy Costs, Charges and Expences, to the Subversion and Destruction of our Families with respect to the Comforts of this Life: And in Addition to all this, threaten us further, unless we comply with their Terms, which are (in our Apprehension) extremely severe, &c.

In speaking to the other Petition, Mr. Speaker, I have said, That the General Proprietors are not privy to the Suits complained of; and as to the Suits of two Persons who are Proprietors, I then referr'd to their Answers on that Head, which I think are very sufficient to shew they have been both kind and candid in all their Transactions with those People, and done nothing illegal, unjust, or oppressive; if they have, it will lie on the Petitioners, to point it out: For the Using the due Course of the Law to obtain what one believes is his Right, tho' it should even not prove so, I believe was never till now deemed *Illegal, Unjust or Oppressive*. As to burdening them with heavy Costs, Charges and Expences; by those two Gentlemen's Answers it appears, they have not been as yet put to One Penny Costs, nor had they (as I believe) thoughts of doing it. How far those People's Conduct will oblige

the Gentlemen to alter their Minds on this Head, is what I don't know. The Petition says,

It would even fill a Volume to enumerate all our Grievances; may your Petitioners crave Leave to refer you to what is inserted in Mr. Parker's Post-Boy of Feb. 17th, and in the Petition preferr'd by our Constituents, setting forth the same, in which we concur, &c.

As to Mr. Parker's Post-Boy, Sir, I humbly conceive the Proprietors have given a full and compleat Answer to it, whereto I refer for Answer to that: However, I beg leave to observe here, That this Paragraph shews, that these Petitioners concur with the Rioters, in every thing they have done and publish'd; and therefore this Committee (as they are pleased to stile themselves) are no less tinctur'd with the Spirit and Seeds of Sedition, than their Constituents, as they call the Rioters; notwithstanding their fair and specious Pretences to the contrary; for by their own Expressions it plainly appears, they are Aiders and Abettors of these Riots, though perhaps they may not personally appear publickly in them. They proceed thus:

And upon the Whole, we beg Leave to observe, That should we attempt a Composition with our Adversaries or Opponents, meaning the Proprietors, there will remain a perpetual Uncertainty who are the True Owners and Proprietors, even by and according to their own Scheme; not to insist upon their putting off False Wares, (we mean) Sham Titles, bare Quit-Claims, for Lands unappropriated, and not so much as located, for and under a good Title to the Premises, even such as shall be secure to the Grantees, their Heirs and Assigns. Many Examples and Instances we might bring as Evidences hereof; and shew, how the poor, weak, simple and ignorant Men have been beguiled, &c. And likewise when diverse of our Associates, who to quiet themselves, and prevent great Loss, Trouble and Charge in the Law, (having none other Refuge or Remedy) have purchased of some such pretended Proprietors, &c. yet have been forced to purchase again, or meet with the same [two lines missing].

By allowing, Sir, any other than the Crown of England and its Assigns, to be the true Owners and Proprietors, a perpetual Uncertainty would evidently follow who were the true Owners and Proprietors; and for that Reason it was, that by the fundamental Concessions, all Deeds from the Indians were to be in the Proprietors Names; for that Reason it was, that the Act of Assembly of 1683, made it criminal and seditious, to take Deeds from the Indians in any other Name; and for that Reason it was, that the first Act in our printed Book of Laws, made all Indian Deeds void, if the Right of

the Crown was not purchased in six Months after that Act was published; so that the Constitutions and Laws of this Province, have sufficiently provided against the Uncertainty in Titles, that the Petitioners would bring into this Colony. It appears, Mr. Speaker, that *Sedition* was the natural Effect of such *Uncertainty*; and therefore they by Law appointed the Punishment of *Sedition* to be inflicted on those, who should attempt to introduce such *Uncertainty*, as Breakers of the King's Peace, and the Peace of the Province. As to the Proprietors putting off *false Wares, sham Titles, &c.* it appears by the Proprietors Publication, that this is altogether a Calumny of them, and can be only true of Doctor *Jacob Arents*, who is no Proprietor, and possibly of some other *Impostors* among the *Petitioners*, pretending to be Proprietors: But are the Proprietors to blame on Account of those Pretenders? Have not they done their Duty, by forewarning the People of *Jacob Arents*, by Name, six Years ago, [See Proprietors Publication, pag. 5.] and of such Pretenders? Did not they there point out a very easy Way to discover such Pretenders? And can they say the Proprietors ever countenanced or approved such Pretenders? Or that any other ever came to their Knowledge, save only *Jacob Arents*? But to go on with the Petition;

Wherefore we must, together with our Fellow Men and Brethren, as Partakers with them in the like Sufferings, humbly pray our deplorable Circumstances may be duly weigh'd and considered, that Way may be made by our Legislative Powers, for our Relief and Help, even by giving, granting and confirming to us, that which has been, and now is, or should be, the undoubted Right and Privilege of every true English Subject, under Oppressions and Distresses, freely and without Let, to seek (and use all lawful Means to obtain) Redress of his Wrongs and Grievances: This is what we singly and sincerely aim at, viz. By humble Application to his Majesty in Council, petitioning him of his Royal Goodness, to determine for us, in such Manner as may be most consistent with Law and Right, &c.

As to this Prayer, Sir, I hope every English Subject is possessed of it, viz. *freely and without Let, to seek (and use all lawful Means to obtain) Redress of his Wrongs and Grievances!* Has not his Majesty appointed Courts of Justice, both of Law and Equity, in this Province for that Purpose? Have not those Courts been open for every one? Has not his Majesty appointed the proper Appeals to himself in his Privy Council, from all those Courts, to redress what Errors they may happen to commit? And have those Courts done any Thing to hinder the Petitioners, or any of them of the common

Course of Justice; or ever been shut against them? And as the Petitioners are intitled to that Course of Justice, appointed by his Majesty in those Courts, and in that Method; so I hope, Mr. Speaker, the Proprietors and all other Subjects of this Province, are in like Manner intitled; and that none will be so bold, besides the Petitioners, to attempt the stopping the Course of Justice in those Courts: If the Petitioners will apply to his Majesty in the first Instance, without bringing their Cause before him, in the Method he has appointed, *viz.* by Appeal from one of the Courts here, has any Body hinder'd them from taking that Course if they thought proper? It appears by Mr. Ogden's Letter (as I mentioned before) that he even offered these Petitioners (the Committee) to lend them *a sufficient Sum of Money for that Purpose upon their own Bond.* This Petition concludes thus;

And may the Honourable House (if in your Wisdom it is thought expedient) lay this our humble Petition before his Excellency our Governor in Council. And your Petitioners, as in Duty bound, shall always pray.

John Condict,	Nathaniel Wheeler,
Samuel Baldwin,	Samuel Harrison,
Michael Cook,	Jonathan Pierson,
Michael Vreelandt,	Nathaniel Camp.

I shall be far from agreeing, Sir, that this House should be the Petitioners Messengers, to lay these Petitions before the Governor in Council, lest it should look as an Approbation of several Things in them, improper to be said to this House without shewing a proper Resentment, as particularly *the attributing their Properties to have their Rise and Support from us,* which *Attribute* is only justly due to his Majesty, our only Supreme Lord, George the Second, (whom God long preserve, and keep free from all rebellions, dangerous Riots, and tumultuous Assemblies, all which threaten the Subversion of our Happy Constitution, and may render us an easy Prey to our Enemies) and all that we can do is, to enquire into and present the Grievances of the People we represent, (when any such really appear before us) and sue for Redress.

Upon the Whole, Mr. Speaker, by all that has been said, I think it plainly appears, that the Petitioners have sate themselves down, and taken Possession of several Tracts of Land, without any real Right and Title to the same: and have occupy'd and taken the Profits of them so long to [two lines missing] Proprietors thereof, that they now begin to think in good earnest,

that they have the best Right to those Lands, and that the true and *bona fide* Landlord is a Cheat! and an Impostor! And when he comes to seek for his own, he is branded as an Invader of their Liberties and Properties *truly*, and charged with unjust Molestation and virulent Oppression: These are *Regular* and *Sure Steps* indeed to acquire *Estates!* I must own, Sir, I have been very long and tedious in this *Affair*, but as there has been a great Misunderstanding and wide Difference subsisting between the Proprietors of *East New Jersey*, and some Sort of People, I could not be silent, and suffer such gross Absurdities, and manifest Untruths to be imposed upon the Honourable the Representatives of the Colony of *New Jersey*, without endeavouring in the fullest and most open Manner, to set every Circumstance in a clear Light, supported by the Records and Matters of Fact; and I think the Petitioners have offer'd neither in Support of their Pretences. Wherefore, and for that this House is no Court of Justice to examine into Titles to Lands, or any Property in Question between his Majesty's Subjects, (tho' we have Right to enquire into the Mal-Administration of Courts of Justice, if any such were complained of, but no such Thing appears here) I say, for these Reasons, I humbly move, that these Petitions may be rejected.

Yet nevertheless, Mr. Speaker, to shew that I am entirely free from Resentment, and in Compassion to a great Number of poor People, who may have been seduced into the late Riots thro' their Ignorance, and for restoring the Peace of the Colony, I further move, that this Honourable House would be pleased to apply to his Excellency the Governor (either by a short Address or Message as they shall think proper) to extend his Majesty's Mercy to those People by a general Pardon, under such Restrictions and upon such Conditions, as to his Excellency shall seem proper.*

* N. B. The great Number of *&c's* in these two Petitions, are not owing to any Omissions of the Words of the Petitions, but to a Peculiarity in the Stile of the Drawer: The like may be seen, in the Paper printed in the *Post-Boy* of *February* 17th, referred to in the last Petition, where there are 21 *&c's*; but these two Petitions are still more plentifully graced with them, as their Number amounts to 38.

“A Freeholder,” “A Native of Maryland,”
“Americano-Britannus,” “Philanthropos,”
and Anonymous
(*Maryland Gazette*, 1748)



IN 1748, a dispute broke out in Maryland when the assembly asserted its statutory power to authorize the county courts to levy a tobacco tax. However, instead of using the funds to maintain the existing courthouse, Prince George's county put the money toward the construction of a new one. A series of pseudonymous essays signed “A Freeholder,” “A Native of Maryland,” “Americano-Britannus,” “Philanthropos,” and Anonymous ran in the *Maryland Gazette* debating the legitimacy of the assembly's delegation of its taxing power to the counties. Taken together, they constitute one of the most comprehensive discussions of the nature of constitutionalism in British America.

The first essay, by a “Freeholder,” argued that no assembly had a right to delegate its taxing power because the people's right to consent to taxation was a fundamental part of the constitution and could not be violated by a statute. If the people's representatives gave up this right to a county court, it could in principle tax as much as it wanted, thereby breaking the “original Compact” and loosening the “People . . . from all Tyes of Obedience.” “Americano-Britannus” supported the “Freeholder,” drawing on “Mr. Lock” to argue that the constitution derived from “*an original Contract betwixt the People and their Rulers*,” which “alone . . . could give Beginning to any lawful Government in the World.” For the Maryland assembly to delegate its power to tax to a county court, he declared, “would be to all Intents and Purposes, giving away *an absolute Power over the Estates of the People*, which Mr. Lock

calls a *Breach of Trust in the Legislative*; or in other Words, a Breach of the *Constitution*." Two essayists defended the assembly's delegation of its taxing power. "Philanthropos" asked "how a Law could be supposed to strike at the Liberties of the People; which is made by the Consent of the People," while a "Native of Maryland" contended that there was no danger in the assembly delegating its taxing power, for if the counties violated the "fundamental Laws of the Kingdom," the people could "return to their original, State of Nature, and chuse a new Government, or resume the old One." (C.B.Y.)

A Freeholder, *Maryland Gazette*, January 20, 1748

Mr. GREEN,

As the Press has always been a Friend to LIBERTY, I hope you will give the following Order of Court a place in your Paper; as, at other Times, I shall trouble you with some Observations upon it. I shall endeavour to shew with what Views it was made; I shall consider how far it is either founded on Custom, or our Acts of Assembly; and I shall enumerate the dreadful Consequences of such a Power in our County Courts.

I doubt not but I shall be censured for making thus bold with Magistracy, but as I have no Quarrel to Names or Persons, I can give the less Offence. The thinking Part of Mankind will allow, that tho' Magistracy be a great and honourable Trust, yet, it is a Trust which ought to be bounded with many and strong Restraints; and every Violation of it, the smallest Violation of it, ought to meet with a proportionable Punishment, because Indulgence to the least Faults of Magistrates may be Cruelty to a whole People.

It is the Bulwark of a *British* Constitution, that our Lives and Properties are secured by Laws, made by ourselves and executed by our Magistrates; and whenever these Laws are wilfully or ignorantly misconstrued, to serve certain Purposes or byasd Ends, and not the Good of the People in general, our Constitution affords a Remedy, a tried and practicable Remedy; and while I only contend, that no Steps ought ever to be taken by any Set of Men whatever, to destroy, or even frustrate that valuable Branch of Liberty left in the People, a Liberty to lay their Wants and Complaints, by Petition, before the Legislature, I doubt not but the Prayers and good Wishes of every honest Man will attend me.

A FREEHOLDER.

Anno Domini. 1747.

A Freeholder, *Maryland Gazette*, February 10, 1748

Mr. GREEN,

Agreeable to what I promised in my last, my present Design is to be a little more full and explicit, in considering that very extraordinary Order of Court, which, by means of your Gazette, was exposed to the Public; and indeed,

never did any Thing happen in the Province, of more public Concern; for tho' the Dispute, perhaps, may have taken Rise originally, from the interfering Interests of particular Persons, yet if the Steps taken by one of the Parties, be such, as supposing them to be legal and valid, strike at the Foundation of all Liberty, it is no longer the Cause of private Persons in a particular County, but becomes the Cause of every Man in the Province, who is not inclined to give up those Rights and Privileges, which secure to him his Property, from an unlimited Power contended for in County Courts, to Tax what they please. I call it *an unlimited Power*, because the Interpretation given to that Clause of the Act of Assembly from which they claim their Power, is without Limitation, and gives them the same Power to levy Five Hundred Thousand or Fifty Millions, as One Hundred Thousand. This Consequence is not deny'd by the Favourers of the Tax, and they insist upon it, that such a Power is really lodged in every County Court by that Act. Now, that every Man may judge for himself in this Matter, the Act is to be found in the 32d Page of the Body of Laws, entituled, *An Act empowering the Commissioners of the County Courts, &c.* The first Clause of that Act, is the Cause refer'd to; but before I enter upon what I apprehend to be a fair Explication of the true Meaning of that Act, it may not be improper to make a few general Reflections.

I thought it had been a Thing notoriously known by every Man, who thought himself qualified to act in a public Capacity, that it was one of the most distinguishing Marks of *British Liberty*, nay the very Soul and Essence of it, for the People, or (which is the same Thing) the Representatives of the People, to be possess'd of the Power of keeping their Purse in their own Hands, to be the sole Judges how much is necessary to be raised upon them, and to direct the Disposal of it. Of this the House of Commons have always been so well appriz'd, that whenever any Bill relating to raising of Money, has been offer'd them by the House of Peers, they have never failed to resent it with Indignation, as an Encroachment upon their inherent Rights. If this then be a fundamental Part of the Constitution, as I think won't be deny'd, a Question will arise, Whether a Parliament (or in *America*, an Assembly, for I presume none will pretend to make any material Distinction) has a Power, *i.e.* a Right to enact any Thing contrary to a fundamental Part of the *British Constitution*? For my own Part, I would not take upon me to answer this great Question, if it had not been often resolved in the Negative by some of the greatest Statesmen *England* ever saw. They say it is a vulgar Mistake, to imagine that a Parliament is Omnipotent, or may do any Thing, for that they

can't alter the Constitution. There are certain Powers, Rights, and Privileges invested in every Branch of the Legislature, by the Constitution; no Part of which can be given up by any of them, without breaking thro' that Constitution, which is the Basis of the whole. To instance in the Case in Hand: As all Money to be raised for the Use of the Public, must come from the People, the Wisdom of our Ancestors thought it but reasonable, that the Power of judging the Sum necessary, and directing the Application of it, should be lodged in the People; and after many brave and bloody Struggles, in Opposition to arbitrary Impositions, they have handed down that inestimable Privilege to us. But seeing the People cannot act collectively in a legislative Capacity, they are obliged to choose Men to represent them, and act for their Interest, in exercising the People's Share in the legislative Power. Is it in the Power then of these Representatives to give up this antient Privilege of the People? By no Means; for this evident Reason, because in that Case they would not act for the Interest of their Constituents, but expressly against it; which it is absurd to suppose their Constituents gave them any Power to do: They sit as Representative of the People, not to destroy their just Right, but to preserve them, we Believe that in such a Case, the original Compact (which in the very Nature of free Governments must be supposed), would be broken, the People loos'd from all Tyes of Obedience (so much Power being granted, and so much Obedience due, only on Condition of so many Privileges enjoy'd); and as a very great Author expresses it, the Government dissolved of Course. Now, according to this short View of the *British* Constitution, in Defence of which, the greatest Authorities in *England* shall be produc'd, if demanded, the Assembly *could not*, agreeable to the inherent Rights of *British* Subjects (and it can never be supposed they would act in Opposition to these) invest a County Court with an unlimited Power of Taxing the People at Pleasure, on every frivolous Pretence that they may think proper to call a *public Charge*; because this would be infringing an essential Part of the Constitution, taking from the People the greatest Security they have for their Properties, and conveying that important Power of Taxing, into another Channel, where the People have neither Power or Influence.

Let us suppose, without granting (for perhaps we may deny some of the Particulars before this Subject is concluded) let us suppose, I say, that the Majority of the Freeholders of *Prince George's* County desired that the Court House should continue at *Marlborough*, that there was an absolute Necessity for raising One Hundred Thousand Weight of Tobacco at this

Time, to repair it, that from the known *Wisdom and Learning, Impartiality*, and strict Honesty, of the present ruling Magistrates, nothing was to be feared from the Exercise of such a Power, while in their Hands; and certainly nothing is to be apprehended from the worthy Gentleman that at present deservedly holds the Reins of Government in this Province: Yet, in Times to come, an avaritious Governor, designing to enrich himself out of the Spoils of the People, may fill every Bench in the Province with a set of Tools for his Purpose; some Pretence or other, under the Title of a *Public Charge*, will never be wanting to levy large Sums; these Magistrates too are to appoint Commissioners to lay it out, and if they render satisfactory Accompts of the whole of the Jobb, to the Governor and Council, they are accountable at no other Tribunal. Here then is a Door open'd that leads into an endless Labyrinth of Misery: For I desire to know where are the poor, groaning, oppress'd People, under these Circumstances, to find Relief? The Act of Assembly, which it is alleged gives this unlimited Power of Taxing to a County Court, is one of these which are called perpetual Laws, and cannot be repeal'd without the Concurrence of all the Branches of the Legislature; the Lower House might indeed remonstrate and complain, but any one may easily judge what Redress would be given in such a Case. I confess the supposition made is a very improbable one, but it is sufficient for the Purpose it was adduc'd, that it is a possible one; for the People may be happy under the most arbitrary Governments, when a good and wise Prince happens to sit on the Throne; but true Liberty consists in being secured from the wicked Impositions of a Tyrant and Oppressor.

If this Privilege then of the People to tax themselves, be the greatest Security they have for their Properties; if it be a fundamental Part of the *British* Constitution, ought it not to be inviolably preserv'd? And can any Man be called a Lawyer, though he makes the Law his Profession, so far from understanding the Laws of his Country, as to be shamefully ignorant of the Essentials of its Liberty, having wriggled himself into the Favour of a weak Magistracy, shall take upon him to mislead them in a Matter of the utmost Importance, by giving them a strain'd Interpretation to a Law in direct Opposition to the Fundamentals of the Constitution? Such an Interpretation as sets a whole County in an Uproar, makes the People think their Liberties in Danger, and engages several Hundreds of the Freeholders (as will certainly be the Case) to join in a Petition to the Assembly for Redress! In a Word, such an Order of Court will be a lasting Monument of their Fame, and be an

unanswerable Instance, how necessary a good Education, and Knowledge of Men, is to make a wise Man, at least a Man fit for Business.

But I have already exceeded the Bounds I had prescrib'd myself in this Letter, and therefore reserve the Application of the Act of Assembly with whatever else I have to say upon the Subject, to another Occasion. In the mean Time, I am, &c.

A FREEHOLDER.

A Freeholder, *Maryland Gazette*, March 16, 1748

*Nam tua res agitur, paries cum proximus ardet.*¹

HOR.

Mr. GREEN,

I Believe you never gave any Thing a Place in your Papers, that has afforded Matter of more Speculation than those two Letters of mine lately published. The favourable Reception they have met with, the Author has not the Vanity to attribute to the Merit of his Performances, but altogether to the Subject they treat of; for no Man of Sense will think the worse of a good Cause, because it happens to have a weak Advocate. It is indeed a noble Subject, and putting the paltry Dispute betwixt *Marlborough* and *Bladensburg* out of the Question, such a one as concerns the Liberties and Properties of every Man in the Province. The Unprejudiced Friends of Liberty, I understand, with the *Freeholder* Success, and that he may acquit himself manfully in the task he has undertaken: He promises to do his best. Those who are obliged to oppose him, in order to defend themselves, have taken various Methods according to their different Excellences. Some have *bluster'd* and *sworn* heartily at the *Author*: Others have mounted a Note higher, and *threaten'd*: The *Men of Learning* have found Fault with the *Stile*: And the *bright Gent's* have tried to be witty on the Occasion. Before I resume the Thread of the Discourse, I beg Leave to be indulged in a word or two to each Sort. The *Blusters* may pass *Scot free*; They are generally a very harmless sort of People, that deal only in words, and these for the most part without Meaning.—But the *Menacers*,—a daring Race, who think themselves above censure, and, to deter People from it, impotently brandish the Rod of a *little saucy Authority*, only shewing what they would do if they could;

1. ["When the neighboring wall is burning, your interest is involved."]

these Men are to know, that the *Freeholder* is not to be scar'd; he despises their Threats, and gives them free Liberty to sue the *Printer*, when ever they please. He would think himself peculiarly honour'd, in being call'd upon to defend the LIBERTY OF THE PRESS, as well as those other Liberties of his fellow Subjects, in Defence of which he has drawn his Pen. The Law, he hopes, will prove his Protection in both, as neither he nor his Friends propose to seek any other Redress, than what is to be obtained in a *fair, open, and legal Way*. This he looks upon to be the *Birth-right* of every *freeborn BRITISH* Subject, and is determined not to be bulli'd out of it. Hard would be the Condition of the People in *Maryland* indeed, if an Author was liable to be ruin'd (as has been threatned) for calling in question the Legality of an order made by a Country Court, or for supposing the Justices concerned in it *weak Men*; whilst the Subjects of *Great-Britain* at home, are at Liberty to examine and censure the Behaviour of the greatest *Ministers*; nay, frequently Acts of Parliament itself, as we see daily Instances of in the *Magazines*, and other public Papers. How far the Power of Magistrates in *France* or *Spain*, and other absolute Governments, to *ruin*, may reach, I will not determine; but if ever any Attempt of that sort is made within the *British* Dominions, I hope those who make it will soon be convinced, to their Cost, that the Power of Magistrates is limited to the public Good, and does not extend to the doing of private Injuries. As to the *Men of Learning*, it may not be amiss to give a Specimen of their Criticisms: There was an Expression in the first Letter, *viz. wilfully or ignorantly misconstrued*; Now, says the *learned Commentator*, this is downright Nonsense, because it is impossible for a Man to do a Thing *both wilfully AND ignorantly*; this subtil Remark was seconded by the whole Party, and contended for very warmly. I will answer for the *Critic*, that he did not commit the Blunder *wilfully BUT ignorantly*; for a very little Skill in *Grammar* would have taught him, that the Particle OR is properly a *Disjunctive*, and never used as a *Copulative*, but when absolute Necessity requires; that is, unless the Sentence would be Nonsense without it. It is granted, a Man may make a very good J—ce, {illeg.}—k, or Sh—ff, without understanding *Grammar*; but it really requires a little Knowledge of that sort to be a *Critic*. I would advise them therefore to give over criticising upon Language, for this seems to be the least of their *little Talents*; however, if (as it is said) they have applied to a certain *Domine*² (an

2. ["Pedagogue."]

old Cock of the Game at *verbal Niceties*), to take up the Cudgels in their Defence, it is to be hoped their *Grammatical* Remarks, for the future, will be better founded. The Haste that the two former Letters were writ and transcribed in, may perhaps afford him a few Materials to nibble at; which we are not at all sorry for, as it may be an Encouragement to enter the Lists, but Care shall be taken for the Time to come, to make the *Adjective* agree with the *Substantive*, and the *Relative* with the *Antecedent*, &c. So that the reverend *Preceptor* may have the Satisfaction of examining it, as he would do a *Pupil's* Version or Theme. Pass we now to the Wits:—I beg the *Domine's* Pardon; not for using the Word *we*, it being allowable to use the *Plural* for the *Singular*; but because the *Rule* says expressly that the *Nominative* ought to be put before the *Verb*; and therefore that no Advantages may be taken, let it be said in proper Form, We pass now to the WITS. It is reported, that at a Consultation held (before they thought of his Reverence) to determine whether the *Freeholder* should be answer'd or not, one of the tallest of their Wits, with his usual *self-sufficient Air*, and *Stentorian Voice*, rose up and said, *Let him alone, give him Rope enough and he will hang himself*. I really believe these Gentlemen wish him hang'd with all their Hearts; but the Devil of it is, he is a cursed obstinate Fellow, and will not be drove from his Point: He swears if he must die, he is determined to die by the PAW of the *Lyon*, and not by the HOOE of the *Ass*: But he thinks it will be Time enough to talk of that, when once they have slipp'd their own *Necks* out of the *Halter*; for he is the *Plaintiff* at present, and they are the *Defendants*. His great Comfort is, that the Cause must be tried by *fifty-four* good Men, not chosen by *Sheriffs*, but by *Freeholders*. Thus much was thought necessary to be said before the Subject was resum'd, and as the Arguments drawn from the *British Constitution* have been cavil'd at by some *Smatterers* in Histories and Politics, it is judged proper to illustrate, enforce, and apply them in the following Manner.

What was said in the second Letter, concerning that Right inherent in the People by the *Constitution*, to judge (by their Representatives) of their own Taxes, may be carp'd at, but can never be overthrown: It is the great Hinge upon which Liberty hangs; and whenever that is weakened or thrown down, Liberty must be proportionably weakned or fall with it. By this alone it is, that the great Powers yielded to *Magistrates* of all sorts, from the *supream Magistrate* to the *County Justice*, suffer any Controul: For the most expensive and pernicious Schemes may be projected under a Maladministration,

as the People have no Check on their Councils; but while they are Masters of their own Money, they may keep from them the Means of putting such Schemes as they do not approve into Execution. On the other hand, should ever this Power be lodged in any Set of Men besides those who are the immediate Trustees of the People, and appointed by them, it must be evident to every Man of common Sense, that all Liberty would soon be at an End. There would be no further Occasion for Parliaments or Assemblies; at least, if they were kept up, it would only be for Form's Sake; they could be of no Service to the People: *Redress of Grievances*, it is well-known, is a stale and unavailing Argument, when a Court wants no *Supplies*; it follows then, *a fortiori*, that it would be still less regarded, if the Court had the *Power of Supplies* within themselves. That such an Use might be made of an *unlimited* Power, residing in *County Courts*, to tax the People at pleasure, I think cannot be denied: That such an Use would be made of it, during the present Administration, I have already acknowledged there is not the least Grounds to apprehend. But is this a Reason why it should not be disputed? None but *Fools* will say so. The *Danger* commences as soon as the *Breach* is made; the *Attack* may be reserved for some Governor yet unborn. Had the *Romans* been told, in *Augustus's* Reign, that the Power of appointing *Consuls*, being no longer in the Senate, the *Emperor* might make a Horse *Consul* if he pleased, it would certainly have been thought a very wild and extravagant Supposition; yet, this did afterwards actually happen; when *Caligula* was Emperor, he made his Horse *Incitatus*³ Consul. Those *Politicians*, therefore, (wretched ones I think them,) that argue for an *unlimited* Power of taxing in *County Courts*, from the Improbability of it's being made a bad Use of, ought to be considered by a *free People*, who value their *Rights* and *Privileges*, not only for themselves but for their Posterity, as the *Abettors* of arbitrary Power, and the *Enemies* of true Liberty. And on this Occasion (it is so very pertinent to the Purpose), I cannot omit an Observation made at a Meeting of the *Freeholders*, by a Man of good Sense, who had neither the Misfortune to be a *Scotchman* or a *Roman Catholic*. Here are a Set of Men (says he), who have upon all Occasions been loudest in the Cry against the *Pope* and the *Pretender*; and yet they do all in their Power to introduce the very same arbitrary Measures we fear from them.

3. ["Advancing" or "Speedy," i.e., the name of the horse.—Tr.]

I have all along taken it for granted, that we in *America* have a just Claim to the *hereditary Rights* of *British* Subjects; and I believe *no Man* will dispute it, at least *no Man* worth regarding. In consequence of this, I say, that our *Constitution* is plainly an *original Contract* betwixt the *People* and their *Rulers*; and as many Jestes as have been broke on this Expression, we might safely venture to defy the warmest Stickler for arbitrary Power to produce any one Point of Time, since which we know any Thing of our *Constitution*, wherein the whole Scheme of it would not have been one monstrous Absurdity, unless an *original Contract* had been suppos'd. This was the Case, as well before *Magna Charta*, as after it; for the Lord Coke (that Oracle of the Law) in diverse places asserts, and all *Lawyers* know, that this *Charter* is for the most part declaratory of *Old Rights*, and not a Grant of *new ones*: Indeed the *Sua Jura* and *Libertates Suas*⁴ so often mentioned, are an undoubted Proof of it. Let any Man take an impartial View of the *English History*, and he must be convinced that the *Possessors* of any considerable Share of Property (no matter for their other Titles, I speak of them only as Freeholders) have always claimed the Privilege of keeping their Purse in their own Hands: Certainly this Right was acknowledged before *Magna Charta*, because it is said, that the great Assembly of the Nation, *on their Parts*, granted the King a Fifteenth of their Moveables, as a Consideration for the Acknowledgement and Confirmation of their *antient Rights* contained in that *Charter*. Sometimes indeed it has been usurp'd by crafty, wicked, and tyrannical Princes; but then our brave *Ancestors* have never failed to *assert* and resume it the first favourable Opportunity: But whatever Disputes may formerly have been concerning the *original Contract*, there is not the least Room left for any such, since the Settlement made at the *Revolution*, which was an express *Renewal* of it: From that happy Period our *Constitution* has taken a *new Æra*; not that the *People* acquir'd at that Time any *new Rights*, but that their *old ones* were more explicitly acknowledged and ascertained; perhaps some few additional Barriers were raised in favour of Liberty, that for the Time to come,* *The Liberties and Properties of the Subject might be established upon sure and lasting Foundations*. But with what Justice could it be said, that this *valuable End* had been obtained by the *Revolution*, if an *unlimited Power* of Taxing could be placed in a County Court? It has been

4. ["Their own rights and their own liberties."]

* The Words of the Prince of Orange's Declaration.

already clearly made out, that this would be putting the *Liberties* and *Properties* of the Subject upon the most precarious Foundation, such a Foundation, as no Man would have any Thing he could call his own, whenever a rapacious Governor thought proper to lay his Hands upon it. What should be thought then of a Man, who made his Brags upon all Occasions, that he had *studied* the *Constitution* these twenty Years; and at last found out, that such a Power in County Courts was *good Law*, and agreeable to the *Constitution*? Ought it to be imputed to Weakness, or Design? The former is certainly the most charitable Supposition, unless he would rather choose to be reckoned a Knave than a Fool; however it would be but reasonable to give him his Choice.—After all, it would be merry enough, if it should be found that this *poring Student*, after so many Years Application, had not yet got quite perfect in his *Reading* and *Spelling*:—Such a Man, if there be such a Man (for I only reason Hypothetically), might, during the Infancy of a Country, by a little low Cunning, attain to some Degree of Popularity. Habits of Business (which are mechanically acquired), such as a Knowledge gain'd by Experience in the Forms and Modes of proceeding in *Courts*, perhaps in *Assemblies*, would easily pass upon the *Ignorant* for a Knowledge of the *Constitution*. By his Credit gain'd in this Manner, he might be thought an useful or *necessary* Man, while his Popularity lasted, and so be advanced into some *honourable Trust*. But alas, this would be the most effectual Way to ruin him, and if a Man of SUPERIOR PARTS and refin'd Policy ow'd him an *Grudge*, he would be fond of contributing to his Preferment well knowing that a Man of a *weak Head* cannot bear *Elevation*. It makes him quite *giddy*; he grows *proud*, *haughty*, and *insolent* upon it, and tries to *brow-beat* every Man that will not acknowledge his *Greatness*, or pay an implicit Submission to his *Dictates*; he *swells*, *blows*, and *storms* upon the least Insinuation that he may be mistaken in his Judgment; especially if it should happen to be upon his darling Topic, the *Laws* and *Constitution* of his Country. In fine, he grows contemptible and contemned; his *old Friends* forsake him, having found out that he only made use of them to get into *Power*, and was *tyrannical* and *partial* in the Exercise of it; favouring his own *Minions* in opposition to Men of *true Merit*, and preferring the Interest of a *Juncto*⁵ to that of a *whole County*. His *new Friends* would probably laugh in their Sleeves at all this, and take

5. [A group of people assembled together for a purpose, a self-selected group; also *junto*.—Tr.]

the first favourable Opportunity to let him drop into his *original Obscurity*, from whence Nature never intended to have rais'd him and if that capricious Dame Fortune, in one of her Freaks, had given him a Kick *up Stairs*, it was only with an Intention to divert herself, by tumbling him *headlong* down again. I am no Prophet, or the Son of a Prophet; yet, without being one, if there be any *such Person* as has been described, I could take upon me to foretell that this would be his Fate; if there be any such Person, there is no Harm done; a Man can't be held for thinking.—

It was my full Purpose, when I first began this Letter to have explained the Act of Assembly, and vindicated the Legislature from the *Reflection* thrown upon it by the *wronghead'd* interpretation given to the Law; but in clearing my Way thither, either the Variety of Matter has deceiv'd me, or I lacked Time or Skill to put it in less Room. Be this as it will, the narrow Confines of a *News-Paper* obliges me now to delay to another Opportunity; so that if the *Freeholder* does not {*illeg./respond?*} himself, as has been *predicted*, you may expect to hear from me again in due Time.

A FREEHOLDER

A Native of Maryland, Supplement to the *Maryland Gazette*, March 23, 1748

Mr. Green,

As leisure and Opportunity may permit, I propose to animadvert on a Paper with which you have been pleased to favour the Public, signed A Freeholder. And, as in this I am actuated solely by an ardent Desire of promoting the Welfare of my unhappy Country; I hope the following Reflections, which are intended as an Introduction to my further Sentiments, will have a Place in your Gazette.

*I am, Sir, your's,
A Native of MARYLAND.*

The famous Mr. *Addison*, than whom, perhaps, no Man ever judg'd better, was of Opinion 'That nothing could be so scandalous to a Government, and detestable in the Eyes of all good Men, as defamatory Papers and Pamphlets.' This great Writer, whose extensive Knowledge and benevolent disposition made the Interest of all Mankind his Care, could not, with but the utmost Regret and Concern, behold that great and honest Nation, which gave him Birth, sacrificed to the mean and mercenary Views of low and contemptible

Party Scribblers; who, from an Itch to Writing, from factious Principles, or from desperate Fortunes, were incessantly labouring the Destruction of the best Constitution of the known World; and that also, which is an Aggravation of the Crime, under the specious, and lying and impudent Pretence of defending it: For so inestimable a Blessing is Freedom, in the Eyes of all those who are actually free, that he who would propose to himself any success in attempting to cheat an ENGLISHMAN of his Liberty, is under a Necessity of first persuading him, that he is already in Danger of losing it.

This ever was, and ever will be, the constant Artifice of those, who, out of a counterfeit Zeal for the public Good, endeavour to throw all Things into Anarchy and Confusion; and from thence to derive to themselves some Advantage or Glory, which, from the Want of all worthy Endowments, they could not hope to obtain in the Calm and Serenity of any settled and well-ordered Government.

'ENGLAND (says a certain Author) is the Place in the World, where the public Justice is most equally administered; and where the People suffer the least Violence.' 'We are blessed (says another) with that Form of Government, which *Tacitus* mentioned as the most perfect, and thought the Hardest to be framed, that happy Ballance and Mixture of Interests, which comprehend every Interest.' In Truth, it is a Government which is the Glory of its King, the Happiness of its People, the Reproach of Tyrants, and the Envy of Slaves: Yet, and which shews the Insufficiency of every human Institution, this wise, this just, and excellent Constitution, has not at all always been able to preserve itself free from the most violent Sparks and Convulsions; nor even Proof against the little Arts of the selfish Pursuits of vile Incendiaries. One would indeed judge, People, blessed with so uncommon a share of Felicity, incapable of having their Senses so grossly abused by Knaves and Vipers, as to become the Tools and Agents of their own Destruction, were not the contrary plainly evinced by many Pages in the *English* Story.

In the Reign of *Richard* II, the Duke of *Lancaster*, who adhered to the Crown, larded over all his ambitious Views with a popular Pretence of redressing public Grievances. After demotion{?}, as a just Reward of his Usurpation, he had the Misfortune of finding the same Game, which he has taught others, played upon himself, by those very Men who had pav'd his Way to the Throne. The Insurrections of *Wat Tyler*, which was one of the most formidable and bloody Rebellions that *England* ever saw, took its Birth from a Circumstance yet more in{illeg.} and inexcusable: Having been guilty of the

worst of Crimes, in order to screen himself from the Hand of Justice, he had immediate Recourse to the invariable and never-failing turn of all Incendiaries, by setting himself up for a Redresser of Wrongs. By this Strategem he so fully succeeded, that in very little Time, he found himself at the Head of a hundred thousand Men, breathing nothing but Destruction to the Nobility and Gentry, and greedily following this monstrous and, even, unheard of Doctrine; 'That all Men, being Sons of Men, their ought to be no Distinctions; and consequently it was their Duty to reduce the World to a perfect Equality: When an unruly Multitude are once inflam'd, how eagerly do they listen to any Doctrine, however absurd, to any Schemes or Propositions, however preposterous, to obtain Satisfaction for Injuries which, in their cooler Reflections, they would perhaps find to have existed no where but in the Warmth of their own Imaginations: And what Lengths they will go, what Feats of Madness, Cruelty, and Rapine, they are capable of, to accomplish that End, Will evidently appear from the Progress of this Commotion, in which was spilt a Torrent of the best Blood in *England*; and all the Ravages committed that could be expected from so numerous a Mob, guided solely by their Fury. It is indeed barely possible to have Charity enough for such rash and inconsiderate Men, as to allow, that they who acted unprovokedly thus, in Defiance of all Laws human and divine, and in direct Opposition to common Sense and common Humanity, could have any Relation, save the outward Form, to the human Species! Yet, who were the Authors of this bloody and tragical Scene, the inhuman Butchery of their own innocent Countrymen? Who, but those *Englishmen*, who justly boasting the Enjoyment of greater Privileges than any People under the Sun, were thence the more tenacious of them, and thence the more easily imposed on by any Suggestions, however false, groundless, and improbable, of the Danger of losing them.

In short, whoever takes an impartial View of the History of *England*, from the *Norman* Conquest down to the present Time, will find, that religious Controversies in general, and a few instances hereafter mention'd excepted, almost all the Commotions which have happened in this Kingdom, however plausible the Pretences of the Authors might be, were calculated purely to serve particular Interests, and not the Good of Society. A Jealousy for the public Weal is certainly a commendable Jealousy; and when the Liberties of the People are so far invaded, as to render Methods mild and gentle ineffectual, then, and not 'til then, violent Remedies are justifiable. Such were the just Wars of the Barons, in the Reign of King *John* and *Henry III.* by which

was obtained not only a Grant and Confirmation of *Magna Charta*, and the Basis and Ground-work of all *English Liberty*, but moreover a Right in the People to vote by Representatives in Parliament. Such was the timely, tho' perhaps too violent, Stand made to the despotic Government of *Charles I.* and such the glorious Opposition to the tyrannical Measures of *James II.* which brought about the happy Revolution.

Those therefore, who, from a pure Regard to Liberty and the Rights of Man, have in the most perilous Times, bravely stood in the Gap of Tyranny, and by their gallant Efforts stemmed the Current of arbitrary Power and lawless Rule, will be as eternally remember'd with Veneration and Gratitude by all the Posterity of Freemen. But on the other Hand, to prostitute the sacred Name of LIBERTY to the narrow and corrupt Purposes of particular Leaders, who are not animated by any Zeal for the Community; to wish and seek to be alone happy at the Expence of Thousands; to endeavour to rise by Fraud, and to be exalted on the Ruins of a whole Country; is certainly, of all Villainy and Wickedness, the highest and greatest that the Heart of Man can be capable of.

Hitherto, in this our Infant Country, we have, I thank God, excepting very late Instance, enjoyed the Sweets of a happy and uninterrupted Repose. Our situation, perhaps our Want of Treasure, have serv'd as Bulwarks against Invasions from abroad; whilst an easy contented Frame of Mind, arising from the Contempt of Power and Riches, a Happiness unknown to sordid Breasts ever thirsting after new Acquisitions, has been our Security from civil Discord and Commotions at home. The hateful and invidious Task, therefore, of sowing Dissention and stirring up domestic Feuds, seems to have been by Fate reserv'd for Foreigners, Men, who having liberally tasted of that Hospitality, for which this Country is above all others remarkable; shar'd our Prosperity, and partook of every Advantage in common with the Natives; have thus rewarded them with all the Meanness of Ingratitude. The World will, no Doubt, readily judge that I am here complaining of the extraordinary and unprecedented Conduct of a Set of Men, who think themselves injur'd by a late Proceeding of *Prince George's County Court*: The Magistrates, who in that Case acted under an ample Power lodg'd in them by as clear and explicit a Law as ever was made, have been most shamefully insulted and traduced; not in private Companies and public Meetings only, but in Print also; and that not in suppositious Characters, but expressly by Name; a Treatment savage, cruel, and scandalous, and heretofore unknown

in any civiliz'd Part of the World. Not content with these matchless Proceedings, the honest, but too credulous, People have been surprisingly seduced, and made to believe, that this Action of the Justices, although preservative of their Properties, was nevertheless destructive of their Liberties: Thus by an Abuse of the amiable Word LIBERTY, the People, through a laudable, tho' mistaken View of preserving entire that principal Ingredient of their Happiness, have become the Dupes and Engines of promoting the avaritious Views of others, without any Possibility of the least Advantage to themselves. Nor is this the worst:—From an honest Principle in many; from interested Motives in some; and from mistaken Notions in most; this Affair has sour'd the Minds of Men, and alienated the Affections to such a Degree, that the Inhabitants of the same County are already like two different Nations, and in a fair Way of hating one another as heartily, as if they had been declared Enemies from their Birth.

The celebrated Author, whom I first mentioned, has set the Calamities attending such a Division in so clear and moving a Light, and, at the same Time, so justly touch'd upon the Characters of every Party in this Dispute, that it would be doing my Country Injustice not to give his Sentiments a Place here. 'There cannot (says he) a greater Judgment befall a Country, than such a dreadful Spirit of Division as sends Government into two distinct People; and makes them greater Strangers, and more averse to one another, than if they were actually two different Nations. The Effects of such a fatal Division are pernicious to the last Degree; not only as to those Advantages which they give to the common Enemy, but those private Evils which they produce in the Heart of almost every particular Person. This Influence is very fatal, both to their Morals, and their Understandings; it sinks the Virtue of a Nation, and not only so, but destroys even common sense.

'A factious Party Spirit, when it rages in full Violence, exerts itself in Civil War and Bloodshed; and when it is under its greatest Restraints, naturally breaks out into Falsehood, Detraction, Calumny, and a partial Administration of Justice. In a Word, it fills a Nation with Spleen and Rancour, and extinguishes all the Seeds of Good-Nature, Compassion, and Humanity.

'It is the restless Ambition of artful Men, that thus break the People into Factions, and draws several well meaning Persons to their Interest, by a specious Concern for their Country. How many honest Minds are fill'd with uncharitable Notions out of their Zeal for the Public Good! What

Cruelties and Outrages would they not commit against Men of an adverse Party, whom they would Honour and Esteem, if, instead of considering them as they are represented, they took them as they are? Thus are Persons of the greatest Probity made bad Men, even by that noblest of Principles, their Love of their Country.'

The Authors of these Evils and Misfortunes, think no doubt, all that Farce and Grimace with which they have conducted themselves, passing upon the World for mighty Artifice and Cunning. Perhaps it does so; but of this I may venture to tell them, that with all their Wiles and Subtleties, in the End they will find themselves extremely short-sighted, and fatally mistaken. As those who wantonly sport with the Ease and Happiness of a People, cannot long escape the People's Resentment, who are sure always to take Vengeance, at least in Proportion to the Injuries they receive: For which, however, I do not insist that my Opinion alone should be taken; having, for my Authority, that imitable Writer upon Liberty, the Lord PAGET With whom I shall close this subject.

'Such as are known to love their Country, and reasonably expect to be safe in it, or that Enmity to the Public, will not meet with Public Hate, which is the next Step to Public Revenge. And they who are indifferent to any Interest but their own, tho' they may purchase Flatterers, who have Minds as bad as theirs, can never be exempt from one miserable Reflection, that most Men, and all the best Men, abhor them; whilst only a few of the worst applaud them. Nor can they take much Delight from the hollow Prattle of a Tribe of Fawners, when they remember that injur'd Multitudes are perhaps at the same cursing them. We may indeed personate Public Spirit for a while, yet have none, and for a While pass for Virtuous, without having Virtue. But the Fraud will soon be discover'd. No Disguise can long hide the false Patriot; and his Hypocrisy will but lead to his Condemnation, when he is no longer able to cover his Guilt.'

[A Native of Maryland]

Americano-Britannus, *Maryland Gazette*, April 13, 1748

Mr. Green,

I Desire you will be pleased to insert the following Piece in your Gazette, as soon as it suits your Conveniency, Tho' the Author be a Native of Maryland; yet, as he prides himself more in being descended from British Ancestors, and scorns to

apply to the Passions and Prejudices of the Vulgar, he chuses to subscribe himself,
AMERICANO-BRITANNUS⁶

*Studius he sat, with all his Books around,
Sinking from Thought to Thought, a vast Profound!
Plung'd for his Sense, but found no Bottom there;
Then write and flounder'd on in mere Despair.
Popé's Dunc.*

Thus *Tibbald*, after *The Death of Settle* his Predecessor, is described in the *Dunciad*: *There are certain Periods of Time wherein many who are fond of being Authors, often find themselves in the Condition of King Tibbald: Some from Necessity become Authors; these are most to be pitied, but not always to be excused; another swells in Print, from an irresistible Itch to scribbling and appearing in Public; another is rouz'd from his native Lethargy and sloth, by the Importunities of a Party;*

*Who long on him had built their Hopes,
For writing Pamphlets, and for roasting Popes.*

If they enter the Lists, take up the Gauntlets, become An Author, and if like *Tibbald*, they find themselves sinking from Thought to Thought, plunging for Sense, and finding no Bottom, it is not to be wonder'd at, if like him also, they persevere in Writing, and flounder on as our Poet beautifully has it, in *mere Despair*.

Nothing has given me a more lively Idea of such an Author, than a Piece lately published in the Supplement to No. 152, of the *Maryland Gazette*. The Author pretends he is a Native of *Maryland*; and from the single Merit of being born in the Province takes upon himself to abuse, traduce, and calumniate a number of Gentlemen who *think*, and I believe very *justly think* themselves and their Fellow Subjects injured by a late Proceeding of the Prince George's County Court; and imputes all Opposition to Foreigners, who, he says, were *destin'd by Fate*, to di{lute?} those *Halcion Days* the People of *Maryland* had 'til then enjoy'd.—Happy People! Thrice Happy Country! whose Natives are all Sages and Philosophers, whose Inhabitants have so great a *Contempt of Power and Riches*, as never to *thirst after worldly Acquisitions*; but alas, what a Pity it is, that

6. ["American Englishman."]

a Happiness unknown to *sordid Breasts*, such sweetness of a *happy and uninterrupted Repose*, such an *easy contented Frame of Mind*, should exist only in the Reveries of this Author, or in the Golden Forms of Poets, whose *Elysium* I fear had furnished him with a Description of that happy Mansion of Spirits, void of vain Passions, than any real Object he had ever seen, or what not one reasonable Man on Earth will ever hope or expect to see—But the poor Man has plunged beyond his Depth, and it is not to be wonder'd at that he flounders on at Random: for what else can reconcile his calling on the People of *Maryland* and loudly affirming in Contradiction to a Truth well known to every Man that will hear him, *That hitherto in this our Infant Country, we have, excepting a very late Injustice, enjoyed the Sweetness of an uninterrupted calm Repose*. Will not every Man who reads this Sentence, from his own Knowledge and Experience in Public Affairs, contradict it? Can any Man forget the Feuds, Heats, and Animosities which have for so long and so warmly subsisted between our Government and our Assemblies? Few are ignorant of the Complaints of the People, and that they have been long ago transmitted Home, in order to be laid before our Sovereign. But what avails the Jarring Interests of the Court and Country, let these differ, let the Difference be carried on with all the Heat and Violence imaginable, the Country shall still enjoy the Sweets of an *uninterrupted calm Repose*: But if a County Court should at any Time meet with a Rebuff, or some Opposition to its *Measures*; if this should happen, the Clouds must immediately gather, that calm Serenity we before enjoyed, shall be at once discomposed, a sudden Storm shall arise, which at once produces all the Calamities of Dissention, by *souring the Minds of Men, and alienating their Affections to such a Degree, that the Inhabitants of the same County shall look like two different Nations*.

Surely County Courts appear very considerable in the Eyes of this Author; but however they may be in his Eyes, the Public will always claim a Right to judge of their Conduct, and tho' Men might in some Instances submit to Taxes they impose, without Murmurs or Complaints, *yet if they hear large Sums demanded of them as a Right, and find it by sworn Judges of the Law adjudged so, upon such Grounds and Reasons as every Stander by was able to swear was not Law* (as was the Case in the great Cause of Ship Money) in this Case, I say, would our pacific Native submit to whatever Burthen a County Court might be pleased to lay upon him, or will those who oppose such Measures, deserve the opprobrious Names of Knaves, Sharpers, and Incendiaries? *Oh! But the*

hateful and invidious Taste of sowing Dissention, and stirring up domestic Feuds, seems to have been the Fate reserv'd for Foreigners, who having liberally tasted of that Hospitality for which this Country is above all others remarkable, shared our Property, and partook of every Advantage in common with the Natives. That the People of *Maryland* are generally hospitable and courteous to Strangers, is a Thing, I believe, that all Strangers allow, and which, for the Honour of my Country, I very heartily concur in, and hope they will always continue so, in Spite of any Endeavours to the contrary. But there are too many amongst us, who look upon all Strangers that settle here, as so many Eye sores; especially if they should happen to rival them in Parts or Fortune, in Parts, by the Advantage of a better Education, in Fortune, by a more successful Industry, these are unpardonable Offences in the Eyes of the Invidious; and tho' it be as demonstrable as any Proposition in *Euclid*, that it is for the Interest and Prosperity of all Young Countries to encourage Men of Parts and Industry to reside in them, yet it would be very difficult, if not impossible to persuade Men of selfish and imperious Disposition, that any Thing could be for the Public Good, which might mortify their Pride, and prove a Check upon their ambitious Views of Grandeur, and popular Applause: Men of this Stamp could not help treating Strangers with Rudeness and ill Manners, whenever they durst; but I hope there are but few of these amongst us: And altho' the Author under our Consideration, from his Dislike or prejudice to Foreigners, as he calls them, would lay to their Charge, *the invidious Task of sowing Dissention, and stirring up domestic feuds*; yet, if he could be cool enough to look into Facts, how flatly and how strongly would he find them contradict his Passions. He would find Numbers of Gentlemen, Natives of this Province, of good Credit and Fortune, to have been amongst the most forward, in the Opposition to the Measures of the Court; Gentlemen, who disdain to be the blindfolded Tools and Instruments of Sedition, or to be drove on by the factious, turbulent, or avaritious Spirit of others. And the Case happens to be exactly the same, in the present Disputes in *Prince George's County*; for many Gentlemen of Sense, Fortune, Spirit, and good Families, have been thus meanly calumniated, for no other Reason in the World, then for refusing to be made Tools of, by standing up bravely for their own and the People's Rights, when they conceived them directly attacked. Then indeed they thought it high Time to contend for their just Rights, and oppose the Torrent of a petty Tyranny, that was threatening to break in upon them; yet this Opposition has been carried on with all possible Decency, Sobriety, and Regard to the Laws and Government; insomuch, that a

certain ever vigilant and watchful Magistrate, with the Riot Act in his Pocket, could never find the least Pretence to make Use of it. The only Appearance they ever made in a Body, was on that memorable Day appointed for the public Agreement with the Undertakers of the Court House: They were headed by a Native of *Maryland*, a Gentleman of Fortune, and unblemished Character, Exemplary by his Life, and Reverend by his Years. He it was that presented a Remonstrance to the Commissioners, in the Name of Six Hundred Freeholders, offering Reasons why the Agreement should be delayed until the Assembly should determine the Dispute: But tho' they were answered with an Air of Authority by one of the commissioners, That tho' there were Ten Thousand Petitioners, he would, for his Part, pay no Regard to it, they did no more than make a low Bow, and retire. I believe it will be allowed that this was as harmless a Mob as ever Made an *Insurrection*; and that the Representative of *Wat Tyler*, whom they chose for their Head, had very much improved the Principles and Behaviour of his *Prototype*, in the Reign of *Richard the Second*.

It appears, from what has been said before, that about six hundred Freeholders of the same County think the Proceedings of their Court very extraordinary; but our *Native* dogmatically affirms, that they acted under an ample Power, lodged in them by as *clear* and *explicit* a Law as ever was made. Whether the Freeholders are mistaken, or the positive Gentleman is right, a proper Tribunal will probably very soon determine; but as to the *Cruel, Savage, Scandalous, and Never before heard of*, given to the Magistrates, I would advice our *Native* not to be too positive in advancing Facts, which a little more Learning and Application, may convince him to be false. He will then find Judges (much greater Judges than the Justices of County Courts) very freely treated in the Writings of the Learned: not in fictitious Characters, but in their own proper Names. He may then discover in our Days, a Lord Chief Justice of *Ireland* severely lampoon'd for his Management in Court against the Draper's Printer. He may then find out, even in his own Books; for the Chronicles of *England* will shew him that heretofore Lord Chief Justices of *England* have not only been severely handled, both in writing and speaking, but that some of them have been very decently *hanged*, for giving Opinions contrary to Law, and destructive of the Constitution.

I shall therefore only proceed to consider the great Labour and Pains our Author hath taken to select out of Mr. Addison, out of a Certain Author, and out of the *Chronicles of England*, and out of Lord Paget, Facts and Sayings, in themselves well worthy the Authors that wrote them, on many Occasions proper to be mentioned, but always necessary to be applied: For I care to

say, the *Freeholder* will readily join with Mr. *Addison*, that nothing can be so scandalous and detestable in the Eyes of all good Men, as defamatory Papers and Pamphlets; and it would much better become one who is contending for Justice and Right, to say with the same great Man, that *when a furious Party Spirit is under its greatest Restraint, it naturally breaks out into Fals[e]hood, Detraction, Calumny, and a partial Administration of Justice.* But before such Sayings can be justly applied, it is previously necessary to determine who are the Defamators, and where lies couched that famous Party Spirit Mr. *Addison* so justly complains of: Has the Native done this? He has certainly never so much as attempted it; unless you will take a Number of groundless and malicious Insinuations for Truth and Argument. To what purpose then has our Author introduced Mr. *Addison*? I Confess I know not, unless it be in Compliance with a Rule laid down and strongly inculcated by the GREAT MOTHER to her Votaries, on all Occasions to make use of great Names; for, says the Goddess of Dullness, in the before mentioned Poem,

*So shall each hostile Name become our own,
And we, too, boast our Garth and Addison.*

[Americano-Britannus]

A *Freeholder*, *Maryland Gazette*, April 20, 1748

*Ne quid falsi dicere audeat, ne quid veri dicere non audeat.*⁷

THUCYD.

Mr. GREEN,

That grave and moral Writer *Thucydides* advises never to have the Courage to advance a *Falshood*, yet at the same Time to have Courage enough to assert any *Truth*. We have an *English* Proverb, which seems, at first Sight, to contradict this; viz. *That Truth ought not to be spoke at all Times*; but I think they are both just, and may be easily reconciled, if the former be supposed spoken of Matters that concern the Public, and the latter, taken as a prudent Maxim, fit to be observed in private Life. This Distinction, which will be found to have it's Foundation in Reason, ought to be consider'd, by those who charge the *Freeholder* with having been too severe: The Truth, Justice, and Exactness of his Painting, none have denied; every Man knew his Neighbour's Picture as well as his own; it seems they were all drawn

7. ["Let him not dare to say something false, let him not not dare to say something true."]

so much to the Life, that there was no Occasion for writing the Names at the Bottom. The only Question then is, Whether it was necessary for the *public Good*, to lay open certain Characters in their true Colours, to prevent the People's being imposed upon by such for the future? The Writer of these Letters conceiv'd it was; neither has he advanced a single Step further than this Necessity seem'd to require. Truth ought always to be the Standard, and public Utility the Boundary of all *pointed* Representations; while these Rules are observed, there can be no just Room for Censure: If they are {*illeg./carried?*} through, the Author will be chargeable with Falshood, private Picque, according to his Offence. Let this be the Rule of judging betwixt the *Freeholder* and the Writer that subscribes himself *A Native of Maryland*, making some small Allowance for human Frailty, where a great deal of Provocation has been received. If none but *Knaves, Sharpers, Incendiaries, and Men of desperate Fortunes*, or *Fools* drove on by such, are engaged in Opposition to the Measures he undertakes to vindicate, if they are nothing but a Parcel of *Mobbers*, with a *Wat Tyler* at their Head, as has been strongly insinuated, then this *author* has been guilty of neither Falshood nor Scurrility. And if the *Freeholders* Characters be equally chymical and unjust if, out of a *furious Party Spirit*, he has *traduced* and calumniated, and endeavoured to stir up the People to *civil war* and *Bloodshed*, let his Behaviour be justly branded with being *savage, cruel, and scandalous*; if he, or any of these on the same Side of the Question, have been guilty of a PARTIAL ADMINISTRATION OF JUSTICE to forward their cause, or to promote their own *avaricious Views*, then let the *Native* be accounted another MR. ADDISON, agreeable to his own Parallel; let his Party be accounted the *true Freinds of Liberty*, and their Opponents, the *restless and ambitious Faction*. But, on the contrary, if all these Insinuations have their Foundation in down-right Falshood and Defamation, it is but reasonable the Saddle should be laid upon the right Horse's Back: However, I am extremely glad that the Management of the opposite Side of the Question is undertaken, because, by this means the Public will have an Opportunity of examining the arguments of both Sides; for I desire nothing more than that truth may appear, wherever it lies: So, without further Pretence, I resume my Subject.

Having, in former Letters, endeavoured to prove, that such a *Power* as is contended for in County Courts is inconsistent with the hereditary Rights of *British Subjects*, secured to us by the *British Constitution*; I proceed now to what I proposed in my last, which was, to explain the *Act of Assembly*

from whence this *Power* is claim'd; and, in doing this, I hope I shall be able to satisfy every unprejudiced and sensible Man, that the *Legislature*, neither in this Act, nor in any other, hath afforded the least Grounds to imagine that they ever intended to place an unlimited Power of taxing the People in County *{illeg.}*

I Shall begin with observing, that County Justices in *England* have but very little Power of levying upon the People lodg'd in them, and even that little is put under the strictest Regulations and Restraints. The principal Power of this Sort is given by the 43d Statute of Queen *Elizabeth*, where a Provision is made for the Poor; and there the Justices are limited to a certain Sum: They shall not assess any Parish above Sixpence per Poll, and one Parish consider'd with another not above Twopence, through the whole County. Besides this, the same Act that gives them a Power to raise this Money, appropriates it. The Wisdom and Prudence, as well as the Reason, of this Proceeding must be evident to every Man, who has duly consider'd our *Constitution*, and the many dangerous Consequences that might attend any considerable Share of Power over the Purses of the People being lodg'd in any Set of Men appointed by the Government. It is with Pleasure I have remark'd the same cautious Proceeding in several of our Acts of Assembly; as in that *For the Establishment of Religious Worship, &c.* in Page 21, of the Body of Laws; there the Justices are impowered to assess for the Reparation of Churches, &c. but they cannot do this, unless the *Vestry* makes Application; and even then they are limited to ten Pounds of Tobacco per Poll, through the Parish. Their Care of the People's Money went yet further, to prevent any *Jobbing* or *Misapplication* of this public Revenue without Redress, the same Law intitles every Parishioner to a Sight of the Register Accounts; and if he thinks himself or the Body of the Parish injur'd, there lies an Appeal to the Governor and Council. It would be tedious to run through every Act of Assembly which might be cited to this Purpose, it will be sufficient to assert in general, that wherever the Legislature has given Courts a Power to raise or dispose of the People's Money, they have for the most part *limited* them to a Sum, and always expressly appropriated it; the Allowances to Grand Juries, Petit Juries, Witnesses, Provincial and County Justices, are all plain Instances of it: But when those of the opposite Side of the Question are press'd with Arguments of this Sort, they reply, that it is very true, County Courts are limited in many particular Instances, but by the express Words of the *Act* in Dispute, they are left at large in every Thing

else. Not so much at large neither, as they may perhaps imagine; however as they are limited to no Sum, nor tied down to any Appropriation of what may be raised, by the Power given *by this Law*, I shall grant it is an Exception from the general Method observed by the Legislature; and I shall endeavour to account for, and shew the true Design of it presently. In the mean time, I must beg Leave to propose a few Questions, which those against whom I am reasoning would do well to consider. For what End, pray, were County Courts limited in these particular Instances? Was it not to secure the Property of the Subject, and prevent Oppression? But how could this valuable End be obtained, by restricting the *Justices* in several Particulars, whilst they are left at Liberty to tax what they please in every Thing else? Would it not be a mere Farce, to restrain County Courts to 10 *lb.* Tobacco per Poll for *parochial Charges*, and leave them at large to assess 10,000 *lb.* Tobacco per Poll, for whatever they please to call *public Charges*? For what avails it to any Man, to have his Property well guarded as a *Member* of a Parish, if it is left exposed as a *Freeholder* of a County? Were these Gentlemen to give themselves Time coolly to weigh the Importance of these Questions, it might be of Service to lead them a little into the Reason of the Law; it might make them less positive and dogmatical in pronouncing a Law to be *clear and explicit*, in granting a Power directly contradictory to a fundamental Part of the *British Constitution*, and contrary to the Tenor and Scope of all *British Laws* whatever, whether Acts of Parliament or Acts of Assembly.

But it is now Time to consider the Words of the *Act* itself; and first I shall lay it down as a Maxim acknowledged by Lawyers, that where the Words of any Law will admit of two Senses, that Sense is to be preferred which is most in favour of *Liberty*; tho' I fancy there will be little Occasion for it in the present Case, for, if I am not much mistaken, it will not be difficult to shew, that however general and indefinite the Expressions may seem to the Inadvertent, they have nevertheless a limited Signification, that it is only under certain Circumstances County Courts are empowered *by this Act* to levy upon the People, and that the Tax in Dispute was not imposed under the Circumstances requir'd, and consequently not warrantable by that Law. *By this Act* County Courts are empowered, *upon Examination had before them of the public Charges of their several and respective Counties, and Allowances by them made of the same, to levy and raise Tobacco for Payment and Satisfaction of the several and respective County Charges.* These are the Words upon which the extraordinary Order of Court is founded: Now I think it

will appear to every one that considers this Clause with due Attention, that it gives the Justices no Power to raise a single Pound of Tobacco upon the People for any Thing, but for Work already done, *Charges* or *Accounts* exhibited, *examined*, and *allowed* of by the Court: If this should prove to be the Case, the disputed Order of Court must be illegal, at least, not warrantable by that Law (and they pretend to no other); because the Tax it imposes was previous to any Work done, or so much as any Agreement made. To clear up this Point, the only Thing necessary is to determine what ought to be understood by the Phrase *Public Charges*; and in my Opinion, were there any Ambiguity in the Phrase, taken by itself, which I think there is not; yet, if it be consider'd as connected with what immediately goes before and follows after in the same Sentence, nothing can be more evident than that it signifies Charges or Accounts brought against the Public for Services already done the Public. For Courts to examine such public Charges, to make *Allowances* of them, and to levy and raise Tobacco for the *Payment* and *Satisfaction* of them, is good Sense, and easily understood. But, let the Phrase *Public Charges* be taken in any other Sense, and I defy any Man to make any Thing but Nonsense of the Sentence, as it stands in the Act. But some will be ready to say, that if it be granted County Courts have a Power by *this Act* to raise any Sum by Tax, which they think proper to allow for Work already done, it makes no great Difference to the People whether the Money be raised before or afterwards. To this I answer, first, that the Question is not, what Difference it makes to the People, but what is the Nature of that Power given by the Law, and whether the Order of Court was made agreeable to it or not: This is the only Point in Dispute, and therefore any such Objections are altogether from the Purpose. But to shew those that talk in this Manner, that the Difference to the People is not so trifling as they may imagine, I will make them another Answer, and assert, that in this very Restriction consists the whole Security the People have from the Abuses that might be committed by this Law. For it is plain, that nothing considerable can ever be safely undertaken on the Foundation of it, in the Sense explain'd, because the Undertaker must first do the Work, and then bring in his Charge; which must be *examined* and *allowed* by the Justices, before they can levy for the Payment of it. Now the Risque in this Case is so great, that no prudent Man would ever choose to run it, in a Matter of any Importance: The same Justices that encouraged him to do the Work, might take it into their Heads to clip his Account unreasonably; nay, one

or two new Magistrates might turn the Scale, and create a Majority against the Service, and disallow the whole. Instances might be produced of both these happening, which will be always a sufficient Discouragement from taking considerable Jobs in hand upon such a precarious Footing.

From hence it appears, that the Power lodged in County Courts by this Act, to levy upon the People, was only intended for the Payment and Satisfaction of small Charges, which, by the Method directed, are supposed to be so evidently just and necessary, that no Court whatever would refuse to allow them; and at the same Time so very small and inconsiderable, that no Man would scruple to run the Risque of it. Nothing is more to be regarded in Laws, than the Intention of the Legislature in making them; if this can be clearly discover'd, any Construction that may be made of the Letter in Contradiction to the Intention, is never of any Weight with the Judges of Law: Now the true Design of this Law will be further evident, if it be consider'd, that all Things of any Consequence to be done at the Expence of the Public, so far as the Legislature thought fit to leave them to the Direction of Courts, are particularly mentioned in different Acts of Assembly, and effectual Methods for the Performance of them directed: In every one of these the Courts are limited to a Sum, or to an express Appropriation of it, for the most part in both, as has been already hinted. But the Legislature, foreseeing that several Occurrences might happen in Counties, which would be difficult or tedious to incorporate, thought proper to lodge in County Courts a general discretionary Power, to judge of small petty Charges on these Occasions, and to levy for the Payment of them, in case they appear to be reasonable; and this seems to be the plain Intent of the Act. *De minimis non curat Lex*,⁸ is a known Maxim in Law: The Legislature knew very well, that nothing but small Matters, nothing but Things undeniably just and necessary could be safely undertaken upon the Foundation of this Act; therefore they thought their usual Cautions unnecessary on this Occasion, no considerable Damage could ever be done the Community while it was strictly observ'd, and as for trifling Inconveniences, *De minimis non curat Lex*.

Thus I have endeavour'd to explain the true Meaning of this controverted Act, and, I hope, shewn, to the Conviction of every unprejudiced Man, that it gives no Power to County Courts to raise a single Pound of Tobacco (far less one hundred thousand) upon the People, unless it be to discharge

8. ["The law does not exercise itself over trifles."]

Accounts actually brought against the Public for past Services; and that from the Nature and Circumstances of the Thing, this Power could never be intended by the Legislature to extend further than to provide for the Payment of small Charges. They certainly could never conjecture, that a Court which has no Power to hold Cognizance of a Sum of above thirty thousand Pounds of Tobacco, would ever claim a Power by this Law to levy one hundred thousand: Surely levying one hundred thousand is holding Cognizance of a Sum above thirty thousand, and consequently exceeding their Jurisdiction. It is mere Quibbling to say, that this Limitation of County Courts Jurisdiction is only with respect to Actions of *Meum* and *Tuum*,⁹ for where do we find any such Distinction made? and as this Sum was levied by one Service, the Public in this Case is but as one Man.

Now what will it avail in answer to all that has been said, to tell us, that Instances may be produced of considerable Sums having been levied by County Courts, previous to any Service done, when they had no other Law than the Act in Dispute to support them in it. Supposing the Fact true, what {illeg.} Will one illegal Act vindicate another? Those who reason in this Manner ought to remember the Rule, *a facto ad jus non datur consequentia*.¹⁰ If Money has been raised for Things acknowledged necessary, without Law, and wink'd at because no Man thought himself injured, will that vindicate an unprecedented Action, dangerous in its Consequences, and unanimously complain'd of by above two Thirds of a County? No reasonable Man will say so. The Law is now Forty Years old, and this is the first Time that ever any such Power was pretended to. I hope it will be the last. All other County Courts in the Province have upon the like Occasions, when they judg'd so large a sum necessary, apply'd to the Assembly for a particular Act empowering them to raise it. This is the regular, this is the constitutional Method, this is the Method consistent with *Liberty*. For if this Law gives a Power to raise One hundred thousand Pounds of Tobacco, it gives the same to raise One hundred Millions. I demand when does it stop? How is it to be controul'd? Should it be acknowledged that the Act really gives County Courts this Power, no superiour Court of Law can controul them, even if they were inclin'd, because it is their Business only to declare what is Law; nothing

9. [Literally, "Mine and thine," i.e., in property matters.—Tr.]

10. [Literally, "A consequence does not result from fact to right," i.e., the fact does not itself constitute a right.—Tr.]

less than another Act of the *Legislature* repealing the former could do it; and all the Branches of the *Legislature* could not or would not agree about it, an unlimited Power of taxing must still remain in County Courts: And then instead of *rebuilding* Court Houses, I can't see why they might not in Time build *Fortifications*, raise *Standing Armies*, levy *Ship Money*, or, in short, raise any Sum upon the People for whatever they thought proper to give the Title of publick Charges to. If any Man will shew me that such an Use might not be made of the *ample Power* contended for, *erit mihi magnus Apollo*.¹¹

Nothing I think will more properly conclude this Subject, than to shew the Sense of the *Legislature* in a Thing of the same Nature, and exactly parallel in all it's Circumstances to the present Case. It appears by* the printed Votes and Proceedings of the Lower House of Assembly for the Year 1739, that a Petition was preferred by the Justices, &c. of *Calvert County*, to the House, *praying Leave to bring in a Bill to new-brick the Under Works of the Court-House, and to new shingle the same*: This Petition was read and granted, but by some conferences betwixt the Branches of the *Legislature*, there happened to be no Sessions that Year, nor the Year following; but in the Year 1741, the Affair was brought on again,[†] and a Motion made to repair *Calvert County Court-House*, in consequence of which, there was an Act passed into a Law, empowering three Commissioners named by the Assembly, together with the Justices of *Calvert County*, to repair the Court-House of that County, by an Assessment of a Sum not exceeding five hundred Pounds current Money on the Inhabitants thereof. It appears by the Proceedings of the same Year, that the Assembly did make it a Rule never to grant particular Acts for the giving any Power to do any Thing, when the same Thing may be done by other Laws in being, The Petition of one *Thomas Harris* was read and rejected, and the Reason given for it in the following remarkable Words;[‡] *Forasmuch as the Petitioner hath already sufficient provision made for him, by an Act of Assembly entituled, &c.* would not this likewise have been a proper Answer to the Justices of *Calvert County*, had there been any Act then in being, which gave them a Power to do what they petition'd for? or will the Gentlemen on the opposite Side of the Question

11. ["He will be as great as Apollo to me."]

* Page 28.

† *Votes and Proceedings, &c.* for 1741, Page 430.

‡ *Ibid.* Page 422.

assert with the *Native*, that an *ample Power* was really lodged in the petitioning Justices *by as clear and explicit a Law as ever was made*; and yet the whole Legislative Body was ignorant of it? That Legislature ought I think, in *Modesty*, to be supposed to understand the Power given in their own Acts best; but by what has been recited, it is plain they were of Opinion, that there was no such Power as was petition'd for given in any former Act; and therefore they made one on purpose: Nay it means they did not see fit to leave the Management of so much of the public Money entirely to the Justices, but thought proper to add* three Commissioners of their own naming to them. Whether the ensuing Assembly will confirm the Opinion of their own Body in this Matter, or acknowledge the superior Skill of *Prince George's County Justices*, a little Time will determine.

The Court-House of *Calvert County* stood two Years without Repairs, after the Necessity of repairing it was acknowledged by the Lower House of Assembly, from a supposed Want of Power to do it without a particular Act for the Purpose; the repairs wanted were only to new-brick the under Works of the Court-House, and new-shingle the same. But it is modestly expected, that the ensuing Assembly, in direct Contradiction to the former Opinion of their own Body, will approve of what the *Prince George's County Justices* have done, and acknowledge that there has been a Law in Force these forty Years, which gives County Courts a Power not only to new-brick the Under-Works of the Court-House, and new-shingle the same, but likewise to make a new Brick Wall round, and considerably enlarge it, or more properly to build it anew; and this too, on such a Footing as places an unlimited Power of Taxing the People in County Courts, which, as has been shewn, is subversive of a fundamental Part of the *British Constitution*.

A FREEHOLDER.

A Native of Maryland, *Maryland Gazette*,
April 20, 1748

Mr. GREEN,

Before the Thread of my Discourse is resumed, it may not be amiss, for the Benefit of those who have not access to the Laws, to publish in your

* See the Act: Mr. Benjamin Mackall, Mr. Benjamin Hance, and Mr. Richard Young.

Paper the Act of Assembly, or rather that Paragraph of it, by which the Inhabitants of *Prince George's County* have lately taxed for the Repairs of their Court-House: The trouble of which would have been anticipated, if Mr. *Freeholder*, agreeable to his repeated Promises, had entered into an explication of the Law; but that it seems has carefully been neglected, either as a Rock on which he was sure to split, or because the Peace and Tranquility of a People was to him of less importance than the Glory of displaying a little Learning in his Accidence. An Ambition commendable enough in a School boy, but surely not altogether becoming the Friend and Champion of Liberty. At his first setting out he was pleased also to entertain us with an Expectation of having the Breasts of the Magistrates laid open, and the private Views with which they acted unfolded; but in that too the Publick, has been unhappily deceived; not more perhaps from the Difficulty of the Task, than to make Room for one of the most daring and insolent Reflections that ever was cast on any Country, by telling the supreme Magistrate and the representative Body of the People that the former had appointed a Person Chairman of a Court of Justice, and the latter unanimously voted him worthy of the greatest and most honourable Trust in the Gift of the People, although he had the Misfortune of being both a Knave and a Fool. But of this at present I shall say no more. Having imbark'd in the Cause of injured Magistracy, and being determined not to be diverted therefrom by any Motive whatever, I shall come immediately to the Law, which to me appears a plain and full Vindication of their Conduct.

An Act empowering the Commissioners of the County Courts to levy and raise Tobacco, to defray the necessary Charges of their Counties and Parishes.

Be it enacted, &c. That for the future it shall and may be lawful to and for the several and respective Commissioners of the several and respective County-Courts within this Province, at their several and respective County-Courts to be held for their said Counties, upon Examination had before them of the publick Charges of their several and respective Counties, and Allowances by them made of the same, to levy and raise Tobacco for Payment and Satisfaction of the several and respective County-Charges, and the Sheriff's Salary for collecting thereof, by an equal Assessment of the taxable Persons of the said several Counties. Any former Law, Act, Usage or Custom to the Contrary in any wise notwithstanding.

To enlarge upon this Law is at present neither my Purpose nor Business; for as the Freeholder himself wittily observes, He is the Plaintiff and the Magistrates the Defendants, wherefore I shall now make no other Observation on that Head, than that this is the only Act by which the County-Courts are impowered to tax the People on any Occasion or for any Purpose whatever. And as the Words of the Law are general, and consequently imply a discretionary Power, it should seem the Duty of those who think themselves qualified to make Distinctions without Differences, to shew, that under this general Power Bridges are to be built, Ferrys to be kept, the Poor to be maintained, and yet a Court-House not to be repaired, or that the last is not as necessary a Charge, or more so, than any of the former. Whenever an Attempt of this Kind is made, I shall be ready and I hope able to refute all such shallow Arguments and false Reasoning. In the mean Time, what has already been alledged by the Freeholder in Relation to the Constitution of our Mother Country shall be answered, nor am I diffident of proving, to the Conviction of all Men, my Adversary as ignorant of that as he supposed the People of *Maryland* destitute of common Sense, or as they justly esteem him of that and good Manners. I am, Sir, Thine,

A Native of Maryland.

Philanthropos, *Maryland Gazette*, April 27, 1748

Mr. GREEN,

The *Native of Maryland*, in an Introduction to Animadversions on the *Freeholder*, begins with the Opinion of the famous Mr. ADDISON; that "nothing could be so scandalous to Government, and detestable in the Eyes of all good Men, as defamatory Papers and Pamphlets." This Opinion has no need of any Support: They have a Tendency to dissolve all Government, and throw a Country into the utmost Confusion. For Brevity Sake, I shall decline all Preface; and apply myself to consider the *Freeholder's* Letters; from whence it will, I believe, be made appear, that they are scandalous and defamatory and so shall leave our Author to his own Reflections.

In his first Letter he gives us a Copy of the Order of Court, and the Names of the Magistrates that ordain'd it: He tells the Printer he shall trouble him with some Observations upon it; then settles the Method of Prosecution. *I shall endeavour* (says he) *to shew with what Views, it* (the Order of Court *illeg.*ing) *was made; how far it is founded either on Custom or on*

Acts of Assembly; and then enumerates *the dreadful Consequences of such a Power in our County Courts*. Here we are made to expect something extraordinary: And had he punctually pursued these Particulars, with Temper and Decency, he could not have been blamed: But to wander from the Method he had confin'd himself to, and launch out into Scurrility and Defamation; is as great an Absurdity as well can be. I do not wonder he expects to be censured, for being thus bold with Magistracy, when he was conscious with what Scandal and Reproach he was to treat them; but as he, worthy Gentleman, has no quarrel to Names or Persons, *I can give the less Offence*, as he: Here he gives us to understand, that he can belch out slander and Infamy, with a perfect Serenity and Calmness of Mind. O wonderful! Is he of the humane Race! And all this for the Good of Society. O rare Enterprizer!

That Magistracy is a great and honourable Trust, no body will deny, and yet ought to be bounded with many and strong Restraints, and every Violation, wilfully committed, discovered and punished by the superiour Powers. But for a Party Scribbler to take upon him to revile and censure Magistrates for doing what they think is their Duty to do, is Insolence and Impudence, in the highest Degree!

That it is the Right of *English* Subjects to have their Lives and Properties secured by Laws made by themselves, and executed by their Magistrates, is I think incontestible. But the *Bulwark* of the Constitution, is too pompous a Word for me: I must leave that to the *Freeholder* to explain. Then follows the double Assertion, that *whenever these Laws are wilfully, or imperfectly, misconstrued, to serve certain Purposes, or By-Ends, and not the Good of the People in general, our Constitution affords a Remedy; a try'd and practicable Remedy*. I call this a notable Assertion, because every Body would pity a Magistrate that ignorantly misconstrued a Law, provided he was sincere and honest; but ignorantly to misconstrue a Law, or Laws, to serve certain Purposes, or By-Ends, and not the Good of the People in general, is a flaming Contradiction and Nonsense; for it supposes, he knows his Ends in misconstruing, and yet is ignorant of them. How well qualified is this Scribbler, to write against Magistracy? He gives us a Contradiction, and knows not that it is so. But more of this when I come to his third Letter. But to have done with his first Letter, I challenge him to make it appear that the Magistrates have taken any Steps to *destroy, or frustrate, that valuable Branch of Liberty, (viz) a Liberty in the people to lay their Wants and Complaints, by Petition, before the Legislature*. If he has no Ground or Reason for this; is it not highly

impudent and presumptuous, to expect, that the prayers of every good Man should attend him? How solemn is this Farce! But it is what every Body may easily see through.

In his second Letter, he tells us, *his Design is to be a little more explicit, in considering that very extraordinary Order of Court; and says, That nothing ever happened in the Province of more publick Concern. If the Steps taken by one of the Parties be legal and valid, it strikes at the Foundation of all Liberty, and then the Cause, not of private Persons, in a particular County, but of every Man in the Province, who is not inclin'd to give up those Rights and Priviledges which secure to him his Property, from an unlimited Power, contended for in County Courts, to tax what they please.* Now in Answer to this, he should first have shewn, to make the Order extraordinary, that no such Thing has been done before, by any Court in this Province: For if there has, then this Order is not extraordinary. This was still more incumbent upon him, because he asserts, *That never did any Thing happen in the Province, of more publick Concern!* Is it not strange, that this has never been seen into, from 1704 till this subtle Author found it out? And I believe there is not a County in the Province, but where the Justices have taxed the People with what was, in their Opinion, sufficient to defray the County Charge. But it is plain, the Author has made this a Party Cause; *for if it is legal and valid what one of the Parties have done, (says he) then it strikes at the Foundation of all Liberty; one Party supposes another, an Opposite; of this our Author takes upon him to be the Advocate. I should be glad to know of him, how a Law can be supposed to strike at the Liberties of the People; which is made by the joint Consent of the People? Or, which is the same Thing, by their Representatives? One would think the Legislature would rebuke him for this; especially for saying, that this Order, if legal and valid, becomes the Cause of every Man in the Province, that is not inclined to give up his Rights and Priviledges. Is not this clamouring against the Legislature? A spiriting up the People against them? A making a Party against them, in order to bring them into Contempt? The plain English is, that if this Act gives them (the Magistrates) power to levy what they think sufficient to defray the County Charge, and have not fixed them to a certain Sum; then the Legislature have taken away their Rights and Priviledges. But he calls it an unlimited Power: he says, because the Interpretation put upon the Clause of the Act of Assembly, from which the Justices claim their Power, is without Limitation; and gives them the same Power to levy five hundred Thousand, or fifty Millions, as one hundred Thousand; and he*

might have added, as one Pound; *and this Consequence is not denied*, he says, *by the Favourers of the Tax; they insist upon it, that such a Power is really lodged in every County Court by the Act.* Is not the Clause of the Act as unlimited as the Interpretation of it? But who ever challenged an unlimited Power to the Justices to levy what they pleased? Are they not plainly limited by the Charges of the County? Can they raise one Pound more than will defray those Charges? Are they not under the Ties of Oaths to act uprightly? Are not their Accompts, of the Tobacco levied, kept apart from other Matters; and to be under Inspection of the Governour and Council? What greater Care could the Legislature take, to prevent a corrupt Administration of the Act? They could not limit them to a certain Sum; because they could not foresee what would be proportionate to such Charge; the general Limitation is all that in Reason could be expected. And what a strange Noise has our Author made about it? It would have been worthy of him to have shewed, that the Justices of our Mother Country, or the Overseers of the Poor, are otherwise limited than by general Restraint? For if the Practice be the same there, as here, I'll venture to say, that the Order of Court is conformable to the Act, and strikes not at the *Foundation of all Liberty*; for may it not, with Reason be supposed, that the Parliament of *Great Britain*, and Assembly of *Maryland*, know the Constitution better than our Author? But he goes on, and says, *he thought it had been notoriously known, by every Man, who thought himself qualified to act in a publick Capacity, that it was one of the most distinguishing Marks of British Liberty, nay, the very Soul and Essence of it, for the People, or (which is the same Things) for the Representatives of the People, to be possessed with the Power to keep their Purses in their own Hands, to be the sole Judges, how much is necessary to be raised on them, and to direct the Disposal of it.* Now, grant all this, and what to the Purpose? Therefore they ought not, or cannot in Conjunction with the other Parts of the Legislature, enact a Law to empower the Justices, to levy what is necessary to defray the County Charges. Has our Author the Assurance to draw such a Conclusion? He seems to nibble at it; for he tells us, *that whenever any Bill, relating to raising of Money, has been offered them (the Representatives of the People meaning) by the House of Peers, that they never failed to resent it with Indignation, as an Incroachment on their inherent Rights.* And what then? Will it follow that the Legislature cannot empower the Justices of a County, to levy what is necessary to defray the County Charge? A noble Logician! How wisely does he draw Conclusions? Is it not as Fundamental a Right in the People

to give as to take? May not they, in Conjunction with the other Branches of the Legislature, provide for the incident Charges of a County, and enable the Justices to levy them, without a Breach upon the Constitution? Can they make no Provision for Futurity? What a senseless Constitution does our Scribbler make of it? He brings in the House of Commons, resenting it as an Incroachment on their Rights, that the Lords should offer a Bill for raising of Money, to prove that the whole Legislature cannot empower any Sett of Men whatever, to raise or levy any Money, or other Thing, upon any Account whatsoever, tho' ever so necessary to be done; and *this*, he says, is a *fundamental Part of the British Constitution*. How wonderful Sagacious is our Author? He should have given a particular List of the *Fundamentals*, with a Caution to the Assembly not to touch them! *For*, says he, *they cannot alter the Constitution*; that is, they can neither make it better nor worse! *There are* (says he) *certain Powers, Rights, and Priviledges, invested in every Branch of the Legislature by the Constitution, no Part of which can be given up, by any of them, without breaking thro' that Constitution, which is the Basis of the whole*. But cannot the whole alter them? Can they not make what Law they please? I wish our Adept would answer these Questions: It would be entertaining to have his Explication of the Constitution, the Basis, Bulwark, Fundamentals, Powers, Rights, and Priviledges invested in every Branch of the Legislature; *no Part of which can be given up by any of them, without breaking through that Constitution, which is the Basis of the whole*. I'll venture to say, that these are such a Jingle of Words, that no Man can understand, without an Explication, and fixing the Particulars. Pray, *Sir*, was not the Birth-right of *James the Second* an inherent Right? Was it not his Property and Priviledge to rule the Nation, to be at the Head of the Lords and Commons, to assent or dissent to all Laws made? Now if this was his Right and Priviledge (if you say it was not, shew what was) how could this be taken away *without breaking through that Constitution, which is the Basis of the whole*? And if the Constitution was then dissolved, what becomes of the Basis?

I Shall now humbly, and with great Deference to the Community, offer my Opinion of the Constitution: I take the Basis, or Foundation, of it to be the great Law of Reason, the Rules whereof are deducible from the Nature of Things; but would be ineffectual for the Purposes of Government, without the best and wisest of the Community to explain and apply them impartially, to the Exigencies and Necessities of the Whole. The Dictates of Reason, then, directed our Ancestors to that mixed Form of Government

that we now have, which secures to the Body of the People the Legislative Power, and lodges the Executive in a single Person, under Limitations; and this has been improved into what we call a Parliament, consisting of King, Lords, and Commons; who regularly meet, and enact Laws agreeable to the Nature of Things, for the well ordering, directing and governing the whole Community. To them belong the Explication and Application of the Law of Reason, for the Purposes of Government. I know then of no Essential or Fundamental of the Constitution, but Parliaments; their Existence was before the Law, their Origin cannot be founded in any Law; we have Laws for the Choice and Regulation of them, but not for their Existence: An Essential or Fundamental must be before, or at least coeval to the Thing, of which it is Essential or Fundamental: Now, if this be the Case, that there are no other Essentials of our Constitution but Parliaments, they must have an absolute and unlimited Power, and may do whatever is fitting and necessary to be done, in all Cases: And so may a *Maryland Assembly*; for I presume none will pretend to make any material Distinction, and I think it notorious, that they have always assumed such an unlimited Power: The Parliament of *Great-Britain* independent, the Assembly of *Maryland* dependent. Parliaments, then, are the very Constitution itself. It would be absurd to say, they ever or would alter the Constitution; that is, themselves: But there is nothing dependent upon the Constitution, but what they can and may alter. There is no Power on Earth superior to them, and this, I think, takes off the Force of what is said in his second Letter, and evinces this to be true, That the People, as the other Branches of the Legislature, may tax themselves, and empower any others to tax them, for incident Charges, more especially, or other Necessaries, without violating the Fundamentals of the Constitution; for they may resume any of those Powers at Pleasure, or give greater, if they think it necessary.

But, before I conclude my Remarks on this second Letter, I shall consider the Author's Flirt at one of our Lawyers. *Can any Man be called a Lawyer (says he), tho' he makes Law his Profession, who is so far from understanding the Law of his Country, as to be shamefully ignorant of the Essentials of it's Liberty; who having wriggled himself into the Favour of a weak Magistracy, shall take upon him to mislead them in a Matter of the utmost Importance, by giving them a strained Interpretation to a Law, in direct Opposition to the Fundamentals of the Constitution; such an Interpretation, as sets a whole County in an Uproar, makes the People think their Liberties in Danger and engages*

several Hundreds of the Freeholders (as will be certainly the Case) to join in a Petition to the Assembly, for Address, &c. Here we have a Specimen of the Gentleman. Good Manners! The Lawyer is shamefully ignorant, because he has not the same Notion of the Constitution, that he has. Oh! Pity he did not understand *Bulwarks, Basis's, Essentials Fundamentals, &c.* but he has wriggled himself into the Favour of a weak Magistracy; and has not he screwed well? Monstrous! what Asses are these Magistrates, to be so imposed. In this Light has he set our Lawyer and Magistrates; sometimes they are weak and ignorant, at other Times acting by Ends and Purposes! Now, pray, who wriggles? Does not such Stuff as this betray a bad Cause, and indicate a {illeg.} Interest at bottom? Defamation and Scurrility are unnecessary to set off a good Cause, but a certain Sign of a bad one. A *wrong headed Interpretation* (says he) *has set the whole County in an Uproar, makes the People think their Liberties in Danger, and engages several Hundreds of the Freeholders to join in a Petition to the Assembly for Redress.* Now let any {illeg./injudi?}ous Person, nay the Honourable Assembly themselves, say whether this Scribber has not done all he could, to persuade the People their Liberties were in Danger from an Act of the Legislature and whether he and his Party are not the Aggressors. He is their Advocate; he has wire drawn the Constitution and made a Hobby of it. I hope they will not set forth in this Petition, that the Assembly had not Power to make such an Act; and that if it is not repealed, the People will resume their Rights. It is notorious, that a *British Parliament* is bound by nothing but the Law of Reason, nor are accountable to any Power on Earth for what they do. That the People have a Right to petition for Redress, when they think themselves aggrieved, Nobody will deny; but I must observe upon these writers of the *Freeholder* in general, that they are a scurrilous abuse of the Assembly and Magistrates; bullying of them, dictating to the Assembly what they cannot do! Is this like Petitioners humbly seeking for Redress of Grievances? He tells the Magistrates, *that the Order of Court will be a lasting Monument of their Fame;* that is, a lasting Reproach upon them. And then he does not barely rest here, but further slurs them for Want of Education and Knowledge; *an unanswerable Instance* (says he) *how necessary a good Education, and Knowledge of Men, is to make a wise Man; at least, a Man fit for Business.* It is Pity this Gentleman was not highly promoted to his Wisdom; he would I suppose, introduce a new Colony Assemblymen and Magistrates; such as would preserve his *Basis's, Fundamentals, Bulwarks, Essentials, &c.* But, to halt this Paper within

Bounds, I shall refer what may be further said, on this and his third Letter, to a future Consideration.

PHILANTHROPOS¹²

A Native of Maryland, *Maryland Gazette*, May 4, 1748

Mr. GREEN,

When *Augustus Caesar* was informed that, during his Absence from *Rome*, the publick Offices were sold, and thence Corruption likely to creep into the Magistracy, he resolved neither to punish any by vulgar Reports, nor to spare such as were manifestly found guilty. A Rule extremely just and worthy of the wise *Augustus*; and such, no doubt, as will be duly observed by our Legislature with Regard to the Magistrates of *Prince George's County*; whose Conduct will meet with Censure or Approbation, agreeable to the Merits of their Cause, and not according to the weak or prejudicate Opinions of others, who thro' Ignorance cannot, or thro' Interest will not, form a just Judgment of their Actions.

It is undoubtedly of the last Consequence to the Well-being of any Society, that the executive Powers be firmly supported in their Administration: But how can this be done, if those who have the Exposition and Execution of the Laws must ever belie at the Mercy of Individuals, and be eternally exposed to the Raillery, Insults and Reflections of every one who is inclined to differ in Opinion with them? Or how soon, by these Means, would that useful and honourable Station be rendered wholly useless and contemptible? And what must be the fatal Consequences, but in the first place, a partial Administration of Justice, and at length universal Confusion? That Government ought always to be in Subjection to the legal Constitution, is what no Man, who understands the Constitution, will deny. But that Magistrates, who have the Distribution of Justice, and Execution of the Laws, assented to by the Community, or, which is the same Thing, the Powers by them constituted, ought not to be upheld and protected from the Insults and Reproaches of private Persons, is what no Man, who is not an Enemy to the Constitution, will affirm.

Parliaments cannot always be sitting, nor is it necessary, or consistent with the Safety of the People, that they should. As one of the greatest Sticklers for Liberty, as well as one of the most consummate Judges that, his own

12. ["Lover of man."]

or any other Age ever produced, has incontrovertably shewn in his Treatise on Government. There standing Parliaments are demonstrated to be more dangerous than standing Armies. And from thence our Author proceeds to shew the Necessity of an executive Power, and the Plenitude of it, in the following Words.

But because the Laws that are at once, and in a short time made, have a constant and lasting Force, and need a perpetual Execution, or an Attendance thereunto; therefore it is necessary there should be a Power always in Being which should see to the Execution of the Laws that are made and remain in Force. And thus the legislative and executive Power come often to be separated.

Here we find, by this great Authority, which has never yet been disputed, nor from the Nature of Things in this Case ever can, that in the Recess of Parliaments the whole Power legislative, excepting that alone of making Laws, is devolved on the Power executive; from whence evidently appears the Necessity of supporting the last in the highest Honour and Dignity, the better to enable it to go thro' the Exercise and Performance of it's several Duties and Functions. Of this the *English* Nation have ever been extremely sensible and tenacious. Four hundred Years ago we find the Heir apparent to the Crown committed to the Fleet by a Magistrate, for insulting him in the Execution of his Office. We find too this noble Resolution of the Judge applauded by the Nation, approved of by the King, and rewarded by the Offender himself, after he became the great *Henry* the Vth. And the late Case of Judge *Willes* is a convincing Argument how dangerous it is at this Day to insult or reflect on a Magistrate in *England*. A Court Martial there, consisting of great Men, much greater Men than the Freeholders of *Prince George's* County, such too as perhaps were not more ignorant of the Constitution, were, for only saying that a Judge of the Common Pleas had exceeded his Jurisdiction, reduced to the mortifying Necessity of signing a formal Recantation, and asking Pardon in the most abject and submissive Terms. Upon receiving of which Submission on and Recantation, we are told, the Chief Justice delivered himself to the following Effect.

I desire, with the Concurrence of my Brothers, that it may be registred in the Remembrance Office, as a Memorial to the present and future Ages, that whoever set themselves above the Law, will in the End find

themselves mistaken; for we may with Propriety say of the Law as of Truth, *Magna est Veritas et prevalebit*.¹³

The legislative Powers of this Province seem to have been no less sensible of the Necessity of keeping up the Power and Dignity of Magistrates, as may be seen Page 199 and 207 of the Body of Laws, where Courts, and Magistrates out of Court, are not only impowered, but also positively enjoind, strictly to observe, and, by Fine or Imprisonment, punish those who behave with the least Indecency before them. Thus we find in what high Estimation the Station and Office of a Judge has ever been held in this and our Mother Country. Which may serve for an Answer to a late half-witted Author, who seems to have been kept by the Freeholder as a Body of Reserve, in case he should find himself too closely attacked. This Author, in order to prove that the Persons of Judges are not regarded in *England*, instances the Case of *Tresilian and Brember*, and others, Ministers and Favourites of *Richard the IIId*, who were put to Death, not for giving their Opinions on a Point of Law, but for advising the King he was above all Law: Which is Treason in any other Person as well as a Judge. This superficial Writer may, by these Laws, find how considerable County Courts have appeared in the Eyes of the Legislature, as well as those of the *Native*. He may by perusal also be convinced, that the Necessity of them arose from the Conduct of Foreigners. And if he will give himself time to reflect on the late Department of one of his own Party in a County Court, he may be satisfied of the Necessity of continuing such Laws in Force. Upon Enquiry too, he may perhaps learn, that the Offender has, in the Course of this Dispute, prided himself on that his insolent Behaviour; made a Merit of it to the People, as one of the Essentials of *British Liberty*, and thereby encouraged others to fly in the Face of Government. To take farther Notice of this Author, would be making him too considerable; for which Reason I shall drop him into his original Obscurity, and resume the Subject-Matter of this Paper.

The Freeholder's Performances begin I think in No. 143 of the *Maryland Gazette*. The first Paragraph, containing nothing but an uncommon Strain of Egotisms, and promises of shewing what it has not been, not ever will be, in his Power to shew, shall be passed over in Silence. In the second, we are told by this unprejudiced and well-bred Author, *he doubts not but he shall*

13. ["Great is the truth and it will prevail."]

be censured for making thus bold with Magistracy. From whence, I would be glad to know, could this Certainty of Censure proceed, but a Conviction that he either had or should futurely deserve it. *But*, says he, *as I have no quarrel to Names or Persons, I can give the less Offence.* Would not every one from hence naturally have concluded, that our modest Author would have concealed the Names of those against whom he intended to reason without Reserve, and whose Actions he designed with the utmost Freedom to canvas. Or, did not common Decency require thus much, even to an Enemy, in a Matter wherein it then could not, nor yet can, certainly be known, whether the Accusation be just or groundless? Yet we find, that to put beyond all Doubt who were the Persons intended to be libelled and aspersed without Measure, a Certificate of their Names, under the Hand and Seal of a Sworn Officer, has been industriously dispersed throughout the Province. A notable Instance of a well bred Gentleman! *In a Word, such a Proceeding will be a lasting Monument of his Fame, and an unanswerable Instance how necessary a good Education is to make a wise Man, at least a Man fit for a polite and candid Writer.*

The thinking Part of Mankind will allow, that tho' Magistracy be a great and honourable Trust, yet it is a Trust which ought to be bounded with many and strong Restraints. Whether Chains or Ropes I presume our Author forgot to mention. Magistrates, in my humble Opinion, are already bounded and tied down by the same Laws which govern the rest of Society. What Occasion then of additional Restraints? Or, if their Trust and Power be aimed at, and that must be retrench'd or taken away, what then becomes of the great and honourable Trust? *And every Violation of it, the smallest Violation of it, ought to meet with a proportionable Punishment; because Indulgence to the least Faults of Magistrates may be Cruelty to a whole People.* What, no quarter for poor Magistrates? No Allowance for human Frailties? What an obdurate, rigid and hard-hearted Patriot is here! And how well does he ape or rather surpass his Grandsire *Cato!* Surely our Author, by a fatal Mistake, took Magistrates for Popes. How else could it have entered into his Noddle, that a Man, by being dubb'd a Justice, was from thence forward invested with a Spirit of Infallibility, as he certainly must, before he can in Justice be accountable for an Error in Judgment, or Failings and Weaknesses which are incident to and inseparable from the Nature of Man.

It is the Bulwark of a British Constitution, that our Lives and Properties are secured by Laws made by ourselves, and executed by our Magistrates. Here for

once we shall agree with the *Freeholder*, that his Doctrine is sound and good. What a Pity is it then, that this judicious Author has unluckily knock'd it on the Head, in his second Essay on Liberty and the Constitution; where we find this memorable Expression; *If the Steps taken by one of the Parties be legal and valid, they strike at the Foundation of all Liberty.* Thus, by a wonderful Operation of our Laws, they secure our Lives and Properties at the same Time that they are destructive of our Liberties! What a profound Statesman is our *Freeholder*, and how unfathomable are the Depths of his double-refin'd Politics! When, Oh! when shall it please Almighty God to enlighten this Infant Country, and enable the brightest of her Sons to make such wise Distinctions and subtle Remarks? But alas! we* *want the Advantage of a better Education*, and, in that, all Things.

†*Come Wisdom, come, dispel these Clouds of Night;
And o'er the Province spread thy glorious Light;
Let Colleges arise at thy Command,
And send thy wise Instructors through the Land.*

Then indeed shall the Natives of *Maryland*, enter the Lists, and take up the Gantlets, with the most learned B—kh—d that ever imbibed Grammatical Nonsense in a Hutt, or received an aukward Education at a Charity-School. *Whenever these Laws are wilfully or ignorantly misconstrued, to serve certain Purposes or bye Ends, and not the Good of the People in general, our Constitution affords a Remedy, a tried and practicable Remedy.* That Laws may be wilfully or ignorantly misconstrued will not be denied: But that they can be misconstrued ignorantly to serve bye Ends, is what I must desire at present to be excused from allowing; because, with Submission to the learned *Philo* and his Cousin *Americano*,¹⁴ a little native Sense tells me, that no Man can designedly do a Thing, and yet be ignorant of it.

And while I only contend that no Steps ought to be taken by any Set of Men whatever, to destroy, or even frustrate that valuable Branch of Liberty left in the People, a Liberty to lay their Wants and Complaints by Petition before the Legislature; I doubt not but the Prayers and good Wishes of every honest Man will attend me. Worthy Patriot! Good and pious Man! How does

* *Americano Britannus.*

† *Philo-Musaeus.* {"American Englishman Lover of the Muse."—Tr.}

14. [*Philo* seems to refer to the author of the poem quoted above, *Philo Museus*, "Lover of the Muses."—Tr.]

his Breast glow, his Pulse throb, and his Heart beat, with the Love of his Country! To me it is Matter of Wonder, that in this difficult and arduous Task, he had not invoked the Assistance of all the immortal Gods, as well as the Prayers of every honest Man. But before Assistance either human or divine is necessary, it is incumbent upon this poor oppressed and groaning Patriot, to shew that the Magistrates have taken any Steps to deprive him of this valuable Branch of Liberty; or that they have ever denied the Rights of the People, in an humble Manner to lay their Aggrievances, or what they esteemed such, before the Legislature; a Thing, not only in itself highly reasonable, but moreover agreeable to *Magna Charta*, and the Petition of Right. How very different has been the Conduct of those Gentlemen on that Occasion? Conscious of the Uprightness of their Intentions, whatever Light they might appear in to others, they were ever ready and willing to submit their Actions to the Judgment of those to whom alone they are accountable; beholding at the same Time, with a just Disdain, the little Arts and scandalous Devices of their Enemies, to render them contemptible in the Eyes of the World, and expose them to the Hatred and Insults of the People: In which laudable Design, however well they may have succeeded, their grand Project of preventing the Designs of the Justices from being carried into Execution, has nevertheless miscarried. They who had accepted of a Trust, and were satisfied of the Rectitude of their Measures, and the Measures of those by whom they were intrusted, were not to be intimidated by Clamours of Numbers, but remained immutably fix'd in their first Resolutions, agreeable to the Intrepidity of just and good Men, so nobly set forth by *Horace* in the following Lines:

*The Man resolv'd, and steady to his Trust,
Inflexible to Ill, and obstinately just,
May the rude Rabble's Insolence despise,
Their senseless Clamours, and tumultuous Cries.*

Hence it came to pass, that a memorable Remonstrance, containing in Substance nothing, in Nonsense much, handed in on an ever-memorable Day, by an ever-busy Gentleman of another County at the Head, at the Instance, and in the Name, of half a Dozen interested Leaders, and twenty-six misguided Freeholders, of *Prince George's*, had not it's designed Effect. But since our Constitution, by our Author's own Confession, affords a Remedy for every Evil, why all this Fuss, this Clamour and Noise, about a

single Instance of male Administration in a County Court, supposing for Argument Sake this to be one! Or is it reasonable or just, that violent Convulsions should ensure every false Step or Error in Judgment of a Court of Judicature; and the People be set together by the Ears or in our Author's own Words, *a whole County set in an Uprising*. And that too before those, by whom alone the Matter is cognizable, have determined the Justice of the Complaint; or does not such an uncommon Mode of Proceeding betray the Badness of a Cause?

Having thus concluded my Remarks on the *Freeholder's* first Letter, it seems absolutely necessary, before I proceed to a Consideration of the second, to premise that a very wide and material Distinction is to be made between what is Law, and what ought not to be Law, for this plain and obvious Reason: If Magistrates act wilfully or corruptly, without or against Law, they are accountable and punishable for it; but if they act under a Law, be it never so pernicious in it's Consequences, let it even be destructive of Life, Liberty, Property, and all that is dear and valuable to Society; yet, as they had no Share in the making of it, they therefore cannot be answerable for it's Consequences, although obliged in their Administration to govern by it. The Necessity of this Distinction will further appear to every one who considers the Drift of the *Freeholder's* Arguments, and how much the principal Matter, to which he should have confined himself, has all along been departed from. It ought to be remember'd, that what originally gave Rise to this Dispute, was a Charge of male Administration, exhibited against a County Court, and founded on a Presumption that the Proceedings of it's Members were either against, or without, Law. This then is the essential Point which the *Freeholder* should first have endeavoured to prove, and which was incumbent on him to prove: But that, we find, has been artfully laid aside, and a faint Attempt made towards demonstrating such a Law (which, by the Bye, is a Confession of the Law, and consequently a Giving up of at least half the Argument), to be inconsistent with a *British* Constitution. From whence it may naturally and reasonably be inferr'd, that our Author himself was not insensible of the Badness of his Cause; so he must have supposed such a Law actually in Being, before any Conclusions could be drawn from it. But we shall cease to wonder at this Conduct of our Author, however extraordinary it may at first appear, when we consider his Motives, and the Advantages he expected to reap from it. If, as he and his Party fondly hoped, and modestly believed, the People of *Maryland* should turn out so insuperably ignorant

and undiscerning, as not to be able to judge, that under a general Law, penn'd in plain *English* Words, wherein neither a Bridge nor Court-House is mentioned; If these stupid Wretches and Outcasts of Nature, I say, should not be able to discern, that in such a Case the Bridge and House are equally taken Notice of; or should they judiciously determine with the *Freeholder*, that the first is mentioned, and the last not; then our Author obtains his Ends, gets a Court-House to himself, shakes Hands with Liberty, drops the Argument, *makes a low Bow, and retires with all imaginable Sobriety, Decency, and Regard to the Laws and Government.* But if on the contrary, a Ray of Light should unluckily break in upon the clouded Brains of senseless and unwary Buckskins; if they should, contrary to all Expectation, *without the Advantage of a better Education,* be able to judge that Black is Black, and that White is not Black, and from thence in Time arrive to such a Pitch of Understanding as to distinguish, that where neither a Bridge or House is mentioned, they are equally taken Notice of; that the Words *necessary Charges* are as applicable to a Court House as a Bridge; and that it is as necessary to repair the first as the last: Or, which is worse than all, if the Assembly too should at the same Time be seized with distinguishing Faculties, and concur in Opinion with the newly enlightened Natives; then Mr. *Freeholder*, as his last Resort, has Recourse to his Friend *Constitution*, whom he brings into the Field at the Head of a numerous Army of veteran Forces, consisting of *Fundamentals, Essentials, Basis's, and Compacts:* With these choice Troops he first attacks Common Sense, as an Enemy to his refined Politics; in which, if he comes off victorious; he has then a clear Stage, and nothing left to do, unless the *Parliament, or an Assembly in America, (for I presume no one will pretend to make any material Distinction,)* should offer to touch or meddle with any of *Constitution's* Men; in which Case, an Opportunity is offer'd this Hero of signaling himself in another Campaign; the *Freeholder*, with the Assistance of *some of the greatest Statesmen that England ever saw,* having convinced him of the Lawfulness of such a defensive War.

That this is the Spirit and Substance of the *Freeholder's* Doctrine, if any Substance or Spirit there be in it, *let every Man that hears him, every Man that will read him,* judge; and that he knows nothing of that Constitution about which he has made such a Pother, it is hoped, will in the Course of this Argument be shewn: But for the Sake of Order, and that nothing may be left unanswered, I shall first consider what is said by our Author, in his Complaint of the unlimited Power of Magistrates, from the Law

under our Consideration. *I call it, says he, an unlimited Power, because the Interpretation given to that Clause of the Act of Assembly, from which they claim their Power, is without Limitation, and gives them the same Power to levy five hundred thousand or fifty millions, as one hundred thousand: Yea, and our sagacious Freeholder might have added, as one Ounce.* For this is actually the Meaning of the Law, and I presume was the Design of the Makers. Nor could it possibly be couched in other Words, so as to answer the Intention of it; because it then was, and to this Day is, altogether impossible certainly to judge what Sum or Quantity of Tobacco may be adequate to the necessary Charges and Exigencies of a County. How could a Legislative Power determine what Repairs of every Kind might be wanting; how many Bridges, and what Dimensions; how many Ferries, and on what Terms they ought to be kept; how many Pensioners, and what Charity according to their respective Circumstances they merited? Hence arose the Necessity of investing Courts with that plenary Power so much complained of, and which in my weak Opinion cannot be altered for the better, nor lodged in any other Set of Men, with equal Safety to the People. For, supposing Mankind in the General to be upon a Level with regard to Corruption, yet as every one, let him be ever so depraved in his Morals, would choose to appear virtuous in the Eyes of the World, from that Consideration alone the Actions of Men in an elevated Station will ever be found attended with greater Diffidence, Circumspection, and Caution, than such as are transacted in Holes and Corners, or in a Manner less exposed to public View. From whence it is evident, that this delegated Power of Taxing is more securely lodged in County Courts, than it would be in Vestries, or with Constables, as it is in some Cases in *England*; or with any Set of Men whatever.

[A Native of Maryland]

A Native of Maryland, *Maryland Gazette*,
Supplement to May 11, 1748

CONTINUATION of the Native of MARYLAND.

The favourite Argument of those against whom I am reasoning, that *an avaritious Governor might, by filling every Bench in the Province with a Set of Tools for his Purpose, enrich himself out of the Spoils of the People*, will

be found extremely Fallacious, and without all Foundation, when it is considered, that the Magistrates are not only expressly limited by the Words *necessary Charges of the County*, and under the solemn Tie of an Oath not to exceed that Limitation, or burthen the People with what, in their real Sentiments, is not necessary, (in which Case too they must be equal Sufferers, in Proportion to the Number of their own Taxables) but moreover, from the Manner of Taxing, and the Nature of the Thing, they cannot possibly make such an ill Use of their Trust, as by our scare-crow Author has been suggested: Because they have not the least Power over, nor can ever come to the Possession of, the Tobacco taxed. The Sheriff, who is the proper Officer for levying and gathering it on the People, not being accountable to the Magistrates after Collection, but to those to whom it was appropriated, or to the Uses for which it was assessed. To illustrate this Argument, let us suppose that *a Set of Tools* in every County Court of the Province, minding to compliment the Governor with a hundred thousand Pounds of Tobacco, were to assess that Quantity on the People, under a Pretence of repairing their Court-Houses, and that, at the Time of levying, a Contract is entered into for those Repairs; does not the Tobacco then become the Property of the Undertaker? Or we shall suppose again, that no Agreement is made by the Courts, nor by any Persons by them appointed; what then becomes of the Tobacco? Does it not remain in the Sheriff's Hands for the Use of the County? Has not this Officer a Copy of the Levy, by which he may find for what Purpose the Tobacco is assessed? And is not his Bond made liable for it to the Uses for which it is levied expressly by an Act of Assembly. (Body of Laws, Page 97. "And also the Obligation of such Bond to be made answerable to the public Charges of the respective Counties.") How then could an avaritious Governor possibly lay his Hands on such a Tax? Is it likely that the Justices, or any Set of Men, would be weak or wicked enough to draw such an Order, as the following, on a Sheriff, *Pay his rapacious Excellency, or Order, one hundred thousand Pounds of Tobacco; which was levied the last November Court for the Repairs of our Court-House*. Or is it probable that a Sheriff, or any Man of common Sense, would pay any kind of Regard to such an Order? And yet I cannot, for my part, conjecture what other Expedient, bad as it is, a Court of Tools could fall upon to enrich a Governor out of the Purses of the People. Of the Difficulty of such a Task, the *Freeholder* himself seems fully apprehensive. *I confess* (says he) *the Supposition made is a very improbable one; but it is sufficient for the Purpose it was adduced, it is*

a possible one. I would ask this ever-watchful Guardian of Liberty, what is not possible! Or whether the utmost Stretch of human Wisdom was ever yet found sufficient, to frame such wise and infallible Laws, as to guard against the various Courses of human Contingencies, and to provide against every Evil or Inconvenience that might possibly happen? Or whether the same Objection to this Act, might not be made to every Law whatever? The Act which impowers a single Magistrate, in a summary way, to determine all Causes to the amount of a certain Sum, has no doubt been hurtful to many. Yet this Law is still thought necessary, to prevent a greater Evil, that of litigious and expensive Suits. The Squirrel Law puts it in the Power of a Magistrate to wrong the Community of considerable Sums in a Year, by giving Certificates of Scalps not destroy'd before him. But a bare Possibility of his making an ill Use of this Trust, has never yet been urged as a Reason for repealing the Law.

It is possible that Parliaments may be corrupted, nay, it is certain they have been so: Must we therefore have no Parliaments? We are told, that although in the twelve Tables of the *Romans*, there was no other capital Crime; yet he who was the Author of a Libel, or took away the good Name of another, was punished by Death. It is possible that such a Law may prevail here; must the *Freeholder* therefore (who has display'd such uncommon Talents in Scandal and Defamation) dread a Hanging? In short, when this Author will shew what is impossible, the Argument on my Side shall be very readily drop'd, and the Fallibility of our Laws, and Rottenness of the Constitution, allow'd to be new modell'd according to his own infallible Notions. Now to evince that such a Power as is contended for (and I presume by this Time fully made out to be in our Justices) is not inconsistent with the hereditary Rights of *British* Subjects, nor contrary to the Scope of all *British* Laws whatever, agreeable to the Power lodged in the Justices of *England* by Acts of Parliament; I shall instance one out of the many that might be mention'd. By the XXIIId of *Henry* the VIIIth,

four Justices of every Shire have a Power, with the Assent of the Constables, or two honest Inhabitants, to tax every Inhabitant, within the Limits of their Commissions, such Sums of Money as they shall think, by their Discretions, convenient and sufficient for repairing, re-edifying and amendment of Bridges, Highways, &c.

These Justices too are to appoint Collectors of the Tax, who are accountable to them only for the Money raised. Is not this an *unlimited Power* of Taxing? Are the Justices by this Act confined to any Sum whatever? And could not a *rapacious King*, by filling County Benches in *England*, with a *Set of Tools* for his Purpose, as easily enrich himself out of the Spoils of the People, as an *avaricious Governor* here? Or rather, has he not a greater Opportunity of doing it; since the Gatherers of the Tax in *England* are accountable to the Justices, but in *Maryland* to the People? In this particular Instance then, we are rather more secure from Oppression, than those of our Mother Country. Yet the *Wisdom of our Ancestors* have never yet discovered such an *unlimited Power* of Taxing in County Courts, to be *inconsistent with the inherent Rights of British Subjects*; nor that by this Means the *original Compact was broken*, and a *back Door open'd which lead into an endless Labyrinth of Misery*. But on the contrary, by the 1st of *Queen Anne*, some Doubts in this Act are explained, and the Power of the Justices confirmed. Thus we find that our dull and unthinking Forefathers, the *English*, continue as ignorant to this Day, as they were two hundred Years ago, when they inadvertently consented to the Law before-recited. And that the Merit of discovering this grand Flaw in their Constitution, has been reserved for the Wisdom of a POTOWMACK FREEHOLDER. Who to prove such a delegated Power of Taxing, a Power which may be resumed at Pleasure, to be inconsistent with *British Liberty*, tells us, that the *Parliament cannot alter the Constitution*. I should be glad to be informed by this cunning Statesman, what Part of the Constitution the Parliament cannot alter? Or whether every new Law made, or old One repealed, is not an Alteration of the Constitution, for the better or worse? What our Constitution is at present, but a Series of Alterations made by Parliaments: or whether the Power of Parliaments, at this Day, is not as ample and extensive as was that of their Predecessors? It is true, there are some Fundamentals which it would not be safe for a Parliament to alter. For in the Constitution of *Great Britain*, we are to consider, not only the constituent Powers, but the Things constituted; which are the fundamental Laws of the Kingdom, the great Barrier and Security of Person and Property; so that if the constituent Powers should abolish any old Laws, or make new, which either take away or weaken the general Security of Person and Property, they would then act against the Spirit or Design of the Constitution. Thus, had the Lords and Commons, as *King James* wished and designed, enacted a Law, that the Kings of *England* had a Right to suspend or dispense

with Laws; to levy Money, or raise an Army, without the Consent of any future Parliament, or that the Parliaments should be perpetual, and chuse one another as Members died off: This, tho' done by the constituent Powers, would have been a traitorous delivering up of the Constitution: And the People would have had the same Reason to resist all the Powers as to resist one, and to return to their original State of Nature, and chuse a new Government, or resume the old One. All the *Fundamentals, Essentials* and *Basis's* therefore that I know of, which the Parliament have no just Power to alter, centers in this, that they cannot give up any of those Powers, which by the joint Consent of the Community, in order to keep up their mixt Form of Government, the several Branches of the Legislature are invested with; that is, they can't make new Legislation, or transfer the Power of making Laws, or place it otherwise than where the People have. But can it, with any Propriety, from hence be said, that Parliaments have no Right to possess the Peoples or any Set of Men on their Behalf, with a delegated Power of taxing themselves for their own Use; as in the Case before us Or that such a Power of Taxing, which, as was before observed, may be resumed when ever it is found pernicious or inconvenient is inconsistent with the hereditary Rights of an *English* Subject, or a parting with the People's Power over their own Purses? No surely, for if this had been the Case, that *rapacious* King, who oppress'd the People with the Article of Ship-Money, without any Colour or Pretence of Law, but merely by the Force of Prerogative, would have had Recourse to the Statute of *Henry VIII*th before mentioned, and fill'd every Bench in the Kingdom with a Set of Tools for his Purpose. Having thus, I think, fully proved that the Law, by which the Justices of *Prince-George's* County lately taxed the Inhabitants, is neither repugnant to, nor subversive of, any Part of the *English* Constitution, but agreeable to the Laws and Customs of that Realm in the like Cases; I shall now proceed to shew, what has been the Construction which has hitherto been put upon this Act of Assembly; and that the late Tax is grounded on Precedent and Custom, as well as the general Words of the Law. In 1710, the Justices of *Prince-George's* assessed the Inhabitants twelve thousand Pounds of Tobacco for the building of a County Gaol. This happen'd but six Years after the making of the Law; when it may reasonably be supposed the Intention of the Legislature might be better judged of than at present. Those who are ever fond of Quibbling in a bad Cause, or making Objections without any Kind of Foundation, may alledge, that the Building of a Prison under a general

Law is no Precedent or Authority for repairing a Court House. However, to obviate such trifling Arguments, in 1713 we find on the Records of the same County, nine thousand five hundred Pounds of Tobacco levied “for Work done to the Court-House.” In 1735 fifty-five Pounds Current Money, was allowed for the same Purpose: And in 1744, twelve thousand two hundred and eighty Pounds of Tobacco was assessed for repairing the present Gaol. Are not these Instances sufficient to shew the late Tax not to be unprecedented, but founded on Custom almost ever since the Law; and is not Custom the best Expounder of the Laws, agreeable to the Maxim, *Optimus legum interpres consuetudo*.¹⁵ How then can this be called a very extraordinary Order of Court? Will it avail any Thing to say, that because the late Tax is higher than any of the former, that therefore it is illegal? This is a Way of reasoning suitable enough to the tender Years of an Infant, but can never become those who profess themselves competent Judges of the British Constitution; a little Knowledge of which would convince them, that a Court has the same Right to take from an *Englishman*, without Law, a Million as a Penny.

Having thus I hope proved, beyond all Contradiction, that the late Proceeding of *Prince-George’s* County Court, is warranted by the Laws and Customs of this Province, that such a Power in County Courts is agreeable to the Constitution of *Great Britain*, and that it cannot possibly be attended with any Danger to the Liberties and Properties of the People; I shall conclude with saying, that in the Course of this Dispute I have been unbass’d by any Interest, save that of my Country, and uninfluenced by any Prejudice, but that of a just Resentment of the wicked and treacherous Measures of those, who, under a Pretence of preserving Liberty, would introduce an unbounded Licentiousness, and Sap the very Foundations of all Government; a Light in which I have ever look’d upon the Doctrine of the *Freeholder* and his Party. And however well or ill my Sentiments on this Occasion may be taken, I shall at least have the pleasing Consciousness of having endeavoured to open the Eyes of my honest, but deluded, Countrymen.

I am, *Sir*, Yours,

A Native of MARYLAND.

15. [“Custom is the best interpreter of the laws.”]

A Native of Maryland, *Maryland Gazette*, May 18, 1748

Mr. GREEN,

It was, till now, my full Purpose not to Answer, in any Manner, the *Freeholder's* last Letter; because there really to me appeared nothing in that Performance worthy any kind of Notice, unless in the ridiculous Way; an Undertaking for which I have neither Time, nor Inclination. But, on Reflection, finding that in my second Letter, wherein a Challenge was given to go upon an Explication of the Law, (and to shew that the Magistrates had, in their late Proceeding, put a wrong Construction on it) I had promised, if any Attempt of that Kind should be made, that my best Endeavours should not be wanting, to refute any false Reasoning or erroneous Arguments that might be offered to obscure Truth, and pervert the Meaning of the Legislature: I thought it therefore my Duty, if for no other Reason than a punctual Observance of my Promise, to add a Word or two in Answer to what has been said on that Subject by the *Freeholder*, in No. 156 of the *Maryland Gazette*: The whole of which (except a long Preface, wherein you are sure to find this honest Gentleman paying his usual Compliments to himself) may be reduced to the following Heads.

[*The Remainder of the Native, in Answer to the Freeholder's Explication of the Law, shall be in our next, as it came so late to hand as to render it impossible to give the whole a Place here.*]

[A Native of Maryland]

Philanthropos, *Maryland Gazette*, May 18, 1748

Mr. GREEN,

Rather than leave any thing behind me unobserved on the *Freeholder's* second Letter, I shall touch upon some other Particulars in it. He absolutely (I think) asserts, *that the Parliament, or in America an Assembly, has not a Power, i.e. a Right to enact anything contrary to a fundamental Part of the British Constitution. And this (he says) is a Fundamental, that all Money for the Use of the Publick, must come from the People; and that the sole Right of judging the Sum necessary, and directing the application of it, is lodged in the People, or their Representatives.* Now suppose this to be true, (I do not dispute it's being reasonable, but deny it's being fundamental, any otherwise than as it is seen to flow from the Law of Reason, the true and only Foundation) will it not follow, that, in Conjunction with the other Branches of the Legislature,

(for without them they cannot levy any thing) they may, by an Act, empower others to levy Money for certain Ends and Purposes, the Quantum of which they cannot foresee? I think it proper to ask our Author some Questions on this Head, Who, or what, can disable the Legislature? Are they not the supreme Power? Is the Power of such a Nature that it cannot in Part be delegated? Has it not been practised in this Province, ever since the Settlement of it? If the *Freeholder* would consider and answer these Questions, he might give some Satisfaction to his Readers. But what he seems to me to contend for, is, I think, absurd; the Legislature must be constantly sitting, the minutest Charge must come before them, they must consider and provide for the Poor, build Bridges, settle Ferries and every other Thing that requires a Charge from the Counties. Our Author, in his Fury, has asserted too much; he has turned the Dispute out of it's proper Channel; he tells us of many brave and bloody Struggles our Ancestors had, in Opposition to arbitrary Impositions: But these Struggles were with the Kings, who pretended to raise Money without Consent of Parliament; his Arguments are adapted to that only Purpose, and against such a Power; and probably taken from Writers on that Subject; But can he shew any one Writer before himself, that ever asserted, that the Legislature cannot empower the Justices to levy any necessary Sum to defray the County Charge?

He says further, that *it is not in the Power of the Representatives to give up this ancient Privilege of the People*. Well, and what then? Is delegating part of a Power, to be exercised in the Name and by the Authority of the Constituents, giving up that Power or Privilege? I think not. It is a retaining of it, as it is executed by their Authority, for the Good of the Whole; and which Power they may resume, or otherwise, when they see fit. Now how is this *infringing an essential Part of the Constitution*? It is so far from that, that it is executing that Power or Trust by Deputies under their own Authority; and so far is it from being unlimited, that it is derived under the best and surer Restraints that the Nature of the Trust will admit of, as I have already shown. Our Author has heard or read somewhat, against a Power of raising Money, any otherwise than by the Representatives of the People; that is, in short, that the King shall not levy Money without Consent or Authority of the Commons: And all this he has turned against our Assembly, for enabling the Justices to defray their County Charges; which is not giving up any Power, but taking necessary Care to have the Power duly and legally executed: Is not this Wriggling? Is it not imposing on the Ignorance of the People? Suggesting their Liberties to be infringed from the Exercise of an

Act of their own making? No Man that means honestly would be guilty of thus prevaricating: There is nothing but Ignorance to be pleaded for it. It is a very heinous Crime to sow the Seeds of Discord and Dissention in the Minds of the People; it has a Tendency to inflame and put all Things into a Combustion; the Consequences whereof have often proved dreadful.

I come now to our Author's famous Supposition, *that the Majority of the Freeholders should desire the Court-House to continue at Marlborough, and that there was an absolute Necessity for raising one hundred thousand Weight of Tobacco at this Time, to repair it.* Now grant but the first, the second *viz.* the Necessity of raising the Sum, is evident to every Body, who knows any thing of the Court House; that it was both too small, and all to pieces. But it is the first that galls our Author and his Party; they want the Court House at Blandenburg and the Trade from *Patuxent*; this is the Liberty they want, and this only is in Danger: Now to make this the Cause of every Man in *Maryland*, is a Banter upon common sense. But to go on with his Supposition, *that from the known Wisdom and Learning, Impartiality and strict Honesty of the present residing Magistrates, there was nothing to be feared from the Exercise of such a Power, while in their Hands, nor from the present worthy Governour; yet in Times to come an avaritious Governor, designing to enrich himself out of the Spoils of the People, may fill every Bench in the Province with a Set of Tools for his Purpose: Some Pretence or other, under the Title of a public Charge, will never be wanting to levy large Sums. These Magistrates too are to appoint Commissioners to lay it out, and, if they render satisfactory Accounts of the whole of the Jobb, to the Governor and Council, they are accountable at no other Tribunal. Here then is a Door opened into an endless Labyrinth of Miseries.* I think I need not repeat the Remainder of this pretty Supposition: The Author himself grants it a very improbable One; and if so, why was it adduced? Can any Consequence be drawn from an Improbability? Oh, *but it is a possible One,* (says he). But should not he know, that what is very improbable is next to morally impossible? He would suppose the Governor and Council to be perjurd Rogues; and that they cou'd find out a Set of Justices all over the Province like themselves; and that these Justices would find Rogues for Commissioners to lay out the Plunder, that is, to put it into the Governor's Pocket; the Sheriff must be a Rogue too, to join in all this; and must they not get Somebody likewise to make Shew at a public Charge, but an Account may be entred of the Particulars? Now, may not our Author as well suppose, that an Assembly might be corrupted to give up their Rights

and Privileges at once? Is not this as possible as the other? And must not he suppose too, that the People would not have Virtue enough to make a Stand against all this, and resume their Rights by the original Contract? This has been done, and will be done again when Things are brought to such an Extremity as our Author supposes; except he'll suppose also, that the Majority of the People are so corrupted that they will not be alarmed by such a Proceeding. But this is not to be supposed. For since Property is so much divided amongst the Bulk of the People, as it is with us, it is morally impossible but that they will at all Times be ready to defend it: They'll neither lavish it away by an unseasonable Attempt, nor wait 'till it is wrested from them by Tyranny. Now, before I rake into such a Heap of Trash and Dirt as is contained in his third Letter; I should gladly have a little more of it, and have done with such Stuff at once: I therefore think it necessary to call upon our Author to look back to the Method he proposed, especially the first Particular, to shew with what Views the Magistrates made the Order that has given him so much Offence. In this he would insinuate they had very corrupt ones; as may be drawn from the Whole of his Letters, *and from the Expectation he has rais'd in every Body that reads him, or hears him read.* Now if he declines this, I shall think it my Duty, with Regard to the Public and the injured Magistrates, to set Matters in a proper Light: I shall explain the Nature of Malevolence and Scandal, show that they are diabolical Vices; whether they will hit our Author or not, shall be referr'd to the fair and candid Considerer. And so I bid him adieu for the present.

PHILANTHROPOS.

Anonymous, Postscript to the *Maryland Gazette*,

May 18, 1748

An ESSAY, towards setting in a clear Light, a Clause of an Act of Assembly, intituled, An Act Impowering the Commissioners of the County-Courts, to levy and raise Tobacco, to defray the necessary Charges of their Counties and Parishes.

Be it enacted, &c. That for the future it shall and may be lawful, to and for, the several and respective Commissioners, of the several and respective County-Courts, within this Province, at their several and respective County-Courts to be held for the said Counties, upon Examination had before them, of the publick Charge of their several and respective

Counties, and Allowances by them made of the same; to levy and raise Tobacco, for Payment and Satisfaction of the several and respective County Charges, and the Sheriff's Salary for collecting thereof, by an equal Assessment of the taxable Persons of the said several Counties: Any former Law, &c.

In the Title of the Act the Charges are called, *the necessary Charges of the Counties, &c.* In the Act itself they are called, *the public Charges of the Counties.* The Meaning then of the Clause depends upon a right Understanding of the Word *Charges.* I understand it to be the *Expence, Estimate or Value of the Particulars necessary and incumbent for a County to provide; such as building and repairing Court-Houses, Goals, Bridges, Provision for the Poor, Ferriages, and all other Necessaries for the Conveniency and public Use of the County.* The Word *Charges* here, must have the same Signification, as it has in Matters of common Life; in them it signifies the *Expence of Food, Cloaths and other Necessaries; the Cost or Amount of such.* Now if this be the true Meaning of the Word, as I believe it will be allowed by all disinterested ingenious Men; the Clause is clear and plain, that the Commissioners are impowered, upon Examination and Allowance of each or all of these Particulars to be necessary, and to be provided by the County, to raise and levy Tobacco for the Discharge of them. This is the plain, easy, natural Sense of the Clause; and clear I think of all Absurdities and Inconveniencies. It puts the Commissioners on a rational Method of Acting; leaving it in their Power to be frugal and wary, and to make the best Bargains they can for the County; and it gives Encouragement also to Workmen to be employ'd by them.

Let us now take a View of the *Freeholder's* Sense of the Clause: And after repeating the Words, he says, *that he thinks it will appear to every one that considers them with Attention, that it gives the Justices no Power to raise a single Pound of Tobacco upon the People, but for Work already done, Charges or Accompts exhibited, examined and allowed by the Court.* Is not this a strain'd unnatural Exposition? He confounds Charges and Accompts together, as if they were one and the same Thing; whereas they are quite different: *Charges* are the Estimate, Value or Expence of particular Necessaries, provided or to be provided. *Accompts*, a Collection on Paper of several particular Sums ready cast up, and a Ballance, if any, struck. On his Sense of the Clause, the Justices cannot treat with, employ, or agree, with any Body about the Particulars incumbent on the County, nor provide for the Payment of

them, before hand. When the Work is done, it is then to be considered, and Tobacco to be levied to pay him, what they please to give. Is this a rational Scheme? Who would work for the County on these Terms? Will one drop from the Clouds to do their Work? For sure, no Man here in his Senses, would work, and depend on the Justices for what they please to levy for him after the Work is done, without being employ'd or agreed with. That this is our Author's Scheme, is plain from what follows: *Nothing considerable*, says he, *can be undertaken on the Foundation of the Act, in the Sense explained; because the Undertaker must first do the Work, and then bring in his Charge, which must be examined and allowed by the Justices, before they can levy for the Payment of it. Now the Risque in this Case is so great* (says he) *that no prudent Man would ever choose to run it, in a Matter of any Importance: The same Justices that encouraged him to do the Work, might take it into their Heads to clip his Accompt unreasonably: Nay, one or two vain Magistrates might turn the Scale, and create a Majority against the Service, and disallow the Whole. Instances* (he says) *might be produced of both these happening; which will be always a sufficient Discouragement from taking considerable Jobbs in Hand upon such a precarious Footing.* Now let me be allowed to ask our Author a few Questions: Would a prudent Man take the most inconsiderable Jobb upon such a Foot? Who was ever served so as to be denied Payment, by the Addition of two or three Magistrates? Or, who ever had their Accompts unreasonably clip'd, by the Magistrates that encouraged them? I fancy our Author will be puzzled to find out Instances. But to go on; if all that he has said was the Intention of the Assembly, could they well have said a more wicked Scheme! Are they not much beholden to our Author for his Explication of their Laws; which in the plain, natural Sense appears just and honest, but, in Intention, a Trap to catch honest People in? Have any of the Courts ever understood the Law in this Sense? But to proceed: Our Author allows that the Legislature has lodged, in County Courts, a general discretionary Power to judge of small petty Charges, and levy for the Payment of them, in Case they appear reasonable. But where has our Author found the Distinction between great and petty Charges? Not in the Title of the Act, nor in the Act itself; one calls it the *necessary Charges*, and the other the *public Charges* of the County, without Restriction. Here is another pretty Trap he has set for the Justices; and if his Sense should prevail, they are all catch'd in it. But I think our Author should have known that general Words, without Restriction, are not to be *wriggled* into Diminutive; nor

will any reasonable Construction admit of it. If they have a discretionary Power to levy set small or petty Charges, they have the same for greater, if the Necessities of the County require it: They are no ways restrain'd, but as the Act generally restrains them.

I refer it now to the Reader, whether our Author's Exposition of the Clause be not an impudent Imposition on the common Sense and Reason of Mankind? The Legislature has given a Power over the *necessary public Charges*: He has restrain'd it to *particular petty Charges*. Is it not fit to ask him, by what Logick he does this? He says, *Nothing is to be more regarded in Laws, than the Intention of the Legislature in making of them*. But will any Man, besides our Author, have the Assurance to fix an Intention on the Legislature directly inconsistent with their express Words? I think I need say no more to shew how absurd his Exposition is.

ANONYMOUS

A Native of Maryland, *Maryland Gazette*, May 25, 1748

The Remainder of the Letter begun in our last.

That the Services should be done before the Tobacco is levied; that the Magistrates, by levying more than thirty thousand Pounds of Tobacco, had exceeded the Jurisdiction of County Courts; that the legislative Powers of this Province have already shewed their Sense of this Law in the Case of Calvert County Court-House.

To all these Arguments, such as they are, I shall give a short and separate Answer: Nor indeed against Arguments so evidently fallacious, can much Reasoning be necessary. As to the first then, I would ask our Author, in what Part of the Law he finds, that the Services ought to be done before the County is chargeable. Does the Words of the Law, from his own Shewing, say any thing to that Purpose; or more than that

the Justices, upon Examination had before them of the public Charges of their several and respective Counties, and Allowances by them made of the same, to levy and raise Tobacco for Payment and Satisfaction of their several and respective County Charges.

Now, from these Words, can a Syllable be gathered by any Man living, of Services to be done, previous to the levying of the Tobacco. If there are any Words to this purpose, let the *Freeholder* point them out. But as

I think he cannot, have not the Magistrates kept punctually to the Letter as well the Intention of the Act? When a Charge is determined to be necessary, and a Sum fix'd on, and a Court either makes a Contract with Workmen, or appoint others to do it on their Behalf, is not the County liable for, and obliged to make good, that Agreement; and consequently the *Charge examined before them*, (the Justices) *and Allowances by them made of the same*. What then could be required more of the Magistrates, than to adhere, even to a Nicety, to the Words of the Law? Or is it not the Height of Impudence in our Author, to insist, that their Proceedings were erroneous, because they tax'd before the Service was done, when no part of the Law requires it; or might he not take the same Privilege of adding to, or taking from, all the Laws of the Province? Or, granting that in this Point the Law was doubtful; in whose Breasts ought the Exposition to be; in those of sworn Judges, Men of Figure, Property and Character, or that of an interested, trifling Scribler, without any Property at all. And supposing farther, that, in Strictness, the Words of the Act were not so plainly in favour of the late Proceeding of the Justices, as we find they actually are; yet, as with Regard to taxing, before or after the Service is done it has, by his Tobacco. If there are any Words to this purpose, let the *Freeholder* point them out. But as I think he cannot, have not the Magistrates kept punctually to the Letter as well the Intention of the Act? When a Charge is determined to be necessary, and a Sum fix'd on, and a Court either makes a Contract with Workmen, or appoint others to do it on their Behalf, is not the County liable for, and obliged to make good, that Agreement; and consequently the *Charge examined before them*, (the Justices) *and Allowances by them made of the same*. What then could be required more of the Magistrates, than to adhere, even to a Nicety, to the Words of the Law? Or is it not the Height of Impudence in our Author, to insist, that their Proceedings were erroneous, because they tax'd before the Service was done, when no part of the Law requires it; or might he not take the same Privilege of adding to, or taking from, all the Laws of the Province? Or, granting that in this Point the Law was doubtful; in whose Breasts ought the Exposition to be; in those of sworn Judges, Men of Figure, Property and Character, or that of an interested, trifling Scribler, without any Property at all. And supposing farther, that, in Strictness, the Words of the Act were not so plainly in favour of the late Proceeding of the Justices, as we find they actually are; yet, as with Regard to taxing,

before or after the Service is done it has, by his own Confession, been both Ways, according as the Nature and Circumstances of the Thing required: Would not that alone be a sufficient Justification of their Conduct. And is it not a Maxim in the Law, well known and long since established, that *common Error maketh right*. If therefore the Magistrates had acted against the Letter of the Law, and could alledge Custom for it, the Plea would be good; especially in a Case where the Error is in favour of Liberty or Property. It is, I think, no less a Man than Mr. *Lock*, that grand Patron of Liberty, who says, that "in some Cases, the Law it self ought to give way to the executive Power." For since many Accidents may happen, wherein a strict and rigid Observation of the Law may do harm; the Ruler therefore should himself have a Power, in many Cases, to mitigate the Severity of Law. If ever this Opinion held good in any Case, (as it is to be presumed it has, or would have been ere now contradicted) it would certainly in this. Is it not highly reasonable, that public Buildings should be done as cheap as any other: And could this possibly be expected, if Undertakers were obliged to wait Eighteen Months for their Pay? No certainly. Those therefore who, for the sake of a Quibble, or private Advantages, object to the levying Tobacco at the Time the Charge is resolved on, would, by an Alteration of that Practice, instead of befriending the Province, lose it many Thousands of Tobacco annually. Now, that the Jurisdiction of County Courts is only in Matters of *Meum* and *Tuum*, confined to thirty thousand Pounds of Tobacco, may be proved, by asking this short Question; Suppose the Assembly should hereafter enact a Law, that a County Court might annually levy fifty thousand Pounds of Tobacco for any one Service; would this enlarge the Jurisdiction of the Court, with regard to Matters of *Meum* and *Tuum*? Surely no. If then a Law, allowing a Court to tax above thirty Thousand, would not interfere with the present Jurisdiction of the Court, in Causes of *Meum* and *Tuum*, how could the late Tax clash with it. As to the Instance of *Calvert* County Court-House, that Argument is still as frivolous as the rest. The Petitioners in that Case prayed for a Sum of Money, which all Courts know they have no Power to levy, on any Occasion, or for any Purpose, whatever, without a particular Law. But allowing that they had actually petition'd for Tobacco, were the Magistrates of *Prince-George's* County obliged to be ignorant of their own Power, because they were so? Or, would not the Assembly have made them the same Answer, as the *Freeholder* says they gave *Thomas Harrison*,

Forasmuch as the Petitioners have already sufficient Power given them by an Act of Assembly, entituled, An Act empowering the Commissioners of the County Courts to levy Tobacco, &c.

I am really, SIR,

A Native of MARYLAND.

Americano-Britannus, *Maryland Gazette*,
Appendix to June 4, 1748

*All my Commands are easy, short and full,
My Son be proud, be obstinate, be dull.*

POPE'S *Dunciad*.

And to mere Mortals seem'd a Priest in Drink.

IBID.

Mr. GREEN,

My last Motto was taken from the *Dunciad*, and I could not help making bold with a few Lines more on this Occasion. The *Native's* Performances I imagine, will easily vindicate the two former, and the Confusion, Ill-nature, Passion, and high-flown Principles, contained in a Letter sign'd Philanthropos, very ill suiting the benevolent Character assum'd, brought the last one into my Mind. But I enter my *Caveat* against any Application, for the Writers of the opposite Side of the Question, seem so fond of applying Things, that I might otherwise expect to hear them name some *Reverend Gentleman*, and charge me with alledging he had wrote it when he was *in drink*. 'Tis really surprizing to see Men that set up for being such deep *Politicians*, so extremely *unpolitic* as to clap the Fool's Cap upon their Friends Heads on all Occasions; even supposing it had been intended for them. Something was said about an *ignorant Lawyer*, and immediately this must be *one of our Lawyers*. The *Freeholder* had likewise made himself merry with some Characters, rather of Weakness and Folly than Vice, and upon this the *Native* and his *Assistant* cry out, that *the Magistrates are abus'd and calumniated*. For my own Part, I have search'd for the Foundation of all this Clamour, and I can find nothing alledg'd against the Magistrates but *Weakness*, in being misled, and even that is only insinuated; no where as I remember expresly said; yet if it had, *Weakness* is no Crime: I believe the best of Men have been impos'd on some Time or other in their Lives. If you will take the *Native's* Word for it indeed, *they have been*

most shamefully insulted and traduc'd in Print expressly by Name. I am afraid the Gentleman will accuse me with want of *Politeness*, should I speak in *plain English* what this is; but I really must beg Leave to tell him, in the gentlist Manner I can, that *he has deviated from the Truth*; for there is no such thing to be found in any of the *Freeholder's Letters*: And I hope he will not say they were abus'd by having their Names prefix'd to the Order of Court; for according to his Doctrine, that was *preservative of the People's Properties*, and consequently doing them great Honour. I could wish this was the only *Deviation from Truth* that the *Native* had been guilty of, but I find several others equally glaring; where does he find the *Freeholder supposing the People of Maryland destitute of common Sense*? Yet this he has asserted in his second Performance. Would not any one have much more reason to retort upon him, that it is he who supposes the People of *Maryland destitute of common Sense*, by endeavouring to impose on them so grossly? Of the same Nature is that where he charges the *Freeholder* with telling the *supreme Magistrate, and the representative Body of the People, that the former had appointed a Person Chair man of a Court of Justice, and the latter unanimously voted him worthy of the greatest and most honourable Trust in the Gift of the People, altho' he had the Misfortune of being both a Knave and a Fool*. He must have been indeed as *destitute of common Sense* as the *Native*, and a *very few* more, suppose him to be, to have talk'd in this manner. But the whole Sentence is entirely the *Native's* own. And were it not for the latter Words *Knave and Fool*, no Body could guess what part of the *Freeholder* it was he alluded to. It happens unluckily that the *Freeholder* uses these Words only once; and then he expressly declares, that he is *reasoning only hypothetically*. I'm afraid this last Word was too hard for our *Native*; for if he understood it, how came he to apply the Character described to a particular Person? Will he insist upon it that the Character there described, so exactly delineates the *Chairman* that it must mean him? I cannot think the honourable Gentleman will thank him for the Complement. But it often happens that the Praises of an unskilful *Panegyrist*, turn out the severest kind of *Satyr*.

But this *polite and candid Writer*, has shewn no more Regard to Truth, in his answer to a certain *learned Blockhead, a late half witted Writer*, as he has very *politely* stil'd me. I take it from whence it comes. Such Language may be worthy of him, but I think it altogether unworthy of me to return it in Kind. *This Author* (says he) *in order to prove that the Persons of Judges are not regarded in England, instances the Case of Tresilian, &c. who were put to Death, not for giving their Opinions on a Point of Law, &c.* Here this *candid*

Gentleman has had the Misfortune to make two Slips in one Breath, relating to Matters of Fact. First, I have no where endeavoured to *prove that the Persons of Judges are not regarded in England*; and I defy him to shew any thing tending towards it, by fair Quotation. No impartial Reader can judge what I have said, was in order to prove any more than this, that the Subjects of *Great Britain* have always been allow'd to speak their Minds freely concerning the Behaviour of Magistrates, even those of a much higher Order than County Magistrates; and that they were liable to the same Censures and Punishments for Misdemeanors as other Men. This was the Point he ought to have oppos'd, if he had any thing to offer to the Purpose; for this is the only Liberty that has been claim'd or taken in this Dispute. But he did not chuse to avow so open an Attack upon that valuable Branch of *British Liberty*, and therefore (meanly enough) shifts the Dispute to the Laws made for the supporting of Magistrates in the Execution of their Office. All that he has said in this Matter, concerns Magistrates only in the Execution of their Office, and then they have the Power in their own Hands, let them use it. It is odd to hear a Man complaining that Magistrates have been ill-treated, and yet at the same Time proving that the Laws give them sufficient Power to punish those that mal treat them. Whose Fault is it pray, if they don't make use of it? Much to the same Purpose is the Instance of Judge *Willes*, &c. which was a Dispute betwixt a Civil and Martial Court about Superiority of Jurisdiction. The second Slip this Gentleman made, relating to Matters of Fact, in the forecited Quotation, was by asserting that *Tresilian was not put to Death for giving his Opinion on Points of Law*. To prove this I shall cite the Words of a sound Lawyer, as I find them in a well-known Law Book of good Authority, giving an Account of this Matter, agreeable to the Facts in the History.

In King Richard the 2d's Time, most of the Judges of England, to gratify certain corrupt and pernicious Favourites about the King, being sent for to Nottingham, were by Perswasions and Menaces, prevail'd with to give false and illegal Resolutions to Questions proposed by them, declaring certain Matters to be Treason which in Truth were not so; for which in the next Parliament, they were called to an account; and Sir Robert Tresilian, Lord Chief Justice of England, was drawn from the Tower, thro' London, to Tyburn, and there hang'd.

Whether this or the *Natives* Authority is most to be depended on, is left for the Reader to determine. One Instance more and I have done. In my

former Letter I had said, that a *Native of Maryland, a Gentleman of Fortune and unblemish'd Character, exemplary by his Life, and revered by his Years, presented in Remonstrance to the Commissioners, in the Name of Six Hundred Freeholders, offering Reasons why the Agreement about the Court-House should be delay'd until the Assembly should determine the Dispute.* In Answer to this, the *Native*, in his usual *polite and candid Manner*, tell us, that a *memorable Remonstrance, containing in Substance nothing, in Nonsense much, was handed in on an ever-memorable Day, by an ever-busy Gentleman of another County at the Head, at the Instance and in the Name of half a Dozen interested Leaders, and twenty-six misguided Freeholders of Prince George's.* Now would any one imagine from this, that the ever-busy Gentleman (as he calls him) had a Petition in his Pocket, importing the same in Substance with the Remonstrance, signed by these Six Hundred Freeholders, in whose Name he presented it, and offer'd to produce it. This was truly the Case. It is true, this Gentleman lives in another County, but it is well known that he has a very considerable Estate, both in Land and Slaves, in *Prince George's County*, and therefore had a Right to concern himself in the public Transactions of the County. The *well-bred Native* calls him an *ever busy Gentleman*; every Body knows that a *Busy body* is the very worst of Characters. Sir, I can bear Scurrility to my self, especially when I know and despise the *Person* it comes from; but I confess it raises my Indignation to hear so worthy a Man abus'd, while others, of far inferior Merit, are applauded for Heroes. 'Tis a great Pity, he had not received an *awkward Education at a Charity-School*, and been *dubb'd a Justice*, then perhaps this Writer would have applied to him the Character *so nobly set forth by Horace in the following ENGLISH Lines.*

THE MAN RESOLV'D, AND STEADY TO HIS TRUST, &c.

Thus it is when Men inconsiderately shoot in the Dark, they as often hit a *Friend* as a *Foe*. Our unhappy *Native* seems to be born for a Scourge to his Friends. What Occasion had he to mention *Charity Schools*; for it suited not one Person upon the opposite Side of the Question that ever I heard of; and as it was evidently intended for a *Fling at Somebody*, it was natural to look out for some *one or more* whom it fitted: However, take Notice that we do not charge his *Hero* with having *imbib'd Grammatical Nonsense in a Hut*, or any where else—But from the high Encomium given the *celebrated Foreigner*, and the scurvy Treatment the *Native* has given his *own Countryman* (as well as other parallel Instances which might be produced) it will plainly

appear, that notwithstanding this Author's forward Zeal to vindicate the *Natives of Maryland*, when no Body attack'd them, his Motives for this, was neither Love of Country, nor true Merit, but only with Design to raise Prejudice against his Opponents, and to surprize the unattentive Reader into a Notion, that he was the Country's Champion against Foreigners, who had greatly abus'd it. I find it would be endless to take Notice of all the Misrepresentations in this Writer; indeed the whole of his Performances is little else; enough has been said to shew, that he is not to be depended on when he pretends to give another Man's Sense; Besides what has been offered, what he calls the *Spirit and Substance of the Freeholder's Doctrine* is a most flagrant Instance of it; that Rhapsody being nothing else but a piece of *dull Buffoonry*; more worthy of a *Pickle-Herring* upon a Mountebank Stage, than of one who pretends to reason upon the *British Constitution*.

I have all along taken it for granted, that this Gentleman is a Native of *Maryland*, as he seems to place great Merit in it, and because I think it is not worth a Farthing where he was born. I dare say Posterity will never have any Disputes about the Place of his Nativity. However, I submit the following Sentence to the Opinion of the *Natives of Maryland*; and from thence let them determine, whether they will chuse to own him for their Countryman, or give up their Claim to him to another *Country*, a little to the *Westward of England*. In the Supplement to Number 156 of this Paper, the *Native*, or as some People call him, the *Natural*, writer as follows, *Thus we find that our dull and unthinking Fore Fathers, the English, continue as ignorant to this Day, as they were two hundred Years ago, when they inadvertently consented to the Law before recited*. It would really be curious to see the Premises that such a Conclusion could be justly drawn from: tho' I do not believe it is altogether *orthodox*, to assert that *our Fore Fathers, the English who lived two hundred Years ago, continue as ignorant to this Day as they were then*; even Burnet himself does not carry the Matter this Length; however, a *Court of Inquisition*, or, which is the same Thing, a *Court*, constituted the Judges of Heresy, might determine it.

Let us now *enter the Lists* with that incomparable Sophist, the flaming *Philanthropos*. He undertakes to *shew that the Freeholder's Letters are scandalous and defamatory; and talks of Temper, Decency and good Manners*. If using all the *Scurrility* he can think of against his Antagonist, be acting with *Temper, Decency and good Manners*, and proving his Charge, this Writer has succeeded to his Wish. Take a Specimen or two of this cool, well manner'd Gentleman's Stile. *He breathes out Slander and Infamy with a perfect Serenity*

and Calmness of Mind. O wonderful! Is he of human Race! But for a Party Scribler to take upon him to revile and censure Magistracy, is Insolence and Impudence in the highest Degree. Let the honourable Assembly themselves judge, whether this Scribler has not done all he could to perswade the People their Liberties were in Danger from an Act of the Legislature. One would think the Legislature would rebuke him for this, &c. &c. &c. Here is Temper, Decency, and good Manners. I wonder what Ideas such Men have to these Words. Thro' the whole of his Performance he is either throwing out abusive Language, or calling out to the civil Power to take hold of his Opponent; as if he was sensible of being over-match'd. He brings me in mind of a *Billingsgate Wench*, in the middle of a Scold, crying out for a *Constable*. The first Proof he brings that the *Freeholder's* Letters are *scandalous and defamatory*, is a piece of *Sophistry*, to prove him guilty of Nonsense. I never heard before that *Nonsense* was either scandalous or defamatory: For Nonsense properly speaking, neither affirms nor denies any thing. But to pass this, as of little Importance, let us hear how this subtle Gentleman makes it out. *Ignorantly* (says he) *to misconstrue a Law, or Laws, to serve certain Purposes and By Ends, is a flaming Contradiction and Nonsense; for it supposes he knows his Ends in Misconstruing, and yet is ignorant of them.* Now, Sir, the *Sophistry* of this Criticism consists in applying the Phrase *ignorantly misconstrue* to the *By-Ends*, as well as to the *Laws*, to which it is alone applicable by the Rules of fair Construction. I shall suppose a Man has a *By-End* in View, he meets with a *Law* that he ignorantly imagines will serve that *By-End*, and accordingly he tries to make that use of it; Is it not plain that, in this Case, he *ignorantly misconstrues a Law to serve a By-End*? Had the *Native* ever imbib'd a little *grammatical Nonsense*, it would have been of some Service to his *native Sense* on this Occasion, and shewn him that the *Soph's flaming Contradiction* (for in all Probability he had it from him) was nothing but mere *Sophistical Smoke*.

It has been the Misfortune of both the *Native* and his *Assistant*, in their late Papers, to produce Objections, for the most Part too with an Air of Triumph, after they had been fully and compleatly answered. I believe every unprejudic'd Man in the Province, nay, even the *Native's* own Friends, was sensible of the absurd and ridiculous Figure his second Letter made, which happen'd to be in the same Paper with the *Freeholder's* Explication of the Act of Assembly, and unluckily plac'd immediately following it. There we find him talking *big*, and undervaluing his Adversary, as if he had already conquer'd him; charging him with *having carefully avoided entering into an*

Explication of the Act of Assembly, as a Rock on which he was sure to split; asserting that this is the only Act by which County Courts are impowered to tax the People, on any Occasion, or for any Purpose whatever. He goes on, Whenever an Attempt of this Sort is made, (viz. to explain the Law in the Freeholder's Sense of it) I shall be ready, and I hope able, to refute all such shallow Arguments and false Reasoning. Nor am I diffident (he was never charg'd with Diffidence) of proving, to the Conviction of all Men, my Adversary as ignorant of the Constitution, as he supposed the People of Maryland destitute of common Sense, or as they justly esteem him of that and good Manners.'Tis impossible to read such Fustian, without being put in mind of that Line in Horace,

*Projicit ampullas, et sesqui-pedalia verba.*¹⁶

I would ask the few Admirers this Writer has, what sort of a Figure they thought this *braggadocio* Piece made, after reading the foregoing elaborate Performance? To me it seem'd very much to resemble the *French* Custom last War, of singing *Te Deum* after they had been soundly beaten.

And I think there cannot be a more convincing Proof of the Strength and Validity of the Arguments made use of by the *Freeholder* on that Occasion, than the late Determination of the Lower House of Assembly; who have resolv'd that Order of Court, against which he was disputing, to be *illegal and oppressive, and warranted by no Law whatever*. This was the very Thing the *Freeholder* undertook to prove; and having stated it clearly, upon the Principles of *Liberty*, and the *British Constitution*, he drop'd his Pen; depending upon the Strength of the Foundation he had built upon, and it has stood secure amidst all the Cavilling rais'd against it, like a House upon a Rock; which all the outrageous Beating of the Wind and Waves were not able to move. Whoever heard the Debates upon this Affair, must be further convinc'd of this Truth; and the Names of *H—mm—nd*, *H—rr—s*, and *T—lghm—n*, all Natives of *Maryland*, will be ever remembred with Honour, by the true Friends of *Liberty*, for their noble Behaviour on this Occasion. But to proceed.

Neither has that subtle *Sophist*, *Philanthropos*, been less unfortunate in being too late with his Objections. He brings one in the following Manner. Now, in answer to this, he should have first shewn, to make the Order of Court

16. ["Throw out bombast and words half a mile long."]

extraordinary, that no such Thing has been done before by any Court in this Province, for if there has, then this Order is not extraordinary.

I call this Writer a *subtle Sophist*, and I think the above Citation will vindicate me in it. He puts it upon his Adversary to prove a *Negative*; and I will venture to say, such a *Negative* as is impossible to be proved. For how is it possible to prove that no such Order was ever made before by any Court in this Province? I know of no other Way, than by exhibiting to the public View, a Copy of every Order of Court that ever was made in the Province; and this is absolutely impossible: For granting we had whole *Magazines of Paper*, and an *Army of Printers* at Command, yet many Orders of Court, that have been made in this Province, must be lost by Accidents of Fire, &c; and if all that are to be found now were to be produc'd, tho' there should appear no such Order amongst them, still the Proof would be incompleat, because it would not appear from thence, that *never any such Order was made before*, seeing many Orders have been made which are now destroy'd. But this Objection, so far as it was possible to answer it, was answer'd before it was made. It is asserted, in the last *Freeholder*, that *the Law is now forty Years old, and this is the first Time ever any such Power was pretended to*. It was his Opponent's Business to have shewn the contrary.

To avoid being tedious I shall mention only one Objection more, which was likewise answer'd before it was made. *It would have been worthy of him to have shewed, that the Justices of our Mother Country, or the Overseers of the Poor, are otherwise limited than by general Restraint*. The *Freeholder* had perform'd the very Thing desir'd, and proved, by quoting the Act of Parliament which makes Provision for the Poor, that the Justices are tied down both to a *limited Sum*, and the Appropriation of it. Yet this Writer takes it for granted the Case is otherwise, and reasons upon it; from whence one may see how well he had inform'd himself in the Subject he undertook to write upon. I purposely avoid the *unmeaning Nicknames of Party Scribler*, and such like Trash; these being equally applicable to all of us who have wrote upon this Subject. There is nothing more common, than for one Lady of Pleasure to call another Wh—re, yet it does not become the *Kettle* to call the *Pot Black A—se*.

It remains now to examine the Cavils rais'd against what the *Freeholder* has said concerning the *British Constitution*: And in doing of this, I do not propose to follow the *Sophist* thro' all his Labyrinths of Quibble and Confusion: I shall content my self with stating the main Points in Dispute, and

defending what the *Freeholder* has said; as I think he writes like a *Freeman*, and breathes the true Spirit of *British Liberty*. I shall support what I have to say by that *great Authority*, which, the *Native* says, *has never yet been disputed*, tho' by the *Bye* that is not true. The *Freeholder* has defin'd the Constitution to be an *original Contract betwixt the People and their Rulers*, and he has defin'd it justly; Mr. *Lock* will bear him out in it, for he asserts and proves, that "it was this alone which did, or could give Beginning to any lawful Government in the World." The same great Writer in another Place shews

that the Reason why Men enter into Society, is the Preservation of their Property; and the End why they chuse and authorize a Legislative is, that there may be Laws made, and Rules set, as Guards and Fences to the Properties of all the Members of the Society; to limit the Power, and moderate the Dominion, of every Part and Member of the Society.

I shall add, by way of Comment upon this, the Words of the most masterly Performance, that ever was wrote upon the *British Constitution*.*

We are not to wonder, however, if Men do not look up to *this Original of Government*, nor trace these Consequences from it. In most Countries, in the Institution of Governments, two great Powers have been usually given, and too great Confidence repos'd, either at first, or in Process of Time. These Powers have subsisted, have been confirmed by more Time, and increas'd by the very Nature of Power, which is the properest Instrument of its own Propagation. But the *original Composition*, for want of being express'd, or sufficiently imply'd, or frequently recur'd to, in the Forms of the Government, hath been forgot, or hath grown so obsolete, that they, whose Interest required that no such Thing should be believ'd, have thought themselves at Liberty boldly to deny it. But the Subjects of *Great Britain* have been more happy: our original Contract hath been recur'd to often.

Thus far my Author. Yes, *Sir*, the Subjects of *Great Britain* have constantly kept their original Contract in view; and agreeable to the true Intention of it, have justly claim'd every Thing as their Rights and Privileges, which was necessary for the *Preservation of their Properties*. These Rights and Privileges they both claim'd and enjoy'd, before any written Laws gave them a Title to

* *Dissertation upon Parties*.

them, as the *Freeholder* has made clearly out in his third Letter. It is from this *Root* that the *Tree of Liberty* has flourished in *Britain*, beyond that of any other Nation. The Branches of this Tree, indeed, have frequently been lopp'd, nay, the very *Root* has been struck at, by the Madness and Ambition, sometimes of *foreign*, but oftener that of *domestic*, Enemies; yet the *English Oak* has always prov'd too hard for them; it has quickly branch'd out again, and flourished afresh; tho' our Ancestors have been sometimes oblig'd (if I may be allow'd to use the Expression) to water it with their Blood. I am not without Apprehensions that the *phlegmatical Philanthropos* will be very much disgusted at so bold an *Allegory*; as he found fault with so plain and easy a *Metaphor* as the *Bulwark of the British Constitution*, for being too pompous.

Had the Writers on the opposite Side of the Question kept this *original Agreement*, and the Design of it in View, it might have prevented them from blundering about like Men *blindfolded* or *in Drink*, when they talk'd of the Constitution; for as my last cited Author observes,

they must have been blinded by Ignorance, or Passion, or Prejudice, who did not always see that there is such a Thing necessarily, and in the very Nature of our *Constitution*; and that they might as well doubt, whether the Foundations of an antient, solid Building, were suited and proportion'd to the Elevation and Form of it, as whether our *Constitution* was established by *Composition* and *Contract*.

Is not this making the *Constitution*, settled by *original Contract*, the *Basis of the whole*? These Gentlemen, who raise a foolish Laugh at such Ways of Speaking, ought to consider, that if bold and emphatical figurative Expressions, be too strong for weak and squeamish Brains, that is no reason why they ought not to be us'd. It is very probable the *Snail*, whose Delight is in *crawling* along the Ground, would object, in the very same Manner, to the Use of *Wings*.—

From what has been said it will appear, that Parliaments are not the Constitution, (as the Sophist asserts) but that they take their Form, Powers and Existence from it: That they cannot alter that Form, or *alienate these Powers*, either from one Branch of the Legislature to another, or to any other distinct Body of Men whatever, without breaking thro' that *Agreement* of the Society, (to be govern'd after such a particular Manner) which constituted them; very aptly termed by the *Freeholder* the *Basis of the whole*. I expect to

be told, that this is taking upon me to *dictate to the Assembly what they cannot do*: But, Sir, I am warranted by that *great Authority, which has never yet been disputed*, to say, that

it is a Mistake to think, that the supreme legislative Power of any Common-wealth can do what they will; their Power, in the utmost Bounds of it, being *limited to the public Good* of the Society.

I shall suppose for Instance, that the Representatives of the People agreed to a perpetual Law, placing an *unlimited Power* in the supreme Magistrate, or in any Set of Men appointed by him, to tax the People for whatever they might think necessary for defraying the *Charges* of Government in general. I desire to know, whether such an Act would be agreeable to the *British Constitution*? The Gentlemen I am reasoning with, must say it would, consistent with their Principles. But I desire it may be considered, that the Representatives of the People, having only a *delegated Power* for a certain Time, are bound to deliver over *all that Power* they were intrusted with, at the Expiration of that Time, back again to the People; who may intrust the same Men again, or others, if they think proper; Now it being a fundamental Part of that *Agreement* which constituted the Society under the present Form of Government, that *the People should not be taxed without their own Consent*, or their Representatives; should their Representatives agree to put that Power of Taxing on any other Footing, how could they deliver back that Power to their Constituents, at the Expiration of the stated Time, which was the very Condition of their being intrusted with it? From the Time that such a Law was in Force, the People might be taxed at any Time, and to any Extent, *without their own Consent, or their Representatives*, which was the great Security they had for the *Preservation of their Property*, by the *original Agreement*, the *only Reason* (according to Mr. Lock) for entering into society—? stated this Point only with respect to the Representatives of the People, because I think it is principally their Duty to watch over the *Liberties of the People*. But the great Author last mention'd calls an Act of this Sort, a *Breach of Trust* in the whole legislative Body.

The legislative Acts against the Trust reposed in them, when they endeavour to evade the Property of the Subject, and to make themselves, or *any Part of the Community*, Masters, or arbitrary Disposers of the Lives, Liberties, or Fortunes of the People. Whensoever therefore the Legislative shall transgress this fundamental Rule of Society, and either by

Ambition, Fear, Folly, or Corruption, endeavour to grasp themselves, or *put into the Hands of others*, an absolute Power over the Lives, Liberties, or *Estates of the People*; by this *Breach of Trust*, they forfeit the Power the People had put into their Hands, for quite contrary Ends; and it devolves to the People who have a Right to resume their original Liberty.

It is true, the Legislative is bound by nothing but the *Laws of Reason*, the *fundamental Rule of Society* (*viz. the Preservation of Property*) being built upon it; but, in Strictness of Speech, it is not true, that they are *accountable to no Power on Earth*; for they are accountable to the *Community*, who are to judge whether they have acted agreeably to this *Law of Reason*, apply'd to the *Fundamental Rule of Society*; and tho' I grant *there is no Power on Earth* (that is, no Body politic, intrusted by the Society) *superior to the legislative Power*, yet I am licens'd by the same Author to say, that *when the Legislative act against their Trust*, the *People have a Right to appeal to Heaven*, *there being no equal Judge upon Earth*. This is the Doctrine held by *one of the greatest Sticklers for Liberty*, as well as *one of the most consummate Judges*, that *his own or any other Age ever produc'd*; and it is surprizing (if one ought to be surpriz'd at any thing the *Native* does) that a Man who acknowledges this, should oppose the infallible Consequences of it. There is no other way of accounting for it, but by supposing that he had dip'd superficially into the *Treatise on Civil Government*, and taken the Character of it by *Hear say*, without so much as knowing that the Author founded his whole Doctrine on *original Compact*; for this Expression the *Native* has laugh'd at, and try'd to turn into Ridicule in his third Letter.

Let us now apply what has been advanc'd to the present Dispute. It is insisted upon by some, that an Act of the Legislature of this Province, places an *unlimited Power* of taxing the People in County Courts, for whatever they shall think proper to call *public Charges*. This is *honestly* acknowledg'd by the *Native*, tho' endeavour'd to be evaded by the *Sophist*, for (says he) are they not plainly limited by the Charges of the County? *Sir*, this is only playing upon Words; for so long as the Magistrates, or those who have the Appointment of them, are to be the *sole Judges* what must be call'd the Charges of the County; this is in reality no Limitation at all. Such a Power wou'd be both *uncontroulable* and *unlimited* with respect to the People, and all the ruinous Consequences the *Freeholder* has shewn may flow from it, under a bad administration, stand *untouch'd* by this Reply. It would be to all Intents and Purposes, giving away an *absolute Power over the Estates of the People*, which

Mr. Lock calls a *Breach of Trust in the Legislative*; or in other Words, a *Breach of the Constitution*. But it is with the utmost Injustice, that the *Freeholder* is charg'd with saying, that the Legislative of this Province had done this, and that he had done all in his Power to persuade the People their Liberties were in Danger, by an Act of the Legislature; for on the contrary, he has all along asserted, and at last proved, that they have given no such Power as was contended for, by any Act whatever; so that in Fact, it is those that contend they have given away such a Power, who clamour against the Legislature, and endeavour to bring it into Contempt. Well, but says the Sophist, are they not likewise under the Ties of Oaths to act uprightly? Alas, Sir, this would be but a poor Security for Mens Properties, to make them depend upon the Integrity of Men appointed by a wicked Administration; which no Man can tell how soon may be the Case. We had a sad Instance, how little Oaths of that Kind are to be trusted even in Kings. In the Reign of James the 2d he took the Coronation Oath; but it is well known how shamefully he broke it. And this leads me to what our sophistical Politician has said concerning this King, and the Revolution that happen'd in his Time; which, if I am not mistaken, will appear something extraordinary, especially as our present happy Establishment is founded upon the Settlement made by the Revolution. He asks first, Pray, Sir, was not the Birth right of James the Second an inherent Right? Every Mans Birthright is an inherent Right; but King James's Right to the Crown was not a natural Right, the Crown of England having been rendered hereditary by the Laws of the Society; for Dominion cannot descend by natural Right of Heirship, as the Author I have so frequently cited, has made out beyond the Power of Cavil. Again, Was it not his Property and Privilege to rule the Nation? His Privilege it was to rule the Nation, agreeable to the Rules of the Society, yet he might and did forfeit it by acting contrary to them. But the Word Property, apply'd to Rule and Dominion, (in the Gentleman's own Language) is a peice of flaming Nonsense; for no Man can have a Property in any thing (according to incontrovertible Authority) but what concerns his own Life, Liberty or Fortune; and therefore to say, that it was any one's Property to rule over others, must be downright Nonsense. But if I am not deceived, there is something worse than Nonsense that follows. Now if it was his Rights and Privilege, how could this be taken away without breaking thro' that Constitution, which WAS THE BASIS OF THE WHOLE? Every Body knows, that such Questions are made use of by way of strong Affirmations: Here then this Author affirms, that the Convention-Parliament, by placing the Prince of

Orange upon the Throne, in the Room of King *James*, depriv'd him of his Right and Privilege, and broke the Constitution; that is to say, the Revolution was brought about by an Act of Injustice, and against the Laws of the Land. Were I to follow this Gentleman's Example, I might call upon the Legislature on this Occasion, to rebuke *him* for so daring an Assertion, to give it no worse a Title; for there are not wanting Instances of Delinquents having been brought upon their Knees before the House of Commons, for Expressions of the same pernicious Tendency; but I really believe the *poor Man* did not know what he was saying. This, *Sir*, has been the Cant of the *high-flying Tories* (more especially the *Clergy* among them) ever since, as well as before, the Revolution. They have talk'd of a *divine*, hereditary, *indefeasible Right*, and I know not what Jargon: They have preach'd up the slavish Doctrine of *Passive-Obedience* and *Non-Resistance*; and, as *Pope* beautifully expresses it,

The Right divine of Kings to govern wrong.

In Consequence of this chimerical *divine Right*, Men of these Principles have always denied any *inherent Rights* in the People to Liberty, and the Preservation of their Property from an *original Contract*; they have broke many *Jests* upon the Phrase, and us'd many *mean Endeavours* to turn the *Constitution* into Ridicule. I am sorry to observe, that both the *Native* and his *Assistant*, evidently aim at the same Thing, only in a different Manner; the one like a hot-headed *High Church Priest*, and the other like a hair brain'd *Merry-Andrew* or *Mad Tom*. You, Mr. *Green*, agreeable to an Injunction given you by a Set of Gentlemen, that call themselves the *Loyal Club*, have, (by a Letter printed in Numb. 153 of your *Gazette*) given the Province to understand, that they are the Patrons of the Writers on that Side of the Question: If their Loyalty consists in such Principles, in my humble Opinion, they do those a great deal of Honour, whom they charge with the want of it.—But I must not omit the last Question propos'd by the learned *Philanthropos*, lest he should alledge, I had past over *his Wit*: And with the Answer to it I shall conclude. *And if the Constitution was then dissolved, what becomes of the Basis?* To carry on the Similitude in a former Citation, I reply, That the *Basis* or Foundation of the *antient solid Building* remain'd firm, tho' the *Top* happened to tumble down; and surely the *Proprietors* had a Right to erect a *new one* in its Stead.

I am, &c.

AMERICANO-BRITANNUS

[Archibald Kennedy],
An Essay on the Government
of the Colonies
(1752)



BORN IN SCOTLAND, Archibald Kennedy (1685–1763) was a prominent royal official in colonial New York. He first came to New York at the behest of his countryman Governor Robert Hunter early in the eighteenth century and served in the British army in America, as customs collector for the port of New York, and as a member of the governor's council. In these posts he consistently supported the royal prerogative while calling for a union of all of the continental colonies, an idea which influenced Benjamin Franklin's Plan of Union at Albany in 1754.

One of six pamphlets Kennedy published in the early 1750s urging the colonists to pay greater attention to imperial defense, *An Essay* is among the best articulations of the case for greater Crown authority in the American colonies. In it, he argued for the importance of cultivating good relations with Native Americans to prevent them from allying with the French and threatening the very existence of the British empire in America. He also decried the growing power of the colonial assemblies, objecting to their destroying the balance of colonial constitutions and arguing that their authority was based on nothing more than royal charters or governor's commissions, both of which were merely revocable grants from the

King. He warned that if the assemblies continued to frustrate the Crown's attempts to coordinate imperial defense, they would not only be guilty of "High-Treason" but enable the French to ensure "that *Fresh-Water*" would "become our Frontier." (C.B.Y.)

AN
ESSAY
ON THE
GOVERNMENT
OF THE
COLONIES.

Fitted to the Latitude Forty-one, but may,
without sensible Error, serve all
the NORTHERN COLONIES.

POOR RICHARD'S Title-Page.

NEW-YORK:
PRINTED and SOLD by J. PARKER,
at the *New Printing-Office* in *Beaver-Street*, 1752.

An Essay, &c.

A Late elaborate Author tells us,

The Design of Colonies is to trade on more advantageous Conditions, than could otherwise be done with the neighbouring People, with whom all Advantages are reciprocal. It has been established, that the State which has founded the Colonies, alone shall trade in the Colonies; and that from very good Reasons; because the Design of the Settlement was the Extension of Commerce, not the Foundation of a City, or a new Empire. Thus it is still a fundamental Law of *Europe*, That all Commerce with a foreign Colony, shall be regarded as a mere Monopoly, punishable by the Laws of the Country. It is likewise acknowledged, that a Commerce established between the Mother-Countries, does not include a Permission to trade in the Colonies; for those always continue in a State of Prohibition.

The Disadvantage of a Colony that loses the Liberty of Commerce, is visibly compensated by the Protection of the Mother-Country, who defends it by her Arms, or supports it by her Laws. From hence follows a third Law of *Europe*, That when a foreign Commerce with a Colony is prohibited, it is not lawful to trade in their Seas; except in such Cases as are excepted by Treaty.

The great Distance of our Colonies, is not an Inconvenience that affects their Safety; for if their Mother-Country, on which they depend for their Defence, is far distant, no less distant are those Nations, by whom they may be afraid of being conquered. Besides, this Distance is the Cause, that those who are established, cannot conform to the Manner of living, in a Climate so different from their own; they are obliged, therefore, to draw from the Mother-Country, all the Conveniencies of Life.

The *Carthaginians*, to render the *Sardinians* and *Corsicans* more dependent, forbid their planting, sowing, or doing any Thing of the like Kind, under Pain of Death.

So far my Author.

We are told, this Continent was first discovered to the *Europeans*, by *Sebastian Cabot*, a *Genoese* Adventurer, who lived at *Bristol*. In the Year 1497 he was sent by King HENRY the Seventh, to make Discoveries in the *West-Indies*; *Columbus's* Successes, five Years before, having set all the trading Nations in the World, upon Expeditions into *America*, in Hopes of sharing the Treasure of the new discovered World, with the *Spaniards*.

The 25th of *March*, 1584, Sir *Walter Raleigh* obtained Letters Patent from Queen ELIZABETH, to possess, plant, and enjoy, for himself and such Persons as he should nominate, themselves and Successors, all such Lands, Territories, &c. as they should discover not in the Possession of any Christian Prince: And this Company was the first of that Kind that was established in *Europe*.

A Settlement was carried on with much Zeal and Unanimity. The Form of Government consisted of a Governor and twelve Councillors, incorporated by Name of *The Governor and Assistants of the City of Raleigh, in Virginia*: But Sir *Walter*, that great Projector and Furtherer of those Discoveries and Settlements, being under Trouble and Disgrace at Court, after an infinite Expence, besides the Hazard and Loss of many Lives, gave over all Thoughts of prosecuting those Designs. And the King, in 1606, did incorporate two Companies in one Patent, to make two separate Colonies; the first to Sir *Thomas Gates*, &c. Adventurers of the City of *London*, with Liberty to begin their first Plantation and Seat, at any Place upon the Coast of *Virginia*, between the Degrees of 34 and 41; and for the second Colony, to *Thomas Hanham*, &c. of the Town of *Plymouth*, with Liberty to begin their first Plantation or Seat, at any Place upon the Coast of *Virginia*, between the Degrees of 38 and 45. But (as the Author of *The History of Virginia*, by a Native of the Place, observes) they were no sooner settled in all this Happiness and Security, but they fell into Jarrs and Dissentions among themselves; which continuing, the *Virginia* Adventurers, were under the Necessity of petitioning his Majesty for a new Patent, with Leave to appoint a Governor. In Consequence of which, they re-settled all their old Plantations that had been deserted; made Additions to the Number of the Council; and called an Assembly of Burgesses from all Parts of the Country, which were to be elected by the People, in their several Plantations. These met the Governor and Council in *May*, 1620, and sat in Consultation in the same House with them: And this was the first General Assembly that ever was held there. This, however, had but little Effect; for the same Author tells us, That

the fatal Consequences of the Company's Mal-administration, cried so loud, that King CHARLES the First coming to the Crown, had a tender Concern for the poor People that had been betrayed thither and lost; upon which Consideration he dissolved the Company in 1626, reducing the Country and Government unto his own immediate Direction, appointing the Governor and Council himself, and ordering all Patents

and Process to issue in his own Name, reserving only to himself, an easy Quit-Rent of *Two Shillings* for every Hundred Acres of Land: He likewise confirmed the former Methods and Jurisdictions of the several Courts, as they had been appointed in the Year 1620; and was pleased to establish the Constitution to be by a Governor, Council, and Assembly.

This, however, was the first regular Form instituted for the Government of the Colonies, and has been the Plan for every other of his Majesty's Colonies.

His Majesty and his Ministers having the Prosperity of this Colony at Heart, and with great Reason, considering the vast Addition it brought into the Revenue; not less, it is computed, than *Twenty Million*, since its first Settlement; all due Attention was given to the Legislature, and each kept strictly within its own Sphere of Action: And Matters went smoothly on till the Year 1676, when *Bacon's* Rebellion happened. Whoever has read the History of those Transactions, will easily see how far the Assembly interested themselves in that Affair, which cost the Crown and Colony upwards of £. 200,000, and brought the Colony almost to an End. The Words of my Author are,

The King, when he was informed of this Rebellion, was so far from hearkening to the Pretences of *Bacon's* Assembly, that he ordered a Squadron of Men of War to be fitted out, and a Regiment of Soldiers to embark on board it, for *Virginia*: But *Bacon* was dead before Sir *John Berry* arrived with his Squadron; and his Followers returned every one to their own Homes, with Fear and Trembling. The Governor having made some false Steps in the Affair, as it is supposed, the Matter was not so strictly enquired into.

Thus you have the Fate of this Colony; *First*, in the Dissolution of the Company, for their Abuse of the Powers they were entrusted with; and next, by being almost brought to Destruction, by the Countenance the Assembly gave *Bacon*. As to their Conduct since, it shall be taken Notice of hereafter.

The Northern Colony, or *Plymouth* Adventurers, escaped a Dissolution, by their Friends at Court, but were not less guilty of the Abuse of their Powers; as may appear from the following Letter; upon which I shall make no further Comment, than to request the serious Perusal of it, by those our pretended Patriots;—let them consider in Time, what a perverse, continued, and obstinate Disobedience to his Majesty's Instructions and

Commands, may bring upon us. We have, I doubt, but few Friends at Court, and fewer, I doubt, at the Board of Trade: How, indeed, can we expect it, from our Behaviour, after so many gentle Admonitions from both? But to the Letter, which is in very few People's Hands.

*A Letter of Thanks from the Governor of New-England,
to Mr. Boyle, for his Services to that Colony.*

HONOURABLE SIR,

The Occasion of our giving you this Trouble, is from the Confidence we have of your Favour and Care of these his Majesty's Colonies in *New-England*, manifested by your continued Endeavours; as in promoting that good Work of the Natives Conversion; so in taking Opportunity for ingratiating us with his Majesty, and the Right Honourable the Lord Chancellor; as we understand by your Letter to Mr. *Winthrop*; whereby you have given us that comfortable Information of his Majesty's Grace towards us, in expressing himself in a very favourable Manner; and that the Lord Chancellor did assure you, (with giving you Commission to assure our Friends in the City) that the King intends not any Injury to our Charter, or the Dissolution of our Civil Government, or the Infringement of our Liberty of Conscience; and that the doing of these Things is not the Business of the Commissioners: The Truth whereof we believe, (as we ought) having the Word of so gracious a King. But alas! Sir, the Commission empowering those Commissioners to hear and determine all Causes, whether military, civil, or criminal; (what they have further by Instruction, at present, we know not) should this take Place, what will become of our Civil Government? which hath been (under God) the Hedge to that Liberty for our Consciences, for which the first Adventurers passed through, and bore up against all Difficulties that encountered them, as in the Way to, so in the Continuance in, this Wilderness.

Sir, We return unto you our true and hearty Thanks for your former Favours; and crave the Continuance thereof, as Opportunity shall offer; and the great Mover of Hearts, shall incline you in appearing our Friend still, that, if possible, the Commissioners may be recalled; for which End we have made our humble Supplication to his Majesty; in whose Eyes, if we find Favour, we and our Posterity shall have Cause to bless the Lord: But if the Decree be passed, so that it may not be recalled, we shall wait the Lord's Issue with us: And whatever may be the Conjectures of any, rendering Alterations here adviseable, the Issue will speak them to be the Subversion

of all which makes this Place, or our Abode herein, desirable; or if any of those that desire a Dominion over us, (not to serve his Majesty's Interest in advancing Plantation Work; with the Countenance of Godliness; but to serve themselves by his Majesty's Authority, and our Ruin) shall prevail, it will, to Posterity, be rendered a Disservice to his Majesty's Honour, and such a Damage as the Procurers will not be able to repair. We can sooner leave our Place and all our present outward Enjoyments, than leave that which was the first Ground of our wandering from our native Country; nor are we thereby made such Strangers thereunto, but that we can rather chuse to return, and take our Lot with our Brethren, than abide here under the Deprivation of the Ends of our Travels.

Our Way is with the Lord.—Craving your Honour's Pardon for this Boldness; lifting up our best desires for you; we remain,

SIR, Your humble Servant.

In the Name, and by Order of the General Court held at Boston, in New-England, October 19th, 1664. JO. ENDECOTT, GOVERNOR.

First, Their Loyalty was called in Question.

Secondly, They were said to be factious in the Principles of Religion.

Thirdly, It was said they were a divided People.

Fourthly, They were charged with carrying disrespectfully towards his Majesty's Commissioners.

Fifthly, They were blamed for a great Omission touching baptizing Infants.

Sixthly, They were accused of Rigidness to such as differed from them in Matters of Religion.

Seventhly, Of grasping after Dominion, more than belonged to them.

This appears from a Letter to the same Gentleman, dated *May 10th, 1673.*

How this Affair ended, I have not been able to learn from any Part of their History. Most People, however, know what Amendments in their Constitution, from Time to Time, have been made, and for what Reasons: The last was thought severe; but the Alternate was given them, either to take it upon those Conditions, or they were to have no Charter.

Numerous Instances of the Encroachments and Abuse of Power in our Colony Assemblies might be given, which I shall wave; what the Event will be, is hard to determine: The many Complaints, however, that have gone,

and daily going Home, upon this Subject, have created Impressions with his Majesty, his Ministers, and the Parliament, not at all in our Favour. Our Neighbour Colony is, at present, in the Hands of the Potter; in what Shape they may turn off the Wheel we shall soon know. My Intention in this, upon the Whole, is no more, than to convince, if possible, our Assembly that they are in the Wrong, and do make a bad Use of their Power; in which if they persevere, it will infallibly bring our Constitution and Privileges into Danger. This, at least, is my Way of thinking. As this is a Subject of no small Importance to me and mine, as well as, I conceive, to us all, I hope a little Warmth (should it so happen) will be pardoned.

Previous to this it may be necessary, as few of our Assembly-men have had the Advantage of a Liberal Education, or the Opportunity of Books to inform themselves of the Nature of Government (*especially that of our own,*) to present them with a short Sketch of it, which I accidentally met with; and is as follows:

The Design of Civil Government is to secure the Persons and Properties, and Peace of Mankind, from the Invasions and Injuries of their Neighbours: Whereas, if there were no such Thing as Government amongst Men, the stronger would often make Inroads upon the Peace and Possessions, the Liberties and the Lives of those that were weaker; and universal Confusion and Disorder, Mischiefs and Murthers, and ten Thousand Miseries would over-spread the Face of the Earth.

In order to this general Good, *viz.* the Preservation of the Persons of Men, with their Peace and Possessions; Mankind have been led by the Principles of Reason and Self-Preservation, to join themselves into distinct Civil Societies; wherein, as by a Compact, expressed or implied, every single Person is concerned in the Welfare and Safety of all the rest; and all engage their Assistance to defend any of the Rest, when their Peace or Possessions are invaded; so that by this Means, every single Member of the Society has the Wisdom and Strength of the Whole engaged for his Security and Defence: To attain this End most happily, different Societies have chosen different Forms of Government, as they thought most conducive to obtain it.

The most regular Mixture seems to be that wherein the chosen Representatives of the People have their distinct Share of Government. The Nobles, or great Men, have their Share; and a single Person, or the

King, has his Share in this Authority; and all agreed upon by the whole Community. This is called a mixed Monarchy; and herein these three Estates of the Kingdom, are supported by mutual Assistance, and mutual Limitations; not only to secure the common Peace, the Liberty of the Nation from Enemies, but to guard it also from any dangerous Inroads that might be made upon it, by any of these three Powers themselves.

Such is the Happiness of *Great-Britain*, under the King, Lords, and Commons.

Here let it be noted, That whosoever has the Power of making Laws, whether the King, Nobles, or the People, or all these together; yet still the particular Execution of these Laws, must be committed to many particular Magistrates or Officers; and they are usually fixed in a Subordination to one another; each of them fulfilling their several Posts, throughout the Nation, in order to secure the general Peace.

In all Forms of Government there is, as before hinted, a Compact or Agreement between the Governors and the Governed, expressed or implied, *viz.* that the Governors shall make it their Care and Business to protect the People in their Lives, Liberties and Properties, by restraining or punishing those who injure, attack, or assault them; and that the Governed submit to be punished, if any of them are found guilty of those Practices; and also that they oblige themselves to pay such Homage, Honours and Taxes; and yield such Assistance to the Governors, with their natural Powers, and their Money or Possessions, as may best obtain the great Ends of Government, and the common Safety of the whole Society.

For this Purpose, therefore, each Person, by his Compact, willingly abridges himself of some Part of his original Liberty or Property, for the common Service of the Society of which he is a Member: And he engages himself, with his Powers and Capacity to defend and preserve the Peace, and Order and Government of the Society, so long as he and his Fellow-Subjects are protected by it, in the Enjoyment of all their natural Rights and Liberties. The very Reason of Man, and the Nature of Things, shew us the Necessity of such Agreements.

From this View of Things it appears, that tho' no particular Form of Government, besides the ancient *Jewish*, could claim divine Right, yet all Government is from God, as he is the Author of Reason and Nature, and the God of Order and Justice: And every particular Government which is agreed upon by Men, so far as it retains the original Design of Government,

and faithfully preserves the Peace and Liberties of Mankind, ought to be submitted to, and supported by the Authority of God, our Creator, who, by the Light of Reason, hath led Mankind into Civil Government, in order to their mutual Help and Preservation, and Peace.

In this Sense it is, that the two great Apostle[s], *Peter* and *Paul*, vindicate Civil Governors, and demand Subjection to them, from Christians. Rom. xiii. 1. &c. *Let every Soul be subject to the higher Powers; for there is no Power but of God. The Powers that be, are ordained of God: Whosoever, therefore, resisteth the Power, resisteth the Ordinance of God; and they that resist, shall receive to themselves Damnation, (i.e. are condemn'd;)* for Rulers are not a Terror to the good Works, but to the evil. 1 Pet. ii. 13. *Submit yourselves to every Ordinance of Man for the Lord's Sake; whether it be to the King, as supreme, or to Governors, as to them who are sent by him, for the Punishment of evil Doers, and due Praise of them: that do well.* What St. *Paul* saith is, *ordained of God, i.e. in general;* as Civil Government, or Civil Powers. St. *Peter* calls it *the Ordinance of Man, i.e. in particular;* as to the several Forms of this Government, which Men agree upon or appoint: And, indeed, God has left to Men to agree upon and appoint the particular Forms: And so far as any of them pursue and attain this End, they must be submitted to, and supported as an Ordinance both of God and Man.

What Connection there is between this System, and the Constitution of *Great-Britain*, let those acquainted with it, judge:—A Constitution envied and admired by every State and Power on Earth; and which Nothing has been able to injure, or ever will be able to injure, but those intestine Encroachments and Divisions amongst themselves; and while the Ballance of that Power, lodged with the three Branches, is kept in a due Poise, will last as long as Time lasts. Of this glorious System we are but a very faint Resemblance; if any at all, it is the most disagreeable Part of it, that, *viz.* of encroaching upon the two upper Branches of the Legislature; in this we have shewn a good Deal of Dexterity. But more of this hereafter.

We are no more than a little Corporation, in the same Manner as a Mayor, Aldermen, and Common-Council are empowered, by his Majesty's Letters Patent, to form Rules and Orders for the Government of a City, in its several Wards and Districts; even so; tho' in somewhat a higher Degree, and more extensive Sphere; but all to the same Purpose is a Governor, Council and Assembly, to govern a Colony, in its several Counties and Precincts, by the same Power: Every Law or Rule made, that is not peculiarly adapted to

their respective Communities, has no Meaning; and every Law made, that in any Shape clashes or interferes with the Laws of *Great-Britain*, are, *ipso Facto*, void. By this I understand, that the Liberties and Properties of *British* Subjects abroad, established and cemented by the Treasure and Blood of our Ancestors, Time out of Mind, is not left to the Caprice and Humour of a Colony Assembly.—O *Fortunati!*¹ I would not, therefore, advise our worthy Assembly, or their Leaders, to profane those sacred Terms, either to frighten or mislead the Ignorant. Our Liberties and Properties are out of their Reach; they have Nothing to do with them: Every Subject within the King's Dominions, the meanest as well as the greatest, have a Right to the common Law of *England*, and the Great Charter, established and confirmed, as Sir *Edward Coke* tells us, by two and thirty Acts of Parliament, and is only declaratory of the fundamental Grounds of the common Law, and no more than a Confirmation or Restitution of the Privileges which were previously claimed and due thereby; and all this we were intitled to, before Assemblies had a Being, and which our Posterity will enjoy when they are no more. I would, therefore, advise those Gentlemen, for the Future, to drop those parliamentary Airs and Stile, about Liberty and Property, and keep within their Sphere, and make the best Use they can of his Majesty's Instructions and Commission, because it would be High-Treason to sit and act without it. This is our Charter; and we may, if we please, be extremely happy in the Privileges we enjoy from it; that alone, of having it in our Power to tax ourselves, is invaluable; of this, I doubt, we shall never be truly sensible, till, by some Mis-conduct of our own, we come to lose it. If we abuse, or make a wicked Use of his Majesty's Favours, we are, of them, but Tenants at Will; we only hold them during Pleasure, and good Behaviour. In most Corporations, where there appears an Abuse of Power or Neglect of Duty, a *Quo Warranto*² is necessary to set Things to rights; in our Case it is not wanted, tho' (as that great Lawyer Lord Chief Justice *Hale*, has remarked, in Relation to the Island *Jersey*) we are Parcel of the Dominions of the Crown of *England*; we are no Part, nor ever were, of the Realm of *England*, but a Peculiar of the Crown; and by a natural and necessary Consequence, exempted from parliamentary Aids. Thus you see our Dependence and the Reason of

1. ["O Fortunate men!"]

2. [Literally, "By what right," i.e., a writ directing a person to show "by what right" he exercises powers of office.—Tr.]

it, is altogether upon his Majesty's Grace and Favour. If we don't approve of our present System of Government, let us pray for a better: In the mean Time, let us not contemptuously treat those Favours the Crown has been pleased already to confer upon us. That this is the Case, is but too obvious.

The Constitution, or Frame of Government the Crown has been pleased to favour us with, is by a Governor and Council of his own Appointment; and to which, by his Directions, are added the Representatives of the People; of which his Majesty's Commission and Instructions are the Basis. This is an Emblem, or faint Representation of the *British* Constitution; and will, with equal Propriety, answer all the good Purposes intended, if we have but Sagacity enough to make a proper Use of it. Here are three Branches in the Legislature, whose Powers are sufficiently distinguished and pointed out to them; and while the Ballance is duly kept up, that is, while each of the Branches keep candidly and strictly within its own Sphere of Action, without encroaching, infringing, or maliciously endeavouring, for any particular Ends, to vilify or lessen the Powers of any other of the Branches, we may conclude ourselves in a happy Way; on the Contrary, if we see any one of the Branches, assuming to itself any Part of that Power, originally lodged, and intended by his Majesty to be lodged with the other Branches, and scrambling vehemently, out of all Measure and Character, for more Power than ever was intended it, you may conclude, that every Step taken for that Purpose, is a Nail in our Coffin, and tends to an Alteration, if not a Dissolution of the Constitution. That each, in their Turns, have attempted this, is beyond Dispute. Those Attempts from a Governor, can only be by Fits and Starts, out of Pique or Prejudice to Particulars; they cannot long subsist: He may be guilty of some few Acts of Oppression; but considering he has not only the other two Branches of the Legislature to check him, but even his own Commission and Instructions, nay, even the whole Body of the Laws of *England*, and one particularly adapted to the Purpose, which makes him accountable in *Westminster-Hall*, for any Mis-conduct here. There Mr. *Lowther* was called to an Account for Acts of Oppression, and was like to have payed severely for it, had he not screened himself by the Act of Grace. He was allowed, upon a regular Complaint, to come home to defend himself; at the Conclusion thereof, he was committed by the Council-Board, till he entred into a Recognizance with Sureties of £ 20,000; and was also ordered to be prosecuted by the Attorney-General. From hence I would infer, that no Governor, from any Acts of his *qua* Governor, can indanger

our Constitution. From a Council we have not much to apprehend, even if they were to join any one of the other Branches, provided the third keeps it's Ground. The Council are in the Nature of Moderators between the Extrems, without whose Concurrence they have no Power to act: Should they, however, neglect their Duty, or abuse the Powers they are intrusted with, they are accountable to his Majesty, and a Suspension soon puts an End to their Being.

From an Assembly, if we value our Constitution, we have every Thing to dread; they have the people on their Side, which greatly preponderates in the Ballance, and will be doing (I wish I could say fairly) what every other monied Person does; that is, turn it to their own particular Advantage; and in this Kind of Traffick our Assemblies have, of late Years, shown great Dexterity, even so far as greatly to lessen that Dignity and Power, so effectual to Government, lodged with their Superiors, the Governor, and Council; and to add to our Misfortune, there is no Remedy, at present, in Being, to cure this Mischief, but either a great Alteration, or a total Dissolution of the Constitution; dissolving an Assembly is none, but the most effectual Method to continue the Mischief: This we may learn, in some Measure, from an Advertisement of their own, or from some of their Friends, of the 17th of *February*, in the *Gazette*, in these Words,

Notwithstanding the utmost Efforts of the Court Party had been exerted, yet our two late Members carried the Elections by a very great Majority; and thus, I am persuaded, it will be, should we have an Election every Month in the Year, for we are determined not to be worried out; and we know our Interest too well, to be deceived either by Paper or Parchment.

I cannot conceive what this Advertisement refers to, unless it be to the King's Commission, which, if I mistake not, is on Parchment, as the Instructions are on Paper.

Thus it is evident, a Dissolution is no Cure for the Abuse of Power in an Assembly: And this brings to my Mind an Observation of a noted Author, on this Point, *viz.*

That when the Ballance of Power is duly fixed in a State, Nothing is more dangerous or unwise, than to give Way to the first Steps of popular Encroachments; which is usually done, either in Hopes of procuring

Ease and Quiet from some vexatious Clamour, or else made Merchandize, and merely bought and sold. This is the breaking into a Constitution to serve a present Expedient, or supply a present Exigency; the Remedy of an Empirick, to stifle the present Pain, but with certain Prospect of sudden and terrible Returns. When a Child grows easy and content by being humour'd; and when a Lover becomes satisfied by small Compliances, without further Pursuits; then expect to find popular Assemblies content with small Concessions. If there could one single Example be brought, from the whole Compass of History, of any one popular Assembly, who, after beginning to contend for Power, ever sat down quietly with a certain Share; or if one Instance could be produced, of a popular Assembly, that ever knew, or proposed, or declared what Share of Power was their Due; then might there be some Hopes, that it were a Matter to be adjusted by Reasonings, by Conferences, or Debates: But since all this is manifestly otherwise, I see no Course to be taken, in a settled State, but a steady, constant Resolution, in those to whom the Rest of the Ballance of Power is intrusted, never to give Way so far, to popular Clamours, as to make the least Breach in the Constitution, through which a Million of Abuses and Encroachments, will certainly, in Time, force their Way.

Health, in the natural Body, consists in the just Proportion of those Salts, Sulphurs, and other Principles which compose our Fluids: If any of them becomes predominant, or too much weakned, Sickness ensues: And in order to restore an equal Ballance, we are frequently obliged to have Recourse to a Remedy, which, to a Man in Health, would prove a slow Poison.

Most of the Revolutions of Government, in *Greece* and *Rome*, began from the Abuse of Power in those selected for the Preservation of the People; which generally ended in the Tyranny of a single Person. This shews the People are their own Dupes.

The *Romans* chose Legislators to pick up the best Laws wherever they were to be found, and to digest them into Order; and during the Exercise of their Office, suspended the Consular Power: But they soon affected kingly State, destroyed the Nobles, and oppressed the People.

The *Epheri* in *Sparta* usurped the absolute Authority, and were as cruel Tyrants as any in their Ages.

The *Athenians* chose four Hundred Men for the Administration of Affairs, who became a Body of Tyrants: They murdered, in cold Blood, great Numbers of the best Men, without any Provocation, for the mere Lust of Cruelty.

In *Carthage* the Ballance of Power got so far on the Side of the People, as to bring their Government to a *Dominatio Plebis*;³ as was that of *Rome*, at last, which ended in the Tyranny of the *Caesars*. Thus it may appear, Tyranny is not confined to Numbers.

Now, if I may be allowed to compare small Things with great if it evidently appears, that those great and free and independent States, lost their Liberties from an over Ballance of Power, usurped by their popular Assemblies; and if I can shew, that our little, diminutive, dependent States are following that Example, as fast as ever they can; and that the same Causes eternally produce the same Effects; I hope I shall be intitled to the Thanks of some of my thoughtless, unwary Country-men; and tho' it may not affect us in so fatal a Manner, our Liberty being, (as before mentioned) otherwise secured; yet it must infallibly indanger our Constitution: We are but yet, as it were, in the Hands of the Potter; in a probationary State of Good-Behaviour; if we totter upon three Legs, he can add or diminish, or turn us off in what-ever Shape he pleases; and who dare say, *What doest thou?*

If any impartial Thinker, or indeed that can think at all, would give himself the Trouble seriously to reflect, and compare our present Situation and Constitution, with any other upon the Face of the Earth, I am confident he would determine in our Favour. We have, from the Infancy of Times here, been nursed up and indulged, at an infinite Expence to the Crown, and People of *England*: Even at this Day, they are at the Expence of £.10,000 Sterling, yearly; and have been at no less, for any Thing I know, every Year ever since we had a Being, for our Preservation. We are exempted from all parliamentary Aids; we have never added any Thing to the Revenue of *Great-Britain*, as some of our Neighbour Colonies have done, of immense Sums: Our Plan of Government is from that of *Old-England*; the most complete System known; to which, if any Additions can possibly be made, we have it in our Power to make them: We have it in our Power to tax ourselves,

3. ["Despotism of the common man."]

as Conveniency suits; which bears no Proportion to those Taxes paid by a like Number of our Fellow-Subjects, in *Great-Britain*. Can mortal Men expect, then, to be happier? or any reasonable Man or set of Men, wish for, or endeavour at a Change?

Let us now see what grateful Returns we have made, on our Parts, for those Favours.

A general Retrospection into the Proceedings of our Assembly, is a Task I have neither Inclination nor Leisure to undertake; and shall, therefore, leave it to those who may hereafter have the Curiosity to collect the Debates of that House, for the Benefit of the Community; and shall only content myself with giving a short Specimen of their Conduct for ——— Years past.

The Commission and Instructions directed to his Excellency the Governor, but intended for the Good of the Whole; which, by the Bye, I cannot help thinking, that if they were in every Body's Hands, as a Family-Piece or House Bible, and not cooped up like the *Sibylline Oracles*, to which Recourse was only had upon extraordinary Emergency, it might be of mighty Use; the People would become acquainted and in Love with their Constitution! they would there see, through the Whole, the benevolent Intentions of our most gracious Sovereign the King, and our Mother-Country: Whereas, at present, they are represented, by some of our Dealers in Politicks, as big with that Monster, *Prerogative*, a Thing which some of our weak Members are taught to dread as much as ever Children were that of *Raw-Head and Bloody-Bones*.

Thus by wicked Instruments, for wicked Purposes, are weak Minds imposed upon; for whose Sake I shall endeavour to explain the Word, which, I doubt, is but ill understood, even by those the Perverters of it: If I am mistaken, I shall readily stand corrected.

There is, in every Family, a Sort of Government without any fixed Rules; and indeed it is impossible, even in a little Family, to form Rules for every Circumstance; and therefore it is better conceived than expressed; but perfectly understood by every Individual belonging to the Family. The Study of the Father or Master, is for the Good of the Whole; all Appeals are to him; he has a Power, from the Reason and Nature of Things, to check the Insolent, or Indolent, and to encourage the Industrious: In short, the whole Affairs of the Family are immediately under the Care or Direction of the Father or Master; and this is a natural Prerogative, known and acknowledged by

every Man living, who has ever had a Family, or been any Ways concerned in a Family, in all Ages and in all Places. His Majesty, as he is our political Father, his political Prerogative, from the like Circumstances and Reasons, is equally necessary. And this political Authority has been allowed the supreme Director, in all States, in all Ages, and in all Places; and without it, there would be a Failure of Justice.

In the Commission and Instructions, as I was observing, there are some Powers in the Crown, which it cannot divest itself of, that, *viz.* of the Militia, Guards, and Garrisons; and tho' his Majesty has given particular Directions for the Regulation of the Militia here, (a Part so essential to every State and Government) yet our late worthy Assembly thought fit to drop it altogether; for which, as they have given us no Reasons, they must give us Leave to guess; and I think there can be but two, that, *viz.* of lessening the Power of the Captain General; or that the Road to those Commissions, is not generally through the Assembly House.

It is plain the Intention of the Crown, in our Constitution, was to bring it up, as near as possible, to that of the original Plan. All Monies raised by Parliament, are issued by Warrant from the Lords of the Treasury. His Majesty has been pleased to direct, that all Monies raised in the Colonies, shall be issued by Warrant under the Hand of the Governor in Council. What due Regard has been paid to this Instruction, is notorious, and the Reason plain; because, otherwise, the Assembly would, in a great Measure, lose those Applications for Gratification of Services done, or pretended to be done, by their Friends and Dependents; of which they take upon themselves to be the sole Judges, in Derogation of the Power lodged with the other Branches of the Legislature, and Violation of his Majesty's Commands.

This will appear in a clearer Light, from the Proceeding of our late Assembly, and the Council's Address to his Excellency, upon that Point; to which I beg Leave to refer. But, as I have met with an Address in the Proceedings of a neighbouring Colony, upon the same Subject, done with great Spirit and Accuracy, I shall make no other Apology for inserting so much of it, as relates to the Subject; and is as follows.

—And now we are come to that Part of this Controversy, which we are no less surprized than confounded should ever be made One, since, as the Gentlemen of the Assembly are sensible, that what is objected to, under this Head, was wholly new, and not to be met with in any former

Excise Act; so they could not be ignorant of his most sacred Majesty's Instruction in this Respect; his Excellency having caused the same to be laid before them, previous to their passing the Act; and consequently they might well believe, that no Member of the Council could consent to the passing this Bill, with such Clauses in it, without justly forfeiting, at the same Time, his Place at this Board.

The Words of the Bill are in the forty-third Clause; wherein, after some of the Uses are mentioned, is the following Proviso, *viz.* Provided, *That a particular Account of all such Necessaries and Utensils, be first laid before the Assembly, to be by them inspected, regulated and approved of:* And they, thereon, address the Governor and Commander in Chief of this Island, for the Time being, and Council, for the Payment thereof: And the Treasurer for the Time being, is strictly enjoined and required, not to pay, or allow of, any Order or Orders that shall be granted, or obtained, for the Payment of such Utensils or Necessaries, unless such Order or Orders, be obtained in Manner aforesaid. And the Committee of publick Accounts, for the Time being, is hereby strictly required and enjoined, not to allow of any Order or Orders that might be granted, or required, for the Payment of such Necessaries or Utensils, unless the same be obtained in Manner allowed to the Credit of the Treasurer, of the Assembly upon his accounting with them; any Law, Usage, or Custom to the contrary notwithstanding. After this, another Use is Specified; and He included the following Paragraph.

“For which no Sum or Sums of Money shall be paid to any Person or Persons whatsoever, by the Treasurer for the Time being, on any Order or Orders that shall be hereafter passed; but such only, as shall be addressed for by the General Assembly, and obtained in the same Manner, as is herein before appointed in this Clause: Nor shall they, or any of them, be allowed of by the Committee of publick Accounts, for the Time being, to the Credit of the Treasurer for the Time being, on his accounting with them; any Law, Usage, or Custom to the contrary notwithstanding.”

All which the Council would have left out of the Bill; and an unanswerable Argument, why they must necessarily insist upon their being left out, the Members of Council think proper to insert, immediately after those Words in the Bill, the King's thirty-fourth Instruction to the Governor; by which they apprehend it will, at first View, appear what a direct Opposition there is in one to the other. The Instruction is as follows, *viz.*

“You are not to suffer any publick Money whatsoever, to be issued, or disposed of, otherwise than by Warrant under your Hand, by and with Advice and Consent of our said Council: But the Assembly may, nevertheless, be permitted, from Time to Time, to view and examine the Accounts of Money, or Value of Money, disposed of by Virtue of Laws made by them, (which you are to signify unto them) as there shall be Occasion.”

These Words in the Instructions, the Council think too plain and full to be misunderstood; and that they are not capable of any other Meaning than that genuine, in which they have been, and are taken by the Members of this Board; who cannot, therefore, suffer themselves to be taught otherwise. Thus we find the Royal Instructions say, *No publick Money whatsoever, shall be suffered to be issued or disposed of otherwise than by Warrant under the Governor’s Hand, by and with the Advice and Consent of the Council.* But the General Assembly of his Majesty’s Island, on the contrary, say, That no Warrant or Order for Money, shall be obtained, till the Accounts of the Persons seeking such Order, have been first laid before them, to be by them inspected, regulated, and approved of: And if the Governor and Council should presume to issue any such Order, in Pursuance of his Majesty’s Instructions, the Gentlemen do strictly enjoin and require the Treasurer not to pay or allow of any Order, to be granted or obtained; nay, if the Treasurer should, by Inadvertency or otherwise, pay any such Order, the Gentlemen of the Assembly have still another Remedy behind; and do, therefore, strictly enjoin and require, the Committee of publick Accounts, not to allow the same to the Credit of the Treasurer.

The Royal Instructions make it necessary, for all those who are intitled to any publick Money, to apply for it to the Governor and Council; but the Assembly of this Province will have it, that Application shall be first made to them for it. The King’s Instructions say, That the Governor and Council, and they only, shall be Judges of what Warrants are proper to be issued for any of the publick Money: But divers of his Majesty’s Subjects, who are of the General Assembly here, insist, that they will be the Judges; and that no Order for publick Money shall issue, till their Judgment has been obtained for it. The Royal Instructions permit the Assembly only to view and examine the Accounts of Money, after it has been disposed of; but these Gentlemen contend for a View, Inspection, Regulation, and

Approbation of them, before; and that too, with the strongest Words of Defiance,—*any Law, Usage, or Custom to the Contrary notwithstanding.*

Such Contrarieties as these, betwixt the Royal Pleasure, signified in the Instructions, and that of the General Assembly, may well be thought enough, without any more, to determine the Opinion of this Board; and no better Reason, certainly, can be expected from the Members of his Majesty's Council, for their refusing their Assent to any Bill, than that the passing of it would be contrary to the King's Instructions. But as the Members of the Council are assured, that the Gentlemen of the Assembly are going upon a great and dangerous Mistake; and that they are now aiming at what can have no other Tendency (tho' we do not charge them with any such Intention) than to subvert the Constitution of the Island, as settled by his Majesty's Commission and Instructions, and to render the Council altogether unuseful in the Government; they cannot pass over this Head without observing, that this Attempt of the Assembly, is not only a bold Innovation here, but is also very contrary to the Usage of Parliaments in *England*; where, tho' it is admitted, that bills of Aids and Subsidies do generally begin with the Commons, and they usually lay the Rates and Duties on Merchandize, yet they have Nothing to do with the Application of the Money, as far as we may presume to judge by their Practice. If they are afterwards apprised of any Misapplications or Abuses, the Method is, to address the King, (as the Assembly may do here) that the several Officers concerned in the same, do lay the Accounts before the House, that they may examine into them, and be therefore enabled to take suitable Measures for bringing the Offenders to condign Punishment, or for preventing the like Abuses for the Future; but that is all. And will the Assembly of this Island, assume Powers not attempted, nor even claimed by a *British* House of Commons? For Gentlemen to set up for Judges of what does not belong to them, and to assume to themselves the Powers and Privileges of the Council Board, we cannot think at all becoming; but, on the other Hand, are satisfied it must lead to Confusion, and in the End, if a timely Stop be not put to it, produce the worst of Consequences.

The Members of the Council would be glad to know what there is in the Nature of those Accounts, that they may not be supposed capable of judging of them, as well as the Assembly? or why this Board may not be presumed to have as tender a Regard for the Interest of the Island, and to

the due Disposition of its publick Money, as the Assembly? They think they may reasonably ask, how it comes to pass, that the Gentlemen of the present Assembly should be deemed the only Persons fit to be trusted with the publick Affairs? or what Security the Country will have, that the same would be safer in their Hands, than where the King has been pleased to place them?

The Gentlemen go on to observe upon the Agent Bill.

The ninth Amendment is to the following Clause of the Bill, *viz.* “For the Payment of such Sum or Sums of Money, as from Time to Time, upon the Address of the General Assembly of this Island, shall, by Order of the Governor, or Commander in Chief for the Time being, by and with the Advice and Consent of the Members of his Majesty’s Council, be made payable to such Person or Persons, as the present General Assembly of this Island, shall or may appoint to be their Agent or Agents, to regulate the publick Affairs of this Island, in *Great-Britain.*” Which Clause discovering the same Spirit of Encroachment with the last, the Council found it necessary to alter, and instead thereof, to insert what follows, *viz.*

“For the Payment of the Salary of such Agent or Agents of this Island, in *Great-Britain*, as shall or may, at any Time hereafter, be appointed, and given by any Law for that Purpose.” And this, they apprehended, would answer all the good Purposes of the other, without being liable to any of the Objections. By these Words, if the Legislature, at any Time during the Continuance of the Act, judge it proper to have Agents for the publick Service, here is sufficient Provision made to pay them out of the publick Money: But the Council could not, nor can on any Account, consent to the Clause, as it stands in the Bill; *First*, Because the Money is not to be paid but upon the Address of the Assembly: *Secondly*, For that the Words are too general and indefinite; *for the Payment of such Sum or Sums of Money, as shall, from Time to Time, &c.* whereby the Assembly might have it in their Power to give away immense Sums for that Purpose, or under that Pretence: *Thirdly*, Because the Money is made payable to such Person or Persons, as the present General Assembly shall or may appoint to be their Agents. And here the Members of his Majesty’s Council cannot forbear expressing their Amazement, that the Gentlemen of the Assembly should take upon themselves to appoint Agents of their own, as they call them, when, at the same Time, they say,

it is to negotiate, transact, and carry on the publick Affairs of this Island, in Great-Britain! What! are all those publick Affairs to be carried on by their Agents, without any Concern of the Governor and Council? Must these have no Hand at all in directing and instructing such Agents, in what will be for the publick Benefit; and the Money, notwithstanding, even unlimited Sums, be implicitly paid, by their Allowance? What is this but to assume, in Effect, an arbitrary and independent Power, and so far to render the other Branches of the Legislature useless, and of no Signification?

—&c.

The Event of this Affair was, that the Bill, or a Draught of the Bill, with the Council's Reasons for their Amendments, were sent Home; and the Governor soon received an Order, grounded on a Report of the Honourable the Committee of his Majesty's Privy-Council, for rejecting the Draught of the Bill, as contrary to the constant Usage of that Island, and of all other his Majesty's Colonies, and derogatory to the Royal Prerogative; which being expressly said to be advised by their Lordships, with Intent to discourage Attempts of the like Kind for the Future.

While these Matters were in Agitation at *Barbados*, the same Disputes were carried on in *New-England*, but, if possible, with still more Obstinacy, tho' with somewhat more Colour of Reason, because of their Charter, which they pretended was infringed by the Instructions: They, therefore, were not satisfied with the Royal Determination, but thought fit to apply to the Parliament; as appears from the printed Votes of the *British* House of Commons.

*Jovis 10, Die Maii, 1733.*⁴

A Memorial of the Council and Representatives of the *Massachusetts-Bay*, was presented to the House and read; laying before the House the Difficulties and Distresses they labour under, from a Royal Instruction given to the present Governor of the said Province, in Relation to the issuing and disposing of the publick Monies of the said Province; and moving the House to allow their Agent to be heard by Council upon this Affair: Representing also, the Difficulties they are under, from a Royal Instruction given, as aforesaid, restraining the Emission of Bills of

4. ["On Thursday, the tenth day of May, 1733."]

Credit; and concluding with a Petition, That the House will take their Case into Consideration, and become Intercessors for them with his Majesty; that he would be graciously pleased to withdraw the said Instructions, as contrary to their Charter; and tending, in their own Nature, to distress, if not ruin them.

Resolved,

That the Complaint contained in this Memorial and Petition, is frivolous and groundless; an high Insult upon his Majesty's Government; and tending to shake off the Dependency of the said Colony upon this Kingdom, to which, by Law and Right, they ought to be subject.

Ordered,

That the said Memorial and Petition be rejected.

To this I have only to add, by Way of *Query*;—Should an Assembly, chose by the People as Trustees and Guardians of their Constitution and Privileges, after so clear a Declaration of his Majesty's Sentiments, continue to insult his Majesty's Government, by contemptuously rejecting every Order and Instruction that does not sute their Taste or Humour? And are they not accountable to the People, for the Consequences of their Conduct? Surely no One can think otherwise.

But I shall go on to shew, in a few more Particulars, the Intention of the Crown, in forming us upon the *British* Plan.

The Bill for the Payment of the Debts of the Government, has been sufficiently animadverted upon, by the Address of the Council here, as well as what may be collected from that other of *Barbados*. The Application Act, as it is called, comes next to be considered: It is, indeed, an Original; and from the very Face of it, appears to be calculated in direct Opposition to his Majesty's Instructions, and the very Form and Nature of our Constitution: Every Officer of the Government is there named by the Assembly, with his Allowance tacked to the End of it; which being a Money Bill, is, with them, sacred and not to be touched with profane Hands; and with this Proviso too, *viz.* "That if any of them die or are removed, so much of the aforesaid Allowances to be paid, as shall be at that Time due; and no more." If an Officer, then, dies or is removed, the Governor, it is true, may put another in his Place; but he can have no Salary or Allowance, till the Assembly please; and that Allowance is just as they please to like the Person. It is not a new

Thing with some of our Assemblies, to add or subtract a Figure in the Salary of the Officers, according to the Nature of the Application; and even to drop an useful Office, upon Occasion, if they disapprove of the Officer; witness the Weigh-Master General's Office. This, I think, is an Encroachment with a Witness, as it creates a Dependence of all the Officers of the Government, upon an Assembly; which, of Course, quite inverts the very Order and Nature of Government.

In *Great-Britain*, to defray the necessary Services of the Government, Estimates are laid before the House of Commons, of which they, if they please, may judge of the Necessity, as well as of the *Quantum*; the Funds, however, are raised; but the Application is left to his Majesty. If there are any Misapplications, it is with the Commons to enquire; and Nothing is more dreaded, than a parliamentary Scrutiny.

The Disposition of Officers, is an inherent Right of the Crown; and is, indeed, a Part of that Power lodged in that Branch of the Legislature, in order to keep up the Ballance; and without it, it would lose of its Weight. It is his Majesty's Intentions, that we should follow the same Method; but, those Intentions our Assemblies have treated according to their usual Complaisance.

The proper Appointments of the Civil List, for his Majesty's Support, is for Life; which, from long Experience, is found most conducive to the Benefit of the Community.

It is his Majesty's Royal Will and Pleasure, that there be paid to his Governor and Captain General, £. 1200 Sterling, yearly, out of his Revenue arising in his said Province; and it is his express Will and Pleasure, that all Laws made for the Supply and Support of Government, be indefinite, and without Limitation, as to Point of Time: As the Commission is, the Meaning I think is plain, that it should last, at least, as long as the Commission; and in this Sense, most of those Colonies immediately under his Majesty's Direction, have taken it; and accordingly, as I am informed, observe it, and enjoy Peace and the Favour of the Crown, while *New-York* and *New-Jersey* are, at present, famous all over his Majesty's Dominions, for worrying one another, and Contempt of Royal Orders and Instructions: But instead of this, our Assembly tell him he may take £. 1200, if he pleases, but it shall be at 40 *per C.* Discount; and even that, but from Year to Year; it is this or Nothing; there is no Alternate. This, however,

is paying no great Compliment to his Majesty's express Royal Will and Pleasure, and but poor Returns of Gratitude for *Ten Thousand Pounds Sterling*, laid out upon us yearly, by His Majesty. That of a yearly Support is but of a late Standing; it was not so from the Beginning. From this Period, however, we may date the Commencement of all our Confusions. Five Years was the common Method; and I believe I may challenge the most sanguine Party-Man, to point out any dreadful Consequences that attended it. This, I say, was the Method, this ought to be the Method, and this will be the Method, however terrible, at present, it may appear; and if we do not follow it, it will be done to our Hands; or we shall have no Peace in our *Israel*, and the King no Government.

Can any Thing be more absurd, than to imagine a Governor, sent abroad to govern a People, and to be supported according to the Dignity of his Office, and under certain Restrictions and Instructions, essential to that Government; but to obtain that Support, every Instruction must be given up, one after another, or have no Support? which is just throwing the Governor into their Hands: This has been the Practice for many Years, and his Majesty and his Ministers know it too; what the Event will be, Time only can discover. Some Remedy must be found, or the People will at last govern.

A Governor is no sooner appointed, than the first Question is, Into whose Hands shall I throw myself? the Answer is ready, Into whose but such as can best manage the Assembly. Hence Prime Ministers and Courtiers are established; and, of Course, Anti-courtiers: Hence Parties are formed; and thus the Peace of the Publick is destroyed, honest Neighbours set together by the Ears, and all Good-fellowship excluded the Society; Elections are carried on with great Animosity, and at a vast Expence, as if our Alls were at Stake: And what is all this for? Is the publick Good really the Point in View? or is it to shew how dexterously the one Side can manage the Assembly for him, and the other against him? Let us be told what mighty Advantage the Publick has reaped from that repeated Round of Squabbles we have been pestred with, with no other View than to distress a worthy Gentleman.

Thus, I think, the Reasonableness, and even the Necessity of supporting a Governor, according to his Majesty's Royal Will and Pleasure, that is independently of any Body but himself, is evident, as it will destroy all those Sources of Contention.

In *Virginia*, the *Two Shillings Sterling*, upon every Hogshead of Tobacco exported, makes the Support easy to the People, who are at this Time, and like to continue in all Duty and Obedience. It is the same in the *Leeward-Islands*, from the *Four* and an *Half per C.* and we hear of no *Fraca's* amongst them.

A gentle Tax upon Lands here, would answer all these Purposes, relieve the Merchant, and encourage Trade, at this Time in a languishing Condition.

If a Man of Worth and Honour falls to our Share, (which indeed, as Matters stand at present, we can hardly expect) he will, if supported according to his Dignity, naturally incline to do us all the good Offices in his Power, if we ourselves don't take Pains to prevent him; and he, the Council, and General Assembly, will have that Time, hitherto spent in trifling Squabbles, to think of securing us from abroad, and encouraging Trade and Industry at home.

The Manner of our supporting our Judges, is equally ridiculous and absurd. It is agreed on all Hands, that those Offices ought to be held for Life, independent both of Crown and People, and under no Bias; but our Assembly are determined to keep them too, under their Thumbs; and tell them, we will allow so much for this Year, but if you do not behave as we think you should do, we will give you less next Year, and perhaps Nothing at all. This would have little Weight with a Man of Fortune and Integrity, in that Office; but might prove too powerful a Temptation to such as have Nothing else to depend upon. As the Commissions, therefore, for good Reasons, are for Life; so ought, for the same Reasons, the Salaries to be.

I have been informed, that in *New-England*, there was a long Debate in the House, whether the Governor's Salary should be paid at the Beginning or at the End of the Year, that they might be the better able to judge of his Good-Behaviour; and, if I am not mistaken, it was carried for the latter.

The *Jersey Assembly*, not many Months ago, waited upon the Governor with the Revenue Bill, insisting, that the Council had Nothing to do with it; and had he passed it in that Manner, can any Body doubt, but that their next Vote would have been to exclude both Governor and Council. Those are great Strides in our Assemblies towards—

But to go on with our Act.

Whoever will be at the Pains to compute the Amount of the Salaries, and compare it with those Allowances made to Assemblies, and their immediate Dependents, will readily see how far the one comes short of the other.

There are Twenty-seven Assembly-men, to whom the Law allows to some *Ten*, to some *Six*, and to others, *Four Shillings* a Day; take the Medium at 7 s. and this amounts to £. 9 : 9 : 0, every Day from their setting out, to their Return to their Homes; and this is a Tax immediately out of the Farmers Pockets; all others are upon the Merchant (a Point that may be discussed at another Time;) besides £. 300 to a Treasurer, yearly, tho' his Majesty has appointed one for that Purpose, and £. 200, yearly, to an Agent of their own. The Incidents on both Sides may be left out in the Computation. We shall be told, perhaps, that some of these Gentlemen, don't take up their Allowance; but sure They won't openly declare this, because, in my humble Opinion, it is down-right Bribery, as I cannot conceive the Difference between saying, I will *give* you seven Shillings a Day, if you chuse me; or, I will *forgive* you seven Shillings a Day, if you chuse me.—So much for this extraordinary Act.

His Majesty, out of a tender Regard for the Preservation of the Lives and Properties of his Subjects here, has given Directions, that proper Provision be made for Indian Affairs; but our worthy Assembly, that their Conduct may appear of a Piece, have made none; I shall not enquire into the Reasons; they ought, indeed, to be very good Ones, to satisfy the People; because, in Case of a Rupture with *France*, it must have very fatal Consequences; and it is not impossible, (considering how indefatigable the *French* are in this Matter) but that *Fresh-Water* may become our Frontier: I can see Nothing to hinder them, without our Indians, from driving the whole Country in before them. How far the Authors of this Neglect may be answerable for those Consequences, at the great Day of Accounts, I am not Casuist enough to determine; and shall, therefore, leave it to their own Consciences.

I have but one Thing more to observe upon, in this Act, and that is, That neither Governor nor Council can command one Shilling of the publick Money, if that Shilling would save the Province, while the Speaker has it in his Power, by Order of the House, to dispose of it as he pleases, without being accountable to any but themselves.—*See the last Clause but one, in the Act.*—How consistent this is with the Nature of our Constitution, or, indeed, any other Constitution, I shall leave to those more judicious to determine.

As I have but little Hopes of any Remedy for those Evils, on this Side of the *Atlantick*, I would have it enacted, by a *British* Parliament, That whereas great Irregularities and Confusions have arisen from the present Methods taken for the Support of Government, and Officers of the Crown, &c.

I. *Be it Enacted*, That all Lands hitherto granted, or that shall be granted by his Majesty, shall pay at the Rate of *One Shilling* for every Hundred Acres, upon Oath, in Lieu of all other Rents or Reservations whatsoever; applicable only towards the Support of Government and the Officers of the Crown; to be issued by Warrant, according to Instructions.

As to what may be objected in Relation to the giving up the Quit Rents; they are but a Trust to the Crown, and will ever be a Canker in the Estate of the Subject. From 1664 to 1710, they are but of very little Importance. The Counties of *New-York*, *West-Chester*, *Dutchess*, and *Albany*, that is, all the East Side of *Hudson's River*, extending along the River about 170 Miles, does not, by an accurate Calculation, pay above £. 90 Sterling, to be collected from several Thousand Hands. The Rest of the Counties are much upon the same Footing; and I may, I think, venture to affirm, that, had it not been for the vacating two Grants; one, *viz.* to Mr. *Evans*, and the other to *Dellius* and *Bayard*; the Quit-Rents would not have defrayed the Expence of collecting them; nor would the Province have been half so well settled.

Governors, during that Period, were under no Restrictions. Grants of Lands, and Reservations, were in Proportion to the Gratifications to a Governor. The greatest Part of the Grants, during that Time, are to pay such Quit-Rents, as hereafter shall be established by the Laws of this Country; which is just saying, you shall pay when you please. There are, however, some Pepper-Corns, some Wampum, Stivers, and Beaver-Skins ascertained.

Since 1710, 2s6 is reserved upon every Hundred Acres; but as Grants are not easily come at by a poor Man, the Rich have generally engrossed them, not with a View of settling the Lands, but of parcelling of them out to the best Bidders. Those Grants, and, of Course, the Reservations, by these Means became so divided and subdivided, that at last, it will become impracticable, if not impossible, either for the Officer to collect, or the Possessor to pay, tho' never so willing, with any Certainty or Regularity. In many of the old Grants, the Shares of the Possessors does not amount to the tenth Part of a Penny; and they must go perhaps a great Way to pay that, or be prosecuted; or if any one of them should even be obliged to pay the Whole, they have no Remedy against those concerned. A poor Man in the *Mohawk's* Country, possessed, perhaps, of fifty Acres, must go upwards of two Hundred Miles every Year, to pay fifteen Pence, or be prosecuted; the Event of which may be fatal to such a Person. This will, in

Time, create great Uncertainty and Confusion in that Collection. In Lieu, therefore, of which, I humbly conceive, that *One Shilling* upon every Hundred Acres, would relieve the Subjects, amply support Government, the Officers of the Crown would become independent of Assemblies, Trade would be relieved, and those extravagant landed Gentlemen, would be obliged to pay their Proportion of that Expence.

From good Hands I understand, that a Person possessed of two Hundred Acres, pays more to the Publick, than some of those possessed of their Hundred Thousands.

In order to put our Indian Affairs upon a proper Footing, I would have all Monies, raised upon the Retailers of Liquors, (being a Sort of a voluntary Tax through the whole Continent) be made a perpetual and unalienable Fund for that Purpose. If this Affair, of so much Importance to the *British* Interest, be left much longer to the Caprice of Assemblies, we may easily guess what will be the Consequence. And that all Duties upon Indian Goods cease, and the Trade left open to all his Majesty's Subjects, except those that take the Road to *Canada*.

As I conceive, that Trade carried on between *Albany* and *Canada*, is attended with very pernicious Consequences to the *British* Interest, I cannot help thinking, with Submission, but that an effectual Stop might be put to it by the following Method. By the 12th of *Ch. II.* no Alien, or Person not born within the King's Allegiance, &c. shall exercise the Trade or Occupation of a Merchant or Factor in any of his Majesty's Plantations, upon Forfeiture of all his Goods, &c.

Let an Officer, therefore, be posted at *Albany*, who is to publish the above Clause; giving Notice, that in three Months, all Goods, Wares, or Merchandize exported or imported, from or to *Albany*, by the *French* or their Factors, the Natives, not under his Majesty's Allegiance, will be seized; the Proof to be put upon the Owner.

There are two Objections to this; *First*, If the *French* are not supplied from us, they will fall upon other Means of supplying themselves, which will prejudice the Consumption of the *British* Manufactures: But the Absurdity of this Objection has already been sufficiently exposed, (*See the Papers relating to an Act of the Assembly of the Province of New-York, for Encouragement of the Indian Trade, &c. and for prohibiting the selling of Indian Goods to the French, viz. of Canada; and Mr. Colden's History of the Five Nations*) I shall take no further Notice of it.

As to the second Objection, that this will be acting contrary to that Freedom of Commerce with the Indians, mutually stipulated by the Articles of the Treaty of *Utrecht*; to this I have only to say, that the *French* understand not that Treaty in such Light; as appears by their discharging our Traders from trading, upon any Pretence whatever, within their Territories, under severe Penalties; witness the Treatment those three *Philadelphia* Traders met with lately, for trading at *Ohio*, only pretended to be within their Territories; whereas neither *English* nor Indians, admit it to be so; and the *Ohio* Indians will suffer all the Extremities of War rather than admit it to be so.

By this Time, I presume, I am reckoned a mighty Governor's Man, (an invidious Distinction) and no Friend to Assembly-men. As to the first, I own it, *First*, Because I find the Laws are severe (where Laws govern) against such as industriously endeavour to create Jealousies between the supreme Magistrate and the People: *Secondly*, Because no Piques or Prejudices ought to efface Good-Manners, due to every Superior, especially a Supreme Magistrate: And *lastly*, Because in the whole Course of my Observations, I never knew any one Individual get any Thing by it, but a little Vanity and a great Deal of Vexation.

As to Assembly-men, there are those whom I revere. One whose only Aim is at the Honour, Safety, and Interest of his Country; and who on this Mark constantly keeps his Eye fixed; who dreads not the Frowns of an enraged Governor, or the horrid Clamours of a possessed Multitude; who smiles to see so many (in all Appearance) honest and thinking Men jog on like a Gang of Pack-Horses; who truly enjoys all that Freedom in his Actions, which he thinks his Duty to procure for, and defend his Country-Men in One, in short, who is directed, influenced, or biassed by none; and while he is in his Country's Service, thinks the most glorious Epithets the World can fix upon him, are those of a rigid, inflexible, ill-natur'd, honest Man.—And such a one who would not revere?

But, as a certain Gentleman observes:

I think, *says he*, there is hardly to be found through all Nature, a greater Difference between a representing Commoner in the Function of his publick Calling, and the same Person, when he acts in the common Offices of Life; here he allows himself to be on a Level with the Rest of Mortals; here he follows his own Reason and his own Way; in short, here his Folly and his Wisdom, his Reason, and his Passions, are all of his own Growth, not the Echo of other Men: But when he is got near the Walls of

his Assembly, he assumes and affects an intire Set of very different Airs; he conceives himself a Being of a superior Nature to those without, and acting in a Sphere where the vulgar Methods for the Conduct of Life, can be of no Use: He's listed in a Party where he neither knows the Temper nor Designs, nor perhaps the Leader; but whose Opinions he follows and maintains with a Zeal and Faith, as violent as a young *Whitefieldian* does those of a Methodist, whose Sect he is taught to profess: He has neither Opinions, nor Thoughts, nor Actions, nor Talk, that he can call his own; but all conveyed to him by his Leader, as Wind is through an Organ: The Nourishment he receives, has not only been chewed, but digested before it comes into his Mouth: Thus instructed, he follows the Party, right or wrong, thro' all its Sentiments, and acquires a Courage and Stiffness of Opinion, not at all congenial with him.

Such a One, if any such there be, I most heartily despise.

The Raging of the Sea and Madness of the People, are put together in Holy-Writ; and the Wrath of a King, to that of the Raging of a Lyon: But his Favours are as the Dew upon the Grass, which that we may endeavour, every one in his particular Station, to cultivate and deserve, are my sincere Wishes.

FINIS.

Anonymous,
The Voice of the People
(Boston, 1754)



WHEN IN EARLY 1754 the Massachusetts legislature imposed an excise tax on the consumption of liquor, it met with vigorous opposition in Boston and other seaboard towns and generated a substantial number of pamphlets laying out the case against it. Representative of these was this short pamphlet, which was published anonymously under the title *The Voice of the People*. Drawing upon the British experience with excise taxes, including the famous defeat of Sir Robert Walpole's proposed excise in 1733, the author pointed out that such bills had always been an instrument of "an oppressive prerogative" in Britain and, invoking the colonists' inherited rights as Englishmen, denounced them as a "Badge of Slavery" that would be destructive "of that Security which every Man enjoys in his own House, which cannot be enter'd even by the *High Sheriff*, unless in criminal Cases." "Every *Englishman*," he declared, "has a Right according to his Fortune to indulge himself" in his own home "in the use of Wine, or Cyder, or any other Liquor, that is most agre[e]able to him?" "If we once become obliged to account with every *Petty Officer* for our particular Oeconomy in our Family, and to acquaint them with their interior State," he asked, "pray what becomes of our Liberty." Besides, he warned, showing an unusually early distrust, not just of prerogative, but of Parliament itself, if "ever Parliamentary Power should extend in it's full Scope over the Plantations, will not this [Massachusetts excise bill] furnish them with a notable Precedent to extend and Multiply *Exc—ses*, without Measure."

Despite the intensity of this opposition, the legislature did not repeal the bill, which, however, expired three years later in 1757. (J.P.G.)

The Voice of the People.

The Exc—se Bill now depending before the H— C—, is with good Reason become the general Subject of Conversation. It will surprize no one who considers the Principles and the Influence of Sir *Robert Walpole*, the extreme Corruption of the Nation, and the Emergencies of the State at that Time, that he should venture to propose this Scheme, to a *P—rl—t* who had before implicitly adopted, and sanctified all his Measures.—Yet in this Attempt he fail'd,—the Laurels of Corruption wither'd on his Brow:—So unconstitutional,—so destructive a Scheme—excited the Clamours of the Nation, alarm'd the Virtue, which the Arts of Bribery had for a long Time lull'd to Sleep.—Even *Pensionaries* burst their golden Chains, cast away for a while their Cords, and before they could be *again* quieted, held up their Hands against the *Exc—se*:—But how astonishing is it that this many headed HYDRA, should be introduced into a Country formed upon one of the broadest Plans of Liberty, into an House where Corruption is such a Stranger, that even LAWYERS will speak without any Consideration, Fee, Promise, or Reward.—For every one knows that the *Grand Promoter* of the *Exc—se* Bill, is of all Men, the freest from Corruption.

Were it not for the clearest Conviction of *their own* Superiority, such an Affair as this, might have been made Publick, just before a Recess, and the sense of their Constituents obtained upon so *interesting* a Bill.—If any other Reason can be given for *precipitating* an Affair of this Consequence, must it not be a Suspicion, that it is absolutely disagreeable, to a People eminent for the warmest Love of Liberty, and the most vigorous Exertions to preserve it.—It is what I think the People have Reason to expect, in Affairs of this acknowledged Moment, and is warranted by antient Prescription, as *Coke* in the fourth Instit. P. 14, observes;—Yea, he calls *it* the LAW or Custom of Parliament, that in any *new proposed* DEVICE on the King's Behalf, *The Commons may answer*, that they DARE NOT AGREE WITHOUT CONFERENCE WITH THEIR COUNTRIES, &c.

But however clear our sovereign *R—l—rs* may be in favour of this Bill, I must beg leave as a free, though private *New-England-Man* to differ very widely from them; for I look upon it as unconstitutional and arbitrary,

as unreasonable and severe, as prejudicial both to Trade and the landed Interest, and as opening a Door to such Vexations and Impositions as cannot be reconciled to a free Constitution.

No Taxes should be collected so as to destroy the very end of raising them:—If the Preservation of our Liberty ought to be the grand Object of all our publick Operations; how inconsistent with this View, is the Destruction of that Security which every Man enjoys in his own House, which cannot be enter'd even by the *High Sheriff*, unless in criminal Cases.—Who would not chuse any other Way of paying the same Subsidy, than that which forces upon them, perhaps at inconvenient Hours and Seasons, a *petulent Invader*, against whom his natural Rights are no Security? Who would not chuse rather to pay something more another Way, than be subject to the numberless Impertinencies which these *Petty Understrappers* of Authority may be guilty of to swell out of their natural Insignificance.—And if once we become obliged to account with every *Petty Officer* for our particular Oeconomy in our Family, and to acquaint them with their interior State, pray what becomes of our Liberty!—When Inroads of this sort are once made into our Houses, where can we imagine there will be any Stop!

The numerous train of Evils which this destructive Scheme will by slow but sure Progression bring upon us, must terminate in the Destruction of that Constitution—the Subversion of that Liberty, which the Favourites of this Bill pretend to support by it—An *Ex—se* is the Badge of Slavery, and therefore a ridiculous Habit for a Free-man.

Every *Englishman* I apprehend has a Right to enjoy the Fruit of his honest Industry, in what way he pleases, provided he keeps himself within the Bounds of Virtue;—at the same time he is indebted to the Publick a proportionable Part of his Earnings for their protecting him in this Enjoyment, and to oblige him to pay more than his Proportion is to oppress him—Every *Englishman* then has a Right according to his Fortune to indulge himself in the use of Wine, or Cyder, or any other Liquor, that is most agreeable to him. One chuses Wine, another perhaps richer than he, chuses Cyder—the one pays a considerable Tax to the Publick, because he drinks Wine, while the other pays nothing at all because Cyder is his darling Drink; Both are equally gratify'd and equally innocent, they only differ in this, that they bear an unequal Share in the Charge of supporting that Government from which they are equally entitled to Protection.—And this Inequality will always take Place in the Operation of such an *Exc—se* Act, unless there be this

Addition—that no Person shall be allowed to make use of any Liquors but those upon which the Government shall lay an *Exc—se*, and every Man shall be obliged to expend so much in his Family as he can afford.

Let us examine into the Origin of *Exc—se* *BILLS*, and we shall find they were first introduced in order to purchase from the Crown an oppressive Prerogative, viz. *the Court of Wards and Liverys*, and the *Parliament* that first introduced them was called a *PENSIONARY PARLIAMENT*.

If we look into all Nations where *Exc—ses* are practised, we shall find that Government which makes the most use of them is the *Dutch*; and 'tis well known they have no Lands to Tax, and must therefore submit to this Method, as a *necessary Evil*.—The *Venetians* are a *Tyranny* of Nobles.—The *Florentines* are Subjects of arbitrary Power, and the *French* are confessedly no Examples for *New-England*, and yet neither have invested the Officers of the *Exc—se* with the Power of Visitation.—

Let us consider the dangerous Efficacy of this Bill with Regard to Commerce; will it not have a Tendency to drive Persons of Stock and Reputation into other Governments, where they may enjoy the Fruits of their honest Industry, without these unsufferable Burdens? Already we have been deserted—Men of Fortune: and Industry are daily leaving us, and is it prudent for us to hasten, and in a Sort necessitate their Departure? Will they not continue to desert a Country where Trade is stretching away on full Pinions, and Liberty but just hovering over us, and preparing to take her Flight; and whoever thinks the Landed Interest will be eased by these extraordinary Burthens on Trade will find themselves mistaken. These are only nominal and temporary Reliefs, which will end in a more grievous Burthen than any other Taxes, and Mr. *LOCKE*'s Observations of some particular Taxes may be applied to this, viz. Perhaps it will be found that those *Taxes which seem least to affect LAND*, will MORE SURELY OF ALL FALL RENTS.—What Value would Lands be of, if for the sake of a small and immediate Ease to themselves, any should be induced to oppress and destroy Trade.

It may be well worth Consideration—Whether it be *prudent* for the Government to raise Money out of the People in a way so disagreeable to them, as this seems to be— Whether a *general Murmuring* against it, is not of it self a discrete Reason to endeavour to find out *some other way*, or if that can't be done, not to make it *necessary* to raise any Money for extraordinary Occasion at all—I am sensible it will be said, that it is already become necessary—that the *French* and *Indian* Enemies are now on our Frontiers and the Consequence

may be fatal, if they are not withstood, which cannot be done without extraordinary Expence; and the Difficulties of the Times render it needful to raise Money to support this extraordinary Expence, in an extraordinary Way—Allowing all which to be true, I believe the good People of this Province will readily Consent to any Measures consistent with that Honour and Freedom which every *Englishman* thinks he has a Right to, and I hope they will always maintain such a Regard to their Security as never to submit to any Impositions inconsistent with it, be the Pretences for them never so Specious.

I must add that the Charges of collecting this *Exc—se* will be some considerable Deduction from the Revenue—that it will tend to deprive the Community of the Industry of many of its Members, besides rendring them odious to the People. But were there no other Objection to this Bill, than its necessary Tendency to multiply Oaths, to introduce Evasions, Reserves, and Equivocations, to ensnare weak Minds, and make the wicked wax worse and worse, to abate that Solemnity, with which the infrequent and deliberate Use of Oaths, is accompanied, it would render any other Way of raising Money eligible to this.—How will tender Consciences be affected, with the Recollection of Omissions in the *Exc—se* Accounts, which hurry of Business, or other Causes may have render'd unavoidable—How will People be tempted to purge themselves of Deviations from the Letter of the Act, when they have violated the true Spirit and Intention of it.—Is it prudent to give a Sanction to any thing that may weaken the Obligations of Virtue, and strengthen the Temptations to Vice. Can we consistently Pray *not to be led into Temptation*, while we tempt one another—Will not this be casting a Stone of Stumbling and a Rock of Offence, where many Persons will Shipwreck a good Conscience, and will the Revenues that arise from these be better than the Prosperity of F—s which will in the End destroy them.

If ever Parliamentary Power should extend in it's full Scope over the Plantations, will not this furnish them with a notable Precedent to extend and Multiply *Exc—ses*, without Measure, and without Number. Although all *Exc—se* Bills are fatal, I repeat it again, and down right Plans for arbitrary Power, yet if they must take Place, Let them be such as equally Effect the Community—Every Member of the Government is a partaker of the Protection which it affords. Every one then ought to Contribute to it's Support—If *Exc—ses* must be Laid, and that with a View not of burdening one part of the Community, to the Ease of another, they should be laid upon Articles of general Consumption, as the *Exc—se* on *Malt Liquors &c.*

If the Design of the Government is to hinder the Consumption of any Article, let it be by total Prohibition, or a duty Tantamount. If Wine, and Rum, are Articles of Luxury, so also O Landed Gentlemen! is CYDER. If Constitutions vary, Wine and Rum in moderate Degrees, may be as Salutary as Cyder, if either are prejudicial to the Constitution, let the Consumption of either be discourag'd.

Moreover, consider what a mighty Influence this *Bill*, and the Offices and Officers to be appointed by it would give to a Governor disposed to extend his Authority beyond its just and natural Bounds, if these Officers should be chose by an H—— devoted to all the Views of the *Chair*. How many Elections might be earned by the dirty Influence of those *Exc—se* Officers, and how much would even the Affluent, temporize with these Fellows, in order to be secured from their Impertinencies! But if the H—— in their Superior Views, should perswade themselves finally to pass this B—— it is to be hoped that the Destruction of it may come from a Quarter where idle People have been most apt to suspect Danger: It is some Consolation to hear that a GENTLEMAN who is as much distinguish'd by the Knowledge and Love of our happy Constitution, as in Point of Rank, Authority, and Influence, should declare himself dissatisfied with this *Bill*.

The penetrating, the gentle S——h——l——y can never heartily acquiesce in a Scheme so fruitful of Mischiefs—Perhaps he may make a successful Stand against it, and in all the Glory of publick Love, once more emerge the FATHER OF HIS COUNTRY? Who would not wish to pay the Tribute of honest Praise, to one who with such distinguish'd Talents, such unweari'd Zeal and Activity, will join so clear a Demonstration of his Regard for our Constitution.—What Confidence will it excite? what Conciliations? how will it silence Opposition! how will it confute Calumny!—But shall a Stranger be grieved for these Measures! O *New-England!* which thy own Sons mistaking thy true Interest are endeavouring to establish? Where are those Worthies who founded these precious Liberties in Toils, in Famine, in Blood? Shall we not wait 'till we have as great a Price for our Liberties as they cost them? Shall any thing else but immediate impending Danger hurry us into Measures which break down the Mounds of the Constitution, whereby all the Beasts of the Field may come and devour it. I wish, and will promote all Patience even under the most pressing Difficulties that arise out of an *Act of Government*, But let me at the same Time that I declare my Detestation of *Mob* Principles observe, that all sublunary Power is bounded,

even the *Grand Seigneur* does not set always easy on his Throne.—There is a certain Point beyond which it will not bear to press, and near to which it is dangerous to approach. Be the Effect of this B——ll no more than a Weariness of the Constitution, and what Mischiefs will that produce, if ripen'd into an Application to our Superiours in *England*, which perhaps they might receive with a Prejudice, to which the best Defence that can be made, may prove Inadequate—With respect to the Constitution of my Country, I can cry out with Father PAUL—*Esto Perpetua*, and in this Patriotick Wish, and all those Measures which tend to promote its Perpetuity, may all the People unite and say. AMEN.

P.S. Since the above was put into the Press, we hear with infinite Pleasure that the Honourable B——d, have rejected the E——E B——L, and herein *concurr'd* with the

Voice of the People.

So timely and glorious a Stand in defence of the CONSTITUTION demand our most grateful Acknowledgments: One head of this *Hydra* is EXCIS'D, may no more spring up from the bleeding Trunk, and may we never want HEROES, as long as we are expos'd to M——NST——RS.

FINIS.

[Landon Carter],
A Letter from a Gentleman in Virginia
to the Merchants of Great Britain
(London, 1754)



WHEN Lieutenant Governor Robert Dinwiddie first arrived in Virginia in 1752, the colony had been free of serious political conflict with London officials for nearly a half century. Dinwiddie brought news that the Privy Council had disallowed ten laws from a 1748–49 revisal and had confirmed fifty-seven others with the proviso that, like all other laws thus confirmed, they could not be changed without the insertion of a clause suspending execution of the change until proposed changes had received formal approval from London. Virginia political leaders were deeply resentful of this unprecedented interference in the Virginia legislative process and appealed with little success to London. In this context, Dinwiddie announced that, with the Council's approval, he had imposed a new fee for signing and sealing land patents. Because the Virginia legislature had long exercised authority to set officers' fees in the colony, this imposition raised a storm of popular protest and, when the legislature next met in 1754, resulted in a sharp confrontation in which the House of Burgesses denied Dinwiddie's constitutional right to impose the fee without its consent, branded anyone who paid it "*a Betrayer of the Rights and Privileges of the People*," and sent Attorney General Peyton Randolph to London to plead its case against the governor.

At the height of this so-called pistole fee controversy, Landon Carter, a wealthy planter from one of the most powerful families in Virginia, produced

a pamphlet that he published anonymously in London in 1754. In this pamphlet, Carter provided a history of the dispute from the point of view of a leader of the House of Burgesses, addressing it to the Virginia merchants whose close ties to the colony and large trade profits from the tobacco trade, Carter suggested, should lead them to support “the humble Requests of a People, who only desire to enjoy the same Freedom and Immunities, as they have done in Ages past.” Presenting Dinwiddie as entirely motivated by “Avarice,” Carter charged that the pistole fee was “against the constant and most antient Rule of the Colony, founded upon Law, confirmed by Royal Charters, Royal Instructions, and even against the express Orders of a King in Council.” By violating both the traditional British principle of legislative consent to all taxes and terms of land granting that were “of very antient Establishment,” Dinwiddie’s demand, Carter wrote, was “too arbitrary for a People inheriting all the Constitutional Rights of *Great-Britain*, their Mother Country”; it was “against the known Laws of the Land, and therefore against the Maxims of a *British* Government.” In Virginia as well as in Britain itself, he declared, traditions and rules “so fixed and established, should [not] be altered without some pressing Necessity of Government,” and, he warned, “Every thing that maketh a Change, and thereby becomes conclusive on the People” was “illegal and arbitrary, if it comes not through its proper Channel.”

For Carter, the proper channel was the Virginia legislature, which, “to this Country [was] a Parliament, in every Sense of the Word,” and he attacked Dinwiddie for questioning the House of Burgesses’s right to inquire into the grievances of the people, without which a legislature would be rendered useless to its constituents, “an Assertion dangerous in a *British* Constitution.” Declaring that “The Rights and Privileges of Parliaments, the Laws and Constitutions of Government are Things too dear to lose by Indolence” or “given up to mere illegality,” he praised the Burgesses’s resolves against the pistole fee as “a lively Instance of that true Spirit for Liberty, which should possess the Breast of every *Briton*.”

In one aside that departed fundamentally from emerging colonial thought about the legal basis for colonial liberty and representative government, Carter suggested “that the Power of holding an Assembly here is purely by the Royal Permission,” an “Indulgence.” For many decades, colonial spokespeople had been claiming in response to perceived violations of their rights that those rights were part of their legal and cultural inheritance, and not

grants from the metropolitan government. Carter's position was an indication of the degree to which, over the previous thirty years, Virginia had been exempt from the sort of metropolitan challenges experienced in so many other colonies and represented in Virginia by the pistole fee. Crown authorities ultimately upheld Dinwiddie's right to impose such a fee, but abolished the pistole fee itself. Significantly, no subsequent governor challenged the legislature's authority to set officers' fees. (J.P.G.)

A
LETTER
FROM A
GENTLEMAN
IN
VIRGINIA,
TO THE
MERCHANTS
OF
GREAT BRITAIN,
Trading to that
COLONY.

LONDON:
Printed in the Year MDCCLIV.

To the several Merchants
of Great Britain,
Trading to Virginia.

——— *Tua te charissima VIRGINIA*
*Nominat exaudi.*¹

OVID MET.

GENTLEMEN,

The Author of this, from a true Sense of the Duty he owes to his Country, and the great Injury she is now likely to sustain; being willing to add his hearty Endeavours, to those of the present House of Burgesses, to put a Stop to an approaching Evil: Begg Leave to tender you an impartial Relation of a Dispute now subsisting, between the Colony of *Virginia*, and the Honorable *Robert Dinwiddie*, Esq; their Governor. And as he is fully persuaded of the Gratitude moving in your Breasts, he does not doubt but the Justness of the Country's Complaint, will actuate your Concern, and excite in you an earnest Diligence towards obtaining the Royal Interposition; which the Burgesses in their Address, to His Most Sacred Majesty, have now most humbly and dutifully sued for. Such a laudable Endeavour, will, Gentlemen, be a lasting Demonstration of your Attachment to this Country; and, as on the one Hand, it will give an undeniable Testimony of that social Virtue possessed by you; so on the other, an indolent Indifference, or Coolness in attempting, will leave that Brand of indelible Reproach, which in the List of proverbial Sentences, we meet with thus emphatically characterised;

Ingratitude is the Devil.

And further, as Experience hath instructed us how necessary timely Applications, in such Cases generally are; it is hoped that you will let this Colony (now terrified with that Hydra *Oppression*) see how truly you are affected by her Fears, and how zealous you can be in the Service of those, with whom you are so closely connected.

The Author's Confidence in your kind Dispositions, makes him decline all farther Apology for calling upon you in this pathetic Manner; and he

1. ["Your dearest Virginia calls you. Pay attention."]

would now proceed to the Relation, but that he thinks it first necessary to give you the greatest Assurances, that he hath not raised this Alarm among you out of an opposing Spirit; neither is he moved by any Interest less than that of a whole Country, and could you know him, or were you acquainted with his History, you would find that he hath ever been *pro virili*,² a just Patriot, a loyal and faithful Subject; one that hath dutifully acquiesced under every Branch of Power legally executed, and only an Enemy to Oppression.

The Relation of the Dispute.

In 1751 arrived the Honorable *Robert Dinwiddie*, in the Character of Lieutenant-Governor, and Commander in Chief of this Colony. The extraordinary Affability and courteous Behaviour of this Gentleman, when he lived among us as Surveyor-General, had so attach'd many of us to him, that we feared nothing less than a grasping or lucrative Person, which added to the Report of his good Circumstances, almost rendered it impossible for us to apprehend any thing short of a peaceable, harmonious, and mild Administration. Agreeable to this, the new Assembly met him with a real Joy in their Countenances; and to his most uncommonly affectionate Speech, at the Opening of the Session, they return'd an Address full of the Assurances they had of his good Dispositions towards the Colony, and of the certain Prospect they entertain'd of a happy and justly order'd Government. It is true indeed, the Compliment of a Present, made to Sir *William Gooch* on his Arrival, was for some Time refused to this Gentleman, but that not out of any Disrespect to his Honour, but purely from a Desire that then prevailed, of discontinuing a Thing, that might in Time become a Matter of Claim, rather than of Compliment; for in the End, when another Colour could be put upon it, *viz.* that of engaging his hearty Endeavours at Home, for the re-enacting certain Laws, that had been just then repealed, and were thought very useful, by the Burgesses to the Country, the Sum of £ 500 was presented to him. Now who could suspect, that this very Gentleman had, during the Time he had been making these extraordinary Professions of Tenderness for the Country, into which he came not out of any lucrative View, but purely to retire, and deposit his little female Family into the Arms of some honest Buckskins, who he thought made the best of Husbands; for so hath he familiarly express'd himself; I say, who could have imagined that

2. [*Pro virili* (*parte*): "Manfully."—Tr.]

he was then meditating an Affair, not only burthensome to the Country for the present, but by the extraordinary Methods made use of to effect it, tending to destroy all Pretence they might have to either Liberty or Privilege hereafter. In the Words then of the Poet we may cry out,

——— *Quid non mortalia pectora*
*Auri sacra fames.*³

VIRGIL.

And in order, Gentlemen, to make you fully acquainted with what that was, it is necessary to inform you, that in this, as in all other the *British* Plantations, detach'd from their Mother Country; the Lands are held by the King, and that they might be useful to both the King and the Subject, they have been made grantable to every lawful Adventurer in Fee, by the following Method, that hath hitherto been pursued. The Adventurer first pays into the King's Treasury here, the Sum of one Crown Sterling, for every fifty Acres he intends to enter, and upon a Certificate or Warrant, under the Hands of the Receiver-General and Auditor, of the said Payment, he is by the same intitled to such an Entry, a Survey of which, together with the said Certificate, being return'd to the Secretary's Office; upon the further Payment of 10 s. 6 d. the Person entering the Land, is intitled to a Patent, sealed with the public Seal, and duly recorded, which Patent is signed by the Governor, without any other Fee. Thus hath it been established and regulated by the Laws of the Country, and by the Royal Instructions from the first settling of the Colony to this present Time, without any Attempt to take any other Fee, excepting one made by the Lord *Howard*, when Governor here, which His Majesty King *William*, of glorious Memory, declared to be uneasy and burthensome to the People, and order'd to be discontinued: I say, thus hath it been ever regulated, till this Gentleman, immediately after the rising of that Assembly, that had been so complaisant to him, gave Orders to the Office to demand a Fee, for the Use of the public Seal, and to detain the several Patents till the same was paid. So that all the Adventurers in new Lands, even those who had entered them before the Governor's Arrival, either have been obliged to submit to this additional Charge of a Pistole, or remain unpossess'd of their Lands.

3. ["To what do you not compel mortal hearts, cursed hunger for gold?"]

Such a Proceeding being found not only burthensome, but also thought dangerous, in that it carried with it something too arbitrary, for a People inheriting all the Constitutional Rights of *Great-Britain*, their Mother Country; many Representations were made of it to the General Assembly in 1753, and they, as it hath been ever their Duty to listen to, and Right to enquire into the Grievances of the People, their Constituents, finding themselves indispensably oblig'd to endeavour at such Redress as should be consistent with the Nature of their Constitution, with all possible Regularity made the following humble Address to the Governor.

SIR,

We His Majesty's most dutiful and loyal Subjects, the Burgesses of *Virginia*, now met in General Assembly, being well assured from your Honour's repeated Declarations, that you are desirous to make the Laws and Customs of *Virginia* the Rule of your Administration. Yet finding from the Representations of several of the Inhabitants of this Colony, that an extraordinary Fee of a Pistole, for signing every Patent of Land and the Use of the Seal, is demanded by the Clerks in the Secretary's Office, to countenance which, your Honour's Name is made use of. We conceive ourselves in Duty bound, as well to your Honour, as in the Discharge of the Trust reposed in us by our Country, humbly to lay the same before your Honour; and to desire you will inform us, whether this Demand is made by your Direction; and if it is, that then your Honour will be pleased to acquaint us with the Authority that impowers you to demand the same?

It is evident that the Burgesses only intended to be authentically satisfied how far his Honour was concern'd in the Demand, and by what Authority he made it, that so they might regulate their further Proceedings for Redress, according to the Nature of the Case. His Honour's Answer we find in these Words,

Mr. Speaker, and Gentlemen of the House of Burgesses,

The Welfare and Happiness of *Virginia* I have very much at Heart, and this great Point hath been the chief Object of my Attention, ever since I have had the Honour to preside over this Dominion: I have been influenced by no other Motive, and my Conduct upon all extraordinary Occasions hath been regulated by the Advice of the Council.

I shall always shew a due Regard for the Sentiments of the House of Burgesses, in every Thing that properly lies before them, and they may remain assured, that I shall not demand or take any Fee without proper Authority.

The Pistole for Patents of Land, taken at the Secretary's Office, which is the Subject of your Address, is by my Direction.

Agreeable to my Instructions, I advised with the Council on this Point, who unanimously agreed and advised me to take the above Fee, which together with the Powers I have received from Home, will sufficiently justify my Proceedings herein, I therefore hope you will think with me, that I have not acted in an arbitrary Manner, but that I am properly invested with regular Power and Authority in demanding the small Fee so much complain'd of.

I must now humbly presume to say, that it was impossible for the House of Burgesses to be satisfied with this Answer, unless we will suppose they could be satisfied with any thing that his Honour should have thought proper to have given in Answer; and I will venture to add, that no Satisfaction was, by the Answer, intended to be given; but on the contrary, in the Compliment paid them, of *shewing due Regard for the Sentiments of the House of Burgesses, in every thing that properly lies before them*; a plain Hint is given them that they had passed their Sentiments on what did not lie before them; now what could that be, other than what his Honour calls the Subject of their Address (that is) the Demand of this Fee. And as this Fee was the Grievance complain'd of to the House, by the People, the saying This did not properly lie before them, is saying no less than that the Burgesses had no Business with the Grievances of the People. That this is a Stroke level'd at one of the chief Designs of Parliament, is evident from the following Argument: If a Parliament hath no Right to enquire into the Grievances of the People, they can have no Right to make Laws for that People, for Law is in its Nature founded on Inconveniences, that is, it would be inconvenient to a People to be without such a Law; and how Grievances and Inconveniences really differ I cannot see, other than in the Degree, the one being more aggravated than the other; from such an Assertion therefore it must follow, Parliaments are of no Use, an Assertion dangerous in a *British* Constitution; I hope then I need not add very alarming here, for though it be true, that the Power of holding an Assembly here is purely by the Royal Permission; yet whilst that

Indulgence is continued to us, this Assembly is to this Country a Parliament, in every Sense of the Word; and they certainly are the only proper Persons to take Notice of such general Complaints, that timely Application may be made for their Redress. His Honour assuring the House, that he will not take any Fee without proper Authority, is certainly something evasive, when a Fee is taken; and it is humbly ask'd by what Authority it is done? For the very concealing the Authority renders it very suspicious that he hath done so without such Authority. A proper Authority can only be such as is consistent with the Constitution, and such an one can never be conceal'd consistently with itself. As to the Instructions that referr'd him to the Council here, had they proceeded from His Majesty, to be sure they should have been made public, that all possible Deference might have been paid them, and in such Case the House would have regulated their Application accordingly: This Concealment therefore is a sufficient Reason to convince the House, that these Instructions talk'd of, are not from His Majesty. And as to all other Instructions, as I cannot conceive how they could affect, so neither can I be persuaded they even were intended to affect us here; this serves as a Discovery to the Whole; his Honour, no doubt, having on his first Promotion, a Design on this Fee, apply'd to some judicious Board for their Assent to the Thing, and they have referred him to the Consideration of the Council here, but that this should create a Power of establishing such a Thing is indeed strange and against all Reason.

These Things being fully considered by the House, they could not avoid making a farther Address to his Honour, which is as follows.

SIR,

We His Majesty's most dutiful and loyal Subjects, the Burgesses of *Virginia*, now met in General Assembly, are under the deepest Concern to find by your Honour's Answer to our Address, that the Demand of a Pistole, as a Fee for the Use of the public Seal, is made by your Direction, and that we are under a Necessity of making Application again to your Honour on that Occasion.

We do humbly, but in the strongest Terms, represent to your Honour, that it is the undoubted Right of the Burgesses to enquire into the Grievances of the People, they have constantly exercised this

Right, and we presume to affirm, that the Drawing it into a Question in any Manner, cannot but be of dangerous Consequence to the Liberties of His Majesty's faithful Subjects, and to the Constitution of this Government.

The Rights of the Subjects are so secured by Law, that they cannot be deprived of the least Part of their Property, but by their own Consent; upon this excellent Principle is our Constitution founded, and ever since this Colony has had the Happiness of being under the immediate Protection of the Crown, the Royal Declarations have been, *That no Man's Life, Member, Freehold, or Goods, be taken away or harmed, but by known and establish'd Laws*; but the Demand of a Pistole as a Fee for the Use of the public Seal, being not warranted by any known and established Law, is, we humbly conceive, an Infringement of the Rights of the People, and a Grievance highly to be complain'd of; and that we may vindicate the Legality and dutiful Manner of our Proceedings, we beg Leave to acquaint your Honour, that upon the first Plantation of this Colony, under the Government of the Treasurer and Company of Adventurers, it was by them ordained, that Fifty Acres of Land should be granted for every Person imported into this Colony, without any other Fee or Consideration than the Annual Rent of One Shilling; and after the Dissolution of that Company, His Majesty King *Charles* the Second, was pleased by his Royal Charter, under the Great Seal of *England*, to ordain that Lands should be granted to the Subjects here, upon the same Terms as had been establish'd by the Company; and to authenticate the Patents for such Lands, the public Seal was constantly affixed thereto, without Fee or Reward, until the Year 1685, when Lord *Howard*, of *Effingham*, then Governor, demanded a Fee for the Use of the Seal, which upon Representation of the Burgesses of *Virginia*, was by His Majesty King *William*, of glorious Memory, in his Privy Council, the 9th of *September*, 1689, declared to be uneasy and burthensome to the People, and ordered to be discontinued, since which no Fee has been demanded from the Subject for affixing the Seal to Patents for Lands, but those given to the Secretary by the establish'd Laws of this Colony.

These being the Terms and Conditions upon which his Majesty and Royal Predecessors have been graciously pleas'd to grant their Lands to the Inhabitants of this Colony, we humbly conceive they cannot be alter'd by the Advice of Council; and as your Honour's insisting upon the same,

will in our humble Opinion, be an Infringement of the Rights of the People, a great Discouragement to the Settling the Frontiers of this Colony, and a Prejudice to His Majesty's Revenue of Quit-rents; we think it our indispensable Duty to desire that your Honour will recede from your Demand.

The Observations already made, and the Arguments thereon, having sufficiently proved, that the Expressions used by the Governor in his Answer, tended to destroy the Use and Rights of Parliaments: It was certainly just in the House, to admonish him, how dangerous it was, even to doubt of them; and as the Demand was against the known Laws of the Land, and therefore against the Maxims of a *British* Government; it was a Piece of Tenderness to him to let him know how short the only Precedent for such a Demand fell of the desired Success; for there the Demand was declared not only *burthensome*, but *uneasy* to the People; Words expressive of the great Regard paid by wise and good Princes to the just Complaints of their Subjects. And the House ever mindful of that Happiness which proceeds from a good Agreement between those who govern and those who are govern'd; prudently tender to his Honour's Consideration the evil Consequences that will inevitably attend the Continuance of such a Demand; and therefore they humbly desire his Honour to recede from it. But however justifiable they may be, we do not find his Honour so disposed by his Answer to this their second Address.

Mr. Speaker and Gentlemen of the House of Burgesses,

I am not unacquainted with the just Privileges of the House of Burgesses, in the Enjoyment of them they shall ever have my Protection: My Duty to the King, and my Regard for Liberty, has and will on every Occasion influence my Conduct.

As I will never injure the one, I cannot suffer any Encroachments on the Rights of the other. The Complaints of the People should be heard, and every just Grievance redress'd; but their Complaints should be well grounded, and the Grievances really felt.

The Establishment of the Fee complained of, relates solely to the Disposal of the King's Lands, and, which it is conceived, may be deemed a Matter of Favour from the Crown, and not a Matter relative to the Administration of Government; and the fixing thereof was with so much Circumspection, that it is my Care and Concern for the Improvement of His Majesty's Revenue of Quit-rents, that prompts me to be the more

earnest in adhering to my former Opinion, and insisting on that Fee, which is confirmed to me by unquestionable Authority.

The first Part of this Answer, it may be, was intended to soften what was said in the former, but I am much mistaken if it hath affected it. In that the Complaints of the People were not to be enquired into by the Burgesses; in this we were told those Complaints are not well grounded, and Grievances should be first felt before complain'd of. With humble Submission I must observe, that a Complaint founded on a Fact is well grounded, where that Fact carries any thing burthensome or oppressive, and that this doth it is hardly possible to deny. And as to the waiting to feel Grievances before we complain, it is a Doctrine not good in Experience; surely when a Cudgel is lifted up by an angry Man, the Blow should be guarded against before it is felt, or it will then be too late; all Grievances are more or less so, in Proportion to their Consequences, and that this is one of the worst sort will be proved in the Sequel; at present it is enough to say, it is already felt, and if this Application against it is unsuccessful, it will not be long before we shall feel it more outrageously. *Felix quem faciunt, aliena pericula cautum*,⁴ is a Motto for a wise and prudent People.

In another Part of this Answer, his Honour doth not seem to deal fairly with the House of Burgesses: I no where observe them endeavouring to encroach upon the Rights of the King, but his Honour has hinted at it by making it Part of his Answer, and saying that he cannot suffer it; as this is an ungenerous Accusation, and on Purpose put in to influence the Dispute, if possible, I must challenge every Advocate for him to shew one Instance of such an Encroachment; or the least Tendency to such a Thing. A Pistole Fee is demanded against the stated Rules establish'd in the Country, and His Majesty hath been graciously pleased to acquiesce with those Rules, can the opposing this Demand be any Encroachment on His Majesty's Right? Or in plainer Words, must we suppose that every Thing a Governor doth here, is by His Majesty's Order? Such Things perhaps ought to be so, but no one will say they are so.

The making the Disposal of the King's Lands here only a Matter of Favour, and not relative to the Administration of Government, is past all Comprehension: To fish any Meaning out of it, is to suppose His Majesty

4. ["Fortunate is he whom the dangers of others make cautious."]

and his Subjects so disjointed, as that the Interest of the one is contradictory to the other. It is true, it is a Favour to grant these Lands, and they may be granted on such Terms as the King pleaseth: But doth not that Favour redound to His Majesty's Advantage, as well as to that of the Subject? The granting them then on such moderate Terms, as might encourage the Settling them, becomes a Matter of Wisdom in our Prince, and therefore we find a Paragraph in Lord *Howard's* Commission (which will be hereafter inserted) directing the same. And the doing these Things against a stated Rule, cannot but be something strictly relative to Government, and indeed not a little subversive.

That which concludes the Answer, *viz. His Concern for His Majesty's Revenue of Quit-rent, hath made him insist on this Demand*, is really a profound Mystery, and I am confident I shall never fathom it. How a Fee, of which not a Shilling goeth into the King's Treasury, can be of any Advantage to the King's Quit-rents, when that Fee is become so discouraging to the seating the Lands from whence the Quit-rents are to arise, as to be a Matter of universal Complaint, must certainly be the Work of something yet unborn to solve. As to the last Words of the Answer, that tells us this Fee is confirmed to him by *unquestionable Authority*; I shall give these, and all such like Assertions, of which we have had many, an Answer, when I come to enquire into the visible Authorities mentioned by his Honour; as to those which are kept *in petto*,⁵ I humbly presume they cannot be very unquestionable when they are conceal'd from public View.

Having now shewn that this Answer, like the former, did not tend to any satisfactory Accommodation, I will here proceed to a Set of Resolves that the House were forced into, in order to convince the World how justifiably they have proceeded.

1st, Resolved, *Nemine contradicente*,⁶

That this House have proceeded in the most dutiful and justifiable Manner, in laying before his Honour the Governor, their Opinion of the Demand, which is made of a Pistole, as a Fee, for affixing the public Seal to Patents for Land, and that his Honour's Answers to the Addresses of this House, relating thereto, are unsatisfactory, and a

5. ["In the breast."]

6. ["With no one dissenting," i.e., unanimously.—Tr.]

Means to create Fears and Uneasinesses in the Minds of His Majesty's faithful Subjects.

These Resolves, by carrying their own Justification, give us a lively Instance of that true Spirit for Liberty, which should possess the Breast of every *Briton*. The Rights and Privileges of Parliaments, the Laws and Constitutions of Government are Things too dear to lose by Indolence, and when they have been so constantly protected by the Royal Instructions, sure they ought not tamely to be given up to mere illegality. As to the Resolve,

What could be more justifiable and dutiful, both to the People and Governor, than for the House to listen to the numerous Complaints of the one, and humbly to address the other, both as to the Fact charged in their Complaints, and as to the Authority that impowered the Demand which gave rise to those Complaints? And further, What could be more designedly unsatisfactory than for his Honour to tell them of an empowering Authority, and at the same Time purposely conceal what that Authority was? *Hinc illae lacrymae*.⁷ From hence then, do those Fears and Uneasinesses proceed? That Subjects distinguished by a steady Faithfulness to their Prince, may by such dark and unwarranted Proceedings, should they be indolent, slow, or unsuccessful in complaining, be still burthen'd, even to Vassalage, and like *Tantalus*, only see the Apple of their Freedom, untasted, and out of their Reach.

2dly, Resolved,

That the said Demand is illegal and arbitrary, contrary to the Charters of this Colony, to His Majesty's and His Royal Predecessors Instructions, to the several Governors, and the express Order of His Majesty King *William*, of Glorious Memory, in his Privy Council; and manifestly tends to the subverting the Laws and Constitutions of this Government.

What can be more illegal and arbitrary, than for a Man to act against the constant and most antient Rule of the Colony, founded upon Law, confirmed by Royal Charters, Royal Instructions, and even against the express Orders of a King in Council, and hitherto punctually obey'd by diverse Governors? What more subversive of Law and Constitution, than a Demand so circumstanced, and countenanced by no proper Authority? For I beg Leave

7. ["Hence these tears," i.e., the cause of grief.—Tr.]

to say, every thing that maketh a Change, and thereby becomes conclusive on the People, is illegal and arbitrary, if it comes not through its proper Channel.

3dly, Resolved,

That a most dutiful and loyal Address be presented to His Majesty, humbly to represent the Demand of a Pistole for affixing the public Seal to Patents for Land, as a great Grievance, a Discouragement to the Settling the Frontiers of this Colony, and a Prejudice to His Majesty's Revenue of Quit-rents; and to beseech his Royal and Paternal Interposition, that his faithful Subjects may be relieved from the Payment of this illegal Demand.

To whom should we apply but to our King, our Royal Father, to whom the Sceptre of Authority was given, that he might govern us with Law, and rule us with Affection; yea, and I trust he will hear our just Complaint, with the same paternal Tenderness as did his Royal Predecessor King *William*, of glorious Memory.

4thly, Resolved,

That whoever shall hereafter pay a Pistole, as a Fee, to the Governor, for the Use of the Seal to Patents for Lands, shall be deemed a Betrayer of the Rights and Privileges of the People.

The Necessities of some Patentees having obliged them to pay the said Fee, that they might comply with their Engagements to others; previous to this Demand, I say, that this might not run into a Precedent, and become advantageous to arbitrary and illegal Proceedings, it was truly proper to admonish the Ignorant and Unwary, how dear their Rights and Privileges ought to be to them; and as they would be hereby endangered, it was no ways improper to set a Brand of Disgrace on all those, who for the future, should act so regardless of them, as to comply with the Demand.

Pursuant to the third Resolve, an humble and dutiful Address was drawn up to His Majesty, which being in the Hands of *Payton Randolph*, Esq; whom the House deputed as their Agent, to solicit this Affair, I must refer you to him, who to be sure will be fond of acting in Concert with you, for the Good of his Country; and I doubt not, but by your joint Endeavours, it will find a ready Passage to the Royal Ear; and that no Obstacle may be

thrown in the Way, from Arguments made use of here, I shall now consider the Matter as to the Reasonableness of the Thing, and the Legality of the Methods by which this Demand hath been established.

1st, I say, the Terms upon which the Lands have been hitherto granted, are of very antient Establishment, settled first by the Company of Adventurers on the Seating of the Colony; then confirmed by King *Charles II.* by his Royal Charter after the Dissolution of that Company, and doubly confirmed by King *William*, by his most gracious Declaration made against the Fee demanded by the Lord *Howard*, and further continued down without any Alteration, through many succeeding Reigns, and under Variety of Governors.

As these are all indisputable Facts, it cannot be thought reasonable, that a Rule so fixed and established, should be altered without some pressing Necessity of Government: And, I conceive, a Fee to the Governor can never be thought such a Necessity, especially when many other Perquisites make up his Income sufficient, and consistent with any Dignity hitherto attempted. The moderate Terms upon which these Lands were made grantable, were no Doubt, a great Inducement to Persons to come and settle here, and unless that Intention of settling those Lands be altered, I beg Leave to say, there is as great Reason to continue that Moderation now, as ever there was; for the Public have been alarmed with great Tales of encroaching Neighbours, and what better Security can there be against such Attempts than that of Persons attached by Property, and as the Expences of Settling must needs be equal, if not greater than formerly, because of the Increase of the Distances from Navigation; it must follow, any new Fees added will obstruct the Intention, and every thing depending upon it. The Quit-rents would not encrease, without the Lands are settled, nor the Country protected in its Possessions. That this Fee is a Discouragement at present, is evident for two Reasons; the one is, the present Expence; and the other, the great Probability of its increasing; for as the Demand is not from any additional Trouble or Expence, it can only be founded in Avarice, and who can set Bounds to that, where the Power of gratifying it is so easily obtained, as this hath been, if it is a Power? The calling it a small Fee will not lessen these Apprehensions, it is by small Fees that a Door is opened to greater, because by these the People are lulled into Indolence and Indifference, till they become a Precedent for greater; and then it will be too late to recall it. As to the Fee it is not really small, when in the Hands of those who settle those Lands, for though £3000, or Pistoles, may

be a small Medium in the Hands of so many People; yet so much Money in the Hands of a People that are intended as a Barrier to a Country, will do that Country more real Service, than any Sum in the Hands of one that is not obliged by Duty or Interest, to spend One Shilling of it that Way. I shall conclude these Arguments by saying, that it ought to be remembered, the Intention of His Majesty is absolutely against any such Demand, in that he hath been graciously pleased to give up for a Time, some of his usual Rights, that those Settlements may be encouraged, and with what Face can his Governor exact new Fees?

Against this it is argued, a Fee is given in the other Plantations for the Use of the public Seal, and it is as reasonable for one People to pay it as another.

I believe the Fact, and have Reason to conclude these Fees had their Beginning in other Plantations after the same Manner. We see it had been attempted here before, but was discontinued, as it met with Opposition; and shall the Indolence of other People, in not husbanding their Privileges, be an Argument for our being tax'd; such a Doctrine would put it in the Power of a designing Government, and a weak People in other Plantations, to lay us under great Hardships indeed, if because they have done so, we must. It is impossible now to assert the History that gave Being to many of our Laws, but is it not absurd to say, That it is possible some Perquisites now raised by Act of Assembly, may have been purely out of Consideration of this and other Immunities, for I conceive, when they were made, Respect was had to the Annual Income, and had the Fees for the Seal been then established, as that Income must have been greater, there could have been no Reason for the making such Acts. This Argument of theirs, I find proves our Fears, well grounded, for as other Countries are brought to countenance the taking a Fee, it is no great Trouble a Year hence, to go there for the increasing the Fee; and this small Sum for the Seal, is, in *Barbadoes*, I am told, now got to £5. I will conclude this, by asserting one Thing in my Turn, in answer to that asserted by them, that is, If it is reasonable that one People should pay as well as another, it is as reasonable that this Gentleman should be satisfied without such Fee, since all that have gone before him have been so. And if they would say any thing, they should first prove that any People ought to have been loaded with such a Fee at all, for till that is done it is unreasonable in all Cases.

Farther it is said,

The People are richer now than they were in King *William's* Days, and therefore better able to bear such a Fee, which is perhaps a Reason for his ordering the Fee to be discontinued.

I answer, The Riches of a People can be no Argument for the multiplying of Taxes, unless the Exigency of Government require it; but grant they are richer, it follows the Perquisites have also increased, for Pride and Luxury always find an Entrance in with Riches, and as these are always justly taxed, if the People are richer, the Governor's Salary is also increased, which is true in Fact, but that not from our Riches in all Cases, but from the Increase of our Numbers, which have greatly added to his Perquisites. I cannot grant that as Individuals we are richer, though in Respect of the Whole, as the Inhabitants are increased, and each having a little, the Country may be so; and as all things are now much dearer, if we are not richer, we are less able to bear new Fees; and Things burthensome then, are more so now.

As to those who tell us, that where the Governor really finds a Man poor, he gives up his Patent without Fee; I shall say little more than what *Horace* said upon something as absurd, *Risum teneatis amici*?⁸ What give up our Rights, and depend upon a charitable Disposition to parcel them out to those he thinks proper Objects?

2d, The Method made use of to countenance this Demand. An Instruction is talked of, referring his Honour to the Council here for their Approbation, and upon their consenting he made the Demand.

There can be no reasoning properly on concealed Instructions, because it is only feeling in the Dark; but as it is, I think, already proved they came not from His Majesty, it may be still presumed, notwithstanding his Honour speaks so positive, and calls them unquestionable Authority, he is mistaken. Those who pretend to be in the Secrets of the Cabinet, tell us they are from the Board of Trade; this not being Authority enough for us to reason upon, I shall only say it is not likely that *that* Board, after having recommended to our Assembly, that such Indulgencies may be given to those Settlers as was before given to those who first settled in the Counties of *Brunswick* and *Lunenburg*, and that so lately, should ever have intentionally given any unquestionable Authority for new Fees to be raised upon them.

8. ["Would you hold back from laughing, friends?"]

The only visible Authority then that hath confirmed this Fee to his Honour, is the Council of *Virginia*. It will be needless to repeat the many legal and authenticated Obstacles, there are to this Consent given, in which as *Milton* says, *With one bound they have o'er leap'd all bound*. I will therefore confine myself to the Power they had for doing it, which I am told they have derived from the Commission to the Lord *Howard*, which is according to the following Extract.

And we do likewise give and grant unto you full Power and Authority, by and with the Advice and Consent of our said Council, to settle and agree with the Planters and Inhabitants of our said Colony and Dominion, concerning such Lands, Tenements, and Hereditaments, as now are or hereafter shall be in your Power to dispose of, and them to grant to any Person or Persons, for such Terms and under such moderate Quit-rents, Service, and Acknowledgements to be thereupon reserved unto us, as you, by and with the Advice and Consent aforesaid, shall think fit.

And our Will and Pleasure is, that you shall and may keep and use our Seal already appointed by us for our Colony of *Virginia*.

Surely in these Words it cannot be candidly said, that there is any Power lodged in the Council, to establish Fees for the Seal, or those Lands, the Words extended no further than to the proper Reservations to be made to His Majesty. As this is the Commission by which they should govern themselves, is it not a partial Fondness for Authority that rules them, when they derive a Power to themselves, from the Wording of an Opinion, given by the King's Council in *England*, in a Matter nothing relative to it, but only from Words perhaps loosely penned? This Opinion is as follows, that the Reader may be his own Judge.

Whereas Complaint is made of a Fee of Two Hundred Weight of Tobacco and Lask, lately received by the Lord *Howard*, for the Use of the publick Seal; we are humbly of Opinion that although it appears unto us that the said Fee, upon Complaint thereof, was not disallowed or thought unreasonable by your Majesty's Council in *Virginia*; yet in as much as the same hath not been established by the said Council, as by the said Commission is requisite, and the same being also represented as burthensome and uneasy to the Colony, we are humbly of Opinion that it be discontinued, &c.

The Argument to establish an Authority in the Council, is founded on these Words, *In as much as the same hath not been established by the said Council, as by the said Commission is requisite*.

From hence it is implied, *That the Council had Power by that Commission, to establish such a Fee, and that, had that been done, the Council in England would not have been of Opinion it ought to be discontinued.* I answer, The Council in *England* only gave their Opinion on what was referred to them, that is, the Fees being burthensome; and as to every thing else, tho' from the Wording of it different Conclusions may be drawn, yet as they are only Reasons for the Opinion given, they ought not to be taken as a Comment on, or Explanation of the Commission, to create an Authority by Reasons that do not carry a full Conviction, are not by the best Judges adopted as such, especially when they make neither for nor against the main Point, for it was not referred to that Council, what Power the *Virginia* Council had by the Commission; neither could their Establishment of it be or not be any Argument against the Discontinuance of that Fee, for even a full worded Commission could not have bound His Majesty. These Reasons therefore ought, with Submission, to be looked upon as loosely worded; and at best they do but leave it a controverted Point; therefore should this be the only Authority on which the Power of our Council is founded, I must say, It cannot be called an unquestionable one; and I think I may add, That the confirming it on a bare Implication will be of infinite Prejudice; for the Instances in this Case, and in that of the Lord *Howard*, are convincing, that where Fees to a Governor are left to the Determination or Consent of a Council here, the Thing is effected with little Regard to those out of whom those Fees are to be raised.

Against those who would alarm us with the great Interest his Honour hath in his Favour, I shall cheerfully oppose the Justness of our Cause, and the paternal Regard hitherto shewn by His Majesty to his faithful People of this his antient Colony.

3dly, A great Number of these Patents, for which this Fee is demanded, are upon Entries made for Lands before the Arrival of his Honour.

Now should we be so unhappy as to have this Fee established, those certainly ought to be exempted, according to all the Rules of Equity, because those who entered had complied with every Requisite under the only Rule subsisting, and to load them with a new Charge will be very injurious, as they are certainly fair Purchasers; and as there can be no proper Argument used to subject these Patents to that Demand, a very specious one hath been handed about, to lessen the Injury. It is said, that though these Patents ought to have issued before, yet as in such Case they would have been liable to the King's Quit-rents sooner, the Injury is less to pay this Fee than it would have been to have paid the Quit-rents: To this I answer, That although the

Quit-rents would have become due sooner, the Lands would have been also in a State of Improvement, to have made that Burthen easy, and if the Quit-rents have been retarded, it should be remedied on the proper Persons; the Office must have been in Fault, and not the Adventurer, who is always liable to severe Penalties, should he become a Delinquent as to his Quit-rents, after he is once legally possess'd of his Lands. Again, this Argument only affecteth those who have entered large Tracts, which are not a great many. The other Patentees then would in paying the Fee, exceed what they would have otherwise paid in Quit-rents. But where is the Reason, that because the King looseth a little by the Delays in his Office, the Governor should make the People pay it into his Pocket? For I conceive it is not intended that this Fee demanded shall go into his Majesty's Treasury.

Having now gone through all that appeared, or that hath been talked of, in Favour of this Demand, I think I may say, that from a fair State of the Case, *pro* and *con*, it seems to be a burthensome Demand, supported by no legal Authority, nor any plausible Reasons; but on the contrary, introductive of many things that will for ever render this once happy People very uneasy.

You, Gentlemen, have in your own Hands, a sufficient Demonstration of the great Use this Colony is to both the Sovereign and Mother Country, in the large Revenue paid, and the vast Expence of *British* Commodities, added to the Numbers employed in sailing to and from the Country; and I need not say how strong such an Argument ought to be in favour of the humble Requests of a People, who only desire to enjoy the same Freedom and Immunities, as they have done for Ages past, when there is not one Necessity of Government can be alledged to countenance any Alteration.

As to the Governor, had he known his own good, and could have been contented with really more than others have had, by means of the Increase of the Perquisites, he might have lived and died the happy Governor of a grateful and happy People; but now, by his strange Perseverence, I am persuaded he will be convinced that he hath deprived himself, as he will do us, of all such Hopes, should he meet with any Success in this Attempt. I am,

GENTLEMEN,

Not only a Well-wisher to my Country,

But to all those who trade amongst us,

The AUTHOR.

George Frye,
The Case of Capt. George Frye
(London, 1754)



IMPEACHMENT WAS NOT a common phenomenon in colonial British America. Indeed, the only bona fide case involved George Frye, a native of Montserrat who had served in the British army before gaining appointment as president of the Montserrat Council, a position that meant that he became the chief executive of the island whenever its lieutenant governor was absent. Frye served in that capacity for several years before late 1753, when the Montserrat Assembly drew up eleven articles of impeachment against him for “high crimes and misdemeanors” and soon after convicted him, whereupon George Thomas, then governor of all four Leeward Island colonies, removed him from office. Evidently written by Frye himself when he was in Britain to petition London authorities against this sentence, this selection provides a full history of the events that preceded the impeachment, from Frye’s point of view.

Interestingly, Frye did not deny any of the charges against him. He freely admitted that he had ordered a man who appeared stark naked before Frye and his wife whipped by his overseer, that he had ordered another man set in the stocks, that he had caned another, that he had told an attorney that “he would sh——t upon him,” that he had engaged in a tavern brawl with another, that he had advised a man who refused to take off his white cap in court “to wear one on his p——k, and not keep a seraglio of negroes,” or that he had told the twelve members of the Montserrat Assembly that “they were *fools and knaves*.” But Frye insisted that none of these offenses fell into the category of high crimes and misdemeanors, terms that suggested “the most

enormous guilt, such as selling the Island to the enemy, burning houses, plundering churches, robbing the community, destroying the constitution of the country, to make himself absolute, committing rapes and murders, or at least . . . embezzling the public money, making a trade of his authority, corrupting the legislature, influencing jurymen, and perverting the course of justice." Indeed, he used the fact that the person he had set in the stocks had successfully sued him and been awarded damages as proof that he was innocent of the general charge that he had endeavored "to advance his *arbitrary power*" or was deserving to be vilified as a "tyrant, and *Turkish Basha*." According to him, the source of his problems was his refusal to accede to Protestant demands for more religious and civil restrictions upon the Catholic majority in the colony, which left him open to suspicions that "he was a favourer of the Papists" and brought down upon him the wrath of the Protestant minority. Explaining each of his transgressions as an appropriate reaction to vindicate his authority in the face of a series of "the grossest insults to the first magistrate in the country," he argued that this group was both responsible for the attacks upon him and guilty of "inciting the people to sedition and disobedience to his authority."

In his pamphlet, Frye moved beyond the immediate details of his case to the larger constitutional question of the Assembly's "pretended right of impeaching." Specifically, he declared "that it was very high presumption in twelve planters at *Montserrat*, under the pretext of their being the representatives of the Commons there, to arrogate to themselves a privilege equal with the greatest, enjoyed by the Commons of *Great Britain*; a privilege no charter ever gave, and which was never exercised or dreamt of by the assembly of any other colony in all the *British* dominions," and he concluded by noting that the Assembly failed to follow British practice, which required a trial conducted not by the Commons but by the King or the House of Lords. Perhaps no document in this collection more fully illustrates how far royal authority in the colonies could be contested by local power holders unhappy with the performance of a royal executive. (J.P.G.)

THE
CASE

OF

Capt. George Frye,

PRESIDENT of the COUNCIL
in the Island of *Montserrat.*

CONTAINING

An impartial NARRATIVE of his
Behaviour in that Station.

TOGETHER WITH

An ACCOUNT of the several Steps
taken to procure his Suspension.

AND ALSO

COPIES of the IMPEACHMENT preferred against him,
by the Assembly of *Montserrat*, to Governor THOMAS,
and the Council of the Island.

Captain FRYE's ANSWER thereto;

AND THE

ASSEMBLY'S REPLICATION.

To which are added, An ACCOUNT of the Proofs given
in Support of the said IMPEACHMENT, and the other

PROCEEDINGS had thereupon.

Justum et tenacem, propositi virum,

Non civium ardor prava jubentium;

Non vultus instantis tyranni,

Mente quatit solidâ.¹

LONDON:

Printed in the YEAR M.DCC.LIV.

1. ["Not the passion of citizens ordering vicious acts, not the threatening face of a tyrant shakes a man just and holding fast to his principle from his solid purpose."]

The Case of George Frye, Esq;

GEORGE FRYE, Esq; a native of *Montserrat*, enjoyed a small estate in that island by inheritance from his father, who was President of the council there for many years.

But a war breaking out against *Spain*, he quitted that and his family to serve as a voluntier in the expedition against *Carthagena*; where he carried a musquet, and so greatly recommended himself to General *Wentworth*, the commander in chief, by his behaviour upon that occasion, that he promoted him to a lieutenancy, and afterwards to the first lieutenancy of a company in General *Wolfe's* marines, in which service he expended at least 1000 *l.* more than his pay.

After that expedition was over, he was ordered on board a man of war, in the squadron then commanded by Sir *Chaloner Ogle*, who, upon some disgust, invented a groundless complaint against him; and thereupon brought him to a trial (after having made him suffer 15 months imprisonment) by a sea court-martial, who, by the Admiral's procurement, pronounced a sentence against him; the cruelty of which has never been parallell'd; in consequence whereof he was sent home a prisoner to *England*, there to suffer 15 years imprisonment.

But the injustice of that sentence manifestly appearing, upon an examination into the whole affair before the privy-council, his Majesty, by an order of that board, dated the 7th of *November*, 1744, was graciously pleased to remit the sentence of the court-martial, and order Mr. *Frye* to be forthwith discharged from his confinement, and restored to his Majesty's service.

Mr. *Frye*, not being able to obtain the least reparation from the person who had thus cruelly injured him by any other means, determined to seek it in our courts of justice, where he recovered damages for the same by the verdict of a jury.*

* This cause was tried before Lord Chief Justice *Willes*, who, upon summing up the evidence, declared it as his opinion, that Captain *Frye* was intitled to much larger damages; but said, that as he was intitled to recover heavy damages against every one of the six other members, who (with Sir *Chaloner*) composed the court-martial which condemned him, it would not be right to make him an adequate recompence for his sufferings at the expence of Sir *Chaloner* alone; which was the only reason that the jury gave no more than 1000 *l.* (large as that sum may appear) instead of a much greater compensation.

When a scheme was set on foot in *England* for making another attempt to discover a north-west passage (after Captain *Middleton's* had miscarried) *Arthur Dobbs*, Esq; now governor of *North Carolina*, applied to Mr. *Frye* to take upon himself the conduct of it; and upon his consenting thereto, petitioned his Majesty to give him an independent company for that service, and a commission to command as governor of all the countries which should be discovered in the search: This petition was granted by his Majesty, and a notification thereof was sent to the secretary of state; an order was also dispatched to the admiralty for making a draught from the marines to fill his independent company; but as he had been greatly injured, it was natural for those who had done him wrong, to dread the consequences of his resentment; nor is there any thing more natural than hatred of the man we fear; it is not therefore wonderful that Mr. *Frye* had enemies; these enemies had power and influence, both of which were exerted upon this occasion to frustrate his Majesty's intentions,—and they succeeded.

An expedition being afterwards intended against *Canada*, General *St. Clair*, who was to have commanded therein, intended Mr. *Frye* for one of his Aids-de-Camp; but that expedition was laid aside.

Whilst the late rebellion was on foot, Mr. *Frye* was chosen, on account of his known loyalty and military abilities, to command a company composed of one hundred volunteers of the most wealthy, loyal, and considerable citizens of *London*, who armed for the defence of their king and country. These (amongst whom were Sir *Joseph Hankey*, Mr. *Honywood*, and many others of distinguished eminence) he mustered and disciplined; and they, in return, gave him the most public testimonies of their approbation and regard.

After this Mr. *Frye* was so far employed in his Majesty's service, as to be appointed to the post, and to do the duty of a captain of a company in the regiment stationed in the *Leward Islands*, instead of an officer who was superannuated; but without any pay or profit for the same, the former officer being to enjoy full pay for life: so that this appointment gave him rank, and consequently created an expence, but was no pecuniary advantage to him, he being to serve without pay till a vacancy happened by the death or removal of an officer.

His Majesty was also pleased to appoint Captain *Frye* to be one of the members of his council in *Montserrat*, and in *July 1750*, the Lords of trade and plantations were pleased to signify to *Gilbert Fleming*, Esq; then commander in chief of the *Leeward Caribbee Islands* in the absence of General

Mathews, that as it appeared that his Majesty's mandates granted to him to sit in council in that island was of a prior date to any of the mandates granted to the other members of the council there, it was his Majesty's pleasure that he should take precedence of all the other members, though some of them had been sworn in before him; which direction was accordingly complied with by Mr. *Bouveroon*, who was at that time President, and (as such) commander of the island in the absence of his superiors (that is to say, the governor and lieutenant-governor in chief of all the *Leeward Caribbee Islands*, and the lieutenant-governor of *Montserrat*) he immediately resigning his command to Capt. *Frye* with great politeness and good humour, and withdrawing himself from the council.

This gentleman is a person of upright intentions, and great hospitality.

The next member in precedence after him (*George Wyke, Esq;*) whose actions best speak his character, pretended to be dissatisfied, and entered a minute in the blotter* of the council, declaring his resolution never more to take his place at that board under Capt. *Frye*.

John Bramley, Esq; brother-in-law to Mr. *Wyke*, (another member of the council) followed the example of his brother-in-law, as he has frequently done in other very extraordinary circumstances.

The members then remaining were not sufficient, in point of number, to compose a council, there being (after the desertion of the above three gentlemen) only Capt. *Frye, Nicholas Daniel, Edward Daniel*, and *William Irish*, qualified to sit in council; no board whereof can transact any business without the presence of five members.

Hereupon Capt. *Frye*, the president, transmitted an account of these proceedings to lieutenant-governor *Fleming*, and desired him to fill up the vacancies in the council, that they might be thereby enabled to transact public affairs.

In answer to this remonstrance, lieutenant-governor *Fleming* wrote to the president that he would leave the choice of proper persons to fill up those vacancies intirely to him; but the president not choosing to give offence in the island, by any appearance of partiality in favour of particular persons, instead of filling up the vacancies himself, as, thus authorized, he might have done, returned a list of five gentlemen to the lieutenant-governor, as fit and

* A book in which all minutes and rough drafts of orders are first written.

proper persons to sit in the council, and requested him to nominate three from amongst them for that purpose.

The gentlemen contained in this list were *Benjamin Walker*, merchant, *James Shaw*, surgeon, *William Musgrove*, Esq; *Edward Luther*, Esq; and *William Chambers*, barrister at law; all of whom were men of credit and distinction in the island, and bore unblemished characters.

The lieutenant-governor, upon receipt of this list, sent orders to the president to swear in Mr. *Walker* as one of the council immediately; and as he was not acquainted personally with any of the islanders, he desired the president to join with him any two of the remaining four persons in the list at his own discretion.

The president hereupon swore in Mr. *Walker*, and by his admission into the council, there being five members upon the island qualified to sit, a board was immediately held, when Mr. *Irish* (one of the members) requested that Mr. *George Wyke* might be re-admitted to his seat at the board.

In this request he was seconded by all the other members, and Mr. *Wyke* himself had also before privately requested the same thing of the president.

Upon which the president reflecting, that though a minute of Mr. *Wyke's* resignation had been entered in the blotter, yet (as that had never been transcribed into the council book, and was consequently only to be considered as a draught, and not as an act of the council) they had an undoubted right to rescind that minute, being besides desirous of obliging the members of the council in general, and Mr. *Irish* in particular, for whom the president had a peculiar esteem, on account of his excellent character, and the generous care he took of several indigent relations, did re-admit Mr. *Wyke* to the council-board.

By this means six of the seven seats of the council-board (for there are never more than seven members of the council at *Montserrat*, unless by his Majesty's mandamus) were filled up.

There then remained only one vacancy, for the filling up of which the president took the advice of the council: he, in his own private opinion, indeed, preferred Mr. *James Shaw* to the other persons put in nomination, and accordingly recommended him to the other members of the council; at the same time acquainting them, that their inclinations should govern his choice; and accordingly *William Musgrove*, Esq; being approved of by the majority of the members present, was immediately sworn in.

Of all these proceedings the lieutenant-general having received information, fully approved.

As the king's mandamus for the admission of persons into the council-chamber supercedes all appointments from the governor-general of the *Caribbee Islands*, or his deputy, in such manner, that if six members sit by mandamus, only one of the governor's appointments ought to sit with them (to make up the number seven;) and if seven or more sit by mandamus, no other person ought to sit with them; it is requisite for all the members of the council, who sit by the government's appointment, to apply for his Majesty's mandamus in *England* to confirm them in their seats.

Upon this principle Messrs. *Walker* and *Musgrove* applied for, and obtained mandamuses in *England*.

The president also having a personal regard for Messrs. *Shaw*, *Luther* and *Chambers*, by his particular recommendation of them to the lieutenant-general, and an application to his friends in *London*, procured mandamus's for them to sit in the council also; and by his interposition Mr. *Shaw's* mandamus was signed precedent to the signature of Mr. *Musgrove's*.

There are in the island of *Montserrat* about 400* white families, of which not above 140 families are Protestants; the rest of the whites are all Roman Catholicks; the latter of whom being excluded from the possession of all places of trust or profit, and in general from all share in the government of the island, have applied themselves much more closely to planting and trade than the Protestants, and thereby many of them have out-stripped these last, and have in general better credit than they.

Thus the exclusive share in the government of the island possessed by the Protestants on the one hand, and the advantages in trade acquired by the superior industry of the Romanists joined to their numbers on the other, have fomented mutual jealousies between the inhabitants professing the two religions, which have long subsisted, and frequently broke out even to the commission of publick outrages.

One remarkable instance of this mutual animosity happened about the year 1743, when one *James Farell*, and his sister, children of a *Roman* Catholick family in the island, were detected in the commission of the horrid crime of incest: The unhappy parents, willing to conceal the shame of their family, intended to have shut up their daughter in a monastery, and sent the son also out of the island into some foreign service; but several

* The exact number of families is not ascertained, but by a poll taken in the year 1752, the number of white persons able to bear arms appeared to be 420.

of the Protestant families, and even a majority of the council, hearing of the affair, prevailed on the son and daughter to turn Protestants, under a notion that as such the son might lawfully dispossess his own father of his inheritance; and under colour of this scandalous conversion, they not only maintained the son and daughter, and encouraged and received them into their houses, in spite of their parents, but also by their recommendations of the son to General *Mathews* (who was imposed upon as to the causes of his changing his religion) procured for him the command of the regiment of militia of the island: nay, so far were these proceedings carried, that when the chief justice of the island granted a warrant for the apprehension of the daughter (a girl under age) in order to deliver her up to her parents, from whom she was withheld; the marshal, to whom it was granted, refused to execute it; threats were publicly given out, that any attempt to put it in execution should be opposed by force; and the chief justice himself, for granting it, was personally threatened and insulted in the streets, and forced to fly to his own house for shelter: And what more fully exposes the folly as well as wickedness of this transaction, is, that the unhappy son died a very few years afterwards; and upon his death-bed abjured that Protestantism which he had from the most unworthy motives before espoused, and reconciled himself to the Romish faith, in the profession of which he died.

The President seeing the height to which these quarrels were often carried, and being convinced of their evil tendency, endeavoured, by every means he could devise, to reconcile these religious disputes, and promote a general harmony and good correspondence amongst the inhabitants; for which purpose it was that in his recommendation of the several gentlemen above-mentioned to be appointed members of the council, he had a particular regard to their moderation, and the inclination they in general had to promote peace and good neighbourhood in the island. For the same purpose also he endeavoured to act with the strictest impartiality towards people of all denominations, and conversed indiscriminately with every one whose character did not make it dishonourable so to do, without concerning himself about their particular differences in opinion.

This conduct had in some measure its desired effect; fewer differences happened between the inhabitants of different professions, and those which did occur were not carried to such violent heights as formerly.

But though the Protestants by these means, as well as by the care taken to restrain them from the commission of any violences against the Romanists,

were brought to a better temper towards their neighbours, this conduct of the President's did not fail to unite against himself all that resentment which had heretofore been let loose upon a numerous body of the inhabitants, whom they had been accustomed to treat as enemies, and could not bear to see the President protect their civil rights as *Englishmen*.

This enmity of theirs occasioned frequent applications to the President from several of the principal Protestant inhabitants, to deprive the Papists of the free exercise of their religion, and to prohibit their sending their children to Popish schoolmasters; but as the Romanists composed a great majority of the people of the island, and had always enjoyed the free exercise of their religion from its first settlement, and as there were no Protestant schoolmasters in the place, the President thought it his duty to disregard both these requests as extremely unreasonable and oppressive.

The President was the more unwilling to provoke the Papists of *Montserrat* by ill usage, as they have in general been good as well as useful subjects ever since the revolution, advice whereof arriving at the island, one *Garret Missett*, a leading man amongst them, made this sensible reflection upon it, "That whoever was King at *Whitehall*, would be King at *Montserrat*." A truth so obvious, and which has made so deep an impression upon their minds, that they have ever since been governed by it; and particularly in 1712, when they signalized themselves in the defence of the country against Mons. *Casart*, who invaded it with 3000 regular forces, and whom they had a principal share in repelling.

However, the President's non-compliance with this persecuting humour, drew upon him a suspicion that he was a favourer of the Papists; a circumstance than which nothing could have rendered him more odious to the other inhabitants, who from thenceforth began to find fault with him upon all occasions, insomuch that every trifle was made a subject of complaint: And the first instance of misbehaviour which they could find to charge him with was this: The President, in the year 1750, having threatned to punish a fellow for his indecency, who, under pretence of asking leave to fish in his private pond, came up to him stark naked when he was riding with his wife; the fellow had the insolence to come afterwards to his own house, where he told the President, that the pond in which he had asked leave to fish was not his own but a publick pond, and that he (the fellow) would fish in it in spite of him; upon which the President bid him be gone, and not provoke him to punish him as he deserved: But instead of this the fellow advanced

up to him with an air of defiance, and repeated his resolution to fish in the pond when he pleased: The President thereupon ordered his overseer (a white man) to correct the fellow for his misbehaviour with his whip, which he accordingly did; but after four or five strokes the fellow ran for it; and so ended this famous affair, which, three years afterwards, was set forth in a formal complaint to the governor-general of the *Caribbee Islands* as a most unheard-of piece of tyrannous cruelty.

The next complaint was of a more serious nature.

In all the *Leeward Islands* a regulation prevails to prevent persons from getting into debt, and then defrauding their creditors by quitting the country; which is, that no one shall be permitted to embark for any other part of the world without previously giving fourteen days notice of their intention in the secretary's office: and to make this regulation more effectual, the masters of all vessels which arrive in the islands are obliged to give security, to take no persons on board without a ticket or certificate of their having given such a regular notice; however, this, like many other institutions of an old date, has been lately much neglected, and indeed is but seldom attended to, except where those who apply for a passage from these islands are generally reputed to be in bad or doubtful circumstances.

It happened that Capt. *Samuel Woodward*, owner of a shallop which traded among the *Leeward Islands*, had given 2000 *l.* security in the secretary's office at *St. Kitts* for his observance of the above law; he did not navigate this vessel himself, but employed a master, who unluckily took one *Rookesby* aboard at *St. Kitts* without regarding the regulation, and brought him to *Montserrat* where Capt. *Woodward* was settled.

This *Rookesby* was a fugitive for debt, and a fellow of most infamous character; and it was evident, that unless he could be brought back to *St. Kitts* before his creditors could proceed at law against Capt. *Woodward's* securities, they would be subjected to the payment of all his debts; they therefore sent word to Capt. *Woodward* of *Rookesby's* flight aboard his vessel the moment they heard of it; and this intelligence reached *Montserrat* on a *Sunday*, and very shortly after *Rookesby's* arrival there.

Upon this occasion Capt. *Woodward* applied to the President for his assistance to send *Rookesby* back again; but, though the President was well inclined to do every thing in his power towards assisting Capt. *Woodward* in an affair so manifestly just, he had no authority to seize upon and send any person out of the island without his own consent; however, he devised

an expedient, which was carried into execution in the following manner: He granted a warrant for the apprehension of *Rookesby* as a loose and disorderly person; this warrant was executed the same evening, and *Rookesby* was brought before the President, who was then at a tavern near the beach, and immediately discharged him for want of proof of his profligate life, and then quitted the room: no sooner was his back turned, than two or three stout fellows, employed by Capt. *Woodward*, seized on *Rookesby*, hurried him on board a vessel, and carried him safe back to *St. Kitts*.

The whole of this transaction was indisputably advised by the President, though he himself did nothing more in it than the granting the warrant, and discharging the fellow when brought before him; all the rest was done by Capt. *Woodward*, without any assistance or warrant from him: It must be confessed indeed that he knew *Woodward's* intentions, and that the share he took in the matter was purposely to further the success of them.—Whether in this affair he acted legally or not must be left to others to determine, but that his intentions were praise-worthy, and the action equitable, can admit of no dispute; as thereby Capt. *Woodward* and his securities (who were drawn into a snare by the negligence of the master of his vessel) escaped forfeiting the penalty of their bond, and no injustice was done to *Rookesby* any more than to his creditors, who were thereby possessed of that security upon which alone they had given him credit, that is to say, his body.

After this another affair happened, which furnished matter for loud complaints against the President's tyranny and oppression.

One *Mansell Nathaniel Wilks*, a clerk to Mr. *Edward Frye*, the President's brother, (under whom he had been bred out of charity) had hired a vessel to go down to *St. Kitts* upon his master's business, and the President having occasion to dispatch a letter to *St. Kitts*, sent it on board the vessel by the fort major, who delivered it into the hands of a passenger to be forwarded; the passenger gave it to the master, who refused to carry it, and returned it to the President, telling him, that his refusal was in consequence of *Wilks's* directions, who at that instant coming up, confirmed what the master said, and added, that no letters should be carried in that vessel but from such people as he and his master approved of: This flat refusal to permit what the President, as commander in chief of the island, had a right to compel, drew some angry words from him, which instead of producing submission, only gave rise to sawcy answers: However, at length the President, inclosing his letter in a case directed to the gunner of *Basse Terre Fort*, and writing

on the cover, "Upon his Majesty's service," the master of the shallop durst no longer refuse to take it; but whilst he went up into the guard-room to give a receipt for it, *Wilks* went off towards the beach, whereupon the President, being apprehensive that he intended to go aboard and set sail without the master, and so evade carrying the letter, as soon as he had got the receipt, hastened down to the tavern upon the beach, as he supposed *Wilks* would go in there before he went aboard; here he accordingly found him, and upon his entering into the room told him, "He saw he was not gone yet;" to which the other making no answer, nor shewing the least token of respect, but, on the contrary, endeavouring to affront him by the insolence of his gestures; the President asked him if he knew who he was, and told him it was his duty to treat him (the President) with respect: to which *Wilks* perty answered, "he knew who he (the President) was very well, he was Mr. *Frye*." The President hereupon ordered him to quit the room, which the other peremptorily refused, and called upon the company to bear witness how he was treated, saying, the tavern was as free for him as for the President; this he often repeated in the most vociferous manner, adding to it such an insolence of behaviour as ought never to be suffered by a magistrate.

The President therefore thought it incumbent upon him to maintain the dignity of the office he bore, and consequently declared he would commit *Wilks* for his contempt; he accordingly sat down to a table to write a warrant for that purpose, when *Wilks*, with an effrontery of which there are but few examples, impudently seated himself at the same table, and drawing out a pencil began to write also, swearing, "By G——d he could write as well as the President." Thus provoked, the President once more commanded him to avoid the room, and, on his refusal, and appeal to the company to observe how he was treated and threatened, turned him out with his own hands.

The President then issued out his warrant to apprehend *Wilks*, and bring him before himself, or any other of his Majesty's justices in the island, to answer for the insult committed upon himself, and directed the constable, to whom it was given in charge, to carry him before any justice of his own nomination; accordingly he was immediately taken and carried (at his own request) before Mr. *Benjamin Walker*, who refused to hear the complaint, under a pretext that the warrant being to bring *Wilks* before the President, he, as an inferior, would not meddle with it, as it might be look'd upon as an encroachment upon the President's authority.

The President therefore drew up another warrant, whereby the constable was required to bring *Wilks* before *Walker*, and sent it to *Walker* to sign, which he did; and the warrant being obeyed, the President appeared before the justice; and it being suggested that *Wilks* was going to sail for *St. Kitts* upon his master's affairs, and that to detain him in such a juncture might be of great prejudice to his master's business, the President (upon the undertaking of one of the persons present for his appearance to answer the complaint upon his return) consented to his being discharged.

But he not offering himself before a magistrate upon his return to answer the charge against him, and instead thereof appearing upon all occasions before the President, attended by a retinue of factious people, with an appearance of triumph; that gentleman ordered the constable to apprehend and bring him before Mr. *Michael Dyer* (in the absence of Mr. *Walker*, who took care to be out of the way) which was done; but that ingenious justice could not find out that there was any crime or misbehaviour in offering the grossest insults to the first magistrate in the country: The President therefore being determined to support that authority, without which no government can be maintained, ordered the offender to be brought before himself, and immediately caused him to be set in the stocks for half an hour, which was the whole of the punishment inflicted on him.

But such was the temper of the people in *Montserrat* at this time, inflamed as they were by bigotry, and prejudiced against the President for not suffering them to run to all the lengths of zeal and madness, that *Wilks*, having brought an action against him for thus vindicating his own authority, a jury of the inhabitants was found, who gave him an hundred pounds for damages.

Some time after this affair, the President, being at his brother's house, *Wilks* came into the company, and though his own master, Mr. *Edward Frye* (who could not but know that his brother, the President, must think it improper to suffer him in his presence, after what had passed) ordered him to withdraw, he was as far from obeying the master, as he had before been from respecting the magistrate; whereupon the President saying he seemed not disposed to obey any body, and insisting upon his withdrawing, he replied, that the President was not then upon his own plantation, and therefore had no business to command there: The President then telling him, that he had a right to command all over the island, and that if he (*Wilks*) did not withdraw, he would make him do it, for that, as an inferior,

he would not suffer him to remain in his company; the other told him, that "By G——d he was not his inferior, nor would he be treated as an inferior"; and advancing up to the President with his fist clenched, added, "and if you dare to strike me, I will make you smart for it." After such a provocation, who will wonder to hear that the President caned him? He did it, and very severely.*

When the action brought by *Wilks* against the President for setting him in the stocks, was tried, *Michael White* was employed as council for the plaintiff, and took that opportunity to abuse the President with the highest scurrility, calling him, amongst other appellatives, *Turkish Basha*, and even inciting the people to sedition and disobedience of his authority: All this the President, whilst in court, patiently bore; but seeing *White* afterwards, he called him an insolent old scoundrel, and told him he would beat him, but for his cowardice, and that he would sh——t upon him, were it not that *White* might seek his revenge for it by law: This nasty threat gave *White* too great offence ever to be forgiven, especially as it furnished those who did not love him with a most provoking nick-name to call him by; and therefore he was afterwards the great spring and principal mover of the impeachment, in which the reader may be assured this shitten menace was not forgotten.

And for these offences another complaint was also exhibited against the President to governor *Thomas*.

A *French* vessel coming to *Montserrat*, and lying off and on upon the coast for two days, and then coming to an anchor in the road, where she lay several hours, and afterwards dragged her anchor and went off to sea, without the captain's waiting on the commander in chief as he ought to have done, pursuant to treaties, the acts of trade, and his Majesty's instructions, the President went into the town to enquire the reason of it, and declaring it was an insult upon the fort, said he would hire a sloop to go after her and bring her back again; whereupon one doctor *Patrick Farell* impertinently condemned this declaration, although he had just seen another person modestly submit, upon being check'd by the President for offering his advice unask'd; *Farell* being rebuked for this behaviour, jumped up and struck the

* This *Wilks* afterwards brought another action against the President for calling him thief, but the President unluckily proving his having robbed his master of a quantity of rum to pay for a laced waistcoat; this hopeful attempt miscarried. Note also, that this theft was committed before the commencement of the first affair between him and the President.

President in the face, who thereupon laid his hand on his sword, but after a moment's recollection quitted it again, and lifting up his stick was going to have beaten him, but *Farell* recoiling back in the most manifest terror, the President desisted from that intention also, and committed him into custody; however, he was afterwards admitted to bail by Mr. *Earle Daniel*, one of the justices of the island, who (by the bye) was always forward in encouraging insults upon the President, who being soon afterwards superseded, *Farell* was never prosecuted for this monstrous insult.

Michal White, junior, having handed about a scandalous libel against the President and the gunner of the fort, who were pointed at under the names of *Don Quixote* and *Sancho Panca*; and having (at the same time) written those names (but ill spelt) upon a publick tavern table, the President being informed by whom it was done, wrote upon the table, under it, a recommendation to *White* to learn to spell of his aunt, or couzin, it being dubious which of the two she was (for it is to be noted that her mother had lain with *White's* grandfather and uncle, and could not tell to which of them to lay the child) and in the same writing he was advised to learn *Spanish* of another aunt of his, who was housekeeper to a *Jew*. *White* some days afterwards took the President aside, under pretence of asking him if he wrote that recommendation, and unawares struck him over the head with his stick in the most cowardly manner, and repeated his blows; but the President, who had been in some measure stunned by the first blow, soon recovered himself, and in return knocked the assailant down, and then committed him to gaol; but the President's suspension a short time afterwards prevented his meeting with any further punishment.

The President one time speaking of an ancient maiden lady, said, that she once drank a glass of urine, and eat some parrot's dung, to acquire a parrot and a monkey, the possessor of which would not let her have them upon any other terms; and though this ridiculous story was notoriously true, and not less publick, the repeating it after it had been in the mouths of hundreds, was charged upon him as a most horrid piece of scandal and defamation.

In the year 1750, flour was so extremely dear in *Montserrat*, that the inhabitants were in the utmost distress for want of it: In this exigency the President raised 800 *l.* currency upon his own credit, and expended that sum in the purchase of a cargoe of flour, which he procured at one third part less than the then current price, and distributed the same amongst the inhabitants in small quantities at prime cost; but this action also was treated

as a grievance, and represented as a most cruel injury to the merchants by beating down their market; so ready were the inhabitants to complain of the President upon every occasion, and even without occasion.

At length, towards the end of the year 1753, these ill humours broke out with the utmost violence; for a motion was made in the assembly of the island then sitting, and which consists of no more than twelve members, for impeaching the President to the governor-general of the *Leeward Islands* and the council of *Montserrat*, of high crimes and misdemeanors, and a vote passed accordingly; which the President hearing of, sent for them into the council-chamber, and there made a speech, in which he told the council and assembly he had always acted for the honour and advantage of the island; and that though he could by his authority prevent the meeting of the assembly, and thereby put it out of their power to proceed against him, he was determined to give full scope to their resentments, by permitting them to sit as often as they pleased, and added, that he had been happy enough wherever he resided to have knaves and fools for his enemies, and hoped to continue in that happy state.—This speech furnished them with a pretence for another of the articles of impeachment afterwards exhibited against him.

About the same time, or a day or two before, the President had ordered the following paper to be publickly stuck up, which the members of the assembly voted to be a scandalous libel, &c. and ordered it to be burnt by the hands of the common hangman, which was done accordingly.

Whereas a report has transpired, that *Michael White*, who was formerly engineer-general of this island, and expell'd the assembly, for writing a scandalous letter to a near relation of his, is appointed a manager, in the present assembly, together with *George Bramley*, who built the northward church, and *Earle Daniel*, who has a demand against the estate of *William Lee*, to prosecute the President for high crimes and misdemeanors.

These are to inform all *William Dyett's*, *William Sloan's*, alias *Semple's*, *John Hayne's*, *Mansell Wilks's*, and Dr. *Patrick Farrell's* advocates, that they are welcome to do their worst, by the assistance of malignant and short-memory men. Nay, the President's insolence may be complained of, for reprimanding the marshal, who gave him no attendance on the King's birth-day; or what other crimes may be alledged against Capt. *Frye*, such as making alarms; putting troopers on the fort for their

absence at musters; tying foot-men for neglect of their duty; giving charges to grand juries at courts of sessions, to present undutifulness in children towards their parents; and other practices which no man ever had the impudence to exclaim at before. They may censure him for going to public devotion, discommending bad husbands, adulterers, filthy fornicators, and *Scotch* Jacobites: They may make what they can of his detaining the *French* ship, and threatening to *sh—t* on a pretended lawyer, for openly abusing him in the court-house. Notwithstanding his misconduct, unarm'd, he can sing, *Integer Vitae*,² &c. and, arm'd, *Horon, Dondoron, 'tis little he values them.*

The assembly afterwards proceeded upon the impeachment, of which, and of the answers to it, with the assembly's reply thereto, copies are here inserted.

Montserrat.

PROCEEDINGS before his Excellency *George Thomas, Esq;* Captain-General and Commander in Chief in and over all his Majesty's *Leeward Caribbee Islands* in *America*, and the honourable members of his Majesty's council within the island of *Montserrat*, one of the said *Leeward Caribbee Islands*, against the Honourable *George Frye, Esq;* late President of his Majesty's aforesaid council, held on the {blank} day of {blank} in the twenty-seventh year of the reign of his Majesty *George the Second*, by the Grace of God, of *Great Britain, France* and *Ireland*, King, Defender of the Faith, &c.

ARTICLES of Impeachment of high crimes, and other misdemeanors, against the Honourable *George Frye*, President of his Majesty's Council, by the Commons in Assembly met, in their own name, and in the name of all the Commons of the island of *Montserrat*, &c.

I. That the said *George Frye* is a *common calumniator*, and a *common disturber of the peace*; that he endeavours to foment *divisions* and *quarrels*, by speaking, and writing evil of *many* persons, in the most public manner; that in order to *aspurse* and *inflame* the living, he blackens the memory of their dead ancestors, and gives out scandalous reports of

2. ["Irreproachable in life."]

them; that he, even in the court of grand sessions, where he presided, by virtue of his being eldest member of the council, appointed by his Majesty, has openly defamed *several* by *insinuations* and *positive assertions*, of their being guilty of crimes, the cognizance of which did not lie before the court; and the persons taxed and aspersed had no opportunity of making any defence to any such irregular charges: That when he has by these, and other such unwarrantable means, *provoked* some persons to assault and strike him, he has *ordered* them to be *committed* for a breach of the peace, and would take no bail; that he would not, when a breach of the peace was committed upon him, tho' he was not then in the execution of his office, apply to any other justice of the peace to commit, or bind over, the offender, to secure the peace, but when such offender applied to some other justice of the peace to be released from his imprisonment, which was ordered by the said *George Frye*, by finding sureties of the peace, he, the said *Frye*, *endeavoured* to *influence such justice* of the peace to oblige the offender to be bound in a *very large* sum, and intimated to such justice as if he was to act under his, the said *Frye*, direction, and was subject to his controul.

II. That the said *George Frye*, in consequence of his provoking several persons, by his abusing and scandalizing them, often goes *arm'd*, in an unusual manner, with a *sword*, and a *pistol in his hands*, and another person attending him, *with another pistol concealed*.

III. The said *George Frye*, under colour of his offices of President of his Majesty's council, and justice of peace, *assaulted*, and evilly treated, and afterwards inflicted an *unheard-of punishment*, upon one *Mansell Nathaniel Wilks*, an infant, in a most ignominious and barbarous manner, with the utmost rancour and malice, and for no real, but supposed offence, of an indignity or affront; and this punishment was ordered by the said *George Frye*, *without* even the formality of a *trial*, to be inflicted on the said *Mansell Nathaniel Wilks*, by tying his *right leg* to the *whipping post* half an hour; that the said *George Frye* caused the said *Mansell Nathaniel Wilks* to be carried before *Michael Dyer*, Esq; a justice of the peace, to be tried for the same supposed offence; who, upon examining the matter, could not find the said *Mansell Nathaniel Wilks* guilty of any offence, when Justice *Dyer* *acquitted* the said *Wilks*; the said *George Frye* had a *warrant* and an *order, ready drawn*, in his pocket, to *inflict the said punishment*; and immediately gave

both the said warrant and order to the constable, and directed him to inflict the said punishment on the said *Mansell Nathaniel Wilks*; that when the said *Mansell Nathaniel Wilks* delivered an execution to the Deputy Provost Marshal against the said *George Frye*, to levy the damages and costs he had *recovered of him* for the *aforesaid* imprisonment and wrong, the said *George Frye* *inhumanly* beat him, the said *Mansell Nathaniel Wilks*, for the same.

IV. That the said *George Frye*, as *President* of his Majesty's council, and a justice of the peace, has *abused the authority* he was entrusted with, by virtue of those offices, in making use of the King's processes for *sinister* and vile purposes, and to cover and encourage other violent and arbitrary proceedings, in order to deprive his Majesty's subjects of their *liberty*, and injure them in their *property*; and, as an instance hereof, that he, the said *George Frye*, issued a *warrant*, on a *Sunday*, to arrest one *Rookesby* to answer some complaint; by virtue of which warrant the said *Rookesby* was arrested, and brought before the said *George Frye*, and was kept under arrest till late the same day, when the said *George Frye* ordered him to be released; and had then and there several persons *ready*, who immediately seized the said *Rookesby*, and carried him, by *force and arms*, on board some vessel to *St. Christopher's*.

V. That the said *George Frye* is a person of a *lewd life and conversation*, and even in the *seat of justice*, as *President of the court of grand sessions*, behaved in a most indecent and immodest manner, by obscene and lewd expressions, tending to corrupt the morals of the people, and to bring his Majesty's government into contempt, with a further malicious intent to defame one of the grand jury.

VI. That the said *George Frye*, in order to advance his *arbitrary power*, and to vent his spleen against particular persons, has taken the opportunity to *back-bite* some, and to *slander and reproach others present*, when giving a charge to the grand jury, as *President* of the court of grand sessions; and after having given such matters in charge, he directed the grand jury to take *no notice* of them; and, when one of his associates, a justice, who was present, and so reproached, offered to justify himself, he ordered him, imperiously, *not to speak another word*.

VII. That the said *George Frye* has treated *all his fellow justices sitting in judgment* with him, with *indecenty and contempt*, for differing in opinion with him; particularly, by telling them, in open court, he was sorry to see so *little sense* upon the bench.

VIII. That the said *George Frye*, in order to establish an *arbitrary power and tyranny*, *threatened* to put some counsellors at law in the stocks, for being concerned against *him in suits of law*; and to use others in so base and filthy a manner as is indecent to be express'd.

IX. That the said *George Frye*, to promote his *arbitrary power and tyranny*, and to *terrify* and be *revenged* of particular persons, who had the courage to dispute his unlawful commands; *made frequent alarms without any cause*, thereby bringing himself, and the *dignity of his office*, into *contempt and ridicule*.

X. That the said *George Frye*, in a *riotous and tyrannical* manner, caused one *William Dyett* to be brought before him, and *whipt* by his Negroes and a white servant.

XI. And whereas the representatives of this island, in assembly met, taking into consideration the *general evil fame and bad administration* of *George Frye*, in his offices of *President of the council and justice of the peace*, appointed a committee to draw up articles to charge him with high crimes and misdemeanors; that the said *George Frye*, in order to *intimidate the representatives*, published a scurrilous writing, insolently *defying* them to do their worst, *aspersing all the members of the said committee particularly, by name*, with scandalous assertions and insinuations; and shewing the highest *contempt and indignity* to the *whole body* of the people represented in the assembly. And, in order to give the assembly the most convincing proof of the *highest contempt and bad opinion* he had of them, he *told them*, in a body met together, *before his Majesty's council*, upon a conference, by his directions, that they were *fools and knaves*, and *published a writing much to the same purpose*.

All which crimes and misdemeanors the assembly are *ready to prove*, whereby he hath *abused the trust* reposed in him by his Majesty, and hath most grievously *offended against the peace* of his Majesty, his crown and dignity, the *rights and liberties* of the subject, the *laws and statutes*, and the *prosperity and good government* of this island: And the said assembly, saving to themselves the liberty of exhibiting at any time hereafter, any other article or impeachment against the said *George Frye*; and also of replying to his answers, or any of them, and of offering proofs of all the premisses, or any of them; and of any other article or impeachment that shall be exhibited by them, as the case shall require, do pray, that he, the said *George Frye*, be put to answer to all and every the premisses;

and that such proceeding, examination, trial, judgment, and exemplary punishment, may be thereupon had and executed, as is agreeable to law and justice.

True Copy.

The ANSWER of the Honourable George Frye, Esq; President of his Majesty's council in the island of Montserrat, to the articles of impeachment of high crimes and misdemeanors against him, by the Commons in assembly met, in their own name, and in the name of all the Commons of the said island.

Response to Article I.

The said *George Frye*, for answer to the first article of impeachment aforesaid against him, *denies* the charge of calumny, of disturbing the peace, or of endeavouring to form divisions and quarrels, by words or writing of any sort, in manner public or private, either of persons living or dead. Denies that he has, in open court of grand sessions, where he had the honour to preside, in any sort, positively or insinuatively, defamed any person or persons whatsoever with any crime, cognizable or not cognizable, by the said court: But true it is, that the said *George Frye* hath been actually assaulted several times in his person, inseparable from his office, in the absence of his superiors, during his command as President of his Majesty's council within the aforesaid island of *Montserrat*: And true it is also, that he hath committed such offenders for having assaulted him as aforesaid, and very justly, and what any justice of the peace, in the like case, might have done, without being under the necessity of receiving bail, as the island, at such times of offence given, was well provided with magistrates in the commission of the peace, who, upon tender of surety for keeping the peace, and for being of good behaviour, might, on application therefore made, have taken the recognizance of any such offenders.

If the commander of a province be assaulted, it is not usual for him to take bail, being a judicial act; it is a duty delegated to inferior officers, who by law have such offence under their notice; and better to such officers aforesaid standing indifferent, between party and party, than to be taken by the person offended: The authority of which aforesaid magistrates the said *George Frye* hath not attempted

to hinder or obstruct, much less hath he ever used any methods for *influencing* the commissioners of his Majesty's peace from doing their duty on any such occasion.

It greatly surprizes the said *George Frye*, and must be matter of astonishment to all persons of judgment and reason, that the court of grand sessions aforesaid should be charged with silence, and not taking notice of offences, of defamations, offered by him in the said court; no animadversions thereupon having been made by the said court in their records or minutes, or in any other manner; nor is it less wonderful to find (as by this article against the said *George Frye* charged) that any pretence, or feigned cause of provocation, could bear a comment in favour of such offenders having assaulted him as aforesaid, slander being no justification for an assault.

Response to Article II.

That in consequence of such insults and assaults acknowledged by the first article of impeachment aforesaid, to have been offer'd to the said *George Frye*, by persons using violence with him, he did often go armed, as was expedient and necessary for his defence, finding the malice and outrage of his adversaries such as gave him reason to think and judge, that unless he had in such manner armed himself, their outrages might have terminated in the worst execution of their ill-disposed intentions.

Response to Article III.

That in the matter charged by this article, stand the same as it may, the offence made out by verdict, with judgment and execution thereupon granted against the said *George Frye*, in favour of Mr. *Wilks*, has been carried on to the full measure of the law, beyond which nothing further can be done; and therefore all cause of complaint in that behalf is fully answered and atoned for. Sir *Chaloner Ogle*, in his proceedings against the respondent, paid one thousand pounds damages; and what further satisfaction did the said respondent receive from the said Sir *Chaloner*? Did the Commons in *Great Britain* ever make a cause of impeachment against Sir *Chaloner* for any such matter? or was he ever divested or turned out of any of his posts or employments on that occasion?

The common courts of justice, appointed for redress of injuries, when they give redress, take away, and put an end to all cause of further consider-

ation thereupon. His Majesty's court of King's-Bench and Common-Pleas in this island has given ample redress for Mr. *Wilks's* action against the respondent; and it seems as if evidence was wanting to make out articles of impeachment against the respondent, by repeating and bringing into contest a matter that had been already determined. No body ought to be twice questioned for the same thing, or to be twice punished for one fault.

And as to the last part of the charge, in the third article contained, for a second assault made by the respondent on Mr. *Wilks*, let the matter in evidence thereupon be heard, as well on the part of the respondent as on the part of the accusers; and thereupon this respondent doth refer himself, for excuse, and clearing himself of the inhumanity and hard treatment wherewith he is, on that occasion, charged by the said article.

Response to Article IV.

To this fourth article, particularly to the imprisonment of *Rookesby*, the said *George Frye* answers, that the said *Rookesby* was a mariner, who had had the charge and command of a vessel at *St. Christopher's*, which he sold there, and who had likewise ran away from his creditors there, having withdrawn himself to this island with design to have transported himself from hence out of the government, and out of the reach of its laws, and so to have eluded and defrauded his creditors; whereof one, namely, Capt. *Thomas Woodward*, a mariner and merchant in credit at *St. Christopher's* aforesaid, having gained intelligence, sent advice thereof to his brother, Capt. *Samuel Woodward*, in *Montserrat*, requiring that the said *Rookesby* should be arrested and stopt at *Montserrat*; and the said *Samuel Woodward*, upon application to this respondent for such aforesaid purpose made, prevailed on him to stay the said *George Rookesby's* departure from *Montserrat* on the Sunday, intended for his departure, which was accordingly done, and the said *Rookesby* shipt to *St. Christopher's* the next day.

Sheriffs having the care of his Majesty's counties, and arresting debtors on *Sundays*, and keeping them in durance and custody till next day, so as to answer justice, yet, have they been slightly animadverted upon by the judges thereof, because done in favour and promotion of justice. True it is, regularly, that debtors should not be arrested on *Sundays*, being no law-day; however, the thing so done is valid, and the debtor detained till next day, shall be obliged to find bail: Nor is there any reason that any offenders against the law, under the shadow and cover of the law, should

elude and escape from answering the law; because, in all cases where the reason of the law fails, there also the law itself ceases and fails; and where the ordinary means of justice are deficient, recourse is had to means extraordinary.

Response to Article V.

Denies that the respondent is a person of lewd life and conversation, and defies his accusers to give any one instance, or proof, since his having been honoured with the command of this island, of his lewd life and conversation; and so returns the charge of lewd and dissolute behaviour on his adversaries and accusers, whom it would much better become to look at home and mend their own lives, rather than wrongfully to charge this respondent with offences whereunto he pleads not guilty.

Response to Article VI.

To this article the said *George Frye* answereth, that the same is so general, without descending to, or mentioning any particular persons therein charged to have been back-bitten, slandered or reproached by him, that he cannot answer thereunto, further, than by denying this article in general, and by calling upon his accusers for some particular proofs of that which hath been in general manner aforesaid alledged against him.

Response to Article VII.

To this article the said *George Frye* answers in like manner as he has answered to the sixth article aforesaid.

Response to Article VIII.

To this article, being also a general charge, without setting forth any particular acts of threatening, against any counsellors at law for being concerned in suits against him, this respondent answereth in the negative, generally, as unto the sixth and seventh articles aforesaid, excepting only that for ill manners used by *Michael White*, Esq; in the cause between *Mansell Wilks* and this respondent, and for which the said *Michael* was check'd and reprov'd, *by the court*, as a railing pleader, and who had, in his utterance at the bar, dignified the said respondent with the appellation of *Tyrant* and *Turkish Basha*; the respondent ingenuously acknowledgeth

that, in return to the said *Michael*, for his compliments, after coming out of court, he, this respondent, told the said *Michael* that he would sh—te upon him.

Response to Article IX.

To this article the said *George Frye* answereth and *acknowledgeth*, that, having lately expected the arrival of his excellency *George Thomas*, Esq; he had caused alarms, at several times, to have been fired, having observed that the inhabitants of *Montserrat* were very inexpert in the management and exercise of their arms; and that it would require much diligence and pains to form and bring them into an orderly method and way of exercise; and that, in order to bring this about, as well to their own credit, as for receiving his said Excellency in the most becoming military manner, he so did, with design to improve the inhabitants in the orderly method and way of exercise aforesaid, without acting contrary to the laws and statutes of this island in such case made and provided; with which laws the said accusers do not seem to be acquainted, any better than with the decency and respect with which chief governors ought to be received.

Response to Article X.

To this article the said *George Frye* answereth, that the said *William Dyett* presented himself *naked* (his obscene parts uncovered) before the said *George Frye* and his wife; offended at such behaviour, the said *George Frye* ordered his overseer to give the said *William Dyett* two or three lashes with a whip, as a just reprimand for his appearance, and persisting to appear, after having been commanded to withdraw himself from the sight of the said *George Frye* and wife aforesaid.

Response to Article XI.

To this article the said *George Frye* answereth, by appealing to the paper thereby complained of, and by requiring his accusers to produce the same, submitting himself to all the advantages whatever therefrom to be made out against him, and to the judgment of all mankind, whether innocent, and being satisfied with one's own behaviour, any man, foreseeing the ill designs brewing against him, and called in question by those in place under him, can be called insolent for defying his adversaries, whom the respondent still intrepidly defies, and now calls upon, as he heretofore

hath called upon them, to give their rage and spleen all the indulgence and play, which, in their own way, they have for themselves judged expedient and convenient to do.

*The Assembly's REPLICATION to the answer of the
Honourable George Frye, Esq;*

The assembly have taken into consideration the answer of the Honourable *George Frye*, Esq; to the several articles of impeachment of high crimes and misdemeanors, exhibited by them against the said *George Frye*, and do observe that he has made no answer to many of the said articles; and has passed many others over with little evasions and silly excuses. But the assembly highly resent one part of his answer, whereby he recriminates the assembly for their lewd lives and conversations, and gives out many other vile aspersions and defamations of them, whereby he is guilty of a *most impudent and scandalous libel*; for which the assembly might demand your Excellency's immediate judgment against him: But, to avoid any delays, knowing your Excellency proposes but a short stay upon this island, and knowing how dangerous it is to the public that he should continue in the present places he enjoys, the assembly do aver their charge against him to be true, and that the said *George Frye* is guilty in such manner as he stands accused and impeached; and that the assembly will be ready to prove their charge against him at ten o'clock to-morrow morning.

True Copy.

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Several reflections naturally occur to the mind upon perusing these extraordinary pieces, and amongst them none is more obvious than this, that it was a very high presumption in twelve planters, at *Montserrat*, under the pretext of their being the representatives of the Commons there, to arrogate to themselves a privilege equal with the greatest, enjoyed by the Commons of *Great Britain*; a privilege no charter ever gave, and which was never exercised or dreamt of by the assembly of any other colony in all the *British* dominions: Other colonies have disagreed with officers of his Majesty's appointment, but *Montserrat* has the honour to take the lead in venturing to impeach. The method heretofore taken upon such occasions, has been to complain to his Majesty in council, where the end sought has been the punishment of the

offender; where, indeed the aim has only been to get the obnoxious person suspended, a complaint to the governor, or commander in chief (supported by sufficient reasons) has had its effect; but then the governor can only suspend, he cannot inflict punishment. How absurd, therefore, must the pretended right of impeaching appear, when it is most evident that the person accused, and against whom exemplary punishment is prayed, cannot, when convicted, be punished at all, except that suspension may be called a punishment, which the governor has in his power at all times to inflict without any impeachment, and indeed without any complaint made?

The weight and consequence of *Jamaica* is too well known, to make any demonstration of its infinite superiority over *Montserrat* necessary; the settlers there are wealthy, numerous, and in general well educated; their assembly consists of more than 40 members, who are, by their fortunes, set above dependence, yet when these in concurrence with the government and council passed an act about 12 years ago, to divorce one Mr. *Manning* from his wife, for cause of adultery, plainly proved; the royal assent was refused to it, as being a stretch of power too dangerous to be trusted to the distant representatives of a distant colony.

How much more reason would there have been to put an immediate stop to their proceedings, had they ventured to impeach any person to their council for high crimes and misdemeanors, in which, if they were suffered to go on, they might soon make a very fine progress; there would presently be no occasion for complaints to *England*: For as the power of impeaching, if admitted against private persons, might easily be extended against the King's governors; here would be an excellent and most compendious method chalked out for ridding themselves of those who were unruly.

But supposing it could be granted, that these colonists had a right to impeach, it must then follow, that such a right is to be exercised in like manner as it is in *England*, from whence alone they can pretend to draw their presidents and their authority; but did they ever hear that the *English* House of Commons prefer impeachments to the King, or to the King and Peers? They must know (if they know any thing) that impeachments from the Commons of *Great Britain* are preferred to the Peers, and they alone give judgment: If therefore these assembly-men were determined to exert so high a privilege, they should have impeached the President to the council (who were to exhibit the part of the Peers of *Montserrat*) alone, and not to the governor and council; for it is most certain that the governor has

no voice in the debates of the council, any more than the King of *England* has in the House of Lords; for being only his Majesty's representative, his authority (so far as is delegated to him) may resemble the King's, but can in no case possibly exceed it.

Of all these objections the President was well aware, and consequently thought it his duty to object to this novel method of proceeding; he did accordingly state his objection to governor *Thomas* in council, and insisted that neither had the assembly any right to impeach, nor had the governor and council any right to try him. But he, on the contrary, insisting upon such a right, and quoting Lord *Macclesfield's* case to prove it; the President at length determined to plead to the impeachment, although he then thought it was giving way in a most dangerous point; but he was induced to it by the consciousness of his own innocence on the one hand, and the apparent consequences of his refusing (which yet, perhaps, he ought to have done) on the other; for he foresaw, that had he refused to plead, and demurred to the authority of the governor and council, they would not have scrupled to commit him to prison, till he complied, or perhaps have taken the impeachment *pro confesso*,³ and so have condemned and executed him, without the ceremony of waiting till he should have time to appeal to *England* for a reversal of their sentence; and if neither of these had been the case, his enemies would have had at least an handle for injuring his reputation, by giving out that he was guilty of the charge, and only escaped by finesse, and screening himself under mistakes committed in the proceedings against him.

To proceed to these same articles themselves.

Articles of impeachment of high crimes and other misdemeanors, against the Honourable George Frye, President of his Majesty's council, by the Commons in assembly, met in their own name, and in the name of all the Commons of the island of Montserrat, carry a terrible sound with them, and would naturally induce people to suppose that such a pompous introduction must be followed by charges of the most enormous guilt, such as selling the island to the enemy, burning houses, plundering churches, robbing the community, destroying the constitution of the country, to make himself absolute, committing rapes and murders, or at least they must expect to find him charged with embezzling the public money, making a trade of his authority, corrupting the legislature, influencing jurymen, and perverting the course of justice:

3. ["As if confessed," i.e., not denied.—Tr.]

But how would they be astonished to find their complaints dwindled into general charges, without time, place, or circumstance (and consequently illegal, as being upon that account incapable of an answer;) and to find that these charges were, for being a common calumniator and disturber of the peace by defaming people,—for committing people to gaol who struck him, and then desiring a justice to take sufficient bail for their appearance,—for carrying weapons in his own defence,—for setting a sawcy boy in the stocks for half an hour, and afterwards beating him;—for assisting in sending a fellow, by force, to *St. Kitts*, about 14 leagues off;—for talking indecently,—for back-biting,—for telling his brother justices he was sorry to see so little sense upon the bench,—for threatening counsellors,—for making alarms in the island,—for causing one *Dyett* to be whipped,—for publishing a scurrilous writing,—and for telling the assembly they were fools and knaves: Surely they could not have the most favourable opinion of the heads or hearts of these representatives of *all* the Commons of *Montserrat*.

But if the articles themselves should astonish the reader, how would that astonishment increase upon his being informed of the evidence offered in support of them, and of the true state of the facts as they appeared upon proof?

And first; Governor *Thomas* and the council of *Montserrat*, being set and proceeding to the tryal of the President: one *Rigby* proved the story of the Parrot and Monkey mentioned before; and also that the President had once charged him with being guilty of self-pollution, and had quoted Mr. *Benjamin Walker*, one of the council, as the person who had told him of it; and this Mr. *Walker* was then examined, as to what he had told the President upon that occasion, when he swore, that to the best of his memory, he had never spoke those words to the President, which *Rigby* had just sworn the President quoted as spoken by him: But it is observable, that upon being examined, whether he had not said something to the President, of the same purport or effect; *Walker* excused himself, by alledging that he was not bound to answer that question; which excuse was admitted by Governor *Thomas*. *Mansell Wilks* proved that the President told him, his aunt had been f—d by a humpback'd *Scotchman*; but *Rigby* being appealed to as to this matter, could not deny that Mr. *Frye* had his information from him.

Walter Skerrat proved that the President had said that *Walker* was a liar, a scoundel, and a short memory man.—And thus much was proved against him, upon the article of defamation.

Then one *Dewberry* was called, to prove that the President had in the Court of grand sessions, charged him with slandering the council, by asserting that they resolved to hang his (*Dewberry's*) negroe, before they tried him: but the President offering to call Mr. *Musgrove*, to prove the truth of the charge against *Dewberry*, Governor *Thomas* waved examining him, and the President thinking it a matter not worth consideration, did not press it any further.—Mr. *James Hussey* also gave evidence, that Mr. *John Bramley*, one of the assembly, (who on account of his abandon'd lust has got the nickname of *John Goat*) coming before the court of grand sessions as a grand jury man, very meanly clad with a white cap on, was there reprimanded for it by the President; and at last on his declaring that he would dress as he pleased, the President told him, since he was so fond of a white cap, he would advise him to wear one on his p——k, and not keep a seraglio of negroes.—And thus the charge of accusing persons in open court, was made out.

The sticking up the paper before inserted, (which was burnt by order of the assembly) was urged in proof of the President's writing scandal.

The charge of the President's committing persons to prison who struck him, and refusing to take bail, was proved in the cases of *Michael White*, jun. and *Patrick Farrel* related above; but the President justified himself by urging that he being himself the person, against whom the breach of the peace was committed, he apprehended he could not discharge them upon bail. As to the charge of endeavouring to influence a justice of peace, to take bail in a very large sum, nothing further was proved, than that the President desired the justice to take sufficient bail for *Farrel*, that he might not run away.

The President acknowledged, that having been struck, he went armed, and took another person with him who carried a pistol, but not concealed; and in this he insisted there was nothing illegal.

The story of *Mansel Nathaniel Wilks* has been fully related already, and needs no further explanation, any more than that of sending *Rookesby* to *St. Kitts*.

The charge against the President, as a person of lewd life and conversation, was supported by the evidence of a fellow who swore he had once heard him propose an obscene toast, to be drank in a tavern; as also by the proof before given, as to the reproof he gave to *John Bramley* (alias *Goat*.)

Mr. *Wyke* was examined to prove the President's declaration that he was sorry to see so little *sense* upon the bench, but the evidence he gave was, that on a dispute amongst the justices, whether any persons besides freeholders,

should be obliged to serve upon juries, (as had long been customary) or not: The majority voted against compelling any besides freeholders to serve; whereupon the President said he was sorry to see so little *conception* upon the bench, for that the number of substantial freeholders being but small, if they did not put men of substance, who were not freeholders, upon their juries, they would often be composed of ignorant and mean people, very unfit to act as jurymen.

The charge of threatening counsellors for being concerned against him, was supported by no other evidence but the threats beforementioned of sh—g upon *Michael White*.

To prove the charge about making frequent alarms, one *Morson*, a militia trooper, was examined, who gave evidence, that *once, and only once*, he with others being ordered (by the President) out upon a party to apprehend eleven deserters from the King's forces, who were roving about the island, the witness peremptorily refused to go; and the President thereupon foreseeing the consequences of such kind of disobedience, and being fully authorised by the statutes of the island, ordered the alarm to be fired, which of course subjected *Morson* to punishment, in case of refusal; but he thought fit to submit, and beg pardon, nor was there any evidence offered in support of this article, except as to this one affair, which happened three years before.

The story of the President's ordering *William Dyett* to be whipped, has been already related, and needs no other addition than this, that the fellow who whipped him being produced as an evidence on Mr. *Frye's* behalf, Governor *Thomas* would not suffer him to be examined, under the pretext, that by giving evidence in that affair, he might accuse himself, and thereby have a prosecution commenced against him by *Dyett*. However, the story as above related, was confirmed in all particulars by *Evans Walters*, one of the witnesses for the impeachment.

The charge of calling the assembly in a body fools and knaves has been already explained, but it is proper to add, that the President after making the speech, which gave occasion to this charge, and the substance whereof is before given, ordered it to be publickly stuck up in the island.

And thus closed the evidence upon this impeachment, nor were there any other proofs given, to prove Mr. *Frye* guilty of high crimes and misdemeanours.

However, this evidence was thought sufficient by Governor *Thomas*, to warrant his suspending the accused, and (which is more remarkable) the

council being (as the President is well assured) equally divided, the governor himself gave the casting vote against him.

But for heaven's sake! what was the proof given against him, considered as a commander in chief? Or, how did any enormity in his conduct require, or even give the least countenance, to so extraordinary, so violent, a procedure?

The whole evidence may be reduced under the ten following heads of accusation.

1st. Three or four unguarded, and indecent, expressions.

2d. The speaking very freely to, and of, several persons, which was interpreted into slander; though there was not the least attempt to shew, that he had accused any one falsely; but, on the contrary, almost all the stories he had related, and, which gave occasion for this charge against him, were notoriously true.

3d. The threatening to sh—e upon a man; or, in other words, telling a man who had wickedly traduced him, that he deserved to be so served; for, in truth, the words imply no more.

4th. The sticking up a paper, in which no man living would have found a tittle of scandal, except the persons named; nor, would they have considered it as such, unless the few words in it, descriptive of each of them, had waked the sleeping monitor within, and recalled some dark transactions to their memory.

5th. The committing two persons to prison, for striking him.

6th. The going armed in his own defence.

7th. The setting *Mansell Wilks* in the stocks, and beating him.

8th. The sending *Rookesby* to *St. Christophers*.

9th. The firing alarms, as his duty required; and,

10th. The ordering *Dyet* to be whipped.

Of which, the third, fourth, fifth, sixth, and ninth, wear not the least shadow of misconduct.

And, as to the other five, if we consider them in their order, we shall find the first of them is merely for speaking indelicately; of which, nothing more need to be said, to put it in its proper light, than to desire the reader will figure to himself the image of the House of Commons of *Great Britain*, coming to the bar of the House of Lords, with a flaming impeachment against the Earl of *Rochester*, for the high, and most enormous crime of talking bawdy; let him further imagine, a Lord High Steward, (especially created upon this important occasion) sitting with all the peers around, to

try that noble Lord, the reverend prelates sitting by to see fair play; and all the Judges of the land, attending to clear up knotty points of law: lastly, let him conceive each Peer in order slowly rising, his right hand placed upon his breast, to utter, "guilty upon my honour," with consummate dignity.

The charge of defamation was as childish; it by no means appears, that the President said a word more of any one person, than such person merited; and if he had, there was an easy remedy, they might have brought actions against him: the law was open, as was most manifest, by the success of *Wilks*; and it was vastly absurd to bring that as a charge against him, in his publick character, which he had said or done as a private man; and for which he might every day have been compelled, as such, to make satisfaction, with the utmost ease.

The affair of *Wilks*, ought to have been buried in oblivion, for though it should be admitted, that the President had exceeded his authority; yet *Wilks* had been fully indemnified by the verdict of a jury, for sitting in the stocks; and, as to his being beaten, there can be no sort of doubt, but that, encouraged as he was by former successes, he would have brought an action for that too, had he not been conscious, that he drew it upon himself, by insults too outrageous, not to have justified the President, for treating him in that manner; so that the damage done to *Wilks*, being fully repaired, neither he, nor the public, had the least title to complain, the very basis, and foundation of that complaint, being totally removed.

But, there is another reason, why *the Commons of Montserrat*, would have chose to let that transaction remain unmentioned, had their wisdom been equal to their enmity, and it is this,

Captain *Frye* has been called tyrant, and *Turkish* Basha; had he really been so, *Wilks* never would have dared to bring an action against him; had he really governed with a rod of iron, a jury would hardly have found a verdict against him in the sum of 100 l. for damages, which would have been well repaired by 50 shillings; had he really been as bad as he is represented, he would not so soon, nor easily, have submitted to the jury's verdict, and paid the money, as he has done; had the qualities of his heart, been the reverse of every thing, that should adorn a man, he would not have wanted means to procure a packed jury, or perhaps even corrupted judges; but, as the contrary of all this is true, it is apparent as the noon-day sun, that all the clamors raised against him, as well as this redoubtable impeachment, are absolutely void of all foundation, since he was equally liable with the

meanest islander, to be punished by the ordinary means, for any injustice done by him, without having recourse to such unheard of methods.

As to the story of conveying *Rookesby* to *St. Kitts*, it having been already fully treated of, this only shall be added, that some years having passed between that time, and the suspension of the President, he had time enough to have brought an action against him, upon that account, if he had seen occasion; and had he done so, there is not the least reason, in the world, to apprehend his actions being heard and judged impartially, at least, there was no great fear of the jury's leaning in the favour of the President. And the same thing may be said of the whipping *William Dyett*.

Thus having given an impartial account of every transaction, any way relative to the impeachment in question, from the time of the President's arrival at *Montserrat*, to his suspension, nothing remains to be added, but that he has petitioned against the sentence, to the Lords of trade, and plantations, who have referred his petition to his Majesty's privy council; and that in order to support his petition, he demanded of Governor *Thomas*, copies of all the depositions, and examinations, taken against him, which the Governor promised he should have; but, after having waited four months, and applied many times for them, he was informed, by the secretary of *Montserrat*, that the Governor would not grant them to him, but had transmitted the originals to the board of trade in *England*, which has put Mr. *Frye* under the necessity of coming to *England*, (where he now resides) at a great expence, in order to obtain the copies of the Informations, and prosecute his petition.

FINIS.

Anonymous,
A Short Account of the Interest
and Conduct of the Jamaica Planters
(London, 1754)



THIS SELECTION focuses on a problem that was common in many colonies, the hoarding of undeveloped land by prominent families. Metropolitan officials had long recognized the seriousness of this problem in Jamaica, regarding it as the principal cause for Jamaica's failure to attract more white settlers, to the endangerment of the island and the economic disadvantage of the parent state. The selection provides a history of metropolitan efforts to confront this problem from 1734, when the House of Lords called for an extensive investigation, to the mid-1750s, when the author made his case that the British Parliament should intervene to vacate titles to land that remained uncultivated in the colony. The anonymous author was as certain that the Jamaican establishment would never act to resolve this problem as he was convinced there could not be any question about Parliament's jurisdiction over it, and he recommended Parliamentary action as the only "effectual method . . . to re-sume those ancient grants, that have hitherto been useless, even to their owners, as well as to the publick . . . or otherwise put the proprietors under a necessity of cultivating them." By encouraging the immigration of free whites and thereby rendering the island more capable of defending itself, "this reform in the state of Jamaica," he observed, was "in reality the only means that can effectually provide for the domestic happiness of that island, and secure the possession of it to *Great Britain*."

The author was especially concerned about the growing prominence of Jamaican absentees in Parliament, calling attention to the candidacy of “the Great *Jamaica* Planter,” William Beckford, who was then seeking election from the city of London and who could be counted on to oppose any Parliamentary legislation on this subject. This pamphlet is notable not only for the information it provides on a long-running problem in imperial politics but also for its clear expression of the idea that colonial interests might be “very different” from metropolitan interests, the former being designated as “theirs” and the latter as “ours.” (J.P.G.)

A
SHORT ACCOUNT
OF THE
INTEREST and CONDUCT
OF THE
JAMAICA PLANTERS.
In an ADDRESS to the
MERCHANTS, TRADERS,
and LIVERYMEN
OF THE
CITY of LONDON.

LONDON.

Printed for M. Cooper at the Globe in Paternoster-Row.
MDCC LIV. [Price Three-pence.]

An Address to the Merchants, Traders and Livery-Men, of the City of London.

During the contests in many parts of this kingdom, particularly in some of the most opulent, and most commercial cities, it may be thought strange that so little notice is taken of the different views of the contending parties; or whether their interest and the interest of *Great-Britain*, be one and the same. Some may plead a merit by being what is called anti-courtiers, and by voting constantly, right or wrong, against every question proposed, supported, or favoured, by that part of the administration which sits in the House of Commons. They may thereby hope to gain the approbation of the unthinking, and disaffected. But they too often give encouragement to disloyalty, and even rebellion. It may be admitted, that many of these may be mis-led, and others may have imbibed these principles from their infancy; that therefore this conduct cannot be imputed so much to want of honesty, as to ignorance, or prejudice of education. Others seek to distress the administration, solely with a view to be admitted into it; which they no sooner accomplish, but they become zealous advocates for the very measures they before opposed. Others again, from an honest and true spirit of liberty and patriotism, agree, or disagree with the measures proposed in a fair, candid, and rational way, without sinister or self-interested views, avoiding all opposition that may tend to distress the administration in just and proper measures for the support of His Majesty's government, and the welfare of the nation; and watchful at the same time to oppose every measure of a contrary tendency. Hitherto none are mentioned but such whose interest may be supposed compatible with that of *Great-Britain*, but there remains another sort of men, zealous generally in opposition, whose personal interests to appearance are, and whose views in many instances may be, very different from the interest of *Great-Britain*: Of this set are those whose estates are in another quarter of the world, who, by their artful management, keep this country and *Ireland* under a constant yearly tax of several hundred thousand pounds, who accumulate great estates by means of this tax, so very burthensome to almost every individual in this country, and are thereby enabled to support contests in some of the richest and most populous cities of this country. No less than three brothers from one of

our Sugar-islands, three parts in four of which remain uncultivated, having offered themselves, one for *London*, one for *Bristol*, and one for *Salisbury*; and a fourth brother, according to what has been published in the publick papers, intended for a *Wiltshire* Borough. How far the zeal of one of these gentlemen against the measures of government, and the known attachment of all of them to a particular party, may have recommended them, as well as others belonging to the same island, is not at present to the purpose to determine. But surely it is of importance to consider whether our interest, and that of those who desire to be our Representatives be the same; and if they be different, whether it is to be expected those gentlemen, if chosen by us, will sacrifice their own personal interests to promote ours. In order to set this matter in a clear light, it may be proper to state a few facts, relating to the Island of *Jamaica*, which have from time to time come under the consideration of Parliament.

In the month of *April* 1734, the House of Lords addressed His Majesty, that He would be graciously pleased to give direction to the Commissioners for Trade and Plantations, to prepare during the recess of Parliament, and lay before their Lordships at their next meeting, a state of the *British* Islands in *America*, with regard to their trade, their strength, and fortifications; together with their opinion, what may be further necessary for the encouragement of their trade, and security of those islands.

The Commissioners for Trade and Plantation, in pursuance of these directions, laid in the 13th of *February* following a representation before the House of Lords, wherein they set forth;

That, it was impossible to prescribe a remedy which might put our planters in *Barbadoes*, and the greatest part of the *Leeward Islands*, upon a par with the *French*, as to the advantage they derive from the freshness of their sugar plantations, because the soil of those countries, especially *Barbadoes*, is much exhausted; but that in the Island of *Jamaica* there are many large tracts of lands proper for bearing sugar canes, and capable of most other *American* productions which have not yet been cultivated; and they say, they are sorry to observe to their lordships, that the most fertile and best situated lands in this colony had been formerly granted to private persons in such exorbitant quantities, that at present there remains very little or no land for the reception of new comers, unless they purchase it at a very high price, except in such parts of the island as are very much expos'd, and lie under such disadvantages as may justly deter men from settling upon them.

They likewise say they conceive the best means of promoting the prosperity of *Jamaica*, and of securing the possession of it to *Great Britain*, would be to take all possible methods to people it with white inhabitants, and to encourage every kind of agriculture proper for the soil, and capable of being carried on by people of small substance. But that though they had long understood this to be the principal interest of *Jamaica*, they conceive it impossible to invent methods of attracting new inhabitants thither, whilst the lands remain confin'd as they are at present, in the possession of a few wealthy planters.

And they represent further, that five several acts had been pass'd in *Jamaica* at sundry times for the encouragement of new comers. But that those acts were either insufficient to effectuate the purposes for which they were designed, or the execution of them had been evaded, or the intention of them had been weakened by subsequent laws, because those lands had not been purchased by new inhabitants, but for the most part lie still uncultivated, and that the island was more destitute than ever of white inhabitants.

The commissioners then proceed to give it as their opinion, that if the people of *Jamaica* will not be induc'd to frame an act, which may divest particular persons of those extensive tracts, which then lay uncultivated, it might be a proper subject for the consideration of the *British* Parliament, by whose authority an effectual method may be taken to re-assume those ancient grants, that have hitherto been useless, even to their owners, as well as the publick; or otherwise to put the proprietors under a necessity of cultivating them. And they add, this reform in the state of *Jamaica* will be the more necessary, as it is in reality the only means that can effectually provide for the domestic happiness of that island, and secure the possession of it to *Great Britain*; and, on the other hand, were that once done to the extent the country is capable of, it would be in a condition to defend itself against any force that could be rais'd by the future enemies of *Great Britain* in *America*.

This representation was printed by order of the House of Lords, and the parts refer'd to are in part of the 14th and in the 15th pages.

It might have been expected, after such a representation from so great an authority, laid by his Majesty's commands before the House of Lords, and from thence before the House of Commons, that the people of *Jamaica* would have exerted themselves, by giving real encouragement for white people to settle among them, so as to be able to defend that great island from any attack that might be made against it, and that we might soon be freed

from apprehensions of us becoming a prey to any neighbouring power in case of a rupture, and that the cultivation of their lands would have been so improv'd that we might long ere now have had not only a full supply of sugar at moderate prices for our own use, but have had enough to spare for a foreign market.

Let us now examine how these expectations have been answered. In the year 1736, an Act was passed in *Jamaica*, which carried by its title the appearance of an intention to comply with the advice of the Board of Trade. It is to be seen among the printed Acts of *Jamaica* under No. 371, and is called, *An Act for introducing of White People in this Island, for subsisting them for a certain time, and providing them with land that they may become settlers*. But by the preamble it seems as if the scheme of this Act was rather to form a barrier against the rebellious negroes for the security of the old planters, than to encourage a general peopling of the Island with Whites, or to extend the cultivation thereof to any considerable degree.

It being remarkable that the lands appropriated by this Act for the new comers, were in two distinct parcels of 15,000 acres each, in places where barracks were to be built, consequently in the neighbourhood of the rebel negroes, where they would be under such disadvantages as might justly deter them, according to the observation of the Board of Trade, from settling upon them. And that this had no other view than to expose those new-comers to be the first destroyed by the negroes, in case they should not be able to defend themselves, is evident from a remark made upon it in the abridgment of the printed Acts: "See the last clause, wherein it is said of this act that it has several clauses in it giving great encouragement to new-comers." But the whole Act is for a temporary service, and has had its effect, and does not seem to be of any farther use.

It is therefore plain this Act was calculated only to form a barrier against the rebel negroes, this must be the temporary service; after which it did not seem of any further use. It was then of no use to adhere to the general principle laid down, of peopling the island with white inhabitants, or to encourage the cultivation of the vast tracts of the most fertile and best situated lands in this colony. This may be the opinion of those wealthy planters spoken of by the Commissioners, who are possessed of those tracts remaining uncultivated. But most certain it is *Great-Britain* suffers extremely every year by the non-cultivation of the lands of *Jamaica*, and is too often put to great difficulties to provide for the security of that island

when threatned with an invasion, because of its being so thinly peopled with white inhabitants.

In the year 1739, the Sugar-planters made application to Parliament for a direct exportation of sugar from the sugar-islands to foreign markets, without being obliged to bring them first to *Great-Britain*, alledging, that this indulgence would enable them to retrieve the foreign market then greatly on the decline, and got into the hands of the *French*. They succeeded in this application, tho' opposed by the manufacturers and others concerned in the sugar-trade in this country, from an apprehension, that it would be a means of inhancing the price of sugars upon *Great-Britain*. But the planters roundly asserting at the bar of the House their ability to supply all the foreign markets without raising the price at home, and that the *British* Sugar-islands could make more than treble the quantity of sugar they then did, they carried their point in Parliament. But how well the planters, particularly those of *Jamaica*, have made good what they undertook, may be judged of by the late application by petition to Parliament, in the last sessions but one, from a great and respectable member of the most eminent sugar refiners, grocers, and other dealers in sugar, in the cities of *London* and *Westminster*, and the Borough of *Southwark*. This petition, consisting of eleven distinct articles, has put the conduct of the sugar-planters in so strong a light, that nothing can be added to give weight to it. It is needless to mention what was done upon this petition, but it may not be amiss to observe, with what indignity the bulk of the petitioners were treated by the Great *Jamaica* Planter, who now offers himself to represent the city of *London* in Parliament.

Till the year 1752, nothing material pass'd further in Parliament relating to the peopling, strengthening, and improving the Island of *Jamaica*, when the late war, unhappily brought upon this country by the Smugglers from *Jamaica* to the *Spanish* Dominions in *America*, had been for some time at an end, (a war profitable to the Island of *Jamaica*, as all war with *Spain* is, tho' ruinous to *Great-Britain*) some gentlemen of the House of Commons thought it high time to enquire what had been done since the year 1734, towards the peopling, strengthening, and improving the Island of *Jamaica*; and the House addressed his Majesty, that the Commissioners for Trade and Plantations might be directed to make such enquiry, and lay the state of the whole before the House of Commons early in the next session; this was complied with, and the House, upon the 23d of *February* 1753, received the said report, together with a great number of papers serving as an appendix

to the said report. On the 8th of *March* following, the report was taken into consideration by a committee of the whole House, where the great Planter, now the candidate for *London*, exerted all his eloquence to defeat the intention of the inquiry; the Committee, nevertheless, came to several resolutions, which were reported next day, the 9th of *March*, and a bill was ordered to be brought in for the better peopling of the Island of *Jamaica* with white inhabitants, for encouraging the cultivation of lands at present uncultivated in that Island, and for making proper distribution of such lands. The resolutions being to be seen in the votes of the House of the 9th of *March*, it is needless to repeat them; a bill was brought in in consequence of these resolutions, but several circumstances concurring, which prevented this bill's being brought to perfection, the sessions, tho' drawn to a great length, ended without any thing farther being done, either to remedy the gross misconduct of the people of *Jamaica*, with regard to *Great-Britain*, or to redress the grievances complained of by the manufacturers and dealers in sugar living in *London*, *Westminster*, and *Southwark*. The change of the governors of *Jamaica* about that time; Mr. *Trelawney's* putting in, and staying a long time at *Lisbon*, on account of his bad state of health, while the sessions was running on; his being afterwards cast away, and losing many of his papers, together with a continuance of his disorder till his death, which followed in a little time, all conspired to prevent those, whose most immediate concern it was, to form the plan for doing what might be most proper to answer the end desired; to which may be added, that the Planter, the new candidate for *London*, instead of aiding, according to his duty, as a member of the *British Senate*, not only forbore to give any lights or assistance on this occasion, but continually thwarted the endeavours of others, and raised all the difficulties which could be invented; and particularly representing the Planters, in that Island, as the poorest and most miserable of his Majesty's subjects, who had exhausted what little they had by endeavouring to people and improve the Island, and supporting the fortifications, and that in short they were unable to do more.

In the last session nothing further was named about *Jamaica*; but it is to be hoped it will be taken into consideration by the new parliament with a due spirit, to make that island of a more solid advantage to its mother-country than it has hitherto been, and to make it less burthensome, should we hereafter have the misfortune to enter upon a new war with any power whatsoever.

Before this be finish'd, it is hoped it may not be too tiresome to take notice of two or three facts set forth by the Commissioners in the enquiry; one is as to the quantity of land cultivated and uncultivated in the Island of *Jamaica*: It says the island contains, according to the exactest computation made by the best surveyors, 3,840,000 acres;

Of which suppose $\frac{4}{10}$ to be inaccessible, mountainous, rocky and barren lands, which is a very large allowance,	Acres.
that would be 1706,664, says the enquiry, but is	1,536,000
And there would be of good plantable land	2,304,000
Of which there is patented	<u>1,500,000</u>
Remains of plantable land not yet taken up	804,000
And that, as it was judg'd that not above 500,000 of what was patented was occupied, and that not fully cultivated, there remains of lands patented, but neither occupied nor cultivated	1,000,000
So that there is at this time in <i>Jamaica</i> of good plantable lands uncultivated	1,804,000

The most remote of which form a barcadier, or place for landing and shipping goods, if proper roads were made, is nothing near so far as what several estates in *Clarendon*, and other parts are, and the greatest part of it, especially that part that is patented is conveniently and well enough situated.

A second is as to the success of the endeavours of the Council and Assembly to increase the number of white inhabitants. The enquiry sets forth, that upon the whole one hundred and three Families have been introduc'd by virtue of the above mention'd act in 1736, and by the acts passed in 1743, 1748, and 1750, which cost the publick *l.* 11425: 16: 19; and that there had been thirty-three Families, and seventeen artificers introduc'd by virtue of the act pass'd in 1749, which cost the people of *Jamaica* 7000 *l.* The printed acts go no further than 1737; it may not therefore be amiss to enumerate some of the species of artificers recommended to be introduc'd by this act of 1749, which gave the greatest encouragement of any to new-comers; among them are copper-smiths, harness-makers, taylors, peruke-makers, shoe-makers, sadlers, and sugar bakers. This enticing our artificers from us by great rewards, does not look as if they had the interest of *Great-Britain* so much at heart as they have that of *Jamaica*.

Another, is the unnatural discouragement they have given to the consumption of *British* manufactures, and the produce of the countries, whose sovereigns are generally in friendship with *England*; as also, even to the *British* navigation.

Among the printed laws under No. 271, passed in 1728, and still in force, the following duties are laid:

	l.	s.	d.	
On refined sugar, <i>per</i> pound	0	0	6	
On beer in cask or bottles, <i>per</i> tun	2	0	0	
On mum or metheglin, <i>per</i> ditto	3	0	0	
On <i>French</i> wine, <i>per</i> ditto only	5	0	0	
On wine from the Western-islands subject to Portugal	12	0	0	} <i>per</i> do.
On <i>Madeira</i> wine subject to ditto	6	0	0	<i>per</i> do.
On <i>Spanish</i> wine, <i>per</i> ditto	6	0	0	

Besides these partial duties there are others of a more pernicious nature, *viz.*

On some useful commodities with which we are with difficulty supplied from other parts; one of which is indigo, which the law of *Great-Britain* admits free of duty, though brought to *Europe* from foreign colonies on foreign bottoms. Nevertheless, if it be introduced from foreign colonies to *Jamaica*, to come from thence in *British* bottoms, it must pay at *Jamaica* 3 *d.* *per* pound. This is the more insolent, as of late the people of *Jamaica* have thrown up the raising of indigo. Cocoa, if it comes through *Jamaica*, to be brought from thence on our own bottoms, leaves at *Jamaica*, if imported in vessels belonging to that island, a duty of 15 *s.* *per* C. but if in *British*, or any other ship, it pays a duty of 20 *s.* *per* C. Cotton, a material so necessary to a valuable manufacture, and of which we are scantily supplied, if it comes through *Jamaica*, leaves a duty there of 3 *d.* *per* pound: And every ship coming to *Jamaica* from the northward of the tropick of Cancer, which includes every ship belonging to *Great-Britain*, but not one belonging to the sugar-islands, is to pay one pound of gunpowder for every ton. Other instances might be given to prove the personal interest of a rich planter at *Jamaica* is contrary to the interest of every true Briton, whether in a national or a personal light; but this piece is already extended beyond what was at first proposed.

Stephen Hopkins,
A True Representation of the Plan
Formed at Albany, for Uniting
All the British Northern Colonies
(Newport, 1755)



AT THE BEGINNING of the Seven Years' War, metropolitan authorities directed the governor of the colonies from Pennsylvania north to send commissioners to Albany in July 1754 to coordinate the defense of the British colonies. Without explicit authorization from their respective colonies, these delegates proposed a plan of union to be implemented by act of the British Parliament for the combination of all of the British North American colonies into "One General Government . . . within and under which Government, each Colony" could "retain its present Constitution, except in the Particulars wherein a change" might "be directed by" the Parliamentary act. Reluctant to accept any measures that encroached upon their customary autonomy, no colonial legislature ever approved this union, and Parliament never tried to implement it. Nonetheless, people in several colonies regarded the union as "hurtful and Destructive of our Liberties," and some used it in a partisan fashion against political opponents who had had a role in formulating it. This was particularly true in Rhode Island, where two warring factions, one representing Providence interests and the other Newport interests, headed respectively by Stephen Hopkins and Samuel Ward, had long vied with one another for political dominance. In this selection, Hopkins sought to combat the verbal charge, circulating in the colony, that he and his colleagues had exceeded their mandate and violated their trust

in consenting to a plan that was “contrary to, and subversive of our Constitution, and all those valuable Privileges we enjoy under it.” He denied the charge that he was an exponent of the plan and blamed his opponents, who dominated the governorship and council, for the legislature’s failure to consider it. (J.P.G.)

A true Representation of the Plan formed at Albany, for uniting all the British Northern Colonies, in order to their common Safety and Defence; containing Abstracts of the Authorities given by the several Governments to their Commissioners; and of several Letters from the Secretaries of State, and Lords Commissioners for Trade and Plantations, concerning such an Union: Together with a Representation of the State of the English and French Colonies in North-America; and the said Plan of Union, with the Doings of the Commissioners thereon; and some Remarks on the whole.

PARAGRAPH in the Commission given by the Honorable *William Greene*, Esq; Governor of the Colony of *Rhode-Island*, to their Commissioners.

I do therefore, by Virtue of an Act of the General Assembly of this Colony, authorize, impower, and commissionate you, the said *Stephen Hopkins* and *Martin Howard*, jun. forthwith to repair to *Albany* aforesaid, and there, in Behalf of this Colony, to meet and join with the other Commissioners, in consulting what Methods are proper to be used, to preserve the Friendship of the aforesaid *Six Nations of Indians*, and their Attachment to the *British* Interest in *America*. And also, what else may be necessary, to prohibit the *French*, and their Allies the *Indians*, from encroaching on the Lands within the Dominions of His Majesty. And in general, as far as the Abilities of this Government will permit, to act in Conjunction with the said Commissioners, in every Thing necessary for the Good of His Majesty's Subjects in those Parts. And to answer as far as we can, the Designs of His Majesty's Instructions to this Colony, communicated to us by the Earl of *Holderness*.

PARAGRAPH in the Commission given by his Excellency *William Shirley*, Esq; Governor of the Province of the *Massachusetts-Bay*, to their Commissioners.

And whereas, the Great and General Court or Assembly of the Province of the *Massachusetts-Bay* aforesaid, have elected and appointed you to represent and appear for the said Province, at the Convention aforesaid, for the Purposes above-mentioned. As also, for entering into Articles of Union and Confederation, with the aforesaid Governments, for the general Defence of His Majesty's Subjects and Interests in *North-America*, as well in Times of Peace as War.

PARAGRAPH in the Commission given by the Honorable *Thomas Fitch*, Esq; Governor of the Colony of *Connecticut*, to their Commissioners.

Therefore in Pursuance of the said Act of Assembly, you the said *William Pitkin*, *Roger Walcot*, jun. and *Elisha Williams*, Esqrs. are commissioned, authorized, and impowered, in Behalf of His Majesty's Colony of *Connecticut*, to meet the Commissioners appointed by His Majesty's other Governments in *America*, at *Albany*, on the 14th of *June* next; and in Concert with such Commissioners, from His Majesty's other Governments, as shall meet there, to consult proper Measures for the general Defence and Safety of His Majesty's Subjects in said Governments, and the *Indians* in his Alliance, against the *French*, and their *Indians*: And to use and pursue proper Measures in Pursuance of your Instructions from the said General Assembly, relating the Matter aforesaid.

PARAGRAPH in the Commission given by the Honorable *Horatio Sharpe*, Esq; Lieutenant Governor of the Province of *Maryland*, to their Commissioners.

And whereas, I have had Intimation, that the Commissioners from the several neighbouring Colonies, will receive Instructions from their respective Governments, to concert Measures with the Commissioners from the other Provinces, for the better securing these *Indians* for the future, in our Alliance, and preventing their being alienated from our Interest, by the Artifices or Insinuations of our Enemies, as well as for the more easy Defence of His Majesty's Dominions on this Continent. You

shall, if any Propositions of that Nature are made by the Commissioners, in Behalf of their respective Governments, let them know, that this Province is also disposed to contribute to the Execution of any general Scheme to promote such desirable Ends.

PARAGRAPH of a Letter from the Earl of *Holderness*, one of His Majesty's Principal Secretaries of State; dated at *Whitehall*, the 28th of *August*, 1753, directed to the Governor and Company of *Rhode-Island*.

And whereas, it may be greatly conducive to His Majesty's Service, that all his Provinces in *America*, should be aiding and assisting each other, in Case of any Invasion: I have it particularly in Charge from His Majesty, to acquaint you, That it is His Royal Will and Pleasure, that you should keep up an exact Correspondence with all His Majesty's Governors on the Continent.

Two Paragraphs of a Letter from the Right Honorable the Lords Commissioners for Trade and Plantations; dated at *Whitehall*, the 18th of *September*, 1753, directed to Sir *Danvers Osborne*, Governor of *New-York*, and laid before the Commissioners at *Albany*.

When we consider of how great Consequence the Friendship and Alliance of the *Six Nations* is, to all His Majesty's Colonies and Plantations in *America* in general, as well as to *New-York* in particular: When we consider, that this Friendship and Alliance is only to be gained and preserved by making Presents to them at proper Times, and upon proper Occasions; and by an inviolable Observance of all our Engagements with them: And when we recollect the Attempts which have been lately made, to withdraw them from the *British* Interest, we cannot but be greatly concerned and surprized, that the Province of *New-York* should have been so inattentive to the general Interest of His Majesty's Subjects in *America*, as well as to their own particular Security, as to have given Occasion to the Complaints made by the *Indians*; but we are still more surprized, at the Manner in which these Complaints were received, the dissatisfactory Answers given to the *Indians*, and at their being suffered to depart (tho' the Assembly was then sitting) without any Measures taken to bring them to Temper, or to redress their Complaints.—And this leads us to recommend one Thing more to your Attention, and that is, to take Care, that all the

Provinces be (if practicable) comprised in one General Treaty, to be made in His Majesty's Name; it appearing to us, that the Practice of each Province making a separate Treaty for itself, in its own Name, is very improper, and may be attended with great Inconveniency to His Majesty's Subjects.

PARAGRAPH of a Letter from Sir *Thomas Robinson*, one of His Majesty's Principal Secretaries of State; dated *Whitehall*, the 5th of *July*, 1754. directed to the Governor and Company of *Rhode-Island*.

Although you have neglected to give any Answer to the Earl of *Holderness's* Letter of the 28th of *August* last, yet as I cannot doubt of your Receipt of that Letter, wherein the King's Orders were signified to you, not only to act vigorously in Defence of your Government, but to be likewise aiding and assisting His Majesty's other Colonies in *America*, to repel any hostile Attempts made against them; I am now, by the King's express Command, to enforce to you the said Directions, in the strongest Manner, and to acquaint you, that His Majesty expects your immediate Observance of them.

Two Paragraphs of a Letter from the same Sir *Thomas Robinson*; dated at *Whitehall*, the 26th of *October*, 1754. directed to the Governor and Company of *Rhode-Island*.

And cannot fail to excite you to exert yourself, and those under your Care, to take the most vigorous Steps to repel your common Danger, and to shew that the King's Orders which were sent you last Year by the Earl of *Holderness*, and were renewed to you in my Letter of the 5th of *July*, have at last roused that Emulation and Spirit that every Man owes at this Time to His Majesty, the Public, and himself.—But with Regard to such other Articles which are of a more general Concern, It is His Majesty's Pleasure, That the same should be supplied by a common Fund, to be established for the Benefit of all the Colonies collectively, in *North-America*: For which Purpose, you will use your utmost Endeavours, to induce the Assembly of your Province, to raise forthwith as large a Sum as can be afforded, as their Contribution to this common Fund, to be employed provisionally, for the general Service of *North-America*, (particularly for paying the Charge of levying the Troops to make up the Complement of

the Regiments above-mentioned) until such Time as a Plan of general Union of His Majesty's Northern Colonies, for their common Defence, can be perfected.

At a MEETING, &c. on Tuesday, 9th July, 1754.

PRESENT,

The Hon. the Lieutenant GOVERNOR of *New-York*, and the Four
GENTLEMEN of the Council of
New-York:

And all the COMMISSIONERS, except
Mr. FRANKLIN, absent by his Appointment
in the Morning.

The Draught of the Representation, &c. was read and considered, Paragraph by Paragraph, some Amendments made, and the whole was agreed to, and ordered to be minuted as follows.

That His Majesty's Title to the Northern Continent of *America*, appears to be founded on the Discovery thereof first made, and the Possession thereof first taken in 1497, under a Commission from *Henry* the VIIth of *England*, to *Sebastian Cabot*.

That the *French* have possessed themselves of several Parts of this Continent, which by Treaties, have been ceded and confirmed to them: That the Rights of the *English* to the whole Sea Coast, from *Georgia* on the South, to the River *St. Lawrence* on the North, excepting the Island of *Cape-Breton* in the Bay of *St. Lawrence*, remains plain and indisputable.

That all the Lands or Countries Westward from the *Atlantic Ocean* to the *South Sea*, between 48 and 34 Degrees of North Latitude, were expressly included in the Grant of King *James* the First, to divers of his Subjects, so long since, as the Year 1606, and afterwards confirmed in 1620; and under this Grant, the Colony of *Virginia* claims an Extent as far West as to the *South Sea*; and the antient Colonies of the *Massachusetts-Bay* and *Connecticut*, were by their respective Charters, made to extend to the said *South Sea*; so that not only the Right to the Sea Coast, but to all the Inland Countries, from Sea to Sea, have at all Times been asserted by the Crown of *England*.

That the Province of *Nova-Scotia* or *Accadia*, hath known and determinate Bounds, by the original Grant from King *James* the First; and that there is abundant Evidence of the same, and of the Knowledge which the *French* had of these Bounds, while they were in Possession of it; and that these Bounds being thus known, the said Province by the Treaty of *Utrecht*, according to its antient Limits, was ceded to *Great-Britain*, and remained in Possession thereof, until the Treaty of *Aix la Chapelle*, by which it was confirmed; but by said Treaty it is stipulated, That the Bounds of the said Province shall be determined by Commissioners, &c.

That by the Treaty of *Utrecht*, the Country of the *Five Cantons* of the *Iroquoise*, is expressly acknowledged to be under the Dominion of the Crown of *Great-Britain*.

That the *Lake Champlain*, formerly called *Lake Iroquoise*, and the Country Southward of it, as far as the *Dutch* or *English* Settlements, the *Lake Ontario*, *Erie*, and all the Countries adjacent, have by all antient Authors, *French* and *English*, been allowed to belong to the *Five Cantons* or *Nations*; and the whole of those Countries, long before the said Treaty of *Utrecht*, were by the said *Nations*, put under the Protection of the Crown of *Great-Britain*.

That by the Treaty of *Utrecht*, there is a Reserve to the *French*, a Liberty of frequenting the Countries of the *Five Nations*, and other *Indians* in Friendship with *Great-Britain*, for the Sake of Commerce; as there is also to the *English*, a Liberty of frequenting the Countries of those in Friendship with *France*, for the same Purpose.

That after the Treaty of *Utrecht*, the *French* built several Fortresses in the Country of the *Five Nations*, and a very strong one at a Place called *Crown-Point*, to the South of the *Lake Champlain*.

That the *French* Court have evidently, since the Treaty of *Aix la Chapelle*, made this Northern Continent more than ever, the Object of its Attention.

That the *French* have most unjustly taken Possession of a Part of the Province of *Nova-Scotia*; and in the River *St. John's*, and other Parts of said Province, they have built strong Fortresses; and from this River they will have, during the Winter and Spring Season, a much easier Communication between *France* and *Canada*, than they have heretofore had, and will be furnished with a Harbour more commodiously situated for the Annoying the *British* Colonies by Privateers and Men of War, than *Louisbourg* itself.

That they have taken Possession of, and begun a Settlement at the Head of the River *Kennebeck*, within the Bounds of the Province of *Main*, the most convenient Situation for affording Support, and a safe Retreat, to the *Eastern Indians*, in any of their Attempts upon the Governments of *New-England*.

That it appears by the Information of the Natives, the *French* have been making Preparations for another Settlement, at a Place called *Cohass*, on *Connecticut River*, near the Head thereof, where 'tis but about ten Miles distant from a Branch of *Merrimack River*; and from whence, there is a very near and easy Communication with the *Abnekais Indians*, who are settled on the River *St. Francois*, about forty Miles from the River *St. Lawrence*; and it is certain, the Inhabitants of *New-Hampshire*, in which Province this *Cohass* is supposed to lie, have been interrupted and impeded by the *French Indians*, from making any Settlement there.

That since the Treaty of *Aix la Chapelle*, the *French* have increased the Number of their Forts in the Country of the great Lakes, and on the Rivers which run into the *Mississippi*, and are securing a Communication between the two Colonies of *Louisiana* and *Canada*, and at the same Time, putting themselves into a Capacity of annoying the Southern *British Colonies*, and preventing any further Settlements of His Majesty's Dominions.

That they have been gradually increasing their Troops in *America*, transporting them in their Ships of War, which return to *France* with a bare Complement of Men, leaving the rest in their Colonies; and by this Means, they are less observed by the Powers of *Europe*, than they would be, if Transports as usual heretofore, were provided for this Purpose.

That they have taken Prisoners diverse of His Majesty's Subjects, trading in the Country of the *Iroquoise*, and other inland Parts, and plundered such Prisoners of several Thousand Pounds Sterling; and they are continually exciting the *Indians* to destroy or make Prisoners the Inhabitants of the Frontiers of the *British Colonies*; which Prisoners are carried to *Canada*, and a Price equal to what Slaves are sold in the Plantations, is demanded for their Redemption and Release.

That they are continually drawing off the *Indians* from the *British* Interest, and have lately perswaded one Half of the *Onondago* Tribe, with many from the other Nations along with them, to remove to a Place

called *Oswegachie*, on the River *Cadaracqui*, where they have built them a Church and Fort; and many of the *Senecas*, the most numerous Nation, appear to be wavering, and rather inclined to the *French*. And it is a melancholy Consideration, that not more than 150 Men of all the several Nations, have attended this Treaty, altho' they had Notice, that all the Governments would be here by their Commissioners, and that a large Present would be given.

That it is the evident Design of the *French* to surround the *British* Colonies, to fortify themselves on the Back thereof, to take and keep Possession of the Heads of all the important Rivers, to draw over the *Indians* to their Interest, and with the Help of such *Indians*, added to such Forces as are already arrived, and may be hereafter sent from *Europe*, to be in a Capacity of making a general Attack upon the several Governments; and if at the same Time, a strong Naval Force be sent from *France*, there is the utmost Danger, that the whole Continent will be subjected to that Crown: And that the Danger of such a Naval Force is not meerly imaginary, may be argued from past Experience. For had it not been by the most extraordinary Interposition of Heaven, every Sea Port Town on the Continent, in the Year 1746, might have been ravaged and destroyed, by the Squadron under the Command of the Duke *D'Anville*, notwithstanding the then declining State of the *French*, and the very flourishing State of the *British* Navy, and the further Advantage accruing to the *English*, from the Possession of *Cape-Breton*.

That the *French* find by Experience, they are able to make greater and more secure Advantages upon their Neighbours, in Peace than in War. What they unjustly possessed themselves of, after the Peace of *Utrecht*, they now pretend they have a Right to hold, by Virtue of the Treaty of *Aix la Chapelle*, until the true Boundary between the *English* and *French* be settled by Commissioners; but their Conquests made during War, they have been obliged to restore.

That the *French* Affairs relative to this Continent, are under one Direction, and constantly regarded by the Crown and Ministry, who are not insensible how great a Stride they would make towards an Universal Monarchy, if the *British* Colonies were added to their Dominions, and consequently the whole Trade of *North-America* engrossed by them.

That the said Colonies being in a divided, disunited State, there has never been any joint Exertion of their Force, or Council, to repel or

defeat the Measures of the *French*; and particular Colonies are unable and unwilling to maintain the Cause of the whole.

That there has been a very great Neglect of the Affairs of the *Iroquoise*, as they are commonly called, *the Indians of the Six Nations*, and their Friendship and Alliance has been improved to private Purposes, for the Sake of the Trade with them, and the Purchase or Acquisition of their Lands, more than the Public Services.

That they are supplied with Rum by the Traders, in vast and almost incredible Quantities; the Laws of the Colonies now in Force, being insufficient to restrain the Supply. And the *Indians* of every Nation, are frequently drunk, and abused in their Trade, and their Affection thereby alienated from the *English*; they often wound and murder one another in their Liquor, and to avoid Revenge, fly to the *French*; and perhaps more have been lost by these Means, than by the *French* Artifice.

That Purchases of Land from the *Indians* by private Persons, for small trifling Considerations, have been the Cause of great Uneasiness and Discontents; and if the *Indians* are not in fact imposed on and injured, yet they are apt to think they have been; and indeed, they appear not fit to be entrusted at Large, with the Sale of their own Lands: And the Laws of some of the Colonies, which make such Sales void, unless the Allowance of the Government be first obtained, seem to be well founded.

That the Granting or Patenting vast Tracts of Land to private Persons or Companies, without Conditions of speedy Settlements, has tended to prevent the Strengthening the Frontiers of the particular Colony where such Tracts lie, and been Prejudicial to the rest.

That it seems absolutely necessary, that speedy and effectual Measures be taken, to secure the Colonies from the Slavery they are threatned with; that any farther Advances of the *French* should be prevented; and the Encroachments already made, removed.

That the *Indians* in Alliance or Friendship with the *English*, be constantly regarded under some wise Direction or Superintendancy. That Endeavours be used for the Recovery of those *Indians* who are lately gone over to the *French*, and for securing those that remain. That some discreet Person or Persons be appointed to reside constantly among each Nation of *Indians*; such Person to have no Concern in Trade, and duly to communicate all Advices to the Superintendants.

That the Trade with the said *Indians* be well regulated, and made subservient to the Public Interest, more than to private Gain.

That there be Forts built for the Security of each Nation, and the better carrying on the Trade with them. That warlike Vessels be provided, sufficient to maintain His Majesty's Right to a free Navigation on the several Lakes.

That all future Purchases of Lands from the *Indians* be void, unless made by the Government where such Lands lie, and from the *Indians* in a Body, in their public Councils. That the Patentees or Possessors of large unsettled Territories, be enjoined to cause them to be settled in a reasonable Time, on Pain of Forfeiture.

That the Complaints of the *Indians*, relative to any Grants or Possessions of their Lands, fraudulently obtained, be inquired into, and all Injuries redressed.

That the Bounds of those Colonies which extend to the *South Seas*, be contracted and limited by the *Alleghenny* or *Apalachian* Mountains; and that Measures be taken, for settling from time to time, Colonies of His Majesty's Protestant Subjects, Westward of said Mountains, in convenient Cantons, to be assigned for that Purpose. And finally, that there be an Union of His Majesty's several Governments on the Continent, that so their Councils, Treasure, and Strength, may be employed in due Proportion, against their common Enemy.

ALL which is submitted.

At a MEETING in the Court-House at *Albany*,
on *Wednesday*, the 10th of *July*, 1754. P. M.

PRESENT,

The Hon. JAMES DE LANCEY, Esq; Lieutenant Governor of the Province of *New-York*: *Joseph Murray*, *William Johnson*, *John Chambers*, and *William Smith*, Esqrs. of the Council of the said Province of *New-York*.

COMMISSIONERS for the several Governments.

Samuel Wells, *John Chandler*, *Thomas Hutchinson*, *Oliver Partridge*, and *John Worthington*, Esqrs. for the *Massachusetts*.

Theodore Atkinson, *Richard Wibird*, *Meshec Weare*, and *Henry Sherburne*, jun. Esqrs. for *New-Hampshire*.

William Pitkin, *Roger Wolcot*, jun. and *Elisha Williams*, Esqrs. for *Connecticut*.

Stephen Hopkins and *Martin Howard*, jun. Esqrs. for *Rhode-Island*.

*Benjamin Tasker, jun. and Abraham Barnes, Esqrs. for Maryland.
John Penn, Richard Peters, Isaac Norris, and Benjamin Franklin, Esqrs.
for Pennsylvania.*

The Consideration of the Plan of an Union was resumed; which Plan is as follows.

Plan of a proposed Union of the several Colonies of *Massachusetts-Bay, New-Hampshire, Connecticut, Rhode-Island, New-York, New-Jersey, Pennsylvania, Maryland, Virginia, North-Carolina, and South-Carolina*, for their mutual Defence and Security, and for the Extending the *British Settlements in NORTH-AMERICA*.

That humble Application be made for an Act of the Parliament of *Great-Britain*, by Virtue of which, One General Government may be formed in *America*, including all the said Colonies; within and under which Government, each Colony may retain its present Constitution, except in the Particulars wherein a Change may be directed by the said Act, as hereafter follows.

That the said General Government be administred by a President General, to be appointed and supported by the Crown; and a Grand Council, to be chosen by the Representatives of the People of the several Colonies, met in their respective Assemblies.

That within Months after the Passing of such Act, the House of Representatives in the several Assemblies, that happen to be sitting within that Time, or that shall be especially for that Purpose convened, may and shall chuse Members for the Grand Council, in the following Proportions; *that is to say*:

Massachusetts-Bay,	7	Pennsylvania,	6
New-Hampshire,	2	Maryland,	4
Connecticut,	5	Virginia,	7
Rhode-Island,	2	North-Carolina,	4
New-York,	4	South-Carolina,	4
New-Jersey,	3	—	—
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Who shall meet for the first Time at the City of *Philadelphia* in *Pennsylvania*, being called by the President General, as soon as conveniently may be, after his Appointment.

That there shall be a new Election of Members for the Grand Council every three Years; and on the Death or Resignation of any Member, his Place shall be supplied by a new Choice, at the next Sitting of the Assembly of the Colony he represented.

That after the first three Years, when the Proportion of Money arising out of each Colony to the General Treasury, can be known, the Number of Members to be chosen for each Colony, shall from time to time, in all ensuing Elections, be regulated by that Proportion (yet so as that the Number to be chosen by any one Province, be not more than seven, nor less than two).

That the Grand Council shall meet once in every Year, and oftener if Occasion require, at such Time and Place as they shall adjourn to at the last preceding Meeting, or as they shall be called to meet at, by the President General on any Emergency; he having first obtained in writing, the Consent of seven of the Members to such Call, and sent due and timely Notice to the whole.

That the Grand Council have Power to chuse their Speaker, and shall neither be dissolved, prorogued, nor continue sitting longer than six Weeks at one Time, without their own Consent, or the special Command of the Crown.

That the Members of the Grand Council shall be allowed for their Service, *Ten Shillings Sterling per Diem*, during their Session and Journey to and from the Place of Meeting, twenty Miles to be reckoned a Day's Journey.

That the Assent of the President General be requisite to all Acts of the Grand Council; and that it be his Office and Duty to cause them to be carried into Execution.

That the President General, with the Advice of the Grand Council, hold or direct all *Indian* Treaties, in which the general Interest or Welfare of the Colonies may be concerned; and to make Peace or declare War with *Indian* Nations. That they make such Laws as they judge necessary for regulating all *Indian* Trade. That they make all Purchases from *Indians* for the Crown, of the Lands now not within the Bounds of particular Colonies, or that shall not be within their Bounds, when some of them are reduced to more convenient Dimensions. That they make new Settlements on such Purchases, by granting Lands in the King's Name, reserving a Quit-Rent to the Crown for the Use of the General Treasury.

That they make Laws for regulating and governing such new Settlements, 'till the Crown shall think fit to form them into particular Governments.

That they may raise and pay Soldiers, and build Forts for the Defence of any of the Colonies, and equip Vessels of Force to guard the Coast, and protect the Trade on the Ocean, Lakes, or great Rivers; but they shall not impress Men in any Colony, without the Consent of its Legislature.

That for those Purposes, they have Power to make Laws, and lay and levy such general Duties, Imposts, or Taxes, as to themselves appear most equal and just, considering the Ability and other Circumstances of the Inhabitants in the several Colonies, and such as may be collected with the least Inconvenience to the People; rather discouraging Luxury, than loading Industry with unnecessary Burthens.

That they may appoint a general Treasurer and a particular Treasurer in each Government, when necessary; and from time to time, may order the Sums in the Treasuries of each Government, into the General Treasury, or draw on them for special Payments, as they find most convenient; yet no Money to issue, but by joint Orders of the President General and Grand Council, except where Sums have been appropriated to particular Purposes, and the President General is previously empowered by an Act, to draw for such Sums.

That the general Accounts shall be yearly settled, and reported to the several Assemblies.

That a Quorum of the Grand Council, empowered to act with the President General, do consist of Twenty-five Members; among whom, there shall be one or more from a Majority of the Colonies.

That the Laws made by them for the Purposes aforesaid, shall not be repugnant, but as near as may be agreeable, to the Laws of *England*, and shall be transmitted to the King in Council, for Approbation, as soon as may be, after their passing; and if not disapproved within three Years after Presentation, to remain in Force.

That in Case of the Death of the President General, the Speaker of the Grand Council for the Time being, shall succeed, and be vested with the same Power and Authorities, and continue 'till the King's Pleasure be known.

That all Military Commission Officers, whether for Land or Sea Service, to act under this General Constitution, be nominated by the President General, but the approbation of the Grand Council is to be obtained, before

they receive their Commissions. And all Civil Officers are to be nominated by the Grand Council, and to receive the President General's Approbation, before they officiate. But in Case of Vacancy, by Death or Removal of any Officer, Civil or Military, under this Constitution, the Governor of the Provinces in which such Vacancy happens, may appoint, 'till the Pleasure of the President General and Grand Council can be known.

That the particular Military as well as Civil Establishments in each Colony, remain in their present State, this General Constitution notwithstanding; and that of sudden Emergencies, any Colony may defend itself, and lay the Accounts of Expence thence arisen, before the President General and Grand Council, who may allow and order Payment of the same, as far as they judge such Accounts just and reasonable.

After DEBATE on the foregoing PLAN:

RESOLVED, That the Commissioners from the several Governments, be desired to lay the same before their respective Constituents, for their Consideration; and that the Secretary to this Board, transmit a Copy thereof, with this Vote thereon, to the Governor of each of the Colonies, which have not sent their Commissioners to this Congress.

ORDERED, That all His Majesty's Governments on this Continent may have Liberty from time to time, to take Copies of the Proceedings of this Congress, or any Parts thereof, paying for the same; and that no other Copies be delivered by the Secretary.

Thus having seen Abstracts of the Authorities given the Commissioners who were at *Albany*, and of those Letters from the Crown, which occasioned such Authorities to be given; together with the State of the *British* and *French* Colonies in *America* and the proposed Plan of Union, formed in Consequence of the whole: From an impartial View thereof, let every Man judge. Whether it was not the Intent of all the Colonies who sent Commissioners, that they should form some *General Scheme* or *Plan*, for the Safety and Defence of the *English* Colonies, and the *Indians* in their Alliance? Look into the Commission from Governor *Greene*; and after full Powers are given to do every Thing relative to the *Indians* in Alliance with us, What mean these following Words?

And also, *what else may be necessary* to prohibit the *French*, and their Allies the *Indians*, from encroaching on the Lands within the Dominions

of His Majesty. And in general, as far as the Abilities of this Government will permit, to *act in Conjunction* with the said Commissioners, in every Thing necessary for the Good of His Majesty's Subjects in these Parts. And to answer as far as we can, the Designs of His Majesty's Instructions to this Colony, communicated to us by the Earl of *Holderness*.

Surely such Words as these, have some Meaning; and if the Commissioners were so unhappy as quite to mistake their Meaning, let those penetrating Wits who think so, shew to the World, how they are to be understood. But if those Authorities were too extensive, let them be blamed who gave such Authorities, and not those who executed them in the most sparing Manner possible. And will any Man believe, such exact Likeness in Substance, should be in the Authorities given by every Government to their Commissioners, without having any Conference together about it, if the Directions from the Crown had not pointed it out to them in so plain a Manner, that they all understood them alike? And is it not as plain, from the Letters since received from the Secretaries of State, that they all understood them in the Sense the King intended them?

Altho' all this were allowed, yet some may say, If you had Powers given you to enter into some such General Scheme, you ought not to have consented to one so hurtful and destructive of our Liberties as this is! Whether the Plan formed at *Albany*, be a good one, or a bad one, I shall not undertake to determin; yet let it be considered, that the *Rhode-Island* Commissioners were but two of the whole Number, and therefore were far from being able to govern or form Things as they might think best; neither did they ever pretend they could not be mistaken; and Errors of Judgment will always be forgiven by Men of Candor.

And now let us examin what the Commissioners did relating to this Plan, and we shall find, they did no more than form it, and agree to lay it before the General Assemblies of the Colonies from whence they came, for their Consideration. They did not, as is falsly asserted, order it to be sent Home. They did not establish it as an Act or Ordinance of the Board of Commissioners, as they all might have done, by the Authorities given them. They did not leave it in the Power of any one to obtain a Copy of it, and send it Home; but strictly forbid their Secretary to give any Copy, except to the Colonies. Nor did they ever agree to any Thing more, than to carry it to their respective Governments, and lay it before

their Constituents. And agreeable to the Resolve of the Board of Commissioners, those from *Rhode-Island*, did lay this Plan, with all other their Proceedings at *Albany*, before the General Assembly, at their Session in *August* last, for their Consideration. Was this criminal! Was this betraying their Trust! Or was there any Thing more in this, than their Duty! Even Envy and Ignorance joined together, cannot say there was! And those who have been bold enough to assert, That any Thing more relating to this Plan of Union was done, suffered to be done, or connived at, by the Commissioners, are hereby publicly called upon to prove their Assertions, or confess their Falshood.

Once more, let us hold up this so much talked of, *Plan of Union* and view it in another Light: And here, to do my Adversaries all the Justice they can possibly desire, I will, for Argument sake, confess it to be as bad as they represent it to be. Viewing it in this Light, it must be found contrary to, and subversive of our happy Constitution, and all those valuable Privileges we enjoy under it. This destructive Plan was laid before the General Assembly, for their Consideration, in the Month of *August* last: This gave an Opportunity to those Patriots belonging to the Council, who now say so much against this Plan, to have exerted themselves in Defence of our Liberties, so much in Danger, and prevented the dismal Effects so much feared. Well! What have these Champions for Liberty, done in this Matter? Have they not let it lie before the Assembly between six and seven Months, without taking it once under Consideration? Or, Have they ever rejected it? or so much as once in all this Time, moved to have one Word wrote Home, to prevent its taking Place? Was it bad, as they say 'tis, then certainly 'twas their Duty to have done all in their Power to prevent its taking Effect. All Men must confess, the Plan was either good or bad; if 'twas good, Why do they blame it? if 'twas bad, Why have they done Nothing about it?

Now, let every sober-minded Man determin, Whether these Men can be real Friends to the Colony, who placed in the foremost Offices, and intrusted with its Safety, could let a Thing so dangerous to its Interest, lie unobserved by the General Assembly, near seven Months, 'till perhaps it may be too late to prevent it? And then to serve a private Party Turn, suddenly to roar out, *The Colony is in Danger!* All who have Eyes, will see thro' such thin Disguises, and be assured, that the Designs of these Men, are only to blast the Reputation of one of the *Rhode-Island* Commissioners,

who at present may seem to stand in their Way; and not to do the Colony any Service; for if that had been the Case, they would have told us these Things sooner.

What could the Commissioners for *Rhode-Island* have done more? or what could they have done less than they did, relative to this Plan? It was not in their Power to procure a better; and whether it was good or bad, it was equally their Duty to lay it before the Assembly who sent them: They did so, and did no more; and every Member of both Houses of Assembly can bear Witness, I have never used the least Endeavour to induce them to accede to it. If it is bad, as some are pleas'd to represent it, Must not every Man say, They who have suffered it to lie thus long, are the very Men who have betrayed their Trust, and the Interest of the Colony?

Real want of Merit, occasions these Men's Endeavour to rise upon the Ruin of their Neighbour's Reputation. But can the Faults of my Neighbour, make me sit for an Office? And can the valuable Privileges of this Colony be safe in those Hands, where every Thing else seems to be neglected, but what will serve their private Purposes? As I am a Candidate for an Office, I sincerely desire all Men may put their Country's Interest in the first Place, and give their Votes only where they think 'tis most safe; and assure themselves, such a Conduct will perfectly please the Colony's, and their Friend,

Stephen Hopkins.

Providence, March 20. 1755.

“Philolethes” [Samuel Ward],
A Short Reply to
Mr. Stephen Hopkins’s Vindication
(Newport, 1755)



SIGNING HIMSELF Philolethes, Hopkins’s rival, Samuel Ward, hit back hard in this answer to Hopkins’s pamphlet. Questioning whether the suggestion for such a plan of union came from Crown officials in London, Ward declared that the plan was “contrary to *Magna Charta*” and expressed his opposition to “a Plan, which, the Instant it was established, would revoke all His Majesty’s Governor[']s Commissions in *North-America*, and destroy every Charter, by erecting a Power above Law, over the several [colonial] Legislatures.” Denying that the British colonies needed any “arbitrary supream sovereign Court of Jurisdiction over a free People, to lay Taxes, Imposts, and Duties upon our Land, Trade and Merchandize,” he expressed the opinion that “the only Union of the Inhabitants of the several Governments” necessary was the union of “true Protestant Principles,” which would lead them all “to fight for their King and Country freely, without Force or Compulsion” until the “common Enemy” was no longer capable of troubling “us or our posterity.” He suggested that Hopkins and his cohorts, instead of approving the plan at Albany, should have opposed it and charged Hopkins with using his vast influence in the Rhode Island legislature to prevent a letter’s being sent to London to oppose the plan on the grounds that it would “virtually deprive the Government . . . of some of its most valuable Privileges, if not effectually overturn and destroy our present happy Constitution.” At this stage, few colonial leaders seem to have been willing to support any changes in governance that would have in any way curtailed provincial control over internal colonial affairs. (J.P.G.)

A Short Reply to Mr. Stephen Hopkins's
Vindication, and false Reflections against
the Governor and Council of the Colony of
Rhode-Island, &c.

Let the Reader in the first Place, observe, the above named Gentleman introduces his pompous Piece, with Abstracts of the Authorities given by the several Governments to their Commissioners, and of several Letters from the Secretaries of State, together with a Representation of the State of the *English* and *French* Colonies in *North-America*; and then proceeds to his sophistical Arguments, to clear himself from Imputation of Guilt, with Respect to his Conduct at *Albany*, and false Charges against the Heads of the Legislature; and concludes with his ungentleman-like Reflections upon all who shall animadvert.

In the first Place, the Public may be assured, that the above named Gentleman has grosly abused them, by printing only particular Paragraphs of the Commissions given by the several Governors to the Commissioners, in order to deceive his Readers, neglecting whatever Words or Sentences did not answer his Purpose. To demonstrate the Gentleman's Fallacy, I shall only mention one Paragraph in the Commission given by *Horatio Sharpe*, Esq; Governor of *Maryland*, to the Commissioners of that Province, which is as follows:

But you are to understand, that you are not impowered to stipulate or engage, that this Province will advance any Sum of Money, or Number of Men, towards erecting Forts, or garrisoning them, or to such Purposes; but you shall only well observe, what Proposals are made by the other Commissioners, and endeavour to learn how far the Execution of what they may propose, can be necessary or useful, and consider well the Reasonableness of any such Propositions, and to make Return, &c.

This is what the above-named Gentleman has not printed; and if any Gentleman will give himself the Trouble to examin the original Commissions in the Secretary's Office, he will find, that such Parts as are not for his Purpose,

he has omitted; and yet this Gentleman has the Front to assert in his 13th pag. refering to the Plan formed at *Albany*, That "they did not establish it as an Act or Ordinance of the Board of Commissioners, as they all might have done, by the Authorities given them"; which last Sentence is false in fact.

Secondly: His printing Paragraphs of the Letters from the Ministers of State to the several Governments, is to insinuate to his Readers, that His Majesty and the Ministers of State had ordered them, or at least expected that such a Plan should be established, which is contrary to *Magna Charta*. I am perswaded, the *British* Parliament were surprized, that the Governments should petition for a Confirmation of a Plan, which, the Instant it was established, would revoke all His Majesty's Governors Commissions in *North-America*, and destroy every Charter, by erecting a Power above Law, over the several Legislatures. [Note—*Some of the Letters from the Ministry, were dated Octob. 16. which was after the Plan got Home, and was the Foundation of said Letters*].

Thirdly: As to the Representation of the State of the *English* and *French* Colonies in *North-America*, we are all sensible, that if the *French* are suffered to do what they please, they will soon increase their Numbers, and put themselves into such a Position, as to annoy and disturb the *English* Colonies; and the only Union of the Inhabitants of the several Governments, is true Protestant Principles, which leads them forth to fight for their King and Country freely, without Force or Compulsion, and therefore we want no arbitrary supream sovereign Court of Jurisdiction over a free People, to lay Taxes, Imposts, and Duties upon our Land, Trade, and Merchandize; but are ready, when our most gracious Sovereign commands, to oppose the common Enemy, and not desist, till there are any to trouble us or our Posterity. But what good End will be answered, for the Governments to be obliged to conform to this Plan of Union? Why this; a Number of mercenary Gentlemen will heap to themselves Riches out of the public Stock; and those Gentlemen who have purchased all the Lands to the Rivers and Lakes, when the Colonies have built a Row of Forts, and are at the Expence of keeping a standing Army in them, which may cost the smallest Colony Ten Thousand Pounds Sterling *per Annum*, will enhance their Estates to ten Times their present Value, and build them convenient Houses for the Fur Trade, at the several Government's Expence.

Fourthly: We are now come to the Plan of Union; in which the Names of those who compos'd this august Congress, are first inserted, and then the

several Governments: And here observe, they say, "That humble Application be made for an Act of Parliament of *Great-Britain*, by Virtue of which, One General Government may be formed in *America, &c.*" Now, How was this Application to be made? It is not said, That humble Application be made by the several Governments, if they acceded to said Plan; nor was the President of said Congress at *Albany*, ordered (by any Thing that appears) to wait any fix'd Time, to receive the Assent or Dissent of the several Governments; nor have the Governments been informed by that Congress, that they ever designed to wait their Consent to said Plan: And how improbable is it, that they ever designed to wait for the Governments Resolve, when neither Time, Place, nor Person was pointed out to receive the Governments Answer? Notwithstanding, the Plan is at Home, and by our Agent's Letter, before the Parliament for Confirmation.

Fifthly: In his sophistical Arguments to clear himself from the Imputation of Guilt, with Respect to his Conduct at *Albany*, in the 12th pag. he makes an artful Flourish, by saying, "Thus having seen Abstracts of the Authorities given the Commissioners, and those Letters which occasioned such Authorities; the State of the *British* and *French* Colonies, the Plan formed in Consequence thereof: Now let every Man judge, &c." All which did not empower him to introduce an Authority over our Legislature, so as to destroy our Charter, as said Plan virtually doth. I shall pass to pag. 13. where the Gentleman saith, "Whether the Plan formed at *Albany*, be a good one or a bad one, I shall not undertake to determin"; but forgets himself in pag. 14. and says, "All Men must confess the Plan was either good or bad." What Authority has this Gentleman above all others, that every Man must confess the Plan was either good or bad? No doubt to conceal his own Sentiments; should he declare it a good Plan, he might be apprehensive of incurring the Displeasure of the People in general; if a bad one, he must sacrifice his Honor and Reputation with those Gentlemen, who with him, approved of said Plan at *Albany*. He goes on, and says, "What could the Commissioners for *Rhode-Island* have done more? or what could they have done less than they did, relative to this Plan? It was not in their Power to procure a better; and whether it was good or bad, it was equally their Duty to lay it before the Assembly, &c." What Authority, or what Right had this Gentleman to bring any Plan from *Albany*? If he could not bring a good one, he might have done less, and brought none, by rejecting it. We have bad Schemes enough in the Colony of *Rhode-Island*, without bringing more

into it. "Let it be considered (says he) the *Rhode-Island* Commissioners were but two of the whole Number," which consisted of *Twenty-seven*. Now, upon a Supposition, that the Plan is established at Home, then *Rhode-Island* is to have Two out of Forty-eight; and if Forty-six of the Grand Council should consent to lay Ten Thousand Pounds Sterling *per Annum*, upon our Colony, being but Two, it is not in their Power to prevent it. But I desire to know, Whether it was not in the Power of our sagacious Commissioners to protest against said Plan, as those worthy Patriots to their Government, the Commissioners of *Connecticut* did? It was far from a good Plea, for consenting to said Plan, because but Two in Number; if but One, he might have left it, and acquainted the other Commissioners, That his Government did authorize him to dispose of the Government, and bring a Deed of Conveyance for them to sign.

Sixthly: This penetrating, judicious Gentleman, proceeds to his false Charges against the Heads of the Legislature, and concludes with Reflections, which every candid Person must treat with Contempt, in pag. 14.

This destructive Plan (he says) was laid before the General Assembly, in the Month of *August* last: This gave an Opportunity to those Patriots belonging to the Council, who now say so much against this Plan, to have exerted themselves, &c. Well! What have these Champions for Liberty, done in this Matter? Have they not let it lie before the Assembly between six and seven Months, without taking it once under Consideration? Or, Have they ever rejected it? or so much as once in all this Time, moved to have one Word wrote Home, to prevent it; and then to serve a private Party Turn, suddenly to roar out, *The Colony is in Danger!* &c.

What Education the afore-named Gentleman had in his Minority, I know not; but this I know, it is far beneath the Character of a well-bred Gentleman to assert Falshoods against the Heads of a Government, and make no Distinction between them and the lowest Peasants. That this Gentleman has falsly accused the Governor and Council, the Records will make appear; and the Lower House can witness against him. I shall therefore observe the Measures taken by the Governor and Council, from time to time, relating to this Plan. In *August* last, this cunning Gentleman presented to the General Assembly, a Number of Sheets in Folio, in which were contained a Variety of Matters, and the Plan of Union artfully tack'd to the rest, which being read in the Lower House, the Report was received, and in Consequence, all

their Doings, &c. No doubt, some Advocates of Mr. *Hopkins's*, discovered the Absurdity of said Plan, which they conceal'd, to prevent any Reflections on his Character: However, the Vote of the Lower House was sent to the Governor and Council, who perceived the Fraud, of the Plan's being included with their other Proceedings, and acquainted the Lower House, That they concur'd with their Vote, reserving a further Consideration upon the Plan of Union. The Lower House confessed the Reserve just. Many important Affairs lying before the Assembly, at their Session in *October* following, prevented the Council from proceeding to a further Consideration of the Plan of Union; and had no Suspicion of its being sent Home, without the Privy of the other Colonies; however, in *December*, Governor *Greene* receiv'd a Letter from the Agent, dated *Octob. 9. 1754.* with the following Words contain'd therein:

The Parliament is like to meet for Dispatch of Business, in about six Weeks Time, when I am apt to think, some Application will be made to them, respecting the Union of the several Governments in *North-America*, Proposals for that Purpose being lately come to hand, as they were agreed on by the Congress at *Albany*, &c.

This Information surprized the Governor, who in *February* Session, presented to the Council the said Letter, and being resolved to have something done, laid the Letter before the Lower House, to induce them to pass a Vote for a Letter to be sent Home, in order to prevent establishing the said Plan: But a Gentleman, zealously attach'd to Mr. *Hopkins*, made Application to one of the Council, begging that they would not reject the Plan, which would be a Dishonor to the Commissioners. Any Gentleman may discover the Reason why some of the Lower House made use of every Artifice to prevent the Plan from being deliberated on, and no Vote obtain'd from the Lower House in *February* Session, concerning the same. The Governor and Council being dissatisfied therewith, in *March* following (when the Assembly met) sent to the Lower House, the following Resolve in writing, *viz.*

To the House of DEPUTIES.

GENTLEMEN;

Whereas the Plan proposed at the Congress at *Albany* last Summer, in order to an Union of His Majesty's Northern Colonies, for their common Defence, was not acceded to, when presented unto the General Assembly in

August, but by them reserved for a further Consideration. And now this House having duly examined and considered said Plan, do find the same to be a Scheme, which if carried into Execution, will virtually deprive this Government, at least, of some of its most valuable Privileges, if not effectually overturn and destroy our present happy Constitution; Wherefore, it is strongly recommended to you, *Gentlemen*, That an authentic Copy of all the Proceedings at *Albany*, be made out, and sent forthwith to our Agent in *Great-Britain*, with Instructions, That he exert himself to the utmost, in order to prevent the said Plan of Union, or any Thing contain'd therein, to the Purport or Effect thereof, being carried or passed into an Act of the Parliament of *Great-Britain*.

Voted and past per Order,

THOMAS WARD, *Secry.*

Every Gentleman may now judge, Whether the Governor and Council have not once moved, in six or seven Months, concerning the said Plan? and, Whether they merited such indecent Language as this Gentleman has taken the Freedom to treat them with. In his 14th pag. there is a gross Reflection on the Governor and Council, which ought not to be pass'd over in Silence, where he says, "Can the valuable Privileges of this Colony, be safe in those Hands, where every Thing else seems to be neglected, but what will serve their private Purposes, &c." I shall here put this Gentleman in mind of the many Neglects he has been guilty of, which the Records of the Colony will evince. Was he not appointed one of a Committee near three Years past, to prepare the Case of the Northern Boundary Line, and present the same to the Governor, which he has neglected to this Day, tho' repeatedly called upon by the Governor, and those concerned? Did not this Gentleman undertake to form a Letter near two Years past, to send to our Agent, in order to recover our Privileges in making Paper Money, and amused the People, that he would even go Home himself, if the Letter had not the proper Effect? all which, he has neglected. Let him also remember, how he engaged in *May* last, to settle the Colony's Accounts with Mr. *Brenton* (which has occasioned so much Uneasiness in the Government) promising, That he would devote himself to the same; and tho' he has frequently been urg'd by the Assembly to finish it, has not yet found Time. How he undertook to answer the Earl of *Holderness's* and Sir *Thomas Robinson's* Letters, and a Letter from this Government for Canon, &c. &c. all which

he has neglected, tho' our Liberties, Properties, and whatever we esteem valuable, depended upon the Performance of them. And the Inhabitants of this Colony must be sensible, that this Gentleman is over fond of having all Matters of Consequence committed to his Management; and has his Admirers in the Assembly, who (contrary to Decency and good Manners) nominate this Man of Wisdom, in Opposition to every other Man, tho' he gives himself little concern about any Thing, except in agreeing to the Plan of Union, expecting, at least, to be a Member of the Grand Council.

I shall now conclude, with observing to the Inhabitants of this Colony, wherein this Gentleman has endeavour'd to impose on them. 1. By omitting Paragraphs in the several Commissions, which might frustrate his Designs. 2. His inserting Paragraphs of the Letters from our Prime Ministers, to insinuate, that they had them at *Albany* to form the Plan by, when those Paragraphs in Sir *Thomas Robinson's* Letter of *Octob. 26.* was wrote when the Plan got Home. 3. His publishing the State of the *English* and *French* Colonies, to justify the forming said Plan, yet does not acknowledge, whether he approves or disapproves thereof; altho' in his Defence, he ingenuously confesses, that he was concerned in the Forming of it. 4. His asserting, the Plan was laid before the Assembly between six and seven Months, without the least Notice being taken of it by the Council. 5. His Vindication of his Conduct at *Albany*, proves him guilty of what he dare not own nor deny. 6. His indecent Reflections against the Governor and Council, should excite every Man in the Colony to resent, and treat with the Contempt it deserves.

Rhode-Island, April 10. 1755.

All which is submitted, by

PHILOLETHES.¹

1. ["Friend to the Overlooked," i.e., the Neglected.—Tr.]

[William Smith],
A Brief State of the
Province of Pennsylvania
(London, 1755)



AS, INCREASINGLY AFTER 1748 British authorities tried to shore up metropolitan authority in the royal colonies, they also began pressing the proprietors of Pennsylvania to recover some of the authority that the earliest proprietor had permitted to fall into the hands of the colony's unicameral legislature, demanding that proprietary governors seek constitutional reforms that would bring them into sharp conflict with the Assembly. This situation became acute during the early stages of the Seven Years' War, when governors needing money for defense against French incursions into western Pennsylvania could not accept it on the terms offered by the Assembly without incurring the wrath of the proprietor, who resided in London, and of the metropolitan officials with whom he had to deal. In Pennsylvania, these disputes sharpened existing antagonisms between those who supported the proprietor, who were known as the proprietary party, and the supporters of the Quaker-dominated Assembly, known as the Quaker party, although many of them were not Quakers. The author of this selection, William Smith, an Anglican minister and an effective participant in the movement to found a college in Philadelphia, threw his support strongly behind the proprietary party, and in 1755 he published in London this pamphlet, which went through several editions and created quite a stir. In this nakedly partisan tract, Smith argued that Quaker political leaders through their domination of the Assembly were seeking to turn "*Religion*

into a *Political Scheme of Power*,” misleading the massive German population into equating proprietary government with slavery and opposing a militia law because they were fearful that the proprietary-appointed militia officers might throw their weight behind the proprietary party. More important, he was one of several political writers in the mid-1750s who were persuaded that American colonial governance was too popular and American Assemblies were too powerful. Tracing the origins of Assembly power to concessions made by the original proprietor William Penn, Smith did not deny “that Infant-Settlements flourish fastest under a Government leaning to the republican or popular forms,” but he argued that “in Proportion as a Country grows rich and populous, more Checks are wanted to the Power of the People; and the Government, by nice Gradations, should verge more and more from the popular to the mixt Forms.” But, he complained, government had moved in precisely the opposite direction in Pennsylvania, where “the People, instead of being subjected to more Checks, are under fewer than at first, and their Power has been increasing with their Numbers and Riches, while the Power of their Governors . . . has been decreasing in the same Proportion ever since,” until the “Government, instead of drawing nearer to the *mixt Forms*, as it ought in Proportions to its Growth, is now, in fact, more a *pure Republic*.” “Possessed of such unrestrained Powers and Privileges,” the Assembly, he charged, seemed “quite intoxicated; are factious, contentious,” disregarded “the Proprietors and their Governors,” and had come “to claim a kind of Independency of their Mother Country, despising the Orders of the Crown, and refusing to contribute their Quota, either to the general Defense of *America*, or that of their own particular Province.”

“Our Proprietors and our late Governors,” having “done every thing in their Power to assist us, and keep up to an *English* Constitution; for which they have been reviled, abused, and all imaginable Steps taken to hurt them in their Interests,” Smith observed, “only the superior power of the Crown or the *British* Parliament could bring Redress,” and he proposed a series of measures designed to force Quakers out of office, disenfranchise Germans, and pave the way for the extension of proprietary power. (J.P.G.)

A BRIEF
STATE
OF THE
PROVINCE
OF
PENNSYLVANIA,
IN WHICH

The Conduct of their ASSEMBLIES for several Years past is impartially examined, and the true Cause of the continual Encroachments of the *French* displayed, more especially the secret Design of their late unwarrantable Invasion and Settlement upon the River *Ohio*.

To which is annexed, An easy PLAN for restoring Quiet in the public Measures of that Province, and defeating the ambitious Views of the *French* in time to come.

In a LETTER from a Gentleman who has resided many Years in *Pennsylvania* to his Friend in *London*.

THE THIRD EDITION.

LONDON:

Printed for R. GRIFFITHS in *Pater-noster-Row*. 1756.

A Brief State of the Province of Pennsylvania.

Dear Sir,

In your last, you was pleased to desire some Account of the State of *Pennsylvania*, together with the Reasons why we, who are esteemed one of the richest Colonies in *North America*, are the most backward in contributing to the Defence of the *British* Dominions in these Parts, against the present unwarrantable Invasions of the *French*? As I have been many Years a Spectator, and I think an impartial one, of the public Measures pursued in this Province, I shall very readily satisfy your whole Desire. We are now in an alarming Situation, but we have brought the Evil upon ourselves, and Things are now come to that Crisis, that if I was under no Obligation to satisfy your Expectations, yet I should deem my Silence an unpardonable Neglect of the Duty I owe to my Country.—

You were rightly informed when you were told that, of all the *British* Colonies in *North America*, *Pennsylvania* is the most flourishing. Its Staple is chiefly Provisions, of which it produces enough to maintain itself, and a Hundred thousand Men besides. From the Port of *Philadelphia*, at least 400 Sail of Vessels clear out annually. The Inhabitants are computed at about Two hundred and twenty thousand, of whom, it is thought near one half are *Germans*. Of the Residue not quite two-fifths are *Quakers*. Above that Number are *Presbyterians*; and the remaining Fifth are of the *establish'd Church*, with some few *Anabaptists*.

The Legislature is composed of a Governor and Assembly; but the Council makes no Part of it. The Assembly are chosen annually, and claim a Right, by Charter, to sit on their own Adjournment, without being prorogued or dissolved by their Governors, although the *Attorney-General* of *England*, and many other eminent Lawyers, have given their Opinion to the contrary. The Powers they enjoy are extraordinary, and some of them so repugnant,* that they are the Source of the greatest Confusion in the Government. In order clearly to make this out, we must look backward a considerable Number of Years.

As the Colony was first settled chiefly by *Quakers*, the Powers of Government rested for the most Part in them; which they conducted with great

* In some Instances they have both a *legislative* and *executive* Power.

Mildness and Prudence, not having as yet conceived any Thoughts of turning *Religion* into a *Political Scheme of Power*.

A great many Circumstances concurred to fix them in the good Opinion of the World. The First of this Profession strove to recommend themselves by their strict Honesty, and were a sober, thoughtful People. The civil Constitution was then in its Infancy, and its Principles sound. No great Art was required in the Administration of it, and no bad Effects were felt from the extraordinary Privileges granted to the People, for the more expeditious Settlement of the Colony.

Those who have made Politics their Study, know very well, that Infant-Settlements flourish fastest under a Government leaning to the republican or popular Forms, because such a Government immediately interests every Individual in the common Prosperity, and settles itself at once on a broad and firm Basis. Moreover, the People being but few, and but small Profit in public Offices, the Government may also be administer'd without the Faction and Anarchy incident to popular Forms. But in Proportion as a Country grows rich and populous, more Checks are wanted to the Power of the People; and the Government, by nice Gradations, should verge more and more from the popular to the mixt Forms. Thus it may happen that a Constitution which shall preserve *Liberty* and excite *Industry* in any Country, during its Infancy, shall be prejudicial to both, when Circumstances are altered.

For these Reasons, a civil Constitution can neither be preserved nor completed, unless, in the Distribution or Lodgment of Power, nice Regard is paid to all the Fluctuations in Trade, Property, and other Casualties; and should either Wisdom or Opportunities be wanting to adjust the Constitution to these Circumstances, it must fall naturally into Convulsions; and, unless it is able to purge itself thro' the Strength of its *Stamina*, it must linger into certain Dissolution. Upon these Principles, all the Flux and Revolutions of Empires may be accounted for.

Now to apply these Maxims to *Pennsylvania*. The *Quakers*, as was hinted, could not fail to get Credit by their Administration, under the above-mentioned Circumstances. Their Successors, who were quite a different Sort of Men from the Founders of this Province, finding themselves established, quickly enlarged their Views, and have continued the Power in their own Hands till this Time, without leaving a Chance for those Struggles and Contentions about it, by means of which the Constitution might have been purged, improved, and adapted to the Change of Circumstances.

Thus, in direct Contradiction to the Rule laid down above, the People, instead of being subjected to more Checks, are under fewer than at first; and their Power has been continually increasing with their Numbers and Riches, while the Power of their Governors, far from keeping Pace with theirs, has rather been decreasing in the same Proportion ever since. The Consequence of this is clear. The Government, instead of drawing nearer to the *mixt Forms*, as it ought in Proportion to its Growth, is now, in fact, more a *pure Republic*, than when there were not ten thousand Souls in it. The Inconveniencies of this we now begin to feel severely, and they must continually increase with the Numbers of the People, till the Government becomes at last so unwieldy as to fall a Prey to any *Invader*, or sink beneath its own Weight, unless a speedy Remedy is applied.—

Tho' many Circumstances concurred to bring us into this sad State, yet the chief Source of the Evil was what follows:

In the Year 1723, the old Proprietor *William Penn*, being lately dead, and his next Heirs, at Law among themselves about the Government and Soil, Sir *William Keith*, who was then Governor, falling into the Hands of the Assembly, passed a Law, giving them the sole Disposal of all public Money, in manifest Contempt of all the Instructions of the Proprietary Family.

This entirely completed the Scheme of Power our Assemblies had been long aiming at, by rendering all succeeding Governors, and all the Officers of the Province, dependent upon them; for now they annually either vote or with-hold the Salaries of the Governor and all such Officers, according as they are, or are not, the Creatures of the Assembly. And indeed most of them must be so; for our Assemblies have wrested, out of the Hands of the Governor, the Nomination of a great many of the Officers* that hold the most lucrative Posts in the Government.

Possessed of such unrestrained Powers and Privileges, they seem quite intoxicated; are factious, contentious, and disregard the Proprietors and their Governors. Nay, they seem even to claim a kind of Independency of their Mother-Country, despising the Orders of the Crown, and refusing to contribute their Quota, either to the general Defence of *America*, or that of their own particular Province.

* Such as the Provincial Treasurer; the Trustees of the *Loan-Office*; the Collector of the Excise, Bronder of Flour, Bronder of Beef and Pork, Health-Officer, &c.

As a glaring Instance of the former, I need only mention their Opposition to Governor *Thomas*, in raising Soldiers to send against the *Spaniards* in the *West-Indies*, and their absolute Refusal to contribute a Farthing for that Service. Since that Time, during the whole Course of the late War, they have often been called upon by the Crown, and by Governor *Shirley* of the *Massachusetts*, for the Expedition against *Cape-Breton*, &c. To all which, if they have at any Time contributed, it has been done indirectly, and in a Manner shameful to this rich Province; so grudgingly, and in such small Sums, as rather to hurt than serve the common Cause.

Forgetful of the public Good, they seem wholly to have employed themselves in grasping after Power, altho' it is plain they have already too much of this, and such as is really inconsistent and self-destructive.

Nor have they been more attentive to the Defence of their own particular Province, than of his Majesty's *American* Dominions in general.

In *Pennsylvania*, we have but one small Fortification, and that raised and supported at the Expence of private People. The Proprietors, indeed, generously made us a Present of twelve large Cannon, part of the twenty-six we have mounted, and they have also given the Gunner of the Fort a Salary of twenty Pounds *per Annum* towards his Support.* We are otherwise entirely naked, without Arms or Ammunition, and exposed to every Invasion, being under no Obligation to military Duty. In the last War, one of the *Spanish* Privateers came up the *Delaware*, within a few Miles of this City; and when those, who were not *Quakers*, took the Alarm, and associated themselves for the Defence of the Country, they not only received no Encouragement from the Assembly, but were abused and reproached for their Pains, and the *Dutch* or *Germans* kept back from joining in the Association, by all possible under-hand Practices.

The *French*, well apprized of this defenceless and disjointed State, and presuming on the religious Principles of our ruling People, have, the Year

* The honourable Proprietors also proposed to our Assembly five Years ago, That if the Assembly would give Money for building a Strong-House on the *Ohio* (not venturing to call it Fort, or any Thing that implied Defence) they, the said Proprietors would, on their Part, contribute any reasonable Proportion to the building and supporting of the said Strong House. But this Proposal, like many others, was rejected with Scorn, merely, perhaps, because it came from the Proprietors; nor was it so much as thought worthy of a Place in their Minutes; though it is clear, if it had been complied with, the *French* had not now been fortified in the same River, as they now are.

before last, invaded the Province, and have actually three Forts, now erected far within the Limits of it. Justly, therefore, may we presume that, as soon as War is declared, they will take Possession of the whole, since they may really be said to have stronger Footing in it than we, having three Forts in it supported at public Expence, and we but one small Fort, supported only by private Gentlemen.

'Tis true our Neighbours, the *Virginians*, have taken the Alarm, and called on our Assistance to repell the common Enemy, knowing that if the *French* hold Footing in *Pennsylvania*, their Turn must be next. In like manner, the several Governors, and ours among the rest, have received his Majesty's gracious Orders to raise Money, and the armed Force of their respective Governments on such an Emergency; and had these Orders been complied with last Winter, the *French* would neither have been able to drive the *Virginians* from the Fort they had begun in the back Parts of *Pennsylvania*, nor yet to get Possession of one third Part of the Province, which they now have undoubtedly got thro' the Stubborness and Madness of our Assemblies.

But here two Questions will naturally arise.

1. Why are our Assemblies against defending a Country, in which their own Fortunes and Estates lie, if it is really in Danger?
2. Why have not the several Sums been accepted, which they have offered for the King's Use?

With regard to the first, it may seem a *Solecism* in Politics, for a People not to defend their own Property when it is actually *invaded*, unless they were certain of the Friendship of the *Invaders*.

I shall not, however, be so uncharitable as to suppose our political *Quakers* reckon it indifferent, whether, or not, the *French* shall make themselves Masters of this Province, notwithstanding Persons at a Distance may be apt to judge so for the following Reasons. *1st*, From the continued Refusal of our Assemblies to defend the Province. *2dly*, From the extraordinary Indulgence and Privileges granted to *Papists* in this Government:—Privileges plainly repugnant to all our political Interests, considered as a Frontier-Colony, bordering on the *French*, and one half of the People an uncultivated Race of *Germans*, liable to be seduced by every enterprizing Jesuit, having almost no Protestant Clergy among them to put them on their Guard, and warn them against Popery.

Tho' this might be insinuated, yet from Observation I have Reason to believe, that most of the *Quakers* without Doors are really against Defence

from Conscience and their religious Tenets; but for those within Doors, I cannot but ascribe their Conduct rather to Interest than Conscience.

Our Assemblies apprehend, that as soon as they agree to give sufficient Sums for the regular Defence of the Country, it would strike at the Root of all their Power, as *Quakers*, by making a *Militia-Law* needful, in Time of Danger. Such a Law, they presume, would alter the whole Face of Affairs, by creating a vast Number of new Relations, Dependencies, and Subordinations in the Government. The *Militia*, they suppose, would all vote for Members of Assembly, and being dependent on their Officers, would probably be influenced by them. The Officers, again, as they imagine, would be influenced by the Government; and thus the *Quakers* fear they would soon be out-voted in most Places. For this Cause, they will suffer the Country to fall into the last Extremity, hoping that when it is so, our Neighbours will, for their own Sakes, defend it, without obliging them to pass a Law, which, they fear, would so soon strip them of their darling Power. But this Backwardness of theirs has quite a contrary Effect; for the neighbouring Colonies, seeing this Colony, that is immediately attacked, doing nothing, refuse to exert themselves for a People, who are able, but unwilling, to defend themselves.

Thus much in answer to the *first* Question.

With regard to the *second*, little need be said to shew why the Monies they have offered for the King's Service never could be accepted of. For while they have the foresaid Apprehensions from a Law for the Defence of the Country, it must be plainly repugnant to their Interest, ever to offer Money for this Purpose, unless in such a Manner as they know to be inconsistent with the Duty of a Governor to pass their Bill into a Law. This will be fully understood from what follows, which will also shew by what Means they save Appearances among the People, without doing any Thing for the Public.

There was a royal Instruction sent to all the *English* Governors in *America*, upon the humble Address of the Lords and Commons, signifying, That under Pain of his Majesty's highest Displeasure, they shall not pass any Act for the Emission of Paper-Money, without a suspending Clause, that it shall not take Effect till his Majesty's Pleasure is known. Since that Time, upon Petition of the chief Merchants in *England*, an Act of Parliament was passed, entirely restraining the four *New-England* Colonies from emitting any Paper-Bills at all, except in the Case of an Invasion, or some great

Emergency, and then the same to be sunk in a few Years. But the *Southern* Provinces still continue under the Force of the Instruction.

Our late Governor, Mr. *Hamilton*, upon receiving his Majesty's Orders to arm the Province, solicited the Assembly last Winter to raise Money, and enable him to pay a proper Obedience to the royal Commands; but they totally disregarded him, and adjourned themselves. Upon receiving an Account that the *French* had driven the *Virginians* from their Fort, he again called the Assembly, conjured them to obey his Majesty's Orders, and demonstrated the imminent Danger to which their Refusal would expose not only themselves, but all the *British* Colonies. He at the same Time let them know, that tho' his Instructions restrained him from passing any Paper-Money at all without a suspending Clause, yet, in the present pressing Emergency, he would risque it, provided they would vote handsomely, and sink it within the Time prescribed by Act of Parliament, in the Case of *New-England*. Then, and not till then, they voted 10,000 *l.* for his Majesty's Use, redeemable by the Excise in twelve Years, for which Time the Bills were to be sunk annually in equal Proportions.

In that Space the Excise would raise 45,000 *l.* viz. 10,000 *l.* for the King's Use, and the remaining 35,000 *l.* would have been at their own Disposal for what Uses they might think fit.

The Governor, therefore, justly considered, that if he should pass this Bill, it would be giving the Government out of his Hands, and rendering himself and his Successors entirely unnecessary in the Administration for twelve Years. It would be putting 35,000 *l.* into the Hands of the Assembly, still more to increase their Power, and lay out in Schemes to abridge the Powers of their Proprietors and Governors; for tho' the Preambles to all our Money-Acts, and to the Excise, say that the Interest-Money, and what arises from the Excise, are to be applied to the Support of Government; yet they apply it as they please, viz. to distress all who oppose their Measures, and for building Hospitals, purchasing Lands, Libraries, &c.

For these Reasons, and considering also that the Money was to continue seven Years longer than the Act of Parliament allows, the Governor refused his Assent; upon which they adjourned, altho' they knew very well before they proposed the Bill, that he could not give his Assent, without incurring his Majesty's highest Displeasure.

Upon the News of *Washington's* Defeat, last Summer, the Governor again summoned them, and intreated them to consider the melancholy Situation

of Affairs, and fall upon Ways and Means to repell the Enemy, consistent with his Duty to pass it; he having, in the mean Time, received Sir *Dudley Rider's* Opinion, that he could not, with Safety to himself, pass such an Act as they wanted. They then voted him 15,000 *l.* to be raised exactly as before, being certain the Governor could not venture to pass it. Accordingly, upon his Refusal, they again adjourned, and to intimidate other Governors from daring to dispute their Commands, with-held his yearly Salary.

Mr. *Hamilton*, a Gentleman of great Honor, Probity, and good Sense, having for some Time foreseen, that with such an obstinate and perverse People, he could never, as Governor, enjoy Ease to himself, nor be in a Capacity either to obey the King's Instructions, or be of any real Service to the Province his native Country, had wrote over to the Proprietors to send him a Successor, assuring them he would no longer continue to act as Governor.

Upon the Appointment of the Proprietors, he was accordingly succeeded by the Hon. *Robert Hunter Morris*, Esq;

This Gentleman, upon his coming into the Government, immediately spoke, in the most pathetic Terms, to the new Assembly, composed of the old Members.—

After a short Adjournment, they met and offered a Bill for 20,000 *l.* conceived in the same Terms as before, *viz.* to make the Paper-Money extend for twelve Years, though the new Governor had told them before-hand, that he was subjected to the same Instructions as his Predecessors, and could not pass any such Bill into a Law.

Thus their whole Conduct has been of a Piece in this Country, tho' I am well assured it is very much disapproved of and condemned by their Brethren the *Quakers* in *England*, who are justly esteem'd a quiet and upright People, such as we already observ'd the first *Quakers* in this Province were. It is very plain they have no mind to give a single Shilling for the King's Use, unless they can thereby increase their own Power; but they keep continually voting Money in order to keep the People on their Side, who not being well enough acquainted with the Nature of Government, to understand why the Money-Bills cannot be passed, think every such Rejection of a Money-Bill, a Design against their Liberties, and throw the whole Blame upon their Proprietors and Governors, treating their Names in the most insolent and contemptuous Manner.

Hence it is that this Province is reduced to the most miserable Condition.—The People at Variance, and distrustful of each other! A *French*

Enemy and their Savage Allies advanced far into our Territory! The People on our Frontiers liable to be murdered or driven from their Habitations! Our Lives and all our sacred Rights exposed an easy Prey!—And all this owing to the Infatuation and detestable Policy of a Set of Men who mind no Consequences, provided they can secure their own Power and their Seats in the Assembly.

A Petition from a Thousand of these poor Families, who inhabit the back Parts of the Colony, was presented to the Assembly, last *August*, soon after *Washington's* Defeat, praying that they might be furnished with Arms and Ammunition for their Defence; but the Petition was rejected with Scorn. Our *Indian* Allies have often desired us to build Forts, to which their Wives and Children might fly in time of Danger, and have just now* sent down to the Governor, begging he would direct the Building a *Stockade*, or wooden Fort, in which they offer to defend themselves and us, from the Incursions of the Enemy; but the Assembly, to be consistent with themselves, and shew that they are religiously bent on the Ruin of their Country, refused to give any Money for this Purpose, and gave the *Indians* for Answer, that if they were afraid of the Enemy, they might retire farther down, and come within the settled Parts of the Province.

Thus the noblest Opportunity was lost that could have been offered, of keeping our *Indians* steady, and for building a Fort at a small Expence, in a Pass so commodiously situated between the Mountains, that it would have effectually covered and defended two of our Frontier Counties, from the Inroads of the *French* and their *Indians*.

From what has been said, it clearly appears how much we suffer by having all public Monies in such Hands. Were the Case otherwise, Matters might be managed with Secresy, Ease, Expedition, Success, and a small Expence, by embracing the proper Opportunities. But these Opportunities, being once lost, are often never to be recalled, as is too well confirmed by the Settlements of the *French* at *Crown-Point* and on the *Ohio*, both which might have been prevented at first, with one fiftieth Part of the Expence it will now take to dislodge them, had not the Hands of all our Governors been tied up, by having the Disposal of no Monies on such Emergencies, nor any Hopes of obtaining it from our Assemblies, if they should advance any Sums for the public Service.

* *December 1754.*

But here it may be justly asked, By what means the *Quakers*, who are so small a Part of the Inhabitants, and whose Measures are so unpopular, get continually chosen into our Assemblies?

Before the late *Spanish* War a considerable Number of our Assembly were of other Denominations; but at that Time being called upon by Governor *Thomas*, to arm for their own Defence, and the Annoyance of his Majesty's Enemies, they were alarmed with the Prospect of losing their Power, if they should comply, as was shewn above; and therefore they entered into Cabals in their yearly Meeting, which is convened just before the Election, and being composed of Deputies from all the monthly Meetings in the Province, is the finest Scheme that could possibly be projected, for conducting political Intrigues, under the Mask of Religion. They likewise had Recourse to a *German* Printer, who was once one of the *French* Prophets in *Germany*, and is shrewdly suspected to be a *Popish* Emissary, who now prints a News-Paper entirely in the *German* Language, which is universally read and believed by the *Germans* in this Province. This Man, whose Name is *Saüer*, they took into their Pay, and by his Means told the *Germans* there was a Design to enslave them; to force their young Men to be Soldiers, make them serve as Pioneers, and go down to work upon our Fortifications;—that a military Law was to be made, insupportable Taxes to be laid upon them, and in a Word, that all the Miseries they suffered in *Germany*, with heavy Aggravations, would be their Lot, unless they joined to keep in the *Quakers*, under whose Administration they had so long enjoyed Ease and Tranquillity; and to force out of the Assembly, all those who were like to join the Governor, in giving Money for annoying the Enemy.

In consequence of this, the *Germans*, who had hitherto continued peaceful without meddling in Elections, came down in Shoals, and carried all before them. Near 1800 of them voted in the County of *Philadelphia*, which threw the Balance on the Side of the *Quakers*, though their Opponents, in that grand Struggle, voted near 500 more than ever lost an Election before.

The *Quakers* having found out this Secret, have ever since excluded all other Persuasions from the Assembly, constantly calling in the *Germans* to their Aid, by means of this Printer.

But the keeping the *Quakers* in, is not the worst Consequence of these insidious Practices with the *Germans*. The bad Effects of it will probably be felt thro' many Generations.—The *Germans*, instead of being a peaceable industrious People as before, now finding themselves of such Consequence,

are grown insolent, sullen, and turbulent; in some Counties threatening even the Lives of all who oppose their Views. The *Quakers*, in order to keep them from taking up Arms in Defence of the Province, or joining in Elections with their Opponents, have much alienated their Affections from the Government, by telling them there is a Design against their Liberties. They are taught to have but one and the same Idea for Government and Slavery. All who are not of their Party they call *Governors-Men*, in Derision. They give out that they are a Majority, and strong enough to make the Country their own; and indeed, as they are poured in upon us in such Numbers (upwards of 5000 being imported this last Year) I know nothing that will hinder them, either from soon being able to give us Law and Language, or else, by joining with the *French*, to eject all the *English* Inhabitants.

That this may be the Case, is too much to be feared, since, as I remarked already, they refused, almost to a Man, to bear Arms in the Time of the late War. They say it is all one to them which King gets the Country, since, if they remain quiet, they will be permitted to enjoy their Estates, under the Conqueror, whoever he is; and as they have, many of them, lived under *Popish* Rulers before in their own Country, they give out that they know the worst that can happen.

And, indeed, it is clear that the *French* have turned their Hopes upon this great Body of *Germans*. They have now got Possession of the vast and exceeding fruitful Country upon the *Ohio*, just behind our *German* Settlements. They know our *Germans* are extremely ignorant, and think a large Farm the greatest Blessing in Life. Therefore, by sending their *Jesuitical* Emissaries among them, to persuade them over to the *Popish* Religion, they will draw them from the *English*, in Multitudes, or perhaps lead them in a Body against us. This is plainly a Scheme laid by the *French* many Years ago, and uniformly pursued till this Time, with the greatest Address; being the true Cause of their continual Encroachments, and holding their Countries by *Forts*, without settling them. When they come near enough to have Communication with our *Germans*, it will be much more their Interest to plant their Colonies, by offering the said *Germans* easy Settlements, than by bringing new Hands from *Europe*; for by such Means they not only get an Accession of People who are accustomed to the Country, but also weaken us, in Proportion as they strengthen themselves.

That now is the Time they propose to put their grand Scheme in Execution is too evident. They are already so near us, that the *French* Camp,

and their Forts upon the *Ohio* and the Parts adjacent, are not more than 225 Miles, horizontal Distance, from the City of *Philadelphia*, and only about two Days March from some of our back Settlements. By Accounts received last Week, they have 2000 effective* Men in these Parts, together with a great Body of *Indians* at their Beck.

Now there is no Way of preventing these dreadful Misfortunes with which we are threatened, but to open the Eyes of the *Germans* to their true Interests, and soften this stubborn Genius of theirs, by means of *Instruction*. Faithful Protestant Ministers, and School-masters, should be sent and supported among them, to warn them against the Horrors of *Popish* Slavery; to teach them sound Principles of Government, and instruct their Children in the *English* Tongue, and the Value of those Privileges to which they are born among us. If this can be done, and the *French* driven from the *Ohio*,

* Extract of a Letter, dated *Philadelphia*, January 2, 1755.

SIR,

Since my last, we have five Days ago received certain Intelligence that a Body of nigh Six Thousand of the best Troops of *France*, selected and sent over upon this particular Service, are just arrived at the lower Fort upon the *Ohio*, and are employed, even in this rigorous Season, in fortifying that Country. In *September* last, the *French* Men of War that brought them over were seen not far from the Entrance into the River *St. Laurence*, into which we are now certain they went, and landed at *Quebec*. After a short Stay in that City, they were seen by our *Indian-Traders* passing the Lakes, *Oswego* and *Erie*, in a prodigious Number of *Battoes*, of which the several Governors received notice, though we did not then conjecture that it was an Armament from *Old France*, till now that we are too certain of it.

Notwithstanding of this, our Assembly continues as obstinate as ever; nor have we as yet any Probability of their giving any Money for our Defence, although we hear they are to adjourn in two Days. The Governor has beseeched them to consider the defenceless State of the Province, and establish a regular Militia, but in vain. He also observes, that the Activity of the *French* at this rigorous Season cannot but convince the World, that they have formed some grand Design with Regard to this Continent, and that they have made their first Attack upon *Pennsylvania*, as being in the Center, and being not only the most plentiful, but the most defenceless and unwieldy of all his Majesty's Colonies. Having once got Footing here, they will issue forth upon the other Colonies on either Side; and as they have such a large Body already in the Field, we apprehend it is their Design early in the Spring to fortify the Passes in the Mountains; and if they accomplish this, and can find Provisions, they will be able to stand against three Times their Numbers.

so as to have no Communication with our *Germans** for twenty or thirty Years, till they are taught the Value of the Protestant Religion, understand our Language, and see that they have but one Interest with us; they will for the future bravely fight for their own Property, and prove an impregnable Barrier against the Enemy.

But as if it had been decreed by Fate, or the evil Genius of the *Quakers*, that they should never have the same Interest with their Country in a single Instance, it is a Part of their Policy also to oppose every Scheme for instructing and making *Englishmen* of the *Germans*. In order to keep their Seats in the Assembly, they have not only, as I have shewn, suffered the *French* to fix themselves on the *Ohio*; they have not only corrupted the Principles of the *Germans*; but, to be consistent with their Interest, they must strive to keep these poor People in the same dark State, into which they have endeavoured to sink them. For they know, that if the *Germans* were instructed, so as to be capable of using their own Judgment in Matters of Government, they would no more be miss-led by the Arts of a *Quaker* Preacher, than of a lurking *French* Priest.

Hence it is that, by means of their hireling Printer, they represent all regular Clergymen as Spies and Tools of State, telling the People they must not regard any Thing their Ministers advise concerning Elections, since they have a Scheme to elect Men who will bring in a Bill for giving the Tenth to the Clergy, as in some other Countries. It is needless to observe that no such Law can ever be made here, as being repugnant to *Charter*; for our *Quakers*, though they never swear, stick not gravely to affirm and adhere to any Falshood whatever, provided it will support them in their darling Schemes for Power.

There is nothing they more fear than to see the *Germans* pay any Regard to regular Ministers. Whenever they know of any such Minister in good Terms with his People, they immediately attack his Character by means of this Printer, and distress him by dividing his Congregation, and encouraging Vagabonds and pretended Preachers, whom they every now and then raise up. This serves a double End.

* This supposes also that a Stop be put to the Importation of *Germans* into this Province, and that the Migration be turned from us; for if new Hands are continually brought in, and the old Families go back to other Colonies, as they do at present, whenever they begin to get a little Money, and know something of our Language, we shall never make *Englishmen* of them.

First, According to the Maxim, *divide & impera*—¹ it prevents the People from joining in any new Design, and hinders any Minister from ever having Influence enough to set them right at the annual Elections.

Secondly, By discouraging regular Ministers, it gives the *Quakers* an Opportunity of making more Proselytes.

This is the true Reason why the most considerable and wealthy Sect among the *Germans*, is the *Menonists*, whose Principles are much the same with those of the *Quakers*; for they hold it unlawful to take Oaths, or bear Arms. Thus encouraged by our ruling Men, this Sect has a great Influence among the *Germans*, and the *Menonists* are daily increasing by the Converts they make by their great Wealth, which gives them an Opportunity of paying the Passages of their poor Countrymen, who indent themselves to serve four Years for the Money thus advanced for them.

Besides these, there are near one Fourth of the *Germans* supposed to be Roman Catholics, who cannot be supposed Friends to any Design for defending the Country against the *French*. Many are also *Moravians*, who, as they conceal their Principles, are suspected to be a dangerous People, more especially as they hold some Tenets and Customs, as far as we have any Opportunity of judging of them, very much a-kin to those of the Roman Catholics. There are also many other Sects springing up among the *Germans*; which it would be tedious to name, but most of them are principled against bearing Arms.

I have said enough to shew that never was any Country in a more distressed Condition than this; and tho' it has flourished in an extraordinary Degree, as it could not fail to do, when it was young, and all these several Sects employed only in establishing themselves; yet now, when they are grown to Wealth and Maturity, and are not so necessarily employed in their private Concerns, they will turn their Thoughts to the Public, or perhaps against one another; and thence the utmost Confusion must ensue, if a timely Remedy is not applied, and more Checks contrived to balance their increasing Strength than were necessary at first.

I am sorry it has fallen to my Lot to trace all our growing Miseries to the mischievous Policy of my Fellow-Subjects, the *Quakers*, who regard no Consequences, but holding their own Ground. Truth and Duty obliged me to take up my Pen. We have been too long silent, and had this Representation

1. ["Divide and conquer."]

been made, as it ought to have been, many Years ago, we had not now been in such calamitous Circumstances.

I must, however, in Justice observe, that there have been some honest Spirits always among us, who have left nothing unattempted for the Redemption of their Country. Even as late as last *October*, tho' they knew it was striving against the Stream, those Persons made a noble Effort to convince the *Germans* of our common Danger, and induce them to join in the Choice of Men who would defend the Province, and pay some Deference to his Majesty's Instructions. They reminded the *Germans*, that at their Naturalization, they had solemnly engaged to defend his Majesty's Person and Government against all his Enemies; and that, in case of Refusal, they would be guilty of Perjury. But all was in vain. The *Quakers* held them immoveable, by their usual Insinuations; and we might as soon have attempted to preach the stormy Element into a Calm, as, by Reasoning, to rescue these poor deluded *Germans* out of the Hands into which they are fallen.

Nevertheless these worthy Persons imagined it their Duty to exert themselves, not only to convince the *Quakers* that their Measures were disapproved of by the better Part of their Fellow-Citizens, but also to satisfy the Government of *England* that there are still many in this Place, who have not banished all Impressions of Loyalty and Duty from their Breasts.

I can, however, now see no Remedy left among ourselves. We must look to our Mother-Country for Succour, and if it is not speedily granted, this noble Province seems irrecoverably lost. We shall be driven from these beloved Habitations, or else forced to submit once more, not only to civil Slavery, but to Persecution, and that religious Slavery, from which many of our Ancestors left the Land of their Nativity, and sat down in these distant uncultivated Places, amidst the Horrors of the howling Wilderness!

Yet desperate as our Case is here, a Remedy in *England* is easy. Let the Parliament but make a Law to the following Effect:

1. To oblige all those who sit in Assembly to take the Oaths of Allegiance to his Majesty, and perhaps a Test or Declaration that they will not refuse to defend their Country against all his Majesty's Enemies.—This seems the smallest Test of Fidelity that can be required from those to whom the Constitution of their Country, and the sacred Rights of their Fellow-Subjects, are committed in Trust.

2. To suspend the Right of Voting for Members of Assembly, from the *Germans*, till they have a sufficient Knowledge of our Language and

Constitution.—This Provision is as reasonable as the former. What can be more absurd and impolitic, than to see a Body of ignorant, proud, stubborn Clowns (who are unacquainted with our Language, our Manners, our Laws, and our Interests) indulged with the Privilege of Returning almost every Member of Assembly? Now a Course of about twenty Years would make them acquainted with all these Things, if, according to good Policy, we make it their Interest so to be, and give them the proper Opportunities, as I am going to propose. And unless something is done this Way, we may incline them to some bad Measures, and never procure that *Coalition*, which we desire, and which is so much their Honour and Interest.

3. It will therefore be absolutely necessary to encourage Protestant Ministers and School-masters among them, as I hinted already, in order to reduce them into regular Congregations; to instruct them in the Nature of *free* Government, the Purity and Value of the Protestant Faith; and to bind them to us by a common Language, and the Consciousness of a common Interest.*

4. But after such a Provision is made, it will also be necessary, in order the more effectually to induce the *Germans* to learn *English*, not only to suspend for a Time their Right of Voting for Assembly-men, as by the *second* Article, but also to make all Bonds, Contracts, Wills, and other legal Writings void, unless in the *English* Tongue. For want of some Regulation of this Nature, the greatest Confusion is like to be introduced into our Laws, and Courts of Justice.

5. That no News-Papers, Almanacks, or any other periodical Paper, by whatever Name it may be called, be printed or circulated in a foreign Language. Or, should this be deemed too severe (which I think it cannot reasonably be) then it may be provided, that no such Publication or Circulation be made, unless there be a just and fair *English* Version of such a foreign

* *N. B.* As a considerable Progress is made in a Design of this Nature, and a considerable Sum collected for it, by a generous and public-spirited Society of Noblemen and Gentlemen in *London*, who are all Persons of high Rank and Worth, the Parliament could not do a more effectual Service to the *British* Interest in *America*, than to assist the said Society, by making an annual Provision for instructing poor *Germans* in these Parts, for the Space of twenty or thirty Years, till they are brought into a regular State. Some *English* Schools are already begun, and an excellent Scheme laid for their Government; but without public Aid, it is feared the charitable Contributions of private Persons, will prove utterly inadequate to support a Design of so great national Importance.

Language, printed in one Column of the same Page or Pages, along with the said foreign Language.

For want of some such Regulation as this, continual Prejudices are propagated among the *Germans*, without our knowing it, or being able to remove them when they come to our Knowledge.

Now a Law consisting of the five foresaid Provisions, or something equivalent, would effectually rescue us from all the sad Train of Calamities I have pointed out; and without such Means, I see nothing to prevent this Province from falling into the Hands of the *French*.

It cannot be expected that private Persons, without the Aid of the Legislature, can long defend the Country, or support the Expence of military Preparations. A few Men among us have already expended large Sums this Way, and can see no End of it.

During the late War, they petitioned his Majesty, setting forth their Difficulties in this Respect, and the defenceless State of the Province; in which they were countenanced by the Proprietors, who with great Earnestness solicited the Matter, and have on every Occasion been zealous and active for the Defence of the Colony.—The Petition was referred to a Committee of the Privy-council and the Lords Commissioners of Trade and Plantations, who reported in favour of it. But the Petitioners, at that Time, received no Relief, owing, as they presume, to the other weighty Affairs of Government, which then necessarily engrossed the Attention of his Majesty's Ministers. Peace being soon after concluded, the Petitioners remained silent, till we are now again alarmed with greater and more threatenng Dangers than ever. Longer Silence would be unpardonable, and the sooner the *British* Nation is acquainted with our State, the more Possibility of Redress will remain.

It may be said, with the greatest Justice, that our Proprietors and our late Governors, have done every thing in their Power to assist us, and keep up to an *English* Constitution; for which they have been reviled, abused, and all imaginable Steps taken to hurt them in their Interest, by this perverse and proudest of People, who, under the Mask of extraordinary Sanctity and Conscience, lord it over their Fellow-Subjects.

Whatever be the Consequence, all our Misfortunes can be charged no where but upon our People themselves, and I have shewn that it would be plainly repugnant to their Interest to remedy Grievances. All Redress therefore, must, if it comes, come from his Majesty, and the *British* Parliament, to whom our distressed and melancholy Condition must be humbly

submitted. If our Case is longer overlooked, I shall soon begin to think of returning, to spend the small Remainder of my Days in *quiet* with you, and to leave my Bones in the Land where I drew my first Breath. Mean while, permit me to assure you, that,

I am, &c.

FINIS.

Anonymous,
An Answer to an Invidious Pamphlet,
Intituled,
A Brief State of the Province of Pennsylvania
(London, 1755)



THIS PAMPHLET is an answer to that of William Smith (Selection 50). Its unknown author possessed an intimate knowledge of Pennsylvania politics and had probably been a member of the Pennsylvania Assembly. Far from being an accurate account of the state of Pennsylvania, he showed, Smith's pamphlet was a thinly veiled attempt "to strip the Quakers of their rights and privileges, and submit them to the arbitrary will of their governors." Explaining that "The two greatest privileges under the constitution of that government are, the right which the assembly have to adjourn themselves, and meet on their own adjournments, and the application of all publick money; or, which is the same, a right of knowing in what manner it is applied," he insisted that the Assembly's money powers were not recent usurpations, as Smith had implied, but longstanding charter rights, which, "for some time past," Pennsylvania governors had been endeavoring to undermine by "getting the disposal of the public money into their own hands, without being obliged to give an account of it to the assembly." "Watching all opportunities to compass their design upon the assembly," the governor and his supporters had seized "the present encroachments of the *French*" to give them a good chance "for effecting it," claiming that they were barred by their proprietary instructions from agreeing to any defense appropriations that did not give the executive the

free disposal of all funds. But the assemblymen, "tenacious of their rights," had refused to accept any arrangement that would be so "prejudicial to their rights," pleading "a right by charter from the Crown, to certain privileges relating to the manner of raising as well as disposing of the public money." In this "contest of instructions . . . against charter rights," wrote the author, the "assembly have a charter and privileges in their favour, which no friend to liberty or property can blame them to defend." "By wresting that privilege out of their hands," the governor would have deprived the assemblymen of their "right by charter, to have what laws soever they think fit to propose passed by their Governours; and subjected" that right "to the controul of an act of parliament, made to bind other provinces, and in short, for the future, to the will of a Governor." So far from withholding defense funds, as Smith had charged, the Assembly had repeatedly tendered them "in the usual form" only to have the governor refuse them. The problems of Pennsylvania thus derived not from an aggressive assembly but from an aggressive executive bent on destroying the existing constitution. With the Assembly becoming more and more exasperated by the proprietor's demands and not understanding that he was acting in response to pressure from Crown authorities, this writer was one of the first to call for the king to take Pennsylvania under his direct control. (J.P.G.)

AN
ANSWER
To an invidious Pamphlet, intituled,
A Brief State of the Province of
PENNSYLVANIA.

Wherein are exposed
The many false Assertions of the Author or
Authors, of the said Pamphlet, with a
View to render the Quakers of *Pensylvania* and
their Government obnoxious to the
British Parliament and Ministry;

AND THE
Several Transactions, most grosly
misrepresented therein, set in their true light.

LONDON:
Printed for S. BLADON, in *Pater-noster-Row*.
MDCCLV.

An Answer to, &c.

When persons in power and office have given offence to the people over whom they are set, by attempts to destroy their privileges or other rights, and find them on the point of addressing the Crown against their unwarrantable proceedings; their usual method is to endeavour to get the start of them, and publish some false state of the case, calculated to justify themselves, and malign their opponents, in order to prejudice the Government, as well as the Public, against them, only till such time as the injured people have made their case known. In which they propose no farther to obtain their ends, than to take some little revenge for their disappointment, by vilifying the authors of it for a season.

This is in reality the case with the author, or rather authors, of a malicious pamphlet lately published here, and industriously propagated by the friends and espousers of the party, in favour of whom *the brief state of Pennsylvania* was written. For those gentlemen, finding they were not able to carry the point which they aimed at, and that the assembly, by their message to the Governor, of the 26th of Dec. last,* “had come to a resolution to address the Crown, in support of their civil rights and liberties,” which they esteemed to be greatly infringed by the Governor’s refusing to accept any of the sums offered by them for the King’s service, though tendered in the manner and form which had always been used in the province; they resolved to be before hand with them, and publish the present pamphlet, full of invectives, falsities, and unjust reflections, against the assembly and their conduct.

The person† who wrote the letter is very well known to be a *Smith*, a proper tool enough for the club who employed him: but not to enter farther into his character (which is so *black*, that were we to display it in its proper colours, it would be sufficient to discredit his work) we shall begin, without farther detaining the reader, and refute his assertions; either from our own personal knowledge of matters, or from the transactions themselves, which past between the Governor and the assembly, particularly in *December* and *January* last, printed in the *Pennsylvania* and *New York Gazette*.

The title page has more the appearance of a puff, composed of several falsehoods, to set off the pamphlet to which it is prefixed, than any thing

* See the *Pennsylvania Gazette*, for the 31st of Dec. 1754.

† In a letter written on this occasion it is spelled *parson*, perhaps by mistake, as a *parson* and a *smith* seem to have no real connection, whatever they may in a metaphorical sense.

else: for in what part of it is *the true cause of the continual encroachments of the French display'd?* where is *the secret design of their late invasion, and settlement on the river Ohio*, set forth? strong expressions to raise the expectations of the Public, without any thing of a performance like what is promised. However, we may chance to supply their defects, and set forth the affair in a true and clear, not, as the letter does, in a false and obscure light.

Of the same nature with the former are the words following, *to which are annexed, An easy plan for restoring quiet in the public measures of that province, and defeating the ambitious views of the French in time to come.*

One would imagine that his plan was calculated to defeat the designs of the *French*, not only against this province of *Pensylvania*, but all the other *English* provinces in *America*; and so doubtless the author, or authors, would have it understood: whereas their scheme is altogether particular, and consists solely in obtaining the ends which they have in view; namely, to strip the Quakers of their rights and privileges, and submit them to the arbitrary will of their governors. Let us now see whether what is farther declared in the title be true, namely, if *the conduct of the assemblies of Pensylvania is impartially examined.*

The writer of the pamphlet begins with a very fallacious question, as if put by his friend. *Why we who are esteemed one of the richest colonies in America, are the most backward in contributing to the defence of the British dominions in these parts?*

Pensylvania unhappily, like the rest of the colonies, is divided into two parties, one for the true interest of the province, the other against it. The letter writer would not be thought to be of the latter, but as he states the question, he makes himself of it, *why are we the most backward?* and this will appear to be the truth of the case; altho' by *we* he doubtless means the opposite party, or those of the assembly; in which he advances a great falsity: for the assembly of *Pensylvania* have always been as forward to contribute, upon any emergency, as any of the other colonies. As a proof, in the present case, in their message to Governor *Morris*, of *December 12, 1754.* they declare,

As we account it our duty to do every thing in our power to comply with his Majesty's royal orders, or that may contribute to the welfare of the people we represent, we have chearfully and almost unanimously resolved to grant 20,000 *l.* for the King's use.

This they did in the usual manner as they have heretofore done; but the Governor has refused it, on those terms, for reasons the author is unwilling

to assign.—The two greatest privileges under the constitution of that government are, the right which the assembly have to adjourn themselves, and meet on their own adjournments, and the application of all publick money; or, which is the same, a right of knowing in what manner it is applied. The advantages of these two privileges, and how necessary they are to the well-being of the colony, appears from the confusion and discontents which some neighbouring provinces, at certain times, have laboured under for want of them. The assemblies have been harrassed by their governors with tedious lengths of sitting; and it has been known, that when large sums have been demanded, under a pretence of applying it to the use of the public, the Governor, as soon as the money was raised, has put it all in his own pocket, without applying any of it to the service for which it was demanded.

The Governors of *Pensylvania* have, for some time past, been using their endeavours, under various pretences, of getting the disposal of the public money into their own hands, without being obliged to give an account to the assembly; and this, we apprehend, will appear to every impartial person to be the true cause why the Governor has so often refused to accept the considerable sums offered by the assembly, though tendered in the usual form, and in reality much greater than could reasonably be expected from so small a fund of only 6 or 7000 *l. per annum*, to defray all the charges of the Government, and other occasions of the province, and especially as there was, at the same time, scarce 500 *l.* in the treasury. This demonstrates that the assembly are neither backward, nor sparing, in their contributions for the King's service; and as a farther incontestible proof likewise, that they are not against the defence of their country by military methods, as the letter writer so often falsely asserts; they, not only in their frequent messages to the Governor, declare their readiness to provide for the defence of the colony, but, before they adjourned themselves on the 3d of *January* last, they ordered* "5000 *l.* to be borrowed on credit of the House, to be laid out for purchasing fresh victuals, and such other necessaries as they should think expedient, for the use of the King's troops at their arrival." Pursuant to the instructions sent from hence by the Secretaries of State.

The Governor, and his men, as they are called in *Pensylvania*, who have been watching all opportunities to compass their design upon the assembly, imagined that the present encroachments of the *French* gave them a fair occasion of effecting it, and therefore, resolv'd to lay hold of it. They thought

* See *Pensylv. Gaz.* 14 *Jan.* 1755.

by this means either to decoy them out of their right of knowing how the public money is disposed of, or else to force it out of their hands. They apply for money to defend the colony: the assembly readily comply upon terms consistent with their rights and powers. No; that won't do, say the party; we have you now in a cloven stick: you shall either give up your privileges, or be exposed to the ravages of the *French*; for you shall neither defend yourselves, nor be assisted by any province else, on any other terms. The circumstances of this affair, I think, clearly evince that this is the real state of the case.

The Letter-writer, p. 4. says, "We are now in an alarming situation: but we have brought the evil upon ourselves." He might have gone farther, and said, "And we are resolved to augment it, unless the assembly comply with our expectations." Although he owns, that his party have brought the evil on themselves, which is true enough; yet his modesty, poor gentleman! will not permit him to let the world know in what manner they brought it on themselves and the whole province. Well, to save him his blushes, I will venture to disclose the secret for him. The present encroachments of the *French* had its rise from a flagrant piece of iniquity, in burning the houses of a great number of families, who were settled on the *Juniatta*, a branch of *Sasquehanna* river; whose lands were not at the time purchased of the *Indians* by the proprietor, whatever intentions he might have had that way.

This unjustifiable proceeding, in the year 1750 or 51, drove near three-score families over to the *French*, then in the neighbourhood of the *Ohio*, where they have continued ever since; big with resentment and revenge for such cruel usage, which shocked those people whom we call savages: a name which more properly belongs to such merciless incendiaries, some of whom have met with the punishment on other occasions, which they had before deserved on that score.

This most inhuman action, which is cried up as a meritorious exploit by the party, was committed by the Secretary, and other Magistrates subject to his directions, as appears from his own letter to the Governor, by way of journal of his proceedings; which on his return in triumph from that glorious expedition, was printed at *Philadelphia*. This was a copy from Governor *B*—*g's* new way of *ejectment* (as it is called in the colonies) in *North Carolina*, which perhaps exceeded the original itself. Is it to be wondered if such men as these give up the province to the *French*, sooner than depart from their unwarrantable pursuits.

We shall pass over what our author says on the flourishing condition of *Pensylvania*, and his wise reflections on the nature of popular

governments, as well as sly insinuations applied to the Quakers, that a constitution, although extremely proper at first for preserving liberty and encouraging industry, may at length, on the alterations of circumstances, prove prejudicial to both: these things we leave for politicians to consider. Before we proceed to other facts, however, it may be proper to take notice of what he says, in the page before cited, with respect to the trade of *Pensylvania*, "That from the port of *Philadelphia* (only) at least 400 sail of vessels clear out annually." This article requires some kind of elucidation, which our author, not so much thro' haste, as unwillingness to enter into particulars, has omitted; for that might have led him to reveal certain secrets which carry no very favourable aspect, and declare, for instance, how many of those vessels go annually with provisions to the *French* and *Spaniards* in the *West-Indies*, and how many contracts and factors were kept there all the last war? Likewise how six or eight particular persons of the Governors party claimed an exclusive right to that trade? and why, if any body else attempted the same, their vessels were sure to be seized?

The Letter-writer having inveighed against the power which the Assembly have of managing the public money, as a thing attended with very pernicious consequences; his next design is to make it be thought, that this power is a kind of usurpation, by representing it as having been obtained in some collusive and unwarrantable manner. This is evidently his meaning, p. 9. where, after telling us, that the heirs of the old proprietor, after his death in 1723, being at law among themselves about the government and soil,

Sir William Keith, who was then Governor, *falling into the hands* of the assembly, passed a law, giving them the sole disposal of all public money, in manifest contempt of all the instructions of the proprietary family.

This paragraph would insinuate to the world, that *Sir William Keith*, without the proprietor's direction or knowledge, for a sum of money given him by the assembly for that purpose, passed the act he mentions. This is a very charitable reflection on *Sir William Keith* and the then assembly; but the fact was thus: at the death of *Mr. William Penn*, the old proprietor, as the writer calls him, the province of *Pensylvania* was not in that rich and flourishing condition which it is in at present, or has been for some years past; on the contrary, it was involved in great difficulties, and even reduced to a low

ebb, being charged with a heavy mortgage: in order therefore to extricate the proprietors, his heirs, and discharge the province from that mortgage which was then threatened to be foreclosed; the Quakers, who respected their old proprietor, as he was one of their persuasion, and to prevent the government falling into other hands, unanimously joined to raise the sums necessary for that end, which could not be done without passing the act in question: and had it not been for the Quakers exerting themselves upon that emergency, the soil and government of that province, in all likelihood, must have been alienated. But this explanation of the matter the opposite party are on this occasion willing to forget, though they have been the greatest benefitters by it.

The grievance is, that by this act, the Governor, and other provincial officers, cannot have as exorbitant salaries as they might demand; and most of them, it is well known, are never satisfied; especially when they happen to be such as go over to retrieve a broken fortune, which has been too often the case, both in this and other colonies.

The complaint is expressed in the next paragraph, where the writer says,

The assembly aim at rendering all succeeding governors dependent on them, for that now they annually either vote or withhold the salaries of the Governor and all such officers, according as they are or are not the creatures of the assembly.

It is true, that whatever sums the assembly vote for the Governor, is a benevolence, and what he has no right to demand: but he may expect a gratuity according to his behaviour; and if by his conduct it appears, that he has the public interest in view, more than his own private, never fails of having a good one. Ample provision likewise is otherwise made for him, and the rest of the officers of government. What proportion does the officers in the appointment of the assembly, enumerated by the author of the letter, bear to those in the appointment of the Governor? I will answer: not more than ten does to ten thousand. What is the authority, profit, and honour of the chief justices and other judges of the supreme court? the judges and magistrates of all the counties and courts in the province? the prothonotaries, attorney-general, rangers, &c.? Let the balance be struck between the officers in the nomination of both parties, and see which will preponderate.

The writer next exclaims, p. 10. "That the assembly being possessed of such unrestrained powers and privileges, seem quite intoxicated, are factious, contentious, and disregard the proprietors and their Governors." This

is to be understood, because they will not divest themselves of those powers and privileges, which they have purchased in great part by their wealth, and surrender them up to their proprietors and their deputies, to be treated by them at discretion. He adds, "Nay, they seem even to claim a kind of independency of their mother-country, despising the orders of the Crown, and refusing to contribute their *quota*, either to the general defence of *America*, or that of their own particular province."

The latter part of this invective is a repetition of the false allegation, refuted before, whereby it appears that the charge may be justly turned upon those of his party; who when the assembly would have willingly and largely contributed for the general defence, hindered them from giving, by refusing to accept their offers, but on conditions injurious to their rights. As for the rest, the quakers to a man throughout the province, are so far from claiming an independency of their mother country, or despising the orders of the Crown, that they and every inhabitant in the province, save the party, would be glad to see the government reassumed and in the immediate possession and appointment of the crown.

To confirm what he had advanced, with respect to the assemblies refusing to contribute to the general defence of the colonies; he charges them with "opposing Governour *Thomas* in raising soldiers to send against the *Spaniards* in the *West Indies*, and an absolute refusal to contribute a farthing for that service."

In answer to this *glaring instance*, as it is termed by the letter writer, it must be observed first, that the Crown had made a provision for defraying the expence in raising men for that expedition, which rendered the assistance of the assembly in that case needless. Secondly, there was no opposition given by the assembly to Governour *Thomas* or any body else in raising soldiers for that service, where the men inlisted were free and proper to go upon that duty. The controversy was about the taking indented servants and apprentices, which must be condemned as illegal: but such tyrannical influence was used by the Governour's party at that time, that the distressed were obliged to send to *New York*, 100 miles distant, for lawyers to set forth their privilege of exemption.

Because the writer does not think a single instance, tho' such a *glaring* one, sufficient to prove his charge, he endeavours to muster up a great number of instances, by telling us "that since that time, during the whole course of the late war, they have often been called upon by the Crown, and by Governour

Shirley of the Massachusets, for the expedition against *Cape Breton &c.*” Why this *et cetera*? Why stop short at this instance? perhaps he could not find that there was any other occasion during the war, for their being called upon. However they were called upon often it seems, and so it matters not in his opinion, whether it was upon several occasions or only upon one. It might be supposed also from the manner of introducing the charge that they never answered to any of those calls, especially that for *Cape Breton* which he mentions.

But here we are baulked a second time, for instead of saying they did not answer to any of the calls, or contribute towards the war, he in effect acknowledges that they did answer to them all; but would have their compliance thought no better than a refusal, by depreciating the manner of doing it. “To all which (says he) if they have at any time contributed, it has been done, indirectly, and in a manner shameful to that rich province; so grudgingly and in such small sums, as rather to hurt than serve the common cause.”

Methinks the writer seems much put to his shifts how to make out a charge upon this head, and comes but lamely off in pretending that their contributions rather did hurt than good.

He might be asked whether they did more *hurt* than *good* on occasion of the *Canada* expedition, set on foot just before the conclusion of the last peace, when they voted 5000 pounds for the raising, arming and maintaining a number of companies to go on that service, which was three times the number furnished by *Virginia*. But this and other transactions in favour of the Quakers, perhaps slipt his memory; which with persons of his lying turn is commonly short; or else he thought himself not obliged to mention any matter which was not for his purpose. ’Tis true their money on this occasion did no *good* to the public, but rather *hurt* to themselves, as the expedition perhaps was never designed to be put in execution; or if it was did not proceed, being knocked in the head by the ensuing peace.

Now methinks their contributing so largely and freely to this expedition, might have atoned with this writer, for their seeming backwardness to advance a sum towards that of *Cape Breton*: but there was good reason for their different behaviour: the *Canada* expedition was a promising one, and afforded a very rational prospect of success; whereas the latter was looked on in *America* as a piece of *Don Quixotism*, and it is said was carried in the assembly of *New England* by no more than one vote. This might well justify their not contributing at first more than most of the other provinces; tho’ after it was over they did contribute.

Governour Shirley in a speech, observed "that scarce such an instance is to be found in history"; and a certain colonel in the expedition expressed himself thus.

If the *French* had not given up *Louisburg*, we might have endeavoured to storm it with the same success, as the devils might have stormed Heaven. If any one circumstance, says Dr. *Douglass of Boston*, had taken a wrong turn on our side, or any one circumstance had not taken a wrong turn on the *French* side, the expedition must have miscarried with shame to our forces—and the people of *New England* from generation to generation, would have cursed the advisers and promoters of this *unaccountably rash* adventure.

When this *French American* Dunkirk was given up, the *English* found 600 regular troops in garrison, with about 1300 militia; the main ditch 80 foot wide, the ramparts 30 high, mounted with above 65 pieces of cannon; the harbour mouth defended by a battery of 30 guns 42 pounders; and the island battery of as many 28 pounders: provisions for 6 months and ammunition sufficient. It was imagined by some that this place might have been taken by 1500 raw militia, and a few armed small craft of *New England*; but Governour Shirley thought 3000 militia and two 40 gun men of war much better. Very happily, but unexpectedly, Sir *Peter Warren* with his squadron came to their assistance, besides other men of war, which greatly intimidated the *French*; who imagined we were much stronger and better prepared for the siege of such a fortress than we were: for our guns were bad, and the scaling ladders were too short by ten feet; so that it might well be stiled a romantic expedition, which succeeded with 10,000 to one against them: it was in this light that the *Pensylvania* assembly, as well as all judicious people, considered it.

But to proceed, the writer continuing his charge, says, p. 11. that the Quakers "have not been more attentive to the defence of their own particular province, than of his majesties *American* dominions in general." After what has been said in the preceding article, perhaps this article may be true and yet no reflection on them: for if they have contributed as well for the defence of their own province, as they have for that of all in general, I should be apt to think they have not done less than they ought to do; and it is likely they would do more for themselves than for others.

In case they have not fortified this province sufficiently, they have not done worse than most of the other colonies: For want of proper defence is

the general charge to which almost all of them are liable. I do not say this as if I thought the Quakers excusable, in case they have not taken sufficient care for the security of *Pensylvania*, because other provinces have neglected theirs: but for that reason they ought not to be charged with this fault as if it was peculiar to them: and, indeed, if any are excusable for such a neglect, it should be those who make it a point of conscience not to bear arms; and, perhaps, was the power in other hands, *Pensylvania* would lie as defenceless as it is represented to be in the hands of the Quakers; that is, as most of the other provinces are.

The letter-writer says, they have but one small fortification in all *Pensylvania*; and takes care to extol the generosity of the proprietors, in making them a present of 12 large cannon, part of the 26 which they have mounted, and giving the gunner a salary of 20 l. a year. It doubtless was an acceptable present: but we should not have wondered if they had built the whole fort and bestowed all the cannon upon it: For, who would not fence and secure a valuable estate, rather than leave it open and exposed to be ravaged, especially when it lies in a bad neighbourhood? this charge, therefore, tho' intended against the Quaker inhabitants, may more properly be turned against the proprietors. He says, "the fort was raised and is maintained at the expence of private people." But he does not mention in what manner, or by whom. It may be, for any thing that appears, by the very people he finds fault with as not having done it. Of the first of those two particulars I will supply the wilful defect, by explaining in what manner it was built. The money raised for that use was by *public* lotteries: and this is what the letter-writer calls being built by *private* people; As if it was done by a voluntary subscription of a few individuals. So candid and sincere is this author in relating his facts. But *lottery*, perhaps, is one of those terms which he did not care to make use of, as it might give occasion to the people on this side the water, to see that while he is blaming the Quakers for some acts of omission, there are others in *Pensylvania* who make no scruple of acting in open defiance of positive laws of the country. For there is one there particularly against public lotteries: so that this fort, however necessary for the defence of the colony, was erected in an illegal manner, which no friend of liberty can approve of. But this was done by the governor's men, and that is sufficient. The managers of the lotteries have some thousands yet in their hands unapplied, arising from that same fund.

To set forth the defenceless state of the country for want of forts by an instance, the writer tells us, "that in the last war, one of the *Spanish* privateers

came up the *Delaware* within a few miles of *Philadelphia*." Now he could not, perhaps, have pitched on a more improper instance than this: for (1) from *New York* all the way to *South Carolina* there are no fortifications along the coasts; so that the *Pensylvanians* in this respect are not more blameable than their southern neighbours, (2) the reflection falls on *West Jersey* as much as on *Pensylvania*, as lying on one side of the river, and therefore equally concerned to secure the entrance of the river against an enemy. (3) *Philadelphia* lies 150 miles from the sea, and the river is of very difficult navigation, especially for vessels of 2 or 300 tons; besides so large that the whole armada of *Spain* might have run up and returned again, unmolested, provided they ascended no farther than the privateer did: for, what but a naval force could hurt them in any open bay, near 20 miles wide?

So that in effect this is the part of the whole province, with respect to which least danger is to be apprehended. If he had brought an instance of an invasion by land, it might have been something to the purpose; and, indeed, not many years ago there did happen a very terrible one in the western borders of the province, on the *Juniatta* branch of *Susquehanna* river, where the settlements of above 60 poor families were destroyed by fire, and themselves reduced to the utmost distress. This was not only a *glaring* but a *flagrant* instance; however, one of this kind would not have served his turn: for the conflagration was not the act of an enemy, but of the governor or his party; an act not less illegal, and infinitely more detestable than that of the lottery.

I say again I would not be understood as if I excused the neglect of fortifications, or thought them needless: on the contrary I am of opinion, that they are very necessary for security of the colonies; and that forts ought to be built all along their coasts, as well as borders, in the places most exposed to the invasion of an enemy, either by sea or land. And altho' a single privateer in such a river as this might find much difficulty as well as run much hazard in landing; yet in case a desperate crew of fellows should land, and venture up into the country, they might do very considerable damage to the inhabitants; a fort therefore in the narrowing of the river would be very convenient. It would likewise be proper on such alarms for the people to shew a proper zeal for defence of their country, and spirit against the invaders: But the association, which the author tells us was formed on this occasion was a vain ostentatious piece of parade, set on foot by the few to intimidate the people, and awe them at the ensuing election to chuse them.

Besides, the proprietors themselves, 'tis said, when informed of it, thought it a very unwarrantable procedure. What more need be said to justify the behaviour of the Quakers, who considered it in no better a light than the proprietors?

But it is the business of the letter-writer to condemn the Quakers in every thing, and to misrepresent the facts well known in *America*, in order to blacken them here: Of which we are come to give the reader an instance, or to use his phrase a glaring instance, from the same page. There he tells the public,

that the proprietors of *Pensylvania* five years ago proposed to the assembly, that if they would give money for building a strong house on the *Ohio*, they would contribute any reasonable proportion to the building and support of it: but this proposal, continues the author, was rejected with scorn, merely, perhaps, because it came from the proprietors: nor was it so much as thought worthy of a place in their minutes. Altho' it is clear, concludes he, that if it had been complied with, the *French* had not been fortified in the same river as they now are.

This charge with regard to the *Ohio*, which, if as the writer has represented it, would have afforded matter itself for a pamphlet, in the hands of a person or persons, who knows so well how to improve the most distant hint, is thrown by him into a note, as an article which required no farther notice; altho' if the encroachments of the *French* on the *Ohio* were really owing to their rejection of the proprietors proposal for erecting a strong house there, I know not any thing in his whole pamphlet which deserved his expatiation more, or would have gone so far to render the Quakers obnoxious to the government of *Great Britain*. But preparatory to what we shall say on this head, the reader is desired to take notice that he does not say the proprietors had any right to make such a proposal, either by having purchased the lands of the natives for building such a strong house upon; or by having obtained a grant or license of them for so doing. This it was absolutely necessary for him to have done, in order to fix the heinous offence, which he lays to the charge of the Quakers, as the cause of the present bad state of our affairs in *America*, as well as the trouble which we are involved in here on that account, and this the public may be sure he would have done had it been in his power; or at least would have ventured to assert, if he could have had the least hopes of not being detected. But the case is so well known to be

otherwise, that he durst not go too far on this head. The true cause of the *French* encroachment on the *Ohio* is as follows:

One *George Craghan* an *Irish* papist, as an *Indian* trader, was frequently employed by the government of *Pensylvania* to carry presents to the *Indians* living on or about the *Ohio*, and to bring their answers back. About the year 1750, he sent a letter to the assembly of *Pensylvania* then sitting, to inform them, that the *Indians* on the *Ohio*, and in that neighbourhood, had invited the *English* to build a strong house for the protection of their traders. The assembly taking the matter into consideration, thought it very extraordinary that the *Indians* should now desire a thing to be done which they had always, and but just before, so warmly opposed and denied. To be better informed, and know if it was not a design in *Craghan* to impose upon them, tho' earnestly recommended by the governor in his speech to them, they sent for *Conrad Weiser* the provincial interpreter, and one of the council of the six nations, to know his sentiments. *Weiser* acquainted them, "that the *Indians* had heard the *English* were forming such a scheme, and therefore gave him in charge to let them know they must make no such attempt, for that the natives were determined not to permit or suffer any such thing as a strong house to be built on their lands." *Craghan* being thus detected in a vile attempt to impose upon the assembly, who had often entrusted him in *Indian* affairs; in order to disculpate himself, sent a letter to the speaker, which was written to him by the governor for that purpose: but the governor denied, or in some measure excused it; and his tool *Craghan* fell a sacrifice to the assembly's resentment. He has never since dared to come within 100 miles of *Philadelphia*. Having quitted *Pensylvania*, he went and offered his service to the *Ohio* company in *Virginia*: but they rejected it; upon which he crossed over the mountains, and now lives at *Logstown* or at *Aughwik*, doing all the mischief he can in revenge, by influencing the *Indians* and *French* against the *English*. This whole affair appears at large upon the journal and in the votes of the assembly of *Pensylvania*. It is well worth the notice of the curious: but as an account has been already published of it, in *the state of the British and French colonies in North America, &c.* we shall refer the reader to that treatise, only observing that the author has been misinformed, where he says, "on the Governor's proposal to build a fort on the *Ohio*, the assembly voted 10,000 *l.*" whereas they discovered the imposition in time, by their sagacity, and rejected it, as hath been set forth above.

From hence therefore it plainly appears, that the proprietors had neither purchased any land for building a strong house, nor obtained any licence from the *Indians* for that purpose: consequently that the assembly were in the right to reject the proposal; and they did not reject it, as the letter writer would insinuate, merely because it came from the proprietors. It likewise appears, that if they did not register the proposal of the proprietors, they gave a place in their minutes to signify that the proposal was an imposition on them; therefore their refusal was not the cause of the *French* being now fortified on the *Ohio*. On the contrary it is evident that their invasion is more likely to be owing to the attempt of his party to impose upon the assembly, and build a fort on that river, without the consent of the *Indians*; and this is demonstrable from the event. For the *Virginians*, by pursuing the same unfair and precipitate scheme, lost both the country, and the affections of the *Indians*, who went over to the *French* on that occasion, if they did not in reality call them in.

If therefore the *French* have invaded the province of *Pennsylvania*, and built three forts, as he says, within the limits of it, who are to blame, but his party and the *Virginians*? The *French* have been brought down upon the province by those who broached and pursued the project; not by the Quakers, who rejected it when they found it an unjust, fraudulent, and dangerous undertaking, as it turns out to be.

For the same reason therefore, the Quakers may have some reason to expect, that since the *Virginians* have brought an enemy upon their backs, the *Virginians* ought to be at the whole expence of driving them off again. If the just measures which the assembly of *Pennsylvania* took, had been observed in their sister colony, none of the present calamity could have happened to them: and it seems very hard that they should be at the expence of repelling the danger which their neighbours have brought upon them. This might have excused them in good measure if they had been a little backward to contribute on this occasion: But this shameless writer has the confidence, not only to charge them with the crime which his own party was guilty of; but also with refusing to grant money for their defence, although they actually did grant it, and the same party would not accept it, without they also gave up their privileges. Thus they are not content with bringing the enemy upon their province, but at the same time would act the enemy within, by stripping them of their other rights.

The writer says indeed, that the other enemy also is in the province: if so, the poor Quakers have gotten two enemies within their borders, one a foreign, the other an intestine enemy; which last perhaps they are in most danger from. But if a body should deny that the *French* have erected three or any fort within their limits; I apprehend the letter writer, and his constituents would be hard put to it to prove what they assert, as they have neither had any astronomical observations made to ascertain the place, or places, to which the western bounds of *Pensylvania* may extend; nor have yet even so much as run a line, with a view to determine the matter. Methinks the proprietors ought long ago to have had the lands granted them accurately survey'd, and their limits, both as to latitude and longitude, precisely determined; for nothing else can do it unexceptionably. However the writer, to make the charge appear the heavier, ventures to declare what he cannot possibly know; and that in contradiction to what he does know, namely, that the *Virginians* claim the country of the *Ohio*, where the *French* have encroached, as belonging to their province, and that their invasion is, in *Great Britain*, called an invasion of the territories of *Virginia*. He does so, in effect, himself, p. 13 and 18.

After all, supposing the *French* forts were within the limits of the province, or rather on this side of a line drawn 5 degrees west of *Delaware* river; I would ask what right have the proprietors to the lands on which those forts are situated? have they bought them of the *Indians*? for nothing else can give them a right to them, even though they were actually within *Pensylvania*; and if they have not bought them, may not the neglect be considered as an abuse of royal bounty? Had that been done, and proper encouragement given, those lands might have been settled before now; and consequently might have been secure against the attempts of an enemy. For then they might have built forts, without giving offence to the *Indians*, who, in case of an invasion from the *French*, would readily have assisted to repell them. But this opportunity is now lost, perhaps, beyond a remedy; for should the *French* be driven out again, the *Indians* seem determined not to sell them any more; as from the insincere proceeding of the *English* of other colonies, they are become suspicious of their having a design to seize their countries by force.

Besides, should they be inclined to sell them any more lands, they would doubtless hold them up at such a rate, that the proprietors would not care to purchase: for they have learned how extravagantly dear the proprietors sell

the land which they bought of them for trifles; and therefore seem resolved no longer to part with them, for what, as they phrase it, *will run through their guts before they get home.*

The rule which prevailed in *Pensylvania*, instead of making a considerable purchase at once, and on the frontiers, in order to fortify the province, was to buy a small tract at a time; and after the proprietor and his officers had culled them in order to jobb, and parcel out at an extravagant rate, then the rest was sold occasionally by the proprietor's officers, to the highest bidder, for his sole benefit and advantage. The lands so bought were to be settled before the proprietors would purchase any more. Nor was it possible, under such restrictions, to settle the colony so fast as otherwise it might have been; for there is a positive law in force which prohibits every person to purchase from the *Indians*: the preference by such law being given to the proprietor, of whom every individual is obliged to purchase, as that law is construed by the officers of the proprietors, and courts of justice of their own constitution.

Was it not for that obstacle, the greater part of *Pensylvania*, and particularly the western part of it, would have been settled long ago, and a frontier formed too strong for the *French* to force. What is very extraordinary with regard to the proprietary purchases, although they were made for his own private benefit, yet they were chiefly paid for by the assembly, out of the public money; a thing which they have long complained of, and reluctantly comply'd with.

Upon the whole, I think it may be a proper question to ask the author, or authors, of the letter, why ought not the proprietor to contribute to the defence of the province as well as the assembly? since they claim the right and profit of the lands within it, and have little less than three fourths of the whole in their possession, ought they not, in that case, as standing in place of the Crown, to defend them and his people; or at least contribute to their defence? but although he draws so many thousands a year out of the province, it does not appear that he ever contributed any thing either to the defence of the colonies, or even that of his own, excepting the old guns. If he had, his party would have proclaimed it, with a noise as loud as that which all his 12 pieces of cannon could make.

To proceed. He says, "It may justly be presumed that, as soon as war is declared, the *French* will take possession of the whole province; since they may really be said to have stronger footing in it than we." He must here

be supposed to speak of the superior footing of the external enemy, the *French*, to that of the internal enemy, his own party; for he could hardly be so ridiculous as to mean that the *French*, with their three forts (supposing them to be situated within the borders of *Pensylvania*) had a stronger footing in the province than the inhabitants, who are actually possessed of the body of it, to the amount, as he confesses before, of 220,000. However that be, he is comforted to think "that the *Virginians* have taken the alarm, and called on them for assistance." He is all of a sudden reconciled, it seems, with his brethren of *Virginia*, and ready to assist them; although they not only helped to bring on the danger he speaks of, but not long before gave his party as terrible an alarm as the *French* have done, nay a much greater one in all probability. For the *French* may be said to have deprived them of little more land than their forts are built on, and their cannon can command; but the *Virginians*, before their coming, had surreptitiously deprived them of a great deal more, as they conceived, from the erection of the *Ohio* company. And although this writer stifles the matter, he very well knows that to revenge the injury, those of his party gave the first intimation to the *Indians* of that grant, and inflamed them against the *Virginians*; whom, on that account, they stiled false brethren, and branded with the most opprobrious names.

We are now come to the writer's two questions. The first of which is, "Why are our assemblies against defending a country in which their own fortunes and estates lie, if it is really in danger?"

Before the writer put this question, he ought to have proved that the assemblies are against defending their country. But he himself hath shewn that they are not against defending it, by acknowledging that they have offered to advance money, not only for defence of their own province, but also for that of other provinces. Nay his second question is a contradiction of the first, as it confesses that they have offered money for the King's use, but the Governor and his party will not accept of it. Therefore the only proper question should have been, Why will he not accept of the money? which is the second question.

But before we proceed to it, we shall examine the wise reasons he assigns why persons at a distance might imagine the Quakers are indifferent whether or not the *French* shall make themselves masters of *Pensylvania*.

His first reason is the continued refusal of the assemblies to defend the province: which is no more than the question reduced to an assertion, which

we have already proved to be a falsehood out of his own mouth. And as, by his own confession, they have offered to advance money to defend the province; it follows, in effect, from his own confession, that they are not indifferent whether or not the *French* shall make themselves masters of *Pensylvania*. On the other hand, as he likewise acknowledges that the Governor and his party would not accept of the money so offered by them; it follows, from the same way of reasoning, that the Governor and his party are indifferent whether the *French* shall make themselves masters of it. If the question was put, who are most against defending the province, they who offer to advance money for that purpose, or they who refuse to accept of it, would not every body say the latter?

Methinks this suggestion, that the Quakers are against defending their own country, comes with a very bad grace from persons, who at the same time find them so tenacious of their rights. If they are so unwilling to give up their privileges to those of his party, is it to be imagined that they would readily surrender both those and their country also to the *French*? No they don't intend to part with either, they would willingly defend both: but because they will defend one, his party will not permit them to defend the other.

The Quakers are sensible that the province is in danger from the *French*, as appears from their messages to the Governor in the *Pensylvania Gazette*: but they are satisfied that it is not in so great danger as the party would make them believe; for which end to terrify them into a compliance, they have raised many false reports: but that of the 6000 men being landed one day at *Quebek* without ships, and transported the next to the *Ohio* without being seen or heard by any body, has quite ruined their credit, and proved them no conjurers.

His second reason is the extraordinary indulgence and privileges granted to Papists in this government; privileges, saith he, plainly repugnant to all our political interests, considered as a Protestant colony, bordering on the *French*.

The fact is so far true, that the Papists have an equal privilege with those of other religions. But what he would suggest on the occasion is false, as if the present generality of Quakers, inhabiting *Pensylvania*, had out of their great love and affection for Papists, granted them those extraordinary indulgences and privileges; whereas it was done by the father of the present proprietors, who therefore must be affected by this stigma, if it be one, and not the assemblies, who have passed no toleration act in favour of Papists.

It may be proper therefore to clear up this point. The original charter or grant from King *Charles* II. to *William Pen* esq; bearing date the 14th *March* 1681, gives to the proprietor a power to make by-laws. In consequence of such power, the 28th of *October* 1701, he granted a charter to the inhabitants, wherein is included the following clause, *viz.*

I do hereby grant and declare that no person or persons inhabiting in this province or territories, who shall confess and acknowledge *one Almighty God*, &c. shall be in any case molested or prejudiced in his or their person or estate, because of his or their conscientious persuasion or practices, &c.

In the first place, the public sees that the present body of Quakers have done nothing in this case of their own voluntary motion; and if they have strictly conformed to the tenor of the charter in allowing the liberty which is granted by it, methinks it is a very great article in their favour, as it shews that they have not abused their power; and this is a strong reason for believing that they will not abuse it, and an instance of moderation, as well as fidelity to the trust reposed in them, which cannot be produced by most of the neighbouring colonies; who have persecuted their fellow Protestants, and even put some Quakers to death for obeying the dictates of conscience.

How far the father of this colony was in the right for granting such an extensive liberty of conscience to all religions without distinction or restriction, I will not positively say; but I dare venture to affirm that he did it from no bad motive. He doubtless considered those evil doctrines in the Romish church, which are inconsistent with humanity and subversive of the rights and liberties of mankind, as no parts of religion, or matters of conscience; any more than robbery or murder, which fall under the cognizance of the civil magistrate, with whom such pleas would not be admitted. It may be likewise considered that every religion contains doctrines which more or less tend to the prejudice or destruction of all other religions; and therefore thought, if he excepted one religion, he must in justice except more: altho' it must be confessed that Popery exceeds by many degrees all other religions now on earth in those principles, which seem not intitled to toleration. But as I am a zealous advocate for liberty, and think it cannot be supported but on general principles, I should be for excluding no people from liberty of conscience or their civil rights, who should formally disclaim and renounce all such tenets as seemed inconsistent with the safety of government or good

of society; which for that purpose should be picked out of their several systems and made a test.

After having suggested against the assembly that they acted in favour of Papists, he subjoins a kind of draw-back to shew his great moderation in favour of the generality of Quakers.

Altho' this, saith he, might be insinuated, yet from observation I have reason to believe, that most of the Quakers without doors are really against defence from conscience and their religious tenets; but for those within doors, I cannot but ascribe their conduct rather to interest than conscience.

This writer imagines that his seemingly charitable opinion for the *many* would make his suggestions have the more credit and weight with the reader against the *few*. But he did not consider what a blunder his hypocrisy has led him into; for can it without an absurdity be presumed, that the conscientious *many*, *without doors*, would make choice of the *few*, who have no conscience, to represent them within? Be that as it will, Governour *Morris* himself has in direct terms declared himself of a contrary opinion in his message to the assembly of the 18th of *December*, [see *Pensyl. Gaz.* the 26th of *December*] where he says, "he is convinced they act from upright motives, and what they esteem to be the true interest of the province." Need I ask the public which of the two they will believe, the governour or the letter writer? who, it appears from this single instance, deserves no credit in any thing which he affirms or suggests.

The writer next undertakes to enter into the views of the assembly in not complying with the designs of his party: "Our assembly apprehend, says he, that as soon as they agree to give sufficient sums for the regular defence of the country, it would strike at the root of all their power as Quakers, by making a militia-law needful." If they do so apprehend, they apprehend rightly: Such a law, especially such a one as the party aim at, would certainly produce the effects which he mentions; and be the direct means of enslaving and depopulating the country. The importation of *Germans* and other foreigners, so much exclaimed against by this writer and his principals, has been the chief means of bringing the province of *Pensylvania* into that flourishing condition, which it now enjoys; the greatest if not the sole motive for their preferring that colony to all others on the continent for settling in, was the privileges now complained of, the principal of which with them is that of

their affirmation being admitted instead of an oath. If the inhabitants were deprived of these privileges, its flourishing days would be at an end; few of those foreigners would pass over to settle there: and numbers of those who are there now would remove to other countries. The Quakers themselves would be forced to abandon their possessions; for the party's view in obtaining such a law would be to make it the instrument of their revenge, and oblige them to serve personally in wars.

If a militia law was to be established in *Pensylvania* unless it was managed better than it is in other provinces, this colony had better be without it. In most of the others there is scarce any militia, and what there is of such is of very little or no service. They are drawn out by their officers when they want to make a show and display their address in military diversions: but the men get little by it but loss of time and a habit of idleness and drinking, so that these reviews or exercises do more hurt to industry, than service to the public security. As every *American* is a good marksman, has a gun, and other arms, 'tis thought by many that they will fight better if left as they are without that sort of training; and all would be ready enough to defend their property.

But why are the Quakers blamed for not having a militia law? did they ever refuse to pass one? does the Governour expect that the assembly will of their own accord propose a bill of that kind? why does not he get the attorney general to draw one up in a proper manner suitable to the principles of the people whom they are to apply to, and see if the assembly will not accept of it?

We come now to the second question of the letter writer. "Why have not the several sums been accepted, which they have offered for the King's use." Here it is acknowledged, as before observed, that the Quakers have offered several sums for the King's service: but it seems these never could be accepted; because while they have "the aforesaid apprehensions from a militia-law, it must be repugnant to their interest ever to offer money for this purpose, unless in such a manner as they know to be inconsistent with the duty of a governour to pass their bill into a law."

Now supposing they did know it to be inconsistent with the Governour's duty, by his instructions, to pass their bill into a law after the manner they would have it pass; that can be no reason why they ought to offer it in a manner agreeable to the Governour, in case that manner which would be agreeable to him, be as prejudicial to their rights (he allows it would be so

to their interest) as the manner which they have offered it in is repugnant to his instructions. They plead a right by charter from the Crown, to certain privileges relating to the manner of raising as well as disposing of the public money; and the Governour will not pass any of their money bills unless they give up that right. Here is a contest of instructions, (and which appear to be only those of the proprietors) against charter right. Which ought to give way? surely the instructions, otherwise what will become of private property? who would be secure in his possessions if a landlord could at his will and pleasure break the covenants which he makes with his tenants? what in that case would deeds or leases signify? But if a landlord cannot at pleasure make void his own contract, how should his instructions to his steward or deputy operate against that of the crown? must it not be the highest presumption to attempt it? will not the King support his own charter, and punish any person who should offer to invade or controll it? besides a proprietor ought to be the more cautious how he proceeds in such a case, and consider that on the same principle by which he would strip his tenants of their right, he himself might be stript of his own. Be that as it will, methinks he would run a great hazard of being stript of it, if it appeared that sums *offered for the King's service can never be accepted of* by his deputy governors, unless their own ends are served.

The writer comes now, p. 18, to give an account of what had passed between the governour and the assembly for the last two or three years, relating to their offer of money for the King's service on one side, and the reason for not accepting it on the other; and it is certain that a full and impartial state of this transaction was the most proper way of laying the conduct of both parties before the public, and enabling them to form a judgment who were in the right and who in the wrong; but such a state of the case would not serve the writer's purpose, which is to blacken, and even criminate the Quakers; and therefore he hath thought fit to state it neither fully nor fairly.

However we shall endeavour to supply some of his wilful imperfections, as well as correct some of his wilful mistakes, from more credible and authentic evidence than his own.

In the same page he tells us that

Mr. *Hamilton*, on receiving an account that the *French* had driven the *Virginians* from their fort, again called the assembly and conjured them to

obey his Majesty's orders. He at the same time let them know that altho' his instructions restrained him from passing any paper money at all without a suspending clause, yet in the present pressing emergency he would risk it, provided they would vote handsomely and sink it within the time prescribed, by act of parliament in the case of *New England*: then and not till then, continues the writer, they voted 10,000 *l.* for his Majesty's use, redeemable by the excise in twelve years, for which time the bills were to be sunk annually in equal proportions.

The reasons assigned for the Governour's not passing this bill, are (1) that it would be giving the Government out of his hands and rendering himself and successors unnecessary in the administration for 12 years.

(2) That as the excise would amount in that time to 45,000 *l.* it would still more increase their own power and enable them to abridge the Governor's by putting 35,000 *l.* (the surplus when the 10,000 *l.* was paid) into their hands.

For these reasons says the letter, and *considering also* that the money was to continue 7 years longer than the act of parliament allows, the Governour refused his assent; upon which they adjourned: altho' continues the writer, they knew very well before they proposed the bill that he could not give his assent, without incurring his majesty's highest displeasure.

Here in the close great stress is laid on this circumstance, as if the Governour's chief motive for refusing his assent was the danger of incurring the King's displeasure; but, from the manner of relating this passage, *that* appears to have been the least of his concern: for the true motives were those which affected the Governour himself, as contained in the two first reasons: That of the money continuing 7 years longer than the act of parliament allows, is only brought-in in the last place, and as it were by-the-by, as a matter of less moment, with a *considering also*.

To render our answer to this objection more intelligible to the reader, I must previously observe certain matters antecedent to this transaction.

The province of *Pensylvania* standing in need of a paper currency to supply the want of real money, to circulate in the province; the assembly in the year 1739 applied to their Governour Colonel *Thomas*, at present governour of the *Leward islands*, to pass a bill for establishing a fund of 80,000 *l.* in paper money for the conveniency of the inhabitants of the province in carrying on their trade and business among themselves. While this bill lay before

him, in order to enforce an act of the 6th of Queen *Ann*, for regulating the coins in the plantations of *America*, the lords justices of *England* sent him an instruction, requiring him or the commander in chief for the time being, not to pass any act whereby bills of credit should be issued in lieu of money without a clause to suspend the execution of it till the pleasure of the crown should be known.* But it appearing to Governour *Thomas* that the crown had by charter, granted full powers to the people for passing all laws whatever they should judge fit for the benefit of the colony; and also that the paper currency which they applied for, was not only useful but necessary, he the 13th of *May* 1730 gave his assent to their bill, which being recommended to the Crown by the board of trade, it received the Royal sanction on the 12th of *May* 1740.† Afterwards in 1746, the same Governor gave his assent to another bill, granting 5000 *l.* for the King's use, to be sunk on the excise in 10 years, without a suspending clause; notwithstanding the instructions which he had received as aforesaid.

Since the 80,000 *l.* was established, the increase of people in *Pensylvania* has been so considerable that it requires a much greater quantity to supply their occasions; for this reason in offering 10,000 *l.* for the King's use, the assembly proposed an additional sum of paper money to be added to their present stock.

Altho' the instructions to Colonel *Thomas* being directed to him, or to the Commander in chief for the time being, seemed equally to affect Mr. *Hamilton*, yet he made no scruple after his predecessor's example to pass the bill without a suspending clause: But as not long before an act of parliament had passed in *England* for restraining the four provinces of *New England* from emitting paper currency, excepting in cases of extremity, and limited the term of such emission to 5 years, he either thought it proper, or else took upon him, to make it a rule in *Pensylvania*; and on the assembly's not submitting to what they looked on as an innovation and infringement of their charter rights, he refused to pass the bill.

Now let any person who has the least tincture of impartiality, judge in the case, who was to blame the Governor or the Assembly: the assembly have a charter and privileges in their favour, which no friend to liberty and property can blame them to defend. The Governor on his part had apparently nothing

* *Pensyl. Gaz.* 26th of *Dec.* Assemb. mess. 20th of *Dec.*

† *Ibid.* 14th of *Jan.* Assemb. mess. 10th of *Jan.*

to justify his not passing their bill. The act of parliament which he went upon related solely to *New England*; and consequently can affect or bind *Pensylvania* no more than *Canada*. Nor had he so much as a direct instruction from the Crown (I don't say that he had not one from the proprietors) to restrain him from passing the bill.

Of the two authorities which he alledged the general instruction of the Crown to Governor *Thomas*, and the act of parliament made to bind the provinces of *New England*, the first doubtless was most, if not only, to be regarded, (whether then in force or not) as it related directly to *Pensylvania*; if therefore he made no scruple to dispense with *that*, he had surely much less reason (if any at all) to scruple dispensing with the second: and since he was willing to risk passing paper money, altho' he apprehended his instructions "(that is the Royal instructions abovementioned,) restrained him from passing any," how could he justify his unwillingness to risk giving more time than 5 years, when he had no instructions to restrain him? could he imagine that he should incur his Majesty's displeasure more highly for not conforming to an act of parliament which does not concern *Pensylvania*, than for acting contrary to a Royal instruction drawn up for a governor of *Pensylvania*, and by which he *judged* himself to be bound?

It seems evident therefore that the act of parliament made to restrain the people of *New England*, could not be the Governor's motive, as the letter writer alledges, for not passing the assembly's bill for granting 10,000 *l.* for his Majesty's service; but must have been urged by the Governor as a bugbear, with a view to terrify them into a compliance with his demands; and in the letter, by the writer of it, to impose on people here: by endeavouring to make them believe that the Quakers had flown in the face of the government of *England*, and obstinately persisted to get a bill passed by the Governor, in direct contradiction to an express act of parliament.

It is therefore to be believed, that in not receiving the 10,000 *l.* under the said pretence, that the Governor acted solely in conformity to his instructions from the proprietors; and the rather as it appears from the public papers, that he communicated to the assembly the instructions of his majesty, but refused to shew them those of his constituents.

Although the letter-writer, as before observed, brings in this argument of the act of parliament binding *New England*, in the last place, as weakest of the three he alledges, thro' a sense of its insufficiency; yet as it is

the principal, and in reality only argument urged by the Governor for his extraordinary conduct in this affair, I have dwelt the longer in shewing how little it was to the purpose. I shall now examine the writer's other two reasons for the Governor's not passing the bill, which he lays the chief stress on. First,

That if he had accepted the 10,000 pounds offered by the assembly for the King's use, and allowed them ten years to sink it on the excise; it would be giving the government out of his hands, and rendering himself and his successors entirely unnecessary in the administration for twelve years.

This reason is a downright paradox, which the author ought to have explained; but which can be explained only by supposing his meaning to be, *that the Governor would in that case have consented to their having the disposal of the excise branch of the public money for so many years*; a secret however which he did not care to disclose, and through his whole letter is very industrious to conceal: for in what sense otherwise could the Governor's hands be tied up? It is true, he would have allowed five years, in which case it may seem his hands likewise would have been tied up for so long time: but then he would, in so doing, have set aside their right by charter, to have what laws soever they think fit to propose passed by their Governors; and subjected it to the controul of an act of parliament, made to bind other provinces, and in short, for the future, to the will of a Governor, by wresting that privilege out of their hands.

The writer's second reason is, "That it would be putting 35,000 pounds into the hands of the assembly, still more to increase their power, and abridge those of their proprietors and Governors." To make this out, he says, p. 19, That in the space of twelve years the excise would raise 45,000 pounds; and that when the 10,000 pounds for the King's use was paid out of it, the remaining 35,000 would have been at their disposal for what uses they might think fit.

In these few lines the writer has committed four *glaring* falsehoods, to use his own term.

First, in saying, that the excise would amount in twelve years to 45,000 pounds, he would make it, one year with another, to be 3750 pounds, whereas it arises but to about 3000, and has a charge of 500 pounds *per an.* on it, as

the assembly alledge to their present Governor,* who in his calculation for a particular year, makes it no more than 3519.†

Secondly, instead of 45,000 pounds, grounded on that wrong assertion, it ought to be no more than 30,000 pounds, out of which deducting the 10,000 for the King's use, and there will remain but 20,000, 15,000 less than this writer affirms.

Thirdly, That remainder would not have been at their disposal more than it was before, as the excise is always in their power for applying to the uses of the Government; and it does not appear, from his shewing, that it was to be converted into paper currency. It may be presumed, that no more than the money granted was to be made current in that shape, and for no longer time than the twelve years; as in the case of the 5000 pounds before mentioned, granted by Collonel *Thomas* in 1746, which was to be sunk in ten years, at the rate of 500 pounds a-year, and is not yet discharged. The assembly extended it for that length of time, as well to prevent incumbering their small public fund, as that they might have the small addition of paper bills during that interval, though they gradually decreased by sinking every year.

The fourth falsity in the foregoing paragraph, is the writer's affirming, that the assembly might have disposed of the 35,000 *l.* at pleasure. This false assertion is farther aggravated at the bottom of the same page, where it is said,

That altho' the preambles to all our money-acts and to the excise say, that the interest-money, and what arises from the excise, are to be applied to the support of Government; yet they (meaning the assembly) apply it as they please, *viz.* to distress all who oppose their measures, and for building hospitals, purchasing lands, libraries, &c.

This falsehood, which might pass at a distance from *Pensylvania*, would appear *glaring* there even to the moderate of his own party, nothing being better known to every body than the contrary: for the interest arising from the 80,000 pounds in paper currency, which is lent out at 5 *per Cent.* on land-security, is annually examined and settled; and a just account of it, together with the excise returned to the assembly, and by them printed, that every individual may be satisfied in what manner the same is disposed of. The trustees of the Loan-office are also obliged to render an account to the

* *Pensylv. Gaz.* 7 *Jan.*

† *Ibid.* 14 *Jan.*

assembly, and give ample security for the faithful discharge of their office, before they enter upon it. Can any better regulations be made, to prevent embezzling the public money? Too well they know this. In short, the thing which in reality grieves the party, whose tool the writer is, must be, that too much care is taken to prevent embezzling it, by requiring *an account* to be rendered from all who have the handling of it.

The reader may perceive from hence, how much this writer perverts the truth of things; as well as how little the passing that bill would have creased the powers of the assembly, and more enabled them to abridge those of the Governor than they were before, had that been their intention.

For better explanation of what goes before, as well as follows, it may be proper to observe, that the revenue of *Pensylvania* is no more than 7000 pounds a-year, arising out of two articles: The interest of the 80,000 pounds above mentioned, lent out at 5 *per cent.* interest, which brings in 4000 pounds a-year; and the excise above-mentioned, which is also paid into the loan-office. Out of these two funds all the salaries of the public officers, excepting the Governor's, are paid, and the remainder is to defray all other expences of Government.

This fund is so scanty, that many years it is not sufficient to pay those salaries, and other contingent charges; so that it is not to be expected, that ever considerable sums of public money, if any at all, should be found in the treasury. In case of an emergency therefore, when money is to be raised, the usual method is for the assembly to borrow it of the public, and discharge interest and principal out of the excise, by sinking so much yearly, more or less, according to the situation of affairs.

The loan is made by bills, which they call paper currency; and when they borrow money of the people, they give them such bills in lieu of it: or which is the same, they emit so many bills as the sum, supposing 20,000 pounds, amounts to; and having divided it in equal proportions, for instance, twelve parts, burn every year in an oven, so many bills as amount to the proportion, till the whole is sunk; as in the case mentioned a little before of the 5000 pounds granted towards the *Canada* expedition in 1746.

The author of the letter proceeding in his narrative sets forth, that

on the news of *Washington's* defeat last summer (1754), the Governor again summoned the assembly, and again entreated them to fall on ways and means to repel the enemy, consistent with his duty to pass their bill;

he having in the mean time received Sir *Dudley Rider's* opinion, that he could not, with safety to himself, pass such an act as they wanted. They then voted him 15,000 pounds to be raised exactly as before, being certain the Governor could not venture to pass it. Accordingly on his refusal they adjourned; and to intimidate other Governors from daring to dispute their commands, with-held his yearly salary.

The query on the case which Mr. *Hamilton* stated to the Attorney-General here, was,

Whether he might legally and safely, or without breach of his oath, bond, or duty to the king, pass an act of assembly, whereby bills of credit may be issued in lieu of money, without *the suspending clause* before-mentioned being inserted therein.

The letter writer, with his usual sincerity, omits the reason here assigned, why Governor *Hamilton* could not with safety pass this 15,000 pound act, for two reasons: first, because Mr. *Hamilton* had, before he received the said opinion, made no scruple to pass the act for paper currency without *the suspending clause*. Secondly, Because notwithstanding this opinion of the Attorney-General, the present Governor, Mr. *Morris*, offered to do the same, provided the bills were to be sunk in five years; and therefore the writer, by that omission, would have it believed, the reason for Mr. *Hamilton's* latter refusal was still the same with his first, and that which his successor alledged; namely, that the assembly would not submit to sink the money in five years, conformable to the act of parliament binding *New England*. Mr. *H.* seeing this act not tenable, quitted it; and stated the case for an excuse to come off.

The assembly alledged,

That the case, as it was stated to the then Attorney-General, regarded only emissions of bills of credit on common and ordinary occasions, and so in their opinion very little, if at all, affected the bill then depending.

They likewise observe,

That Mr. *Hamilton* seemed clearly, in his reasonings with former assemblies, to have *acknowledged* he *thought himself at liberty* to pass acts of the same tenor with that bill, for granting money for the king's use; and *never offered a suspending clause*, notwithstanding his bonds to the Crown. But,

continue they, the point, whether he might or might not be safe in passing a bill, mentioned in his state of the case, could regard himself only, and does by no means determine the right which we claim under the royal charter:

A right which they say they have hopes will never be taken from them by act of parliament; and the rather, as three bills, to extend the royal instructions over countries and assemblies in *America*, had been attempted in parliament without success.*

The assembly apprehended that Mr. *Hamilton* was prevented from passing the bill, not so much, if at all, from Royal, as from proprietary instructions, which he seems to have looked on in a very bad light, and of pernicious tendency to the colony: for the assembly observe,

That he declared, in the journals of their house, and in a letter to the proprietary family themselves, (1.) That some instructions given to him conclude absurdly, and therefore are impracticable. (2.) That they are a positive *breach of the Charter* of privileges to the people. And (3.) That they are inconsistent with the legal prerogative of the Crown, settled by act of parliament.

This being the case, it may be presumed, that the assembly's stopping his salary was not disagreeable to him, as it furnished him with a handle to write to the proprietaries to substitute another in his place: for that Gentleman, who is single, and of an independent fortune in the province, the place of his birth, could not but have been disgusted with instructions, which, in his opinion, tended to subvert the liberties and privileges of the inhabitants, in which common calamity he must have been involved himself; and therefore the letter, mentioned by the author of the state of *Pensylvania*, to have been written by Mr. *Hamilton* to the proprietaries, was doubtless that cited by the assembly, as before observed. This appears, in some measure, from what our author says, "That he wrote over to them to send him a successor, assuring them, that he would no longer continue to act as Governor:" altho' the *brief state* would give it another turn.

We come now to the last part of the history; which relates to the government of Mr. *Morris*. This Gentleman, he says, on his entering on the government, spoke in the most pathetic terms to the new assembly, consisting of the old members, who

* *Pensylv. Gaz.* 26 December.

offered a bill for 20,000 pounds, conceived in the same terms as before, *viz.* to make the paper money extend for twelve years, though the new Governor had told them before-hand, that he was subjected to the same instructions as his predecessors, and could not pass any such bill into a law.

This is all he says of this last transaction, which however being the most material of all, I shall state the particulars somewhat more minutely. Mr. *Morris* having, on the 3d of *December* last, laid before the assembly the dangerous state of the provinces, and exhorted them to contribute for their defence; in their answer or message of the 12th, they acknowledge,

That the efforts which the *French* have made (on the side of the *Ohio*) are truly alarming, and dangerous to the *British* interest in *North America*; but add, that they had good reasons to believe, that the sums granted to the King in their late assembly, had the then Governor been pleased to pass the bills, offered to him for that purpose, *might, in a great measure, if not totally, have prevented the bad situation of their affairs at present*, and have placed their duty to the best of Kings, as they always desire it should appear, among his most loving and loyal subjects.*

As their bill proposed

emitting 20,000 pounds for the King's use, to be current for twelve years, he declared in his message of *December* 18th, that he could not by any means agree to it, as being *forbidden by a royal* instruction, to pass any law for creating money in paper bills without a suspending clause; and alledged the Attorney-General's opinion before-mentioned, by which he said it clearly appeared that the instruction was most certainly in force, and binding on himself: that however, as the act of parliament restraining the four eastern governments from emitting paper currency, gives them a power to make bills of credit in case of emergency,—he would therefore join with them in any bill, for striking what sum they thought their pressing occasions demanded, provided a fund was established for sinking the same in five years.

It seems to me very odd, that this Gentleman should first tell the assembly, that he could not by any means agree to pass the bill *without a suspending* clause, as being forbidden by a royal instruction, backed with the

* *Pensylv. Gaz.* 19. *December.*

Attorney-General's opinion; and yet presently after promise to pass it without such a clause, provided they would sink the bills in five years, conformable to the act of parliament binding *New England*: as if their compliance with the terms of this act took off the force or obligation of the royal instruction; which yet at setting out is represented as an insuperable obstacle, and has no connection with the act, or the act with *Pensylvania*.

However, as the Governor had, between these two declarations, introduced the late Attorney-General's opinion in support of the first, the assembly mistook his meaning; and concluding he intended to insist on inserting the *suspending Clause*, entered into debate about it. In their answer of *December 20th*, they controvert the force or validity of that royal instruction, as Governor *Thomas*, to whom it was first directed in 1746, passed the 5000 *l.* bill before-mentioned, without a *suspending* clause, by extending the excise act for ten years; to which number they had reduced their demand of time in the new bill.

They say, that as Collonel *Thomas* gave his assent to that act, after the receipt of the said instruction, they hope he will not be more restricted by it than the Gentleman to whom it was immediately directed, and at present holds a government of great importance under the Crown, or than his predecessor Mr. *Hamilton*, who never offered a *suspending* clause.

Governor *Morris* made them sensible, that he *never intended to insist on the suspending clause*, provided they would sink the paper bills in five years. As they did not, he undertakes to prove, that the instruction (which he in his former message had consented to lay aside) *was binding on him*, and that Collonel *Thomas's* conduct was no rule to him. In short, the dispute is carried on as if the *suspending clause* was the only obstacle, and the act of parliament for reducing the ten years to five, which before was the grand impediment, was no longer insisted on. The reason he gives why he had insisted on it is, that he *thought the reason of that act extended here (to Pensylvania) although the force of it did not.** Was not this reason enough why he should not so long have endeavoured to force this act upon the assembly; especially since, as he confesseth, the *reason* of its extending thither was no more than a conjecture of his own? whence it follows, that it was such conjecture or thought of his, which made him urge its authority, not any instruction from the Crown: yet two or three paragraphs after says, "He had before informed them that

* Gazette *December 31.*

he could not pass their bill in the shape they had sent it, (that is requiring ten years time to sink the bills) as being contrary to his Majesty's instruction"; which instruction must, by these words, relate to the act restraining the emission of paper currency to five years: and yet it is no where expressly said by him to extend to that act, (supposing it concerned *Pensylvania*) but to relate merely to the not passing of bills for creating paper money, without a suspending clause.

All this seems to me like playing at cross purposes, or fast and loose with royal instructions: sometimes they are treated as of no importance, and an act of parliament made only to bind one country, brought in to bind another: at another time the act seems to be neglected, and the instruction only regarded. In one part of the Governor's message the *reason* of the acts extending to *Pensylvania* is only his conjecture, and he allows it has no *force* in itself to operate there; in another part it is made to operate by a royal instruction. So that the royal instruction seems to be made a tool of by him to oblige the assembly either to submit to have their bill clogged with a suspending clause, which as they say would be the same as to render it ineffectual, or else to reduce the number of years for sinking the money from ten to five; which seems extremely unreasonable: for the excise on which 20,000 *l.* was to be sunk, would discharge but 15,000 *l.* of the debt in 5 years, supposing it amounted to full 3000 *l.* a year. But indeed it frequently falls some hundreds short, and in time of war becomes very inconsiderable; as the danger of being taken at sea cuts off most part of the trade of wine and rum, &c. out of which the excise arises: hence it might possibly happen that the excise income (already clogged with 500 *l.* a year) might be reduced so low as not to afford a sum in 10 years sufficient to discharge the debt of 20,000 *l.* So that was the whole to have been paid in 5 years, they must have been forced to break into their interest money also: this would have farther disabled them from defraying the charge of officers and other expences of government, by engaging more than one half of the public fund for discharge of the 20,000 *l.*

It seems from the reason of the thing that the more money which is advanced, the more time ought to be allowed for repaying it out of so scanty a fund; and therefore if the assembly had asked longer time than either 10 or 12 years, it could not have been looked on as unreasonable, especially as they saw a war was near at hand, if not already commenced.

The letter writer was conscious of this, and therefore altho' he labors all he can to make their demand of 12 years appear unreasonable on their first offer of 10,000 *l.* he says not a word about it, when he mentions their tender of 15, and 20,000 *l.* his sole argument for the Governor's refusal being, that it was contrary to the act of parliament to grant so long time, which we have already shewn to be an imposition.

As the Governor acted contrary to the rule just mentioned, the restriction proposed to be laid on the bill seems as if done with design to distress the assembly. At this rate what encouragement have they from the Governor to advance large sums, (which yet he was always pressing, alledging 20,000 *l.* as inconsiderable) if they have no more time allowed for sinking large than small? Governor *Thomas* granted them 10 years on the excise for only sinking 5000 *l.* which was at the rate of 500 *l.* a year or one tenth of the public fund; and now they must be allowed but 5 for sinking 20,000 *l.* which is 4000 a year out of 7000, or more than half of their whole fund every year.

Why should they be compelled to such a hardship? the reason is plain: the instruction to Colonel *Thomas* was by the Crown referred to the act of parliament the 6th of Queen *Ann*; but the present Governour by his superior power and authority, has extended the same instruction to the act made, not only to bind a different country (not *Pensylvania*) but also since that instruction was issued, and without the least reference to it.

The assembly having misapprehended the Governor's meaning as hath been observed, and imagining that he had then insisted on the *suspending* clause, acquaint him that in case he would not pass their bill, after all which they had said to induce him, "they should be obliged, as their last resource, to apply to the Crown for redress, or to the Lords of trade, or to their proprietaries." That therefore they might be enabled to state their case more fully, they entreat him to inform them "whether the royal instruction is the only impediment; or whether he had any farther instructions from their proprietaries, which influence him in refusing his assent to their bill." Governor *Morris* in answer says that "altho' he thought it not quite decent, and he believed it unprecedented for a Governor to be called upon for a sight of his instructions; yet, adds he, I shall communicate them to the house (of assembly) whenever the public service shall require it." And accordingly, as by way of advance, took that opportunity to acquaint them with some of his instructions from the proprietors, particularly to recommend to them to provide for defence of the province; not only by granting aids from time

to time to the King, but also by establishing a *militia*, providing arms, stores of war and magazines in convenient places.

Here the Governor had a fair opportunity of trying if the assembly would pass a militia act, by proposing to them a bill for that purpose ready drawn as before; and it may seem strange to many that this never was done by the Governor. But as it might be more agreeable to his views that they should rather appear refractory than compliable, he did not care perhaps to hazard a point of so great importance, lest their answer might have deprived him of the pretence of declaiming on that head.

The assembly in their message of the 26th of *December*, thank the Governor for offering to communicate the proprietary instructions; and say those to former Governors had been repeatedly laid before them, of which they produce some instances: particularly those of Sir *William Keith* in 1724, and Colonel *Thomas* in 1738. They tell him that as they are of opinion,

his proprietary instructions are the principal if not the sole obstruction to his passing their bill; and that as whatever bill they might prepare for the then present, or any other purpose, after all the expence to the country and all their pains in framing them, would be liable to the same difficulties, unless they could know what those proprietary instructions are; they therefore request he would *then* candidly communicate those instructions, as *the time when the public service requires*, since they intended to make them the *great end* of their humble address to his Majesty.

Governor *Morris*, whether piqued with their seeming to claim a right to see his instructions, or perhaps never intending to produce them, as his offer was equivocal; in his answer or message of *December* 30th, refuses to communicate them, "as he could not at that time think it either for his Majesty's service or the interest of the province." He seems much disgusted likewise with their telling him they were of opinion that the proprietary instructions was the *principal or sole obstruction* to his passing their bill after he had told them he was hindered by a royal instruction: on which occasion he asks "how they came so intimately acquainted with his private sentiments, as to know that when he *said one thing he meant another?*" Upon my word this was a proper question. The Quakers sure must be conjurors if they penetrated so deep. 'Tis much the letter writer did not take the hint from this circumstance to charge them, among other things, with sorcery.

To be serious; how could they think otherwise when they knew that he could not be bound by the royal instruction on the suspending clause, because he had offered to pass the bill without such a clause; and that as the act of parliament restraining the remission of paper currency in *New England* to 5 years, could not affect *Pensylvania*, he could not be bound by that act. Since then he could not be bound by either of these, what could bind him but instructions from the proprietaries? that proprietary instructions may be contrary both to the royal instructions given to the Governor, and royal charter granted to the people, as well as absurd in themselves, appears from Mr. *Hamilton's* declaration before set forth. The assembly likewise produce an instance of a saving clause or restriction in the commission of Colonel *Evans*, so inconsistent with their charter rights, that being laid before the council (of *Pensylvania*) in 1724, of which *William Penn* the younger, was the principal member, they determined that *saving clause* to be void in itself.

As things stand, therefore the *Pensylvania* Quakers are in a very bad situation, lying as it were, between two millstones, unable to move; this verifies the text, *one cannot serve two masters*: if their commands be contrary and the people do not know them, which of the two shall they obey, or rather how shall they know which to obey? to enable them therefore to act at all, it is absolutely necessary that they should see one of the Governor's instructions, and consequently the proprietary, as they ought to give place to the royal. After all the having proprietary Governments in a country is incompatible with the rights of Crowns. It is a kind of *imperium in imperio*,¹ and consequently a solecism in politics.

To proceed in our relation of facts: as the assembly mistakes the Governor's meaning (I would be understood with respect to the suspending clause, not to the instructions which he acted from) so the Governor on his side mistakes that of the assembly. Altho' the bill which they sent up to him was for no more than 20,000 *l.* he would persuade them it was for 40,000 *l.* on which in their message of *January* the 3d 1755, they set forth the title as follows, "an act for striking 40,000 *l.* in bills of credit and for granting 20,000 *l.* thereof to the King's use, and to provide a fund for applying the remainder to the exchange of torn and ragged bills now current in this province." On which occasion they tell the governour, that he well knew, it added

1. ["Rule within rule."]

no more to their paper currency than the very 20,000 *l.* granted the King; and even that struck for no other reason than to answer the immediate call of the crown, and to make the grant effectual.

On this faux pas or slip (willful or unwillful) of the Governor, the letter writer, no doubt, grounded his false assertion before-mentioned; that the excise would amount to 45,000 *l.* in 12 years, and the assembly by their bill would have had 35,000 of it at their own disposal. But he has improved the hint considerably, by adding 5000 *l.* to the Governor's 40,000 *l.* and transferring the case from the 20,000 to the 10,000 *l.* grant, in order to make their demand appear more unreasonable, from an augmentation of 15,000 *l.*

After this some little altercation past between the Governor and the assembly with reference to the state of the funds. The Governor insisted that they had, or ought to have, 14 or 15,000 *l.* in bank. They make appear that they had not half that sum, including mortgages and debts; and that there was not 600 *l.* in the treasury.

To conclude this account of transactions: the assembly finding the Governor inflexibly bent not to pass their bill but with his own unwarrantable restrictions, they on the 10th of *January* 1755, adjourned themselves to the 12th of *May* following; after voting 5000 *l.* for accommodating the King's troops when they should arrive, as hath been mentioned before.

This is the sum and issue of the affair. It is now left to the public to judge, which of the two parties ought to have receded from their pretensions? who was to blame—the assembly for insisting to tender the money in the accustomed form, or the Governor for persisting not to receive it in that form?

If they think the Governour was in the wrong they will naturally conclude, according to what has been before suggested, that he was withheld from passing the assembly's bill by a proprietary instruction, not a royal one; and this being admitted, they cannot be long at a loss to discover the purport of that instruction, which notwithstanding the writer so industriously avoids to mention it, transpires in two or three places of his letter, where he speaks so much against the assemblies having the disposal of the public money, and of what blessings would arise to the province from having that power lodged in the Governor. To wrest this power out of their hands was doubtless the sole motive of his conduct; the sole object which he had in view. Had they given up this power, it is not to be doubted (according as the case is stated in the letter) but that the Governor would readily have passed

the bill, had the time asked been 24 instead of 12 years; and all his scruples would have been removed.

But if this power be so much wanted by either the proprietaries or the Governor, how comes it that the acquisition of it was not attempted before? why is this dangerous juncture pitched on to begin a contest, when the affairs of the colonies are too much distracted already; and methods should be used to unite the people, not to divide them?

The writer after having given a fallacious state of affairs, and said all the false and malicious things which his fertile imagination could invent of the *Pennsylvania* Quakers, endeavours to cajole the Quakers here into a bad opinion of their brethren in *America*, and list them into his party, pretending p. 22, "to be well assured that the conduct of the assembly in *Pennsylvania*, is very much disapproved of, and condemned by their brethren the Quakers in *England*; who are justly esteemed a quiet people, such as we already observed the first Quakers in this province were."

As the Quakers are in reality a *quiet upright* people; quiet and perhaps upright for the general, beyond any sect of Christians in all the King's dominions; people who have been often oppressed by other sects both in *Europe* and *America*, but never retaliated on others the injuries which were done themselves, it is not probable that those of *Pennsylvania* should so far degenerate from the meekness of their ancestors, or deviate from the manners of their brethren here, as to renounce their fundamental principles, and become turbulent, much less abettors of injustice. But, by this time the reader must have learned how to interpret the writer's words: with him to hold their privileges is to be unjust; and to refuse delivering them up to his party, is to be unquiet.

In like manner when he says, "it is very plain that they have no mind to give a single shilling for the King's use, unless they can thereby increase their own power." It is the same thing as to say that the Governor will not receive a shilling from them unless they gave him up their power. After what has been said must not the people have reason to think, as he confesses they do, "that every such rejection of a money bill, is a design against their liberties, and throw the whole blame on their proprietors and Governors?" As it is too well known that the people, and all but those of his party, are on the side of the assembly, he judged it could be of no use to conceal it: but he had better have said nothing than given so silly a reason for it, namely, "that they are not well enough acquainted with the nature of Government, to understand

why the money bills cannot be passed"; their understanding must be very weak indeed, as weak as this writer's, if they cannot tell why the bills cannot be passed, in case the reason is, as he pretends, because they ask 12 years for sinking them instead of 5.

He goes on p. 23, representing the miserable condition of the province and imputing it all to the assembly, in terms which may justly be turned on those of his party; and then alledges two instances, first of a petition from 1000 poor families, who inhabit the back parts of the colony, to the assembly in *August 1754*, soon after *Washington's* defeat, praying that they might be furnished with arms and ammunition for their defence; but this petition, he says, was rejected with scorn: the second is of a message in *December* following from their *Indian* allies to the Governor, begging that he would direct the building of a wooden fort, in which they offered to defend themselves and the inhabitants of *Pensylvania* from incursions: this also he tells us the assembly refused, bidding them, if they were afraid, to retire farther within the province.

The reader, we presume, has seen too much of the malice and insincerity of this writer, to believe any thing which he affirms upon his bare testimony; and after he has been so often detected in falsehoods, will not condemn the assembly on his single evidence: but at least suspend their judgments till they may have time to clear themselves, if necessary; and the rather as we find this last particular very differently represented in the *Pensylvania Gazette* of *Dec. 19*, which contains both the Governor's message and the assembly's answer on that occasion. *Mr. Morris*, on the 4th, recommended to them to make "provision for the maintenance of the *Indians* at *Aughwik*, and for setting up some stachados round the place they should fix on for their winter's residence."

The assembly on the 6th, after declaring

their willingness to treat them with justice, humanity, and tenderness, as till then they had done; unanimously resolved to defray the reasonable charges for support of the *Indians*, till their next meeting; but as *Craghan* seemed resolved to remove from *Aughwik*, whereby the *Indians* would be left without any proper person to take care of providing for their subsistence, they recommend it to the Governor's consideration, whether it might not be more convenient for the *Indians* themselves, and less expence to the province, if they were invited to come nearer their back

inhabitants, till by hunting, or otherwise, they might be able to subsist themselves with safety.

Is there any thing in all this so rude or regardless of the *Indians* as he represents the case? All suggestions that the Quakers will not defend themselves and their property, must be false, from the instances already produced to the contrary. Their opposition to the designs of the party is a confutation of the charge. They know it would be but of little significancy to secure their rights against the attempts of a Governor, if at the same time they suffered a foreign enemy to strip them of both liberty and property, without making any resistance. They know too that they could not expect to be left in possession of a country, unless they were resolved to defend it; and that the readiest way to be divested of the possession, would be to refuse contributing their utmost to preserve it: since, in reality, the province is the King's, from whom they have it in trust, on a presumption that they will secure it for him against all enemies; and who, in case of their failure, will resume the possession, in order to prevent the loss of it.

Although the Quakers, out of religious principle, are averse to bear arms themselves; yet they will, no more than those of other persuasions, suffer their property to be taken from them for want of making a proper opposition. If they do not fight in person, they are ready to pay those who will; which is as much as the generality of those do, who scruple not going to war out of conscience: and that *Pensylvania* will afford men enough willing to fight, without compelling the Quakers, appears from the proprietary instructions to the present Governor, requiring men to be raised, but yet so as not to oblige any to bear arms who may be conscientiously scrupulous.

In King *William's* war, Mr. *Hull*, a Quaker of *Rhode Island*, who commanded a vessel of which he was owner, was met at sea by a *French* privateer, which coming up with him, the captain ordered him to strike. The Quaker made answer that he could not resolve to part with either his ship or cargo, which were his property, and of considerable value; neither could he, by the laws of his religion, fight: but he would speak to his man *Charles*, who was of another persuasion, and in case he was inclined to fight, he would not hinder him. Accordingly *Charles* was called, who accepted the encounter; and falling to work with the *Frenchman*, soon obliged him to sheer off. This *Charles* was no other than the late Sir *Charles Wager*, who then served that honest Quaker; and the report which Mr. *Hull* made, when he arrived at

London of this gallant action, was the first rise of that worthy admiral. The Quakers therefore, in effect, will fight; but the party are not content, that the Quakers, like themselves, should fight by proxy; they want to oblige them, against both law and conscience, to fight in person, though without any necessity. This is one part of the wicked tyrannic scheme which they are driving at. The Quakers, besides contributing their quota in the last war, behaved with more circumspection, as obedient, dutiful and loyal subjects to his Majesty and Government, than the party did who would represent them in a contrary light. For it is notorious, that the few now complaining and arraigning their conduct, held constant correspondence with the King's enemies, and supplied them with all sorts of stores and provisions; and, the better to carry on this treasonable trade, they had factors residing in all the remarkable ports of the *French* and *Spanish West-Indies*, during the last war.

In fine, as the Quakers do not profess loyalty to the King, and dishonour him in their actions, neither do they refuse to advance money for his service; all they desire is to see (according to a legal right which they have to see) that such money be laid out for his service, as to answer the public utility, for which it was voted; and not to be sunk in the pockets of venal Lieutenant-Governors. Some of whom formerly have been sent over as hungry as sharks, in order, as it were, to prey upon the vitals of the inhabitants, and devour all the profits of the land. These men are not content with a handsome provision arising out of licences for public houses, to the amount of 2500 *l. per annum*, exclusive of what the assembly gives them, which is seldom less than 1000 *l.* more. How many gentlemen of superior merit and abilities for governing a province, would be perfectly easy with half such an appointment? but sharks can never be satisfy'd.

"From what has been said (saith the letter-writer, p. 25.) it clearly appears how much *we* suffer, by having all public money in such hands." By *we*, must be understood solely of his party; for all else think themselves great gainers, as he himself, in effect, allows but a few lines before, in the concern he expresses to find not only the *Germans*, who make one half of the inhabitants, but all the people in general in the interest of the assembly, whom they consider as their best friends.

He goes on "were the case otherwise," (that is, was the disposal of the public money in the hands of his party) "matters might be managed with

secrecy, ease, expedition, success, and a small expence, by embracing the proper opportunities.”

O! no doubt of it, as all the wisdom, integrity, and frugality, must needs be on the side of the Governor and his party, every thing would then go on swimmingly. The charge of Government would be but a trifle to what it is now; the number of officers would be reduced half in half, as well as their salaries; and the Governor himself would be content with 1000, or 1500 *l.* a year, instead of 4000 *l.* But will they find any without doors to believe them? or any within, among the assembly, weak enough to try them?

It must be observed, that this is one of the two places in the letter, where we meet with glimmerings of the grand point which the Governors are driving at, and the true cause of their not passing the money-bills, all along so industriously suppressed by this writer; namely, their not having the disposal of the money: which transpires a little in the words, “were the case otherwise;” but somewhat more clearly in those which follow;

the settlements of the *French* at *Crown Point*, and on the *Ohio*, might both have been prevented at first, with one 50th part of the expence it will now take to dislodge them, had not the hands of all our Governors been tied up, by having the *disposal of no monies* on such emergencies, nor any hopes of obtaining it (the disposal of the money) from the assemblies, if they should advance any sums for the public service.

Neither the disposal of the monies, nor hopes of obtaining such disposal from the assembly! poor gentlemen, *hinc illae lachrymae*:² who does not pity their deplorable case? who would not gratify their longings to finger the public money, but such hard-hearted men as the assembly, the Quakers, and the rest of of the people of *Pensylvania*? But what need they fret? let them pluck up a heart and comfort themselves; since if they disappoint the Governor of his darling views, he will have it always in his power to be revenged on them, by refusing to receive the money which they offer for the King’s service, and putting the province in danger of being taken out of their hands by the *French*—provided the Government here does not interpose in time. If the Governor had been impowered with the disposal of the money, he would have done more than was incumbent on him, or perhaps would have been permitted him: he would not only have prevented the *French*

2. [“Hence these tears.”]

encroachments on the *Ohio*, but would also have hindered their building *Crown Point* fort, although in another Governor's province. But as the assembly will not give up to him the disposal of the money, he will neither defend his own province himself, nor suffer the assembly to defend it. What should the Governor care if the *French* do take it, since they will not let him have his will? why should he have any care for the colony, if they will not give him the disposal of the cash? what is the colony to him without that?

Some indeed think, that if the Governor intended to act honestly, he would readily accept of the sum voted by the assembly for the King's use, and not be afraid to render an account whenever called upon: but they say they can have no good opinion of a Governor's designs, who unjustly attempts to wrest out of the hands of the people, a power which he knows they have a legal as well as natural right to.

But here it may be justly asked, by what means the Quakers, who are so small a part of the inhabitants, and whose measures are so unpopular (supposing them to be such as this writer represents them) get continually chosen into the assemblies of *Pensylvania*?

It is easy to see that this would be a considerable stumbling-block to the readers of the letter, and a grand objection against the truth of the writer's accusations: for this reason he puts the question himself, and p. 26. undertakes to answer it. His answer, in substance, is this; "that in the late *Spanish* war, Governor *Thomas* calling on them to arm for their defence, they were alarmed with the prospect of losing their power, if they should comply, as hath been shewn above: that they therefore entered into cabals, and persuaded the *Germans* there was a design to enslave them, and force their young men to be soldiers: that a military law was to be made, insupportable taxes laid on them, and what not, unless they joined to keep in the Quakers, under whose administration they had long enjoyed ease and tranquillity; and to force out of the assembly all those who were likely to join the Governor, in giving money for annoying the enemy."

The instrument it seems they made use of to effect this, was one *Saüer* a *German* printer, who publishes a news-paper entirely in the *German* language.

In consequence of this, the *Germans* who had hitherto been peaceable without meddling in elections, came down in shoals, and carried all before them. Near 1800 of them voted in the county of *Philadelphia*, which

threw the balance on the side of the Quakers; who having found out this secret, have ever since excluded all other persuasions from the assembly, constantly calling in the *Germans* to their aid, by means of this printer.

A terrible and dangerous man to be sure!

This answer to the objection is plausible: and yet was it in the main true, it ought to throw no reflection on the Quakers: for first the land is properly their birthright, and the possession in justice belongs to them. They cannot therefore be blamed for using their endeavours to keep possession, and hinder others from reaping the fruit of their labours, after taking so much care to bring the province into its present flourishing condition. Prudence therefore, as well as justice, evinces the obligation, and even necessity, of returning and continuing the Quakers in the assembly: not only as having been the first settlers and establishers of the Government; but also as having, by their good management and conduct ever since, shewn themselves to be the fittest persons for keeping up the prosperity of the colony, as well as the safest guardians who could be intrusted with the established rights and liberties of its inhabitants, against the many iniquitous attempts of the Governor's men.

If therefore they did solicit the assistance of the *Germans* to preserve their own interests, they were certainly in the right of it; and in case they, for that end, endeavoured to persuade those strangers that the Governor had in view, to make slaves of them, I cannot see how they can be thought to have been in the wrong, since an attempt to wrest from them by force their most valuable rights and privileges, might well be looked on in that light. They certainly had, or at least judged they had, just reason to call the *Germans* to their aid, or else they would not have done it; since the writer himself acknowledges that this was the first time that they had taken such a step.

To prevent a discovery, he conceals the time, or year, of the election which he mentions: but in all likelihood it was that of the year 1744, when they had very great reason indeed to make all the friends they could among the other inhabitants, to prevent the violent measures which were then set on foot to destroy the freedom of elections, and fill the assembly with creatures of the Governor: for all the privateer sailors in the harbour of *Philadelphia*, under the influence of the Governor's men, came armed to the Court House, where the Sheriff was then taking the pole; and with open violence hindered the legal voters, who were in the interest of the Quakers, from

voting: knocking down, and beating in a most barbarous manner, all who appeared not to be of their party: And when the house of assembly came to sit, and take cognizance of the affair, in order to find out and bring the delinquents to justice, the Governor granted *noli prosequi*'s.³ However, this alarming and lawless transaction, which struck terror into the minds of the people, throughout the whole province of *Pensylvania*, still remains fresh in the memory of every independent voter, and is to be seen, with all its circumstances at large, on the journals and votes of the assembly.

Is it then to be wondered after this, if ever since, as the writer says, they call in the *Germans* to their aid? but although he keeps these violent measures of his party from the knowledge of his readers, he does not pretend to charge the *Germans* with any unlawful or disorderly behaviour on the occasion; and yet if they had repelled violence by violence, nobody could have blamed them when they were provoked to it, and had acted merely in their own defence.

It is likewise worth observing, that although this writer would have calling in the *Germans* to vote to be reckoned a crime in the Quakers, yet his own party set them the example: for, previous to the election above-mentioned, the *Germans* were tampered with by the Governor's men; and, on their promising to vote for them, he, to qualify them for the purpose, procured many hundreds of them to be naturalized. The *Germans* however, voted afterwards on the Quakers side, from a consciousness or apprehension, that if the other party got a majority in the assembly, they would make such laws as served their own interests, however detrimental to the liberty of the people, and good of posterity; which, although the highest earthly blessings, are no longer dear to men than their principles remain uncorrupted.

From the partial account given of this affair by the author of the letter, the reader has a farther instance of his disingenuity, and how little his representation of any matters which relate to the Quakers is to be regarded. I shall not therefore take up his time with refuting the groundless reflections, which, for want of real matter to accuse them with, he throws out against them on this, as on all other occasions. It is sufficient to observe, that they are only general charges, supported by the bare assertions of a person who resolved with himself, when he sat down to write, to relate nothing truly;

3. [Literally, "Do not continue the legal action," i.e., legal directives to stop the proceedings.—Tr.]

and as no one fact is charged upon them in direct terms, they ought to be treated, like himself, with contempt, and as the hateful offspring of malice and detraction.

However we must not pass on without taking notice of one very remarkable personage; I mean the *German* printer: he speaks of him in terms which shew the deepest concern, as well as dread of his power: as if all the distress of his party was owing to him; and that they can never hope to compass their ends, till the authority of that formidable foe is either lessened or destroyed. This printer seems to be more terrible to them than the Quakers themselves, as he hath above 100,000 *Germans* at his devotion, who, if he but whistles, *come down in shoals, and carry all before them*, as he shall direct.

Whenever they want to *call in* these foreigners to their aid, they do it by means of this printer: by means of this printer, they represent all regular clergymen as spies and tools of state: whenever they know of any such minister in good terms with his people, they immediately attack his character, by means of this printer; and to be sure his business is done at once, for a single man has no chance to stand against such a printer as this *dominus fac totum*,⁴ who commands so many thousands, and obliges them to do whatever service he pleases to send them on.

Who would imagine that printers, and *German* printers too, should become so formidable in *America*, as to strike terror into the hearts of even Governors themselves, for the general, the most dreadless and assuming mortals of any to be found? Yet we have had, it seems, of late, two instances of the kind, *Zenger* in *New York*, and *Säuer* in *Pensylvania*.

Not daring to try his strength at fair weapons, with this *Herculean* typographer, he has recourse to his usual method of calumny, and bestows invidious names on him, as those of *French* prophet, and popish emissary. Nor is it any wonder, that a printer who has wrought his party so much mischief, and blown up their designs against the assembly, should be the object of his keenest resentment. Accordingly the remainder of his letter, consisting of near one half, is employed in blackening the character of this printer, as well as the *Germans*, and contriving expedients to abridge his most extensive influence and authority in *Pensylvania*.

4. ["Master of everything."]

This *German* printer has been a useful member in the society, if no otherwise than in preserving the liberty of the subject, by communicating and exposing the evil designs and oppressions of the Governors to the people, in the same manner as *Zenger*, before-mentioned, had done at *New York*, not many years before: a proof of public spirit which an *English* printer at *Philadelphia* had not the courage or zeal to give, with-held by government-connections, and influence; which too generally destroy patriotism, and hinder men from discharging those duties which they owe to their country.

The writer has expatiated so much on the danger and ruin which must attend keeping the Quakers in the assembly, that one would have imagined it was the greatest evil which could possibly befall *Pensylvania*: but it seems, after all, that this is not the greatest evil: there is a worse than it, attending those insidious practices, carried on by means of the said printer with the *Germans*. For these people, it seems, "Instead of being peaceable and industrious as before, now finding themselves of such consequence, are grown insolent, sullen, and turbulent, in some counties threatening the lives of all who oppose their views." Surely such sons of slaughter cannot be averse to arms! "They give out, that they are a majority, and strong enough to make the country their own." Surely then they will not let the *French* take it from them for want of defending it.

They have suffered the greatest oppressions under Popish Princes in their native countries, where they could enjoy neither liberty of conscience, nor their riches with safety: surely then it cannot be all one to them which King gets the country, *George* or *Louis*: the Protestant or the Romish monarch.

And altho' many of them should be Papists, as this writer asserts, they like a Protestant and *English* government better than their own, or they would not have left it to go live in *Pensylvania*; and their *knowing the worst which can happen*, if a Popish Prince should get the dominion, is the greater security to us, that they will never suffer him to obtain it, if they can possibly keep him out. It seems a very great inconsistency, that they should leave *Germany* to avoid the tyranny of their natural princes, and yet willingly put themselves under the power of the *French*, who are more arbitrary still than the *German*.

Yet this writer represents matters, as if not only the *French* of *Canada* have turned their *hopes upon this great body of Germans* settled in *Pensylvania*, but

even that these people favour their design: so that if the *French* do but send their "Jesuitical emissaries among them, to persuade them over to the Popish religion, they will draw them from the *English* in multitudes, or perhaps lead them in a body against us."

Surely, a man who can so confidently assert so great an improbability, as if he certainly knew it would be the case, must be capable of asserting any absurdity, as well as falshood: for, is it possible that people who abandoned their own country, chiefly to avoid the tyranny of the Popish religion, should so easily be reconciled to it, and induced to embrace what they fled to avoid? should so suddenly change their opinions, as to believe Popery amiable, which till then they looked on as monstrously deformed? and should all at once embrace what before they so greatly abhorred? This is the more unlikely still, as he confesseth, p. 35. that "The most considerable and weighty sect among them is the *Menonists*, whose principles are much the same with those of the *Quakers*; that many of them are *Moravians*, and that there are many other sects springing up among the *Germans*." Which facts are so many confutations of what he has advanced; since it is well known that the Protestant sectaries, the farther they divide, the farther they remove from Popery, as their aim is to approach nearer to the simplicity of primitive Christianity.

It is true, he says, that near one fourth of the *Germans* are supposed to be Romanists; and that the *Moravians* are suspected to be a dangerous people, because they conceal their religion, and seem to hold some tenets and customs much a-kin to the Papists. But as these, if not downright falsities, are only conjectures and surmises of the writer and his party, *as far as they have an opportunity of judging*, they must yield place to the character given of them by those who had *good opportunities of judging*, and are better acquainted with them. From such we learn that the *Germans* in *Pensylvania* are a people easily governed, without power, and no ways ambitious of authority: there are not above five or six in the whole province, who hold any place of either trust or profit; they dread the thoughts of an absolute government, and are sensible of the liberty and other blessings which they enjoy under an *English* constitution; they have such horrible ideas of Popery and arbitrary power from woeful experience in their own countries, especially that of the *French* King, that to a man they would prefer death rather than submit to live under it.

The natural hatred which the *Germans* have for the *French*, and irreconcilable enmity which subsists between them in *America*, will always

be a means to deter, rather than encourage the *French* to attempt any encroachments in the neighbourhood of the *German* settlers. Most of them are *Lutherans* and *Calvinists*, the rest *Moravians* and *Menonists*, a religious people, inoffensive and fond of instruction; but far from being ignorant, as the letter-writer represents them. They have schools and meeting-houses in almost every township through the province, and have more magnificent churches and other places of worship in the city of *Philadelphia* itself, than those of all the other persuasions added together. They abound likewise with able ministers and teachers. Thus the most numerous part of the *Germans* are provided with teachers; and the writer of the letter, p. 31, acknowledges that the rest might be made good Protestants, and good fighting subjects, in case regular ministers and schoolmasters were sent among them to instruct them. He likewise, p. 41, allows that a considerable progress is made in a design of this nature, and a considerable sum collected for it.

If this be the case, how little grounds must he have for those dreadful apprehensions which he affects, of the *Germans* being carried away in multitudes by the Popish emissaries, supposing them to be so ignorant as he asserts? Are these Romish priests more assiduous and dextrous in their work of converting, than the Protestant ministers in that of instructing and watching their flocks? or, has Popery a more alluring and captivating aspect in *America* than it has in *Europe*?

In short, all his objections against the *Germans* are malicious, false and forced: the only one which seems to be against them, or rather against those who allotted them their settlements, is, their having settled too many of them together, instead of intermixing them with the other inhabitants. This method would have prevented any apprehensions of their power, by dividing them; and might have habituated them insensibly both to the language and customs, if not the manners of the *English*: but this course with them, which in all likelihood would have had all the effects which he so ardently desires, the writer never once mentions, either because that might have reflected on his own party, who settled them in their present districts; or else, because he had nothing more in view than to propose the best means he could think on of gaining his point as things now stand, and getting the power out of the hands of the assembly, without any real regard to the welfare of the province, or the *English* interest in it. For, if the *Germans* are so turbulent, and talk already of seizing the province, or giving it up to the *French*, as he alledges, the method which he would have taken with them,

by stripping them of their privileges for thirty years, and compelling them, as it were, to receive the *English* language and religion, will only serve to exasperate them, and spur them to put such designs in execution: which, if they are able to do at present by their numbers, they will at any time be able to accomplish; as it may be presumed their increase will be in proportion to that of the rest of the inhabitants of *Pensylvania*, and consequently, that they will always be the majority.

To the *Germans*, in a great measure, is to be ascribed the present flourishing condition of the province, owing to their industry in cultivating the lands, and the wealth which they brought with them into *Pensylvania*. But as he thinks the country is already over-stocked with them, he would have a stop put to the "importation of any more, and the migration turned another way." But, if they be the ungovernable wretches he represents them to be, how will that remedy the evil? It may remove, but not cure it; and the other provinces will not thank him for his advice: but he cares not what evils they brought on other provinces, so they could be taken off from voting at elections for the Quakers.

The reason which the writer gives, in a note, p. 32, for turning the migration from them, is, because "If new hands are continually brought in, and the old families go back to other colonies, as he says they do at present, (whenever they begin to get a little money, and know something of our language) we shall never make *Englishmen* of them." But whose fault is it, that the old families go off, except theirs of the writer's own party? It is in reality owing to the oppression of the proprietor's officers, entrusted with his land affairs, especially the Secretary of a certain principal man, who makes others fly from their native country, though not for such flagrant crimes as a person well known to himself fled from his own. This instrument of oppression, and another, has been for many years the plague of the province, by engrossing and monopolizing every spot of valuable land, in order to sell again at an exorbitant price; of which numerous instances might be produced, some whereof were complained of here about three years ago, and a proper admonition given to a certain person to look better to the behaviour of his officers.

After uttering so many falsehoods, and injurious reflections against the Quakers and the *Germans*, which his malice could invent, the reader, we presume, can no more believe that he was sorry the task *fell to his lot*, as he pretends, p. 37, than that *truth and duty obliged him to take up the*

pen. Yet he seems confident, that his representation of things will be taken for granted, and matters ordered by the Parliament according to his four instructions.

The first of them is "to oblige all those who sit in the assembly to take the oaths of allegiance to his Majesty; and perhaps a test or declaration that they will not refuse to defend their country against all his Majesty's enemies."

This article is calculated not only to exclude the Quakers wholly from the assembly, by obliging them to take an oath; but also to compel them personally to take up arms against their consciences, which confirms what we before suggested on this occasion. This proposal is so flagrantly unjust and oppressive, that if the character of the writer was not known, it might be wondered how he could have the presumption to offer such an insult to the British legislature. Yet he has the farther assurance to say *that is the smallest test of fidelity which can be required* from them: Altho' he knew that Mr. Penn founder of the colony in his last charter of 1683, enjoins "all who serve the government in any capacity, solemnly to promise when required allegiance to the crown and fidelity to the proprietor and Governor." This solemn affirmation is all which can be expected from Quakers, consistent with their religious principles; and which not many years ago the British legislature established by law; as judging it from the conduct of the people, as well as the nature of the thing itself, to be really in all respects equivalent to an oath; as without doubt it is. Many indeed murmured against this act when in agitation, as if it was indulging the Quakers with a greater privilege than any other Protestants, even church men, enjoyed; and cast a slur or reproach on all those who take oaths. To this it may be answered, that it is in the power of other Protestants to wipe off the slur or reproach if they think it one, and intitle themselves to the same privilege with Quakers, by only leaving off the use of profane cursing and swearing. Whenever any sect or body of them shall prove themselves duly qualified, there is no doubt but the parliament will on their application substitute the solemn affirmation instead of an oath, as well for them as they have done for the Quakers.

His second direction is, "to suspend the right of voting for members of assembly from the *Germans*, till they have a sufficient knowledge of our language and constitution; this provision he says, is as reasonable as the other." I grant it; that is, it is not reasonable at all: for after what has been said on the occasion, it does not appear that there is any ground for depriving

those people of their privileges, especially as the Quakers would be entirely excluded from the assembly by the first article. This shews he is still afraid his party would not be able to obtain their ends; and that three fourths of the people must be deprived of either the privilege of sitting in the assembly, or voting, before he thinks they would have a chance for it: and even then it is a hundred to one but they would find themselves mistaken, and be obliged to get three fourths of the church men and dissenters deprived of *their* right of voting also, before his party could have the least hopes of gaining their point: for the generality of all the different persuasions are in the same way of thinking, and act on the same principles with those of the Quakers.

The three remaining articles relate to the instruction of the *Germans*; and seem to be inserted rather for a gloss to his plan than any thing else, as they are in effect contained in the second. All that is new in them, relates to having all bonds, contracts, wills and other legal writings made in the *English* tongue; and that no news papers, almanacks, or other periodical paper should be printed in a foreign language, at least, unless an *English* version be printed in the opposite column or page: which two cautions are certainly proper and necessary, excepting that the article which relates to wills, may require some mitigation.

Thus having gone thro' the writer's letter, article by article, it remains only to take notice of what he says in the two or three last paragraphs. In the first of them, p. 43, he says that "during the late war, they (he means those of his party) petitioned his Majesty, setting forth their difficulties and the defenceless state of the province, but received no relief; owing, as they presumed, to the other weighty affairs, which then engrossed the attention of the ministry."

Now this is notoriously false, and a reflection on his Majesty as well as his ministers: for upon an application for that purpose, the *Otter* sloop of war, captain *Baladine* was sent out to their aid and defence. She arrived and was in the port of *Philadelphia* when the *Spanish* privateer before-mentioned was in the river *Delaware*. The assembly voted the captain a handsome present, upon his arrival, to buy stores, &c. which it can't be supposed the author is a stranger to, or could forget; unless he has done it willfully, for fear the conduct and behaviour, to the captain, of the Governor's party (the few who had the sole trade to the *French* and *Spanish West-Indies*,) should be exposed. Could the author forget that the captain of the man of war fell in

with one of their vessels, in the bay of *Dellaware*, freighted from the *Spanish West-Indies*? that he seized her and sent her to *Virginia* to be condemned? and that those people arrested the captain on his arrival at *Philadelphia* from his cruize, for the damage they pretended to have received from such capture? or could he forget the proceedings which followed thereupon?

Thus, that his conduct may be of a piece thro' the whole, as he begins with a falshood, so he continues his rout and ends with a falshood. If there be any thing of truth in his letter, to be sure it must be in those places where he speaks in praise of the proprietors and the Governors, whom he takes his leave of by averring, "it may be said, with the greatest justice, that they have done every thing in their power to assist *us* (that is his party) and *keep up* to an *English constitution*"; that is, by endeavouring to destroy that of the Quakers. He concludes, "whatever be the consequence, all our misfortunes can be charged no where, but upon *our people themselves*; the Governor's men: I agree with him, and I have shewn, continues he, that it would be plainly repugnant to their interest to remedy grievances." I agree with him in this point also. How truth will slip out often unawares?—He adds in the last place, "all redress therefore must, if it comes, come from his Majesty and the British parliament." In this particular, the Quakers, both here and in *Pensylvania*, are of opinion with the letter writer; nor is there any thing which they more ardently wish, as hath been already observed, than that their gracious King would take them under his own protection.

FINIS.

“Veridicus” [Thomas Frearon],
The Merchants, Factors, and Agents
Residing at Kingston, Complainants,
Against the Inhabitants of Spanish-Town
(London, 1755)



ADMIRAL CHARLES KNOWLES ARRIVED IN Jamaica in 1752 with directions from London authorities to clamp down on the extraordinary authority exercised by the Jamaica Assembly. These directions soon brought the governor into conflict with the legislature, and when he showed signs of wavering in this battle, he was severely admonished by his London superiors. Knowles responded by making his cause synonymous with the efforts of the leading citizens in Kingston, Jamaica’s largest urban center and principal trading port and the residence of its mercantile establishment, to move the capital from Spanish Town, where it had always been, to Kingston. Spanish Town was an inland capital with a substantial population of free people composed of many of the island’s oldest plantation families, a long tradition of being the center of settler power and the provincial legal establishment, and a group of government buildings unmatched in terms of value by those in any other British colony at the time. After some early defeats, Knowles and his Kingston supporters succeeded in acquiring a majority in the Assembly that enabled them to pass a removal bill in May 1755. Knowles’s party would eventually lose the transatlantic struggle over whether the metropolitan government should confirm this bill and cement Knowles’s victory. In part because of his high-handed actions at several points in the struggle to obtain its passage, he also lost his governorship.

During the long constitutional crisis surrounding these developments, from 1753 to 1757, the two opposing groups flooded London with petitions for and against removal, but the Spanish Town interests also took the contest to another level by producing the substantial pamphlet reprinted here, which they published in London early in 1755. Writing under the pseudonym Veridicus, or truth teller, the anonymous author was perhaps Thomas Frearon, a learned and much respected judge who had never been out of Jamaica. Exhibiting substantial learning in history, law, and languages, Veridicus sought both to demonstrate the inutility of removal and to set forth "the *juridical Case*" against it.

In the process, he laid out in rich detail the underpinnings of the Assembly's aggressive defense of settler liberties as they had taken shape in the various colonies over the previous century and a half, principally, the idea of consent, the subordination of the Crown and its appointees to the law, the sanctity of due process of law, and the sanctity of possessions, a term that extended beyond tangible property to include all fundamental privileges and rights. Veridicus explored at length the legal foundations of these liberties, basing them in the original and fundamental laws promulgated coeval at the time of settlement, the English legal inheritance, metropolitan judicial rulings, explicit contracts (in the case of Jamaica, the 1728 Revenue Act), colonial custom, international practice as rooted in Roman and civil law, and natural law. Insisting that no custom could be abridged through the unilateral actions of the metropolitan government nor changes made in any colonial practice "grounded upon uninterrupted and immemorial Possession" without going through traditional channels, Veridicus thus denounced the Kingston effort to move the capital as unconstitutional.

The pamphlet is remarkable for its use of Jamaican custom to defend the integrity and inviolability of existing constitutional practice in the colonies and for its unabashed defense of the superior legal position of provincial landholders, the "staid" inhabitants of a polity, and of the civil exclusion of transients such as the Kingston merchants and unenfranchised residents such as the colony's massive enslaved population. (J.P.G.)

The Merchants, Factors and Agents, residing
at *Kingston* in the said Island *Jamaica*,
COMPLAINANTS,

AGAINST

The Inhabitants of *Spanish-Town*, and of the four
adjacent Parishes, and against the Members of the
honourable Assembly, annually and constitutionally
held at *Saint Jago de la Vega*, and against the Planters,
Freeholders, Settlers, and chief Body of the People of
the Island of *Jamaica*, RESPONDENTS.

THE RESPONDENTS CASE.

—— Potior est Conditio Possidentis:
Uti possidetis ita Jus esto. (Sic ait Justianus.)

Patriae charisque propinquis
Quantum elargiri deceat. (Persius.)

Patriae Proditio, est foeda et nefaria;
Justitiae Venditio, et Patriae Proditio.
Qui furtivè ac dolosè vana Petitione orat;
aut sordidè corruptâ Largitione spoliare tentat.
Hic Niger est; hunc tu Romane caveto.¹ (HORAT.)

April 6th. 1754.

LONDON:

Printed in the Year M.DCC.LV.

1. ["The claim of the possessor is stronger. Just as you possess, so shall the law be."
(Thus Justinian spoke.)
"How much it is fitting to distribute to our country and dear kinsmen."
"Treason against our country is abominable and impious, a sellout of justice and
treason against our country."
"He who seeks secretly and deceitfully by a groundless suit or tries to corrupt by
sordid bribery.
"This one is blackhearted; this one, you Roman, beware."]

To William Beckford,
and Richard Beckford, Esquires.

*Pulchrum est (ut aiunt) pro Patria mori! ergo (et a fortiori)
Pulcherrimum est, illam, ab occasû, Strage, et Ruina tueri.*²

Gentlemen,

The ensuing Dissertation having been composed for the Service and Preservation of *St. Jago de la Vega*, the antient capital City of your native Country, and ye being the shining Ornaments and chief Defenders of both, this Dedication is therefore most properly due to you.

We have lately received Advice of the Celerity, Sagacity, and Assiduity of your Proceedings on our Behalf, and I am convinced that the Skill and refined Sense, the sound Judgment, and decent, but undaunted Address, which are the constant Concomitants of your Conduct, can hardly fail in so just a Cause to crown your Endeavours with Success, and yourselves with immortal Honour. As an Earnest of this, I can assure you (Gentlemen) that ye are become the Darlings of the People here! Go on and prosper.

I Decus, I nostrum, melioribus utere Fatis.³

Virg.

It is certainly more noble to save a City than to sack one, and it is vastly more glorious to be the *generous Defenders* of a Country, than to be the *unpolitical, but splendid Destroyers* of it. Now (Gentlemen) it's happily your Province to *save and defend*; whereas your Opponents in the present Case make it their Business to *sack and destroy!* May therefore Heaven and Earth concur to reward both Parties *precisely and respectively* according to their Works.

Tho' some introductory Account of the Dissertation may be proper in this Place, yet as to that, I shall not say much, but refer you to itself.

I am not ignorant how far true Sense, and the Comeliness of Modesty, ought to restrain Men from *commending* or *discommending* themselves, or their own Performances, and I am convinced that *Cato* thought rightly when he advised thus,

2. ["It is noble (as they say) to die for your country!
"Therefore (even more so) it is most noble to protect her
from downfall, defeat, and disaster."]
3. ["Go, Go, Glory of our Trojan race. Enjoy a better fate."]

Nec te collaudes, nec te culpaveris ipse
 Hoc faciunt Stulti, quos Gloria vexat inanis.⁴

Yet still without inroaching on the Rules of Modesty and Decorum, it is from the Light of Nature very clear, that it is impossible for us to know, without knowing that we do know; and therefore I shall say without the least Vanity, that the following Particulars are with great Certainty known to me, to wit,

1st, That I traced the Subject of my Dissertation as far back as the Conquest of this Island in the Year 1655, and having collected from our History, our Laws and our Records, all that I could find that was truly useful and necessary for my Purpose, I reduced my Materials into Order, and then proceeded to make them as argumentative for our Defence, and as significant and conducive to my Design, as any small Skill I had in the Art of *Ratiocination* did or could enable me.

And therefore, 2dly, all the Information and Helps that were desired by Mr. *Ferd-John Paris*, by his first Letter to our Committee, are to be found in the following Sheets.

And 3dly, what induced me to write them Sheets, was, that as there are not many in our small Community, who are capable of writing the *Respondents Case* (and it could be wrote no where else but among ourselves, because other People are unacquainted with our Laws, and could not have access to our Records) so I knew of none who was inclined to undertake such a laborious Task, and therefore, though perhaps I may be thought deficient in Point of Ability (there being no Perfection in Man) yet I am very confident, that I can never be truly thought to be so, in Point of Keeness and Sincerity.

4thly, I neither desire or expect any Reward for my Pains in performing the said Task, and all the Good that can accrue to me from that is merely the Pleasure of doing Good to my fellow Citizens, and to all those among whom I live *in the Evening of my Days*; and therefore I endeavoured to draw up the Respondents Case in such Manner, and to state their Defence in such a clear Light, as that all of them may be Gainers by it; and consequently what *Horace* wrote many Years ago, seems at this Day not to be very unaplicable to *you*, to *it*, to *them*, and to *me*.

Æque pauperibus prodest, Locupletibus aequè,
 Æque neglectum Pueris, Senibusque nocebit,

4. ["Do not praise or blame yourself. Fools do this whom empty glory troubles."]

Hoc Opus, hoc Studium, parvi properemus et ampli
Si Patriae volumus, si nobis vivere chari.⁵

Now (Gentlemen) notwithstanding all that hath been said, let it be here supposed, that I had it in my Power to perform, or that I had actually performed my said Task, to the *highest Degree of Perfection imaginable*, and for that Purpose let it be further supposed that I had actually opened the first and purest Fountains of *Justice, Judgment, and Equity*, and that with a Ray of Wisdom equal to that of *Solomon*, and superior to the wise Son of *Sirach*, I had actually disclosed them Fountains, to be clear as the Waters of *Shiloch*, and pure like the River *Damascus*; and still let it be further supposed, that I had with the Invention of *Homer*, the Skill of *Atticus*, and the Eloquence of *Cicero*, ingenuously displayed, and judiciously applied, all the Law, all the Learning, and the whole Art of *Ratiocination*, so far as it is, or can be known upon Earth; and that I had also made all my Arguments as truly conclusive as ever the *Stagyrite* did or could make a *Syllogism*; yet still I must confess (notwithstanding all the said extraordinary and very singular Suppositions) that without *your Conduct*, or without such a Conduct as yours, all my Efforts would, in all Probability, have been rendered abortive or ineffectual: How much then do ye owe to the benign Influences of your native Country, by which you are raised to be its chief Conductors? And how much doth that Country owe to you for the admirable Goodness of your Conduct? Where Friendship is reciprocal, it's naturally capable of a long Duration, and so be it in the Case I speak of; for it is certainly just, that those who are so well worthy of the Love of their Country as you are, ought always to be most dear to, and for ever beloved by it.

Under the Influence of this Sentiment, I need not tell you that I am a sincere Well-Wisher to you both, because after reading and considering the whole State of the Respondents Case, it will hardly be in your Power not to be convinced that I am a staunch Friend to your Native Country, and to its important Cause, and as such I shall only here say, that I am, as I ought to be, and with all due Respect,

Gentlemen, Your most obedient and most humble Servant,

VERIDICUS.⁶

Spanish-Town, Sep. 17th. 1754.

5. ["That which benefits equally poor and rich, neglected, will harm equally young and old. Let us, noble and common, hasten this work, this effort, if we wish to our country, if we wish to ourselves to be dear."]

6. ["Truthteller."]

The Editor to the Reader.

SIR,

The following State of a Case was composed at *St. Jago de la Vega* (otherwise called *Spanish-Town*) in *Jamaica*, for the Benefit and Service of the Gentlemen, Freeholders, and others the numerous Inhabitants of that ancient capital City.

But the said Case in the Course of it's Travels in *America*, happened to wander a little out of the common Road, and thereby an Accident of a very odd Nature happened to it, which was the Cause that *Printing* and *Publishing* were deferred from *April* to *September*; and was also the Reason why a true Copy of the original Manuscript was *then*, and not till then, sent over to me, with ample Instructions or Directions to make such Alterations in, or Additions to, the Respondents Case as I should think fit.

I accordingly have made very free use of my ample Powers, for I have made various Alterations in, and a great Number of important Additions to, the *second* and *third Parts* of the said Case; but the *first Part*, which is the *juridical Case*, seemed to me to be such a perfect Piece of it's kind, that really I must own, that I found it impossible for me to make any Alterations in it or Additions to it, that would not have been (in my humble Opinion) very palpable Pejorations of it. I have therefore left the Law State of the Case precisely as I found it, it is not in the least retouched or altered by me.

And indeed I must confess that I am afraid that many of my Alterations and Additions may seem to be expressed, in a Stile that is a little too poignant; but if the Author will, I am sure that the Publick may very easily forgive me for that; because the *Petition* and *Memorial* of the People of *Kingston* to the Board of Trade, being little better than a mere silly scurrilous Libel upon the good old Town of *St. Jago*, and all her worthy Citizens, the *Law of Retaliation* is a sufficient Warrant for my taking *political*, as well as *poetical Revenge* on them, for an Indignity so great in itself, and so undeservedly conferred as that was.

But yet for all my high Resentment, and in all my Lampoons, Rhapsodies, and Sarcasms, I have observed, or at least I endeavoured as much as the Subject would permit to observe, one general, useful, and a very polite Rule.

But tho' that Rule hath not in the least been transgressed by the Author of the Respondents Case, yet it seems to have been totally forgotten by the

Composer or Composers of the said Petition and Memorial, or else to have been absolutely unknown to them. The Rule that I speak of is this,

As the soft Plume conveys the feathered Dart,
Good Manners send the Satire to the Heart.

Now under the Influence of this Rule, I hope to be excused for all the Liberties I have taken in the following Sheets, and am, Sir,

Your humble Servant,

ANONYMUS.

From my own Chambers in *Gray's-Inn*, the ——— Day of 1754.

The Merchants, Factors and Agents,
residing at Kingston in the said Island,
Complainants, Against The Inhabitants
of Spanish-Town, and of the four adjacent
Parishes, and against the Members of
the honourable Assembly, annually and
constitutionally held at Saint Jago de la
Vega, and against the Planters, Freeholders,
Settlers, and chief Body of the People of the
Island of Jamaica, Respondents.

The Respondents their Case.

It appears very authentically (after the Manner herein after mentioned and particularly set forth) that the Island of *Jamaica* was acquired by Conquest from the *Spaniards* in the Year 1655, and that the most noted Towns in the said Island are *St. Jago de la Vega*, *Port-Royal* and *Kingston*, the first of which hath always been eminent as well in Respect of its Dignity and being the Seat of Government, as of its well known Antiquity.

For *St. Jago* is a long, large, well peopled Town, pleasantly situated in the inland Part of the Country, upon a large Plain or open Savanna of

some Miles extent: the King's House, in which all former Governors used to reside, is built in this Town; and it hath also many other spacious, comfortable, and good Houses in it: It hath likewise had for many Years a very considerable inland Trade. *St. Jago* is built at a small Distance from the Banks of a very useful River, called *Rio-Cobre*, which glides gently by it, and flows with Water as fresh, pure and fine, and as wholesom as any in the known World.

The many natural Advantages of this City, have, by the Policy of the Laws of this Country, made it the Seat of Government; and in it are held by Law the chief Courts of Justice; and the Representatives of the People elected in Virtue of his Majesty's Writs, and called in Virtue of his Royal Proclamations, do annually meet there in their general Assembly; and the Records of the Island are, and for a long Time have been very safely kept in their respective proper Offices at *Spanish-Town*.

Upon the 7th Day of *June* in the Year 1692, *Port-Royal* having been half ruined by a great Earthquake, and having been about ten Years afterwards, to wit, in the Year 1702, almost totally consumed by a dreadful Fire, *Kingston* took Rise from its Ashes, and was built upon the Ruins of *Port-Royal*; but never until now did the Town of *Kingston* set up to be the Seat of Government, or claim the Courts of Justice, and to be made the *Repository* of the Records of this Island.

For all this see Mr. *Francis Hanson's* Account, Page 437, of the Island and Government of *Jamaica*, which was wrote in or about the Year 1682, and Mr. *William Wood's* Preface to the Laws of *Jamaica*, pages 9, 10, 11, passed by the Governor's Council and Assembly of that Island (confirmed by the Crown) and published by Authority in the Year 1716.

There can be no Doubt but this historical Account, handed down to us by *Hanson* and *Wood*, is as consonant to the Truth, as it is to the Acts of the Country, by which it stands confirmed and clearly verified as to all essential Points. For,

1st, As to the Records, it was by an Act intituled, An Act for registering Deeds and Patents passed in the Year 1681, enacted by the Governor, Council and Assembly, "That Deeds shall be recorded in the Office of Inrolments, which said Office shall always be kepted at *St. Jago de la Vega*;" and accordingly the said Records have ever been kept at *St. Jago*, as per Act,

which see No. 14. Page 12. And by another Act passed in the said Year 1681, intituled,

An Act where the Laws of this Island shall be lodged, it is enacted that the said Laws shall be lodged in the Secretary's Office of Inrolments at *St. Jago de la Vega*, and not elsewhere; and to the End his Majesty's Subjects may be fully satisfied no Embezzlement, Raisure or Defacement of the said Acts, or any of them, shall for the future be committed in the said Office: It is enacted and ordained by the Authority aforesaid, that the Secretary of this Island, or his lawful Deputy that shall act in his room or stead, shall give in Bond with good and sufficient Security to our Sovereign Lord the King, his Heirs and Successors, in the Penalty of 4000 l. conditioned as per said Act, which see in Page 28. No. 27.

In Pursuance of which said Acts, it is certain and notorious that the said Records have ever since the said Year 1681, been kept at *St. Jago de la Vega*, and not elsewhere.

And to shew that *Spanish-Town* is just as well intituled to the Privilege of having the supreme Courts of Justice held there, as it is to the Benefit of having the *Custody and Conservation of the Records of the Island*, it appears by another Act passed in the said Year 1681, intituled,

An Act for establishing Courts and directing Marshal's Proceedings, that it is for the better and more orderly Regulation and Establishment of the several Courts of Justice within this Island, as well in Respect of the Time and Place for holding the same, and also directing the Marshal's, enacted by the Governor, Council and Assembly, and it is thereby enacted and ordained by the Authority of the same, that the Judges of the supreme Court of Judicature for the Time being, are thereby fully impowered and authorized to have Cognizance of all Pleas, civil, criminal and mixt, as fully and amply to all Intents and Purposes whatsoever, as the Courts of King's-Bench, Common-Pleas and Exchequer, within his Majesty's Kingdom of *England* have or ought to have, and the said Court shall be duly and constantly kepted at *St. Jago de la Vega*, and not elsewhere, as in and by the said last mentioned Act to be seen in Page 24. No. 26. doth more fully and at large appear.

From all which before recited Acts, it is manifest that *St. Jago* came legally and justly by the Custody of the Records as well as the Privilege of having the said several Courts of Justice held there; and it is no less certain that

Spanish-Town hath been in the continued and uninterrupted Possession thereof ever since the said Year 1681, which is a Possession that hath been quietly enjoyed for threescore and 10 Years and upwards, and during all that time the Seat of Government hath been in like manner uniformly established at *St. Jago de la Vega*, and no where else in this Island.

But what hath been said is not all that with Truth can be alledged as to the ancient and *immemorial Possession* of *St. Jago*; because *Oliver Cromwell* by his Proclamation, which issued *Anno 1655*, (which is the same Year in which the Island was taken from the *Spaniards*) not only promised all Favour and Protection to the *British Conquerors*, but also proclaimed that he had given proper Directions for establishing a Civil Government in this Island; and accordingly the said Laws which were passed in the said Year 1681, proceeded upon the same Model of Government that had been established by the Lord Protector in the said Year 1655, so that they were in Truth of the Nature of *Declaratory Laws*, for they gave no new Right, but only declared an old one; and consequently the Possession of the People of *St. Jago* under those declaratory Laws, carries a Retrospection, *et praesumitur retro*,⁷ until the very Date of the Protector's said Proclamation, a printed Copy of which is to be seen among Secretary *Thurloe's* Letters and Papers (*Anno 1655*) which were lately printed and published. And therefore if that Possession which surpasseth the Memory of every Man living, *be deemed an immemorial Possession*, and if an immemorial Possession in Virtue of Laws and Proclamations, *et justa Causâ praecedente*,⁸ can create an inflexible *legal Title*, as well as for ever establish a *just Right*, it cannot be denied but that the Respondents have a strong Case of it, as being equally well grounded on Law, and upon Equity; and that therefore the Complainants can have no Manner of Right or Title to call in Question an immemorial Possession peaceably and uninterruptedly flowing from such an antient and clear Fountain as it evidently appears to have been derived from. But supposing the Respondents Title could not have been thus historically and juridically demonstrated; yet in the Nature of the Thing, 'tis certain, that 99 Years quiet Possession, is an uncontrolable Presumption of a just Right.

But tho' it may be true that there is no express Law for establishing the Seat of Government at *Spanish-Town*, yet it is as true too that there was no positive

7. ["And it is presumed in the past."]

8. [Literally, "And with a previous actionable legal reason," i.e., a precedent.—Tr.]

Law thought necessary for that Purpose, because that the *tacit Consent* of the King, his Governors and the People have as effectually operated as to that particular End, as their express Concourse doth, or could have done in the making a positive Act for that very Purpose; for after settling all the supreme Courts at *St. Jago*, the *Government of the Country*, and the Jurisdiction of it, were inseparable Friends, and virtually became *Joint-tenants of that Town*.

And in Fact the Building of the King's House in *Spanish-Town*, in which all the *Regalia* of the Government have been constantly lodged, and in which all his Majesty's Governors have always successively resided; is a Demonstration of the Intention of the Legislature, as well as of the true Sense of the whole Community as to the Seat of Government: And since the Reparations, Alterations and Additions which every Governor in his Turn, and according to his Fancy, hath made upon the said King's House, hath cost the Country as much Money as would be sufficient for building a more fine Palace than any that is to be found in *America*: And since that Money was from time to time expended on the publick Faith, and upon the Supposition that the King's House was to be constantly the Seat of his Majesty's Government, it is certainly as little consonant to the Principles of Justice, as it is to the Credit of publick Faith, and to true Policy, to sink so much of the Country's Money purely for the sake of raising Animosities among the People, and disordering the Government, by making Innovations, Alterations or Changes as to the Seat of it.

It is too notorious to be denied, that *Kingston* is and always has been the most sickly Spot in *Jamaica*; the adjacent most nauseous Lagoons, and the noisome poisonous and most malignant Vapours which incessantly arise from them, are self-evidently so fatal to the People of *Kingston*, that some New-comers might have suspected it to be of the Nature of *Pandora's Box*; for many of the Respondents have been informed and verily believe that more white Persons die at *Kingston* in one Year than do die at *Spanish-Town*, in *St. Catherine's*, and in all the other Parishes of this Island in three Years; and that is so true that some of the Respondents do imagine that by the South Wind the Malignity of those Lagoons is fatally communicated to the Royal Hospital, which is unhappily situated very near to *Kingston*, and that by the North Wind that same *fatal Malignity* is driven back upon *Kingston* itself, and seldom fails, especially in the rainy Seasons, to render it's People as incessantly sickly as are even the poor Hospitallers. The great Numbers of sick Persons and of Practitioners in Physick which constantly are to be found

at *Kingston*, give it something of the Resemblance of a mere Hospital; and how near that Resemblance approacheth to the very Truth may appear by considering, that in Fact the Church-yard of *Kingston* (in Proportion to it's Circumference) is perhaps one of the most greedy Graves in the whole Earth; so that were the Inhabitants of *Spanish-Town* to be united to, or to be mixed and confounded with the People of *Kingston*, it might not be improper to enlarge their *common Grave*, and to make it almost as ample as is the adjacent Horse Course. But it is no less true, that *Spanish-Town* is in the Nature of a *Montpelier* in Comparison to *Kingston*, so that the Seat of Government (where for four-fifth Parts of the Year there is a great Resort of People from all Corners of the Country) hath been originally very wisely and judiciously established at *Spanish-Town*, because the Settlement of it there appears to have proceeded upon the Fitness resulting from the necessary Relations of Things, and upon the Reason of that Necessity and the natural Causes of those Relations; so that Art hath concurred with Nature in pointing out *St. Jago* as the most proper Seat of Government, and that is so true that we all in Fact see that at this Day the Governor cannot, to all Intents and Purposes, be so amply and so well and happily accommodated at *Kingston* or at any other Part of this Island, as he and other Governors have been and may be in *Spanish-Town*: And then as to Nature, *the resulting Fitness* herein mentioned is nothing else but a fair Deduction from the original and primary Law of Nature; and as such it is as much a Rule for Kings, and is as just a Directory of their Actions, and as solid a Basis for their solemn Determinations in the great Concerns of Mankind, or in the most important Affairs of the World, as is any other Law, Act or Statute whatsoever.

The Acts before cited were made very soon after the Conquest of this Island, and they appear to be of the Nature of original and fundamental Laws, which ought never to be altered; and indeed they never can be altered, without renting all Order, and breaking all Unity, without unframing the Government and sapping the very Foundations of the Constitution of this Country. And that is so true, that under the public Faith, flowing from those fundamental Laws, the Respondents, all his Majesty's Planters, or the greatest Part of them, have become staid Inhabitants, and very considerable Settlers in this Island.

And since his late Majesty King *Charles* the Second by his Royal Proclamation for encouraging Planters in his Majesty's Island of *Jamaica* and the *West Indies*, given at his Majesty's Court at *Whitehall* the 14th Day of *December*, in the 13th Year of his Reign, did publish and declare that all

Children of any of his Majesty's born Subjects of *England* to be born in *Jamaica*, shall from their respective Births be reputed to be and shall be free Denizons of *England*, and shall have the same Privileges to all Intents and Purposes as his Majesty's free born Subjects of *England*; the Respondents do thereupon apprehend that the Laws of *England* are their *Birth-right*, and that in Virtue thereof, and of the said Proclamation, and of the said original and fundamental Laws, as well as of the before-mentioned long Possession and Prescription, they the Inhabitants of *St. Jago de la Vega* have as good Right to the Seat of Government, to the Custody of the Records, and to the Privilege of having his Majesty's Courts held there, as they have to their respective Freeholds; and that the People of *Jamaica* have just the same legal Rights to the Possession of their own Freeholds as the People of *England* have to theirs, which surely can never be altered, unhinged, hurt or innovated at the Pleasure of a subordinate chief Magistrate, or yet to gratify the Humour of any great Man in the Kingdom.

That the Respondents do very truly and with great Certainty apprehend all this Matter must be convincingly clear to all those who shall consider the historical Account and the Nature, Tenor and Condition of our own revenue Act which was passed (and confirmed) in the Year 1728, and hath ever since been deemed to be of the Nature of a perpetual Law, and which last-mentioned Act doth proceed upon this Recital, *to wit*,

That his Majesty's most dutiful and loyal Subjects the Assembly of *Jamaica*, considering that the greatest Part of his Majesty's Revenue in this Island, as it was established, did determine the 1st Day of *October* in the Year 1724, and being desirous to distinguish his Majesty's most auspicious Reign, have freely and unanimously resolved, not only to revive and continue the said Revenue, but to augment it to a Degree suitable to the Dignity as well as to the Support of his Government, and also to give it such a Duration as they hoped is designed by the divine Providence for the Succession of the Crown in his royal Line; it was thereupon enacted by his Majesty's Governor, Council and Assembly of this Island, that from thenceforth all the Goods, Wares and Merchandizes in the said Act specified, shall pay to his Majesty, his Heirs and Successors, all and singular the various enumerated Duties, as *per Act*.

(which see in Page 144, 145, and No. 271) Of which enumerated Duties, upon the said enumerated Commodities, (which amount to a very considerable

yearly Revenue of no less than 8000 *l. Communibus Annis*⁹) the Crown hath been in the Possession and actual Perception ever since the said Year 1728. And it is the Sense of the Respondents, that that yearly Revenue doth annually increase, and that it was designed to enure to the latest Posterity. And by the last Section in the said last-mentioned Act "it is enacted, that all such Laws and Statutes of *England* as have been at any time esteemed, introduced, used, accepted or received as Laws in this Island, shall and are thereby declared to be and continue Laws of this his Majesty's Island of *Jamaica* for ever."

From what hath been before recited the following Conclusions may be fairly drawn, *viz.*

1st. That the said revenue Act having been wisely, voluntarily, and for a valuable Consideration ratified by the Crown, doth amount to a fair, honest and mutual Contract between the King and People; in Virtue of which all the Privileges, Immunities, Freeholds and Possessions of the Respondents; and all the Incidents of every of the said Immunities, Freeholds and Possessions were of new declared, and by his Majesty ratified and expressly confirmed, and for him, his Heirs and Successors for ever, and to all Intents and Purposes made perpetual.

2d. This being an Act for granting a growing Revenue to his Majesty, his Heirs and Successors, for the Support of the Government of this Island, and for reviving and perpetuating the Acts and Laws thereof, is in Truth, the *modern Magna Charta of Jamaica*: It is a *Charter of Confirmation*, which gives no new Right, but only ratifies, confirms and establisheth an old one: This Charter is not liable to the same, or the like Exceptions as were taken to the *Magna Charta of England* by *Hubert de Burgo Summus Justiciarius Angliae*,¹⁰ who *persuaded* his young Master that the old Charter could be vacated upon the Heads of *Infancy* and *Duress* (for which see Lord Coke's *Procme* to the second Part of his *Institutes*) whereas the *Jamaica Charter* is grounded on a plenary Consent, proceeding from a valuable and growing Consideration, and was voluntarily confirmed by the wisest and best of Kings in the Maturity of his Judgment, as well as in the Ripeness of his Years; it was neither extorted by Force nor impetrated by Fraud; the Infancy of the King, or the Lesion of his Crown cannot be objected to it; and

9. ["The annual average."]

10. ["The Highest Judge of England."]

therefore all our Liberties, Immunities, Privileges and Possessions enjoyed under that Charter, are possessed *Justâ Causâ præcedente*, and what the just, rational, necessary and legal Consequences of such a Possession are, shall be presently made manifest from certain very chaste Illustrations clearly flowing from the first and purest Fountains of the common Law of the World.

3d. But before glancing at such Illustrations, it is here fit to observe that, it is very plain and clear from the Laws of our mother Country, as well as from the *Jamaica* Laws, that all the old and valuable Laws of *England*, are truly the Birthright of the People of this *Island*; for those brave *Britons* who made the Conquest of *Jamaica* can never be supposed to have forfeited the Concessions of the Crown, or the Benefit of the Laws of their own Country, by adding a valuable Jewel to the former, or yet by exploring golden Mines, by opening a new Fountain of Trade and Riches for the Use of the latter.

It is certain the Conquerors of *Jamaica* did a significant thing for the Sovereign, as well as for the Subject, because that Conquest did open a fine large Avenue to the Wealth of the World, and had the Conduct of our Arms in the *West Indies* been equal to their Force during the late War, *Mexico* and *Peru* might have fallen into the Hands of the Conductors, and *Jamaica* could have well served as a *Let-pass* to, or in Case of Necessity as an Asylum of Retreat from either or both of these important Places; which are in themselves so opulent as to be the main Source of almost half the Riches of the whole Earth! The *West India* Trade is in a Manner locked up by the *Spaniards*, but *Jamaica* is such a Key to it, that in the Hands of the Diligent it might be easily so turned, as to open all the *Spanish* Locks with Facility.

4th. It hath been adjudged in *Westminster-hall* that the Benefit of all the Laws of *England* preceding the Conquest of this *Island*, did of Right appertain to the Conquerors (and for this see *Galdy's Case* in the 4th *Modern**) and it cannot be denied that the Statute of the 9th of *Henry* the Third, (which is the uncontroverted *Magna Charta* of *England*) was made and passed many Years before the Conquest of *Jamaica*, and therefore the People of *Jamaica* are fully intitled to all and singular the Benefits, Privileges, Protection and Immunities conceded by that Law or Charter, and so much the rather that the said Statute of *Henry* the Third hath always been esteemed, used, accepted and received as a Law of this *Island*; and as such it is declared by the foregoing recited Clause in the revenue Act (which stands confirmed

**Blankardas Galdy*, 4. *Mod.* 222.

by the Crown as aforesaid) to be and continue a Law of this his Majesty's Island of *Jamaica* for ever. In which Law or Statute, Chap. 29, are the following Words, *viz.*

Nullus Liber homo capiatur, &c. aut disseisitur de libero Tenemento suo vel Libertatibus, vel liberis Consuetudinibus suis, &c. aut aliquo modo distraatur, nec super cum ibimus, nec super cum mittemus, nisi per legale Judicium Parium suorum, vel Legem Terrae. Nulli vendemus, nulli negabimus aut differemus Justitiam aut Rectum.¹¹

Now had the Complainants understood this Statute, or could all of them have translated it into plain *English*, many of them would have probably saved themselves the Trouble of contributing to such a large Subscription as hath been lately set on Foot by them; because in that Case they might have understood that the *selling of Justice* is restrained by *Magna Charta*, and were they true Merchants and fair Dealers they would never attempt either to sell or yet to buy Justice; for all those Complainants, be they Merchants, Factors or Agents, are grosly mistaken who imagine that Justice is either the *Subject* or yet the proper Object of Commerce, and that it never might be made so among us was and is the main Scope of our said Revenue Act.

2d. The Words of the great Charter before recited are so important that the Lord *Coke* hath given us a Comment upon every one of them; as for Instance, he saith, that the said Words *de Libertatibus*¹² do mean the Laws of the Realm, and therefore the before-mentioned Proclamations and fundamental Laws are and may be well supposed to be truly comprehended, under the said *Charta Libertatum*.¹³ Secondly he saith, that the said Words do signify those *Freedoms of the Subject*, by which any By-laws, Acts, Orders or Concessions made contrary to *Magna Charta* are adjudged to be against Law, because they are against the general Liberty of the Subject; and therefore as the Respondents Freedoms and Freeholds are warranted by *Magna Charta*, any Order, Judgment or Award to their Prejudice would be void and ineffectual as being against Law. 3dly, Lord *Coke* saith, "That the Word

11. ["No man shall be seized or dispossessed of his own freehold or his liberties or his own free customs or in some way be destroyed nor shall we proceed against him nor shall we send (probably, arms to arrest) him unless by the lawful judgment of his equals or according to the law of the land. We shall sell to no man, we shall deny to no man, we shall delay to no one justice and right."]

12. ["Of his liberties."]

13. ["Chart of Liberties," i.e., *Magna Charta*.—Tr.]

Liberties signifieth the Franchises and Privileges which the Subjects have of the Gift of the King, or which they claim by Prescription." Now the Custody of the Records, the Seat of Government and the holding of Courts at *St. Jago*, are those Franchises and Privileges which the Respondents enjoy by Proclamations and Laws, and by the Concessions of the Crown as aforesaid, and which said Franchises they have held for 99 Years, and do claim the same in Virtue of the said long Prescription as aforesaid; and whoever duly considers Lord *Coke's* 2d Institute, page 47. must necessarily conclude, that, according to his Lordship's Opinion, it is a thing impossible, legally to preclude the Respondents from any of those Liberties, Privileges and Franchises which they have so long held, and which they do still hold, claim and enjoy as aforesaid, without committing a manifest Violation of the said great Charter of Liberty.

3d, By *Liberis Consuetudinibus*, are to be understood the *Customs of the Realm*. 2d Inst. 47. and Lord *Coke* proceeds to divide them into general and particular Customs; but the Respondents in place of being so elaborate as his Lordship hath been, shall rest that particular Matter of Custom upon this single Thought, to wit, that those are (in the Judgment of Law) the most valuable and significant Customs, which are *ancient, universal, uninterrupted* and *notorious*; that many of the prevalent consuetudinary Liberties of *England*, have not all the aforesaid four Characteristicks, but that the said Franchises, held, claimed, and enjoyed by the Respondents, are undoubtedly and most manifestly vested with them all; and therefore the Respondents very fairly conclude that they ought not to be disfranchised of their said *consuetudinary Liberties*, which are demonstrated to have been ancient, universal, uninterrupted and notorious. At the Instance of transient Persons, impertinent Petitioners, or yet *per Modum simplicis Querelae*.¹⁴ For the *Lex Terrae*,¹⁵ which is as clearly declared by *Magna Charta*, as it is admired and revered by Lord *Coke*, opposeth that summary Manner of Proceeding, and that abrupt Form of Process to the very *Teeth*.

4th, This is a Statute of *weighty Sense*, from which the Respondents do presume to draw one of the most ample, and yet one of the fairest Conclusions in the World; for it certainly imports that no free born *Briton*, or other free Man, shall be ousted of his Possession, or be directly or indirectly

14. ["By the manner of simple brief or complaint."]

15. ["Law of the land," i.e., the common law.—Tr.]

attacked or invaded as to any Franchises, customary Liberties, Privileges or Immunities without an open fair Trial, according to the Law of our Land, and the Verdict of twelve sworn honest and legal Men, or by a Jury of our own Peers; whereas the Complainants by their clandestine Petition (herein after mentioned) have given a base and a secret Stab to *Magna Charta*, maliciously intending that the Wound should prove fatal, by ousting the Respondents of the Benefit of that great Charter, and of all their Freeholds and Franchises by the means of a silly Petition, secretly concerted and privately forwarded by them; in consequence of which nothing less is proposed, than the Ruin of our Capital, and the total Destruction of Multitudes of People, Settlers, Freeholders and staid Families; and all this to be done without *citing or hearing*, against the Law of the Land, and without any Trial by Peers, and without any Title or the least Colour of it on the Part of the Complainants, and against all the before-mentioned just Right, legal Title, and long Possession on the Part of the Respondents; and which said Right, Title and Possession are equally as well grounded on publick Authority, as upon private Consent after the manner aforesaid. The Complainants have therefore not only grosly violated *Magna Charta*, but have also done all that in them lay to shake the fundamental Laws of their own Country, to ruin its publick Faith, and thereby to disgrace its greatest Honour; Inso-much that the Respondents do thereupon very confidently conclude that it can never be in the Power of Complainants, Merchants, Factors and Agents to raise or advance the publick Credit by vainly trampling on private Virtue, and thereafter proceeding proudly and rashly to destroy all that stands established upon the unsuspected Faith of an intelligent People, and of this generous hearted Country as aforesaid.

When once the *firm Assurance* fails,
Which publick Faith imparts;
All Honour dies, and we're undone
By such deceitful Arts.

1. Now the better to illustrate all that hath been said, it is fit here to take Notice, that the most magnificent of the *Roman* Emperors who studied true Policy *more*, and understood it much *better*, than *all*, or at least than most of *all* of their Co-temporaries; held it as necessary to secure the *Roman* People in their Possessions, and to defend their own vast Empire by the Force and Energy of good and wise Laws, as it was to adorn it with their Phalanx, their

Eagles, and the Clangour of their Arms, or with imperial Legions, tho' ever in such artful, strong, and beauteous Order ranked.

2. Upon this Principle it was that the Emperor *Justinian* caused digest all the *Roman* Laws into one Volume, called the *Corpus Juris Civilis*;¹⁶ and accordingly we find that he hath very significantly bestowed the 6th Title of his Institutions, in treating *De Usucapionibus et longi temporis Praescriptionibus*,¹⁷ from which it appears that three Years Possession created a sufficient Right to any personal Estate, and that ten Years Possession was sufficient to establish an uncontrovertable Title to all the real Estates within the whole *Roman* Empire; and that Possession tho' seemingly very short, is called *longi temporis Praescriptio*, and did infallibly pass the Property, where there was no Disability, and in all Cases where the Possessor came by it honestly; for the Words of the said Title are "Et his Modis non solum in Italia, sed etiam in omni Terra, quae nostro Imperio gubernatur, Dominia rerum, justa causa Possessionis praecedente, adquirantur."¹⁸ And if a Possession of ten Years was politically, wisely, and reasonably deemed to be a sufficient legal Title in *Italy* after it was well settled, *a multo fortiori*,¹⁹ such a Possession as that of the Respondents (being almost of ten times ten Years Duration) should be deemed an uncontrollable Title in *Jamaica*, and in every other *British* Colony that is not sufficiently settled, and that not only in Odium of those who rashly and unjustly attempt to disturb the peaceable Possessions of the *veteres Coloni*;²⁰ but also, lest by a constant Uncertainty, the Settlers of Colonies being as dissident as unsecure, might be thereby induced to neglect the Improvement of what they do possess.

3. The virtuous and wise *Romans*, truly sensible of the absolute Necessity for such possessory Laws, and of the many and great Benefits arising from them, resolved to secure them same Laws against the open and secret Efforts of all the Sons of *Violence, Force and Fraud*; and for that Purpose one of the most famous Edicts in the whole *Corpus Juris Civilis*, was at first invented,

16. ["Body of civil law."]

17. ["About ownership and the rights of a long time of possession."]

18. ["And in this way not only in Italy but also in every land which is governed by our regime, ownership of property, when there has existed a previous actionable legal reason, is acquired."]

19. ["By a much stronger argument."]

20. ["Long-established colonists."]

and is commonly called the Edict *unde Vi*;²¹ this Edict was penned with great Spirit, for, saith the Emperor, *unde tu Vi illum dejecisti, ego te restituere cogam*.²² And the Law was the same as to Chattels, Franchises, consuetudinary Liberties, incident Privileges, or such like Concomitants of the Freehold, with Regard to all which the Rule is universal and eternal, to wit, that *spoliatus est ante omnia restituendus*.²³ But the said Edict having been only intended for obtaining Restitution after Violence had been actually committed; and the *Romans* clearly conceiving that it was as much better, as it is for the most part truly easier, to prevent *Violence*, than it is to suppress it; did therefore invent their other most notable and perpetual Edict, known by the Name of *Uti possidetis*;²⁴ for as Possession is by common Intendment a Presumption of Right; so *Paulus* hath very naturally and truly observed on this Edict, that “Qualiscunque enim Possessor, hoc ipso, quod Possessor est, plus Juris habet quam ille qui non possidet.”²⁵ In virtue of the former Edict all manner of Persons were, *ante omnia*,²⁶ restored to their Possessions, if these had been taken from them by Violence; and by Force of the Letter, they were secured in their Possessions against all Manner of Violence that could be offered unto them. The one restored the Possession when lost, but the other did better than even that, in as far as it secured Possessors against any Ouster, and hindered their Possessions from being ever lost. As both these Edicts were made perpetual, so they seem also to have very clear Marks of Universality attending them; for the Principle on which they proceeded is at this Day predominant in all the Law Systems of the World! And thus all the *Possessory Laws* of *Italy, France, Germany* and *Holland*, were truly derived from these Edicts; and *Nolo Leges Angliae mutare*²⁷ is nothing else but an *Uti possidetis* in other Words; and tho large Additions have been made to the Law by numerous long Statutes, occasioned by Revolutions, publick Debts, Commerce and Colonies; yet notwithstanding all the Volumes of Statutes, there hath been no material Alterations made as to Freeholds in *England*, or

21. [“Whence by force.”]

22. [“Whence you drove that man out by force, I shall compel you to restore him.”]

23. [“He who has been robbed must be restored before all things.”]

24. [“Just as you now possess.”]

25. [“The possessor has more right to that possession moreover, because he is the possessor, than that man who does not have possession.”]

26. [“Before all things.”]

27. [“I do not wish to change the laws of England.”]

with Regard to Franchises and consuetudinary Liberties incident to them, since the Reign of *Henry the 3d, Anno Regni 20*,²⁸ who was the first Promulgator of that Royal Edict; the true Sense and sound Policy of which cannot be reasonably doubted of; because it is safer and better to rest upon what is fixed and clearly settled, *altho' it were in some Measure either unjust or inconvenient*, than it is or would be to unHINGE the Constitution of a Country, and to endanger the Peace and Welfare of the whole Society, by making Changes or Alterations of Possessions, or Innovations as to the received Conceptions, and well known Nature of *Dominium, Property and Rights*. And that is so true that by the Statute of 21st *Jac. I. cap. 16.* an Ejectment cannot be maintained in *England* after twenty Years Possession, altho' the Tenant in Possession had no manner of Right or Title, *but Possession*, in the Premises, if so be that the said Tenant's Possession was uninterrupted, and that the Plaintiff was under no Disability; and altho' the said Tenant had been ousted, yet the said Possession of twenty Years immediately before such Ouster, would be a sufficient Title for recovering in Ejectment, because a Possession for twenty Years is like a Descent, which tolls Entry, and gives a *Right of Possession*, which is sufficient to maintain an Ejectment. 2d, *Salkeld* 421. Therefore tho' the Respondents had lost their Possessions, as they have not, yet upon the Strength of this Authority, a fifth Part of the Duration of their said uninterrupted Possession, would be a sufficient legal Title on their Part, for an actual Recovery, according to the due Course of the Law of *England*; and whatever would be a sufficient legal Warrant for awarding Restitution, is (*a fortiori*) a good Warrant for aiding Possessors by supporting and maintaining their Possessions. And in like manner by the Law of *Scotland* no Man's Right or Title can be called in Question, after the long Prescription of forty Years uninterrupted Possession; and thus it appears that the *Uti possidetis* (which is all that the Respondents contend for) is and hath been ever highly favoured by most of the European Nations, and by the Policy of their Laws in general: In Consequence of all which Illustrations, and of the said ancient and long Statutes, and of Lord *Coke's* Comments upon them, and of the said Proclamations, fundamental Laws, long Prescription, great Charters, and Charter of Confirmation, and 99 Years Possession held under them, the Respondents desire no more than what the *Romans* very fully enjoyed in Virtue of the said two short Edicts, *viz. Unde Vi, and Uti possidetis*.

28. ["In the twentieth year of his rule."]

4. The antient, brave, virtuous and wise *Romans*, having carefully studied Nature and Nature's Laws, and with great Exactness penetrated the sovereign Principles of Equity and Justice, and having grounded their own *Law-System*, upon them Foundations, the Civil Law is therefore called the *Lex Legum*, and hath purely for its Excellency been very much admired and followed by almost all the civilized Nations in *Europe*. The high Policy, the true Sense, the Justice, Judgment and Equity of the *Roman Laws* are well worthy of the World's Admiration, and a clear, genuine Conception of them is capable of reflecting eminent Glory and splendid Lustre even upon Majesty itself! and as often as the King doth in Fact make a proper Application of all those *Excellencies*, he doth thereby *most certainly make them all his own*. And thus the Respondents Case can be as righteously determined upon the Edict of *Augustus* as it could be by all the *Wisdom of Solomon*! For, *Uti possidetis ita Jus esto*,²⁹ would be a matchless and most noble Judgment, and a final Determination so compleat in itself, as that it could admit of no Amendment from any Powers of the most intelligent Mind, nor yet from all the Energy of human Understanding! Such a *Royal-Award* would therefore be as truly worthy of the greatest of Kings, as it is certainly and most highly worthy of the best of Men.

Here ends the juridical State of the Case, and thereupon the Scene is changed from the Court to the Coffee-House, in order to examine the *Kingston* Petition, to castigate the Petitions, and to treat them after such manner as *Caleb D'Anvers* used to handle old Mother *Osborne*.

Jusque datum Sceleri canimus Populumque nutantem,
In sua victrici conversum Viscera dextra.³⁰

LUCAN.

From the foregoing State of the Case, the Respondents well hoped that after threescore and ten Years constant, peaceable, and uninterrupted Possession, proceeding upon the original and fundamental Laws of this Island, and after immemorial or 99 Years Possession, *justâ Causâ praeecedente*, as aforesaid, that they are not, nor ought to be attacked or disturbed in their Possessions, or hurt in their Freeholds by Petitions, or otherwise, at the

29. ["As you now possess, so shall it be the law."]

30. ["I sing about right assigned to crime and a tottering nation which turned its conquering right hand into its own vitals."]

Instance of transient Persons, mere Merchants, Factors, and Agents, or any other set of Transients, having no Plantations, or what is among Planters called Settlements, and who have only a momentary Residence, and Habitations for the Time being in this Island.

But yet these Transients, Factors, and Agents, elate with the enormous Prosperity arising from 10 *per cent.* Commissions, and swell'd with the Wealth which they drain from the Trade and Consumpt of *Spanish-Town*, and from the Labours of Settlers and industrious Planters, unhappily forget their own natural Condition, and so sally forth from Shops, Store-houses, and from behind Counters, and totally deserting their own Spheres, they all of a sudden marvellously commence learned Men and Lawyers, Constitutionals, Projectors, and Politicians! But their seraphick Qualifications in the three former Characters, will as eminently appear from the Tenor of their own most matchless Petition, of which honourable mention shall be forthwith made; as their *superlative Endowments* in the two latter Capacities are undoubtedly clear to all those who have had the Honour of *being Assenters* to the *large Subscription* that hath been lately opened by them in their political Fits: A Subscription, however intended (as some of the Respondents do believe, and doubt not to prove) for procuring a *Let-pass* for *Flat-falsity* under the Vizard of *true Policy*, and for establishing a hateful most destructive Monopoly, to be caressed (if not adored) as the *Palladium of Trade* or the *Bonus Genius*³¹ of a commercial Colony! But notwithstanding all their Efforts, if the Lord Coke be right, it must manifestly appear that all the Complainants are shamefully mistaken as to *Magna Charta*, and that they do most grossly err as to the Point of Law; for his Lordship hath laid it down as a settled System, "that generally all Monopolies are against this great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land." 2d. *Inst.* 47.

But notwithstanding all this, and to the great Concern of the Respondents, and very far contrary to their reasonable Expectations, the said Petition, which in itself is as extraordinary as it was unexpected, appears to have been lately drawn up and subscribed by some of the Persons therein named, in order to be presented to his Majesty! And as that Petition abounds with many Singularities, and contains such a Prayer as was never asked of, or granted by any King in *Christendom*, it may not be amiss to insert it here

31. ["The good Spirit of the place."]

verbatim, together with some Remarks on each particular Paragraph of it respectively: Now the Words of the said Petition are as follow (*to wit*).

Jamaica ss.

To his most excellent Majesty George the Second, by the Grace of God of *Great Britain, France and Ireland* King, and of *Jamaica* Lord Defender of the Faith, &c. The most humble Petition of the Merchants, Factors and Agents residing in the Island of *Jamaica*, in Behalf of themselves and their Constituents, and all other the Merchants of *Great Britain, Ireland* and the Colonies in *North America* trading to the same.

Remarks upon the Title of the said Petition.

(1st,) It appears at first Glance; that this Address to the King is highly improper, because the Scope of it, and of the said Petition, is to repeal the said Laws which stand confirmed by the Crown, and which for a valuable Consideration were made perpetual, as is herein and before at large set forth. (And 2dly,) The *Lord of Jamaica* hath as little to do with it as the King hath, for tho' it be called a most humble Petition, yet truly is it more *ridiculous* than *humble*; because it tends to annihilate the very Lordship itself, and to destroy the *Dominium directum*³² of this Island, by disfranchising it's Freeholders, and depriving it's antient Possessors and kindly Tenants of their *Dominium utile*,³³ to which they have the same just Right and legal Title that their King and Lord hath to his said *Dominium directum*; and whoever shall duly consider the foregoing State of the Respondents Case, will find that, that is juridically and clearly demonstrated by it. (3,) It is very untruly called "the Petition of the Merchants of *Great Britain and Ireland* and the Colonies of *North America* &c." For the Respondents know better, and that it is upon the main and in fact nothing else but the Petition of One Chief Ring Leader, and of about half a Dozen of wealthy Merchants residing in *Kingston*; for the rest, or at least many of them, are but Under-strappers, the mere Factors and Agents of his Majesty's Planters the Respondents, and as such they surely behave very ill, and are therefore only to be looked upon as the *Carnalia*³⁴ of this Country, and the mere *Turba Rhemi*³⁵ of *Kingston*. But however richly

32. ["Ownership properly based on law."]

33. ["Possession of property based on use."]

34. ["Flesh."]

35. ["The Rhemish (that is, barbarian) hoard."]

even the best of these Petitioners may be favoured with the Gifts of Fortune, yet it sufficiently appears from what is herein before set forth, and from the Enormity of their Design and the gross Absurdity of their Scheme, that they are but ill furnished, and poorly, very poorly supplied with the Gifts of Nature! For it is but too true that *Fortuna favet fatuis*.³⁶ (4.) The Merchants of *Great Britain*, as well as these of *Savanna la Marr*, and all the other Merchants of this Island (excepting these of *Spanish-Town* and *Kingston*) have as little to do with the Matters of the said Petition as have the Merchants of *Constantinople*! Why then should the King and common Father of our Country depend upon, and how can he trust to the Honour, Sense, or Honesty of such Petitioners who unhappily brand their own Petition with such a notable idle Piece of Misrepresentation in the very Front of it?

Sheweth, that your Petitioners most humbly beg Leave to approach the Throne, and with the most profound Reverence and dutiful Submission to shew unto your Majesty.

Remarks upon Paragraph the first.

(1.) This is a most beautiful *Exordium*,³⁷ for it sheweth that the Petitioners have something to shew unto Majesty. But is not this a shameful Piece of Tautology? (2.) The Petitioners are very aukward in their Advances to the Throne, for they seem to approach it with a sneaking, covetous, silly, fawning, foolish Air, and to creep along like Reptiles, in place of advancing with such Grace and Dignity as upon all Occasions do truly become the erected Countenance, and generous Aspect of the noble Creature Man. But yet it must be admitted that Men are not taught *behind Counters*, how to behave at Court; and therefore the Petitioners seem hardly to know how to be *submissive* without being *Slaves*; and thus by weighing the Paragraph exactly, we may see that when they endeavour to make Expressions of their Duty, they most miserably confound *them, and it*, with *solemn Dulness* and *servile Devotion*!

That the Trade of this your Majesty's Island of *Jamaica* has, for a great while past, been in a declining State, and still continues to decline, to the great Discouragement of all your Majesty's loyal Subjects trading to the same.

36. ["Fortune favors fools."]

37. ["Introduction."]

Remarks upon Paragraph the second.

It is certain that during the late War our Trade was in a good and very flourishing Condition, because the *Spanish* Trade was then kept open to us by his Majesty's Squadrons; but since the Commencement of the Peace, that most valuable Branch of Trade hath been greatly curbed, and in some Measure shut up, by these poor wretched Vessels, and artless Logs of Wood called *Guarda Costas*; and tho' the said Trade be lower now, and for the Reason already given, will always be lower during Peace than it was during the War, until such time as the *Spaniards* shall be compelled by Force or Policy to allow us to trade freely and openly with them; yet still it is a very unfair Representation of that Matter to say, "That the Trade of *Jamaica* has for a great while past been in a declining State, and still continues to decline, &c." because the said Trade having been reduced to it's present low Condition in Consequence of the Peace, it cannot be truly said to have been for a great while in a declining State, for the State of it is the same this Year as it was the last, and it was in as good Condition the last Year as it had been in any Year since the War; neither is it true that *it continues to decline*; because it stands upon the same Footing on which it was left by the Commencement of the Peace. (2.) Our other great Branch is the *Guinea Trade*; but that appears to be in no declining Condition, because we have now a greater Importation of Slaves in one Year, than we used to have in two or three Years; and yet a Planter can hardly buy a better Negro now for 50*l.* than he could or might have done, about seventeen Years ago, for the one half of that Sum: And the Reason is, that tho' the tenth Part of the Negroes annually imported cannot be finally disposed of in this Island, yet the Sellers find Means of vending them among the *Spaniards* in Virtue of private Contracts, or otherwise: but be that as it will, when we see that the Importation of Negro Slaves is annually increased, and that the Vent for them is proportionally enlarged, we may safely conclude that, that Branch of Trade is in no declining Condition. (3.) Our other great Subject of Trade is the *Produce of the Country*, and thus the Exportation of Sugar, Rum, Molasses, Coffee, Cotton, &c. is as great now as ever it was; that Branch of Trade is not therefore in a declining Condition, but on the contrary it is highly probable that our Produce will be annually increased, and that our Exportation will be thereby augmented in exact Proportion as old Settlements shall be protected and secured, and as new ones shall be skilfully managed, and by all lawful Means politically

encouraged. (4.) It is very unsuitable to *the profound Reverence and dutiful Submission*, mentioned in the Petition, for the Petitioners to endeavour to misguide their Sovereign by putting even the *Truth* in an unfair Light, after the Manner aforesaid; for tho' it may be true, that the Trade of *Jamaica* is in a low Condition (in Comparison to what it was during the War) yet it is not true that, that same Trade *has for a great while been in a declining State, and still continues to decline*; a Misrepresentation of this Sort is nothing else but an *Untruth guarded*, which is more *hateful*, as being more *dangerous*, than such other *Untruths* as are not so cunningly covered. (5.) Altho' the Petitioners pretend to complain of the declining State of Trade, yet nothing could make it decline *more and faster* than would the carrying of their own wise Scheme into Execution; because it tends to the Devastation of whole Parishes, the Ruination of Families by Multitudes, and to the Destruction of a well peopled City; and therefore to destroy the Consumers in such mighty Numbers, their cunning Scheme would of Necessity become destructive even to that very Share of Trade which they themselves do presently enjoy.

Notwithstanding all this, in place of saying that the said Scheme is *vile, mean and base*, or that it is wretchedly *sordid* and totally *absurd*, the Respondents shall only say, that they cannot help seeing very plainly, that *the Scope* of the said Petition is to *shut up all the Shops of Spanish-Town, to the selfish End that the Shopkeepers of Kingston may get all the Customers!* And therefore it is left to the King, and to the whole World beside, to frame such Conclusions as may be fairly drawn from *the Malignity of that Design*.

That your Petitioners most humbly apprehend that the Residence of your Majesty's Governor of this Island being at *St. Jago de la Vega* (an inland Village at a considerable Distance from *Kingston*) the Metropolis of Trade and *only Place of natural Strength or Safety* in the Island, has been and still continues to be *one great Cause of the declining State of the Trade* of this your Majesty's Island, and for Reasons of this their Apprehension they most humble beg Leave to shew.

Remarks upon Paragraph the third.

(1.) This is a fresh Instance of the great and superlative Humility of the Petitioners. But however humbly they do apprehend, it is certain, that they seem not to apprehend either *wisely or truly!* Not *the latter*, because the only

true Reason for what they call *the declining State of Trade*, hath been already rendered, and that is vastly different from the Reasons assigned by the Petitioners; nor yet the *former*, because if ever there was a time when our Trade of this Island *was not in a declining State*, that must necessarily have been while the Residence of the Governor (for the time being) was at *St. Jago*; for none of his Majesty's Governors, *but the present one*, was ever supposed to have attempted to reside any where else in this Island. And all the Governors that ever were appointed by his Majesty's Predecessors, did in like manner reside at *St. Jago*; as appears from the authentick historical Account herein before written: and in elder times than theirs, it was the Policy of the *Spanish Nation*, that their Governors should reside at *Spanish-Town*; and the *Spaniards* of that particular Age, *which is here glanced at*, were no less wise, brave and sagacious than any other Nation in *Europe*; and thus the Necessity, Fitness and Expediency of the Governors residing at *St. Jago*, stands manifested by long and certain Experience, and by the *Spanish Policy*, as well as by the Policy of our own Laws; and therefore to imagine that *such Residence* is one great Cause of the pretended declining State of Trade, is surely either a strained Piece of Affectation, or else it is a very great and a most palpable Piece of Misapprehension. (2d.) But to alledge, *that Kingston is the only Place of natural Strength or Safety in this Island!* cannot be owing to any Misapprehension, because that is an open, staring Untruth; it certainly is a notorious and a flat Falsity: For it is sufficiently well known to all Men who know *Jamaica*, that the Rocks, Rivers, high Mountains and impervious Ways of *Clarendon* make it more inaccessible and strong by Nature, than ever Nature made *Kingston*, and vastly more so than all the Art of the World can by any Possibility make it; and that is not all, for the Parish of *St. Thomas* in the Vale is so strangely environ'd with high Mountains, and these so covered with Thickets, Bushes, Timber and other Trees, which constitute a real Wilderness, that it is hardly accessible by Armies or great Bodies of Men, otherwise than by one large Avenue which is called the *River-Road*: This *River-Road* is like a Turnpike-Road, for it is open and easy, it was made by Art, and is supported or kept in Order at a very large annual Expence; it leads along the *North Side* of *Rio Cobre*, whose Banks are so high and so rocky on each Side for about the Distance of three or four Miles from the Vale, as to make the River unfordable, except at two or three Places which were made passable by Art, but in the rainy Seasons they cease to be so; the Mountains here upon each Side of the River are of Rocks, full

of Wood, Bushes and full grown Trees; these Mountains are marvellously high, and most amazingly perpendicular, and that makes the *North-West* Side of the said River, for the Space of some Miles towards the Entry into the said Vale, totally impervious; the natural, plain Consequence of all this is, that were 5000 Men to march into the Parish of *St. Thomas* in the Vale, by the River-Road (and for the Causes aforesaid they could hardly find any other known Way or Road to march in) such a Body of Men could be easily destroyed upon their March, and that too without either Arms or Ammunition; because in the said singular Situation 500 could easily destroy 5000 Men, just by throwing down the loose Stones and fallen Trees, and great Logs of Wood which are to be found in great Plenty upon the very Brows of them very same Hills which commands the River-Road; and such *Stone-throwers* would be in little or no Danger from Fire-Arms, because Nature screens them from these by the means of small Rocks and great Trees, for the Place abounds with both, and therefore to march along the River-Road would be impossible, because the Slaughter might be made total, easy and universal; and all this is so true that during the late War, upon receiving Advice that an *actual Descent* upon the Island was intended, martial Law was forthwith proclaimed, and thereupon the Women and Children, by the Consent and Approbation of their Husbands and nearest Friends, retired into the Vale with their Plate and the most valuable of their Effects; but yet no Person ever thought of retiring to *Kingston* during that supposed publick Danger: On the contrary, it was the general Opinion that *Kingston* stood more exposed than *Spanish-Town*; but be that as it will, it shall be presently proved that *Kingston* is no Place of Strength or Safety, and that it never was and never can be made an Asylum, or a strong Hold for retreating in the Case of an absolute Necessity, because that the Town or Parish of *Kingston* is a naked, open, hapless, dreary Bay; and the Sea having lately made Breaches on the Isthmus, (in place of the best) that makes it one of the worst Bays in this Island.

Est tantum Sinus, et Statio male fida Carinis.³⁸

(3.) To think of a Retreat to *Kingston* in the Time of publick Danger would be a vile, weak Conceit; for by that the Parishes of *St. John's*, *St. Thomas* in the Vale, *St. Dorothy's* and *St. Catharine's* would all be laid open to the

38. ["There is only a bay and an anchorage unsafe for the keels of ships."]

immediate Insults of rebellious Negroes; and to retreat thither in the Case of an Invasion, would be like retiring into a Chimney or Chimney Corner, where a Person can neither be safe, nor yet act offensively in the time of a general Conflagration. And were all the People, or only all the best of the People, to retire to *Kingston* in the Case of any Invasion, that would almost, if not altogether, secure the Success of the invading Enemy; because by such a Measure all the People could be cut off by one fatal Blow, and the whole Country lost by one single, well-conducted Onset. Nor could the Invaders want sufficient Numbers for this Purpose, because, upon the Promise of Liberty, of Prey and Promotion, they could easily find 10,000 *Corromantees*, and 30,000 other able bodied Negroes and fighting Men, who in the Absence of their Owners, and during their Retirement at *Kingston*, would embrace the Opportunity with all their Hearts, and perhaps not fail to fight with all their Hands, in order to change Condition with their Masters. Many of our *Corromantees* and *Papaws* are Men of Spirit, they are naturally sagacious and enterprizing, they are also bold, active and resolute: Such a Retreat to *Kingston* would therefore amount to an actual Cession of the Country. (4.) To transfer the Seat of Government, our Court, and our Records to *Kingston*, would be no less imprudent than to retire thither ourselves; because every one may see that *Kingston* is an open Maritime-Town, and that there is neither a Fort, a Castle, or any strong Hold in it, so that the Governor might be easily pick'd up, the Judges insulted, and the Records burnt for the mere Whim of Russians, Sailors, and other transient Persons, who frequently resort there in mighty Numbers, but who are happily kept at a reasonable Distance from *Spanish-Town*, we say happily, because that in the Time of *Broderick* and *Wilson*, the Judge of the Court of Admiralty was driven out of *Port-Royal* by a Number of Sailors, and by them forced to adjourn his Court to *Spanish-Town*, because that he presumed to acquit a Vessel when there was neither Reason or Cause, or the least Colour of either for condemning her; and from that Time to this, no Court of Admiralty hath ever been held at *Port-Royal*, and we see not how Courts can be more safely held at *Kingston*, where there is neither Fort or Garrison than they were at *Port-Royal*, where there were, and are both a Fort and a Garrison. (5.) It is hard to conceive how any real Engineer can believe that *Fort-Charles* and *Musquito-Point* are such a sufficient Safeguard to *Kingston*, as to make it prudent for us to make the open City of *Kingston* the Repository of our Records, and as it were, the Charter-Chest of all the Titles to every

individual Plantation, as well as to all the opulent Estates in this Island! The wretched Condition of *Fort-Charles* doth particularly appear from the last Report of the Committee appointed for inspecting Forts and Fortifications: But supposing that *Fort-Charles* were in much better Plight than what it is, and that it's Walls were properly lined, and that it's Area were so artificially laid, as thereby to preclude the present Impossibility of Men standing by the great Guns in the Case of any Hot Assault, yet a good sixty-gun Ship approaching as near to the Fort, as the Sea doth permit, could soon level it equal with the Ground, and such a near Approach would be as conducive to the Safety of the Vessel as to the Success of the Enterprize; for after dismounting one, two, or three Guns (which might be soon done by double Broad-sides of 30 great Guns of weighty Metal) it would be no easy matter afterwards to find a single Gun upon the Ramparts that could be brought to bear upon the said sixty-gun Ship; so that the Conquest of *Fort-Charles* could be by no means a very hard Matter. (6.) The Sea is so shallow within a Mile or two of *Musquito-Point*, that all top-sail Vessels sailing from *Port-Royal* to *Kingston* must keep about the middle of the Chanel, which is at so great a Distance from *Musquito-Point* that one Ball of ten could hardly take place, and where it did take place, yet after being so far spent, it's more than a hundred to one, if it sunk the Vessel, so that 19 Ships of 20 might with Safety sail from *Port-Royal* to *Kingston*, notwithstanding all the Batteries of *Musquito-Point*. For this poor miserable Fort seems to peep out of the Earth like a low born Mushroom upon a Quagmire; and it's so little above the Sea, that in the Case of a great Storm, it will probably be wholly laid under Water, and then it would be no amazing thing to see it compleatly interr'd under a huge heap of Sand. Are these those valuable *Forts* for which the Seat of Government must be changed? And can the publick Money be no ways better disposed of for the publick Safety, than in squandring of it (as heretofore hath been done) upon artless Forts, half smother'd and half sunk among huge Banks of Sand, nauseous Lagoons, and ever ouzy Quagmires? (7.) But supposing *Fort-Charles* and *Musquito-Point* to be both impregnable, and that the latter could effectually annoy all Ships running by it to *Kingston*, yet still both Forts would prove but a very miserable Safe-guard to *Kingston*, because the Isthmus or Neck of Land that runs from *Rock-Fort* to *Fort-Charles* is in some Places so very narrow that a long Boat could be shoved over it from the South Side in less than twenty Minutes, and very often there is no Surf of the Sea to hinder it, it being always calm within the

Land on the North Side of said Isthmus, and often so on the South Side of it; so that as many Long-boats, Xebecks, and armed Vessels could be hoved over that Neck of Land in an hour's Time as would be sufficient for setting Fire to all the Houses and Store-houses next to the Sea, and to all the Wharfs of *Kingston*, which by the help of the Sea Breeze might be soon and totally reduced to Ashes, by reason of the great Quantities of Rum, Sugar and Tar, and other combustibile Matters that are constantly left upon these Wharfs. It may be said that the Men of *Kingston* would prove too hard for the said small-arm'd Vessels.

Sed praestat motas componere Flammas.³⁹

And in the mean Time the Incendiaries return in Haste and Safety to their Vessels, supposed to attend at the South Side of the Isthmus, or they could make the best of their Way into the Ocean, with the help of their Xebecks, &c. and their Retreat would be so safe that no Ships coming from *Port-Royal* against the Sea Breeze could overtake them, supposing them to have burnt all the Ships, as well as all the Wharfs at *Kingston*. See here how easy it is to destroy the *Destroyers of Spanish-Town*, to ruin the Wonder of the World, and to burn to Ashes the *impregnable Kingston!*

What a Pity it is that it should be so easy a Matter thus to bereave Mankind of the only *impregnable Fort upon Earth?* And what would become of the *Kingstonians* were they thus to lose their

——— Sola Potentia, Turris
Praesidium, Spes, & Rebus Solamen in Arctis
——— Certa Salutis,
Anchora, et Statio tuti placidissima Portus?⁴⁰

This may serve all the Ends of the highest *Irony*, if it be considered that there was a great Storm upon the 20th of *October 1744*, and that the very

39. ["But it is better to calm the aroused flames." A witticism a bit forced that plays on Neptune's similar phrase in the *Aeneid*.II.135, "But it is better to calm the disturbed waves."—Tr.]

40. ["——— Only strength, tower, fortress, hope, comfort in distressing situations
——— sure harbor of safety and quietest inlet of a safe port?"]

Fate of *Kingston* was then doubtful, and that it and its *Portus Salutis*⁴¹ actually suffered more by that Storm in a few Hours, than *St. Jago* did by it, or by all the Storms, Earthquakes and Hurricanes that have happened since, or for 100 Years before that Time.

Now to convince the World that there is certain Truth, and a real Justness of Thought in the foregoing Conceptions, and that immense Sums of the Country's Money have been laid out and mislaid upon Forts and Fortifications, and that nothing can be more ridiculous than to talk of impregnable Forts in ouzy open Bays, where they can have none but sandy or very unsound Foundations, and that too at a Place so frequently and fatally exposed to Storms, Hurricanes and Earthquakes as *Kingston* is, and hath been.* It is hereby averred, and be it considered, that some of us have taken the Trouble to reflect, but we cannot indeed recollect any one single Instance wherein the Forts and Fortifications of this Island have been of any great significant and important Service to the Country: Certain it is, that they can never be a sure Safeguard against *French* Descents, or foreign Invasions, because all the open Bays of the Island, and many other landing Places beside are exposed to such Enterprizes; and therefore it is believed that floating Forts are the only Fortifications in the World that can be useful and truly available upon such Occasions; and that is so true, that a sixty-gun Ship and two twenty-gun Ships cruising frequently round the Island, would be a more significant Safe-guard to it in time of War, (as well as in time of Peace) than are all the Forts, Batteries and Fortifications that were ever built or erected upon it; and yet these, insignificant that they be, have cost the Country more Money than would be sufficient for buying or building ten

41. ["Harbor of safety."]

* This is a certain Fact, and it is no less true and notorious, that the late Additions made to *Rock-Fort*, and the impregnable Erections recently raised there by the Ingenuity of * * * * * so vainly boasted of by the Petitioners, were vastly endangered by a great Sea and a hard Gale of Wind (for we did not reckon that a Storm) which happened upon *Wednesday* the 17th and *Thursday* the 18th Days of *September* last, the new Works were not quite dry, the green Wall failed and gave Way, and in rushed the Sea with great Violence, so that the Soldiers were thereby obliged to abandon divers of their Apartments, which then were in that impregnable Garrison, consider then the Vanity of * * * * * and consider also

Quid dignum tanto fert hic promissor hiatu? {"What will this boaster produce worthy of such wonder?"—Tr.}

Ships of the Line! At the same Time the half of such a Squadron would not only be sufficient to defend us effectually, but it would also serve to raise a becoming Awe, and to strike a respectful Dread among our designing and ever troublesome Neighbours; insomuch that our Merchantmen could at all Times pass through our narrow Seas, and even within Sight of *St. Jago de Cuba*, or yet of the *Havannah* itself, &c. with as little Molestation as they do at present sail thro' the Ocean.

It is not meant by any Thing herein before set forth, to surmise that our Island is more exposed to Invasions than other Islands are, for all great Islands lie in many Places exposed to sudden Invasions, and for that Reason they are best escorted and defended by Shipping; but yet it is not hereby intended to vilify our Forts altogether, or yet to insinuate that they are in a less respectable Condition than are those of our Neighbours, but only to shew that Forts are not our main Safe-guard, and that our chief Dependance is not upon them, and that therefore the Representatives of the People ought to consider what immense Sums of Money have been from Time to Time jobb'd away under the Colour of *Forts and Fortifications*; so that when any future Applications shall be made for Money upon that Score, it may not be amiss to examine what the Country hath got in Lieu of all that it hath given? And from the Conduct in Relation to Forts and the Benefits received from them in Time past, a rational Estimate may be made of what we ought to give for, and of what we are to expect from them in Time to come.

However the projecting Petitioners do proceed, and with an amazing Candour peculiar to themselves, they do relate as followeth, (to wit)

1st. That by an Act of the Governor, Council and Assembly of this Island, passed in the Year 1683, and which has been sanctioned by one of your Majesty's Royal Predecessors, all Masters of Vessels are obliged to wait on the Governor at very considerable Expence, besides the Risque of their Health and Lives, which are too often lost thro' the Inclemency of the Air, by their Journies to and from *St. Jago de la Vega*, the Place of Residence of your Majesty's Governor.

Remarks upon Paragraph the Fourth. Reason the First.

Subreption and *Obreption* are strangely coupled together in this Paragraph, for by it the Truth is not only wilfully and knowingly suppress'd, but it's *contrary* is also shamefully and very unworthily express'd; and thus, tho'

it be true that there is such an Act as the Petitioners have mentioned, yet it is also true, that by a late Regulation, which had been put in Practice long before the Publication of the said Petition, Masters of Ships were and are allowed to *enter* and *clear out* at and from *Kingston*; and if they have a Mind to wait upon the Governor, he may be likewise found there; so that Masters of Ships need not now, unless they please, come to *Spanish-Town* at all; but had this Part of the Matter been fairly disclosed by the Petitioners to the King, his Majesty must necessarily have rejected their said first wise Reason with Indignation; but then to alledge "that Masters of Vessels run the Risque of their Health and Lives, which are too often lost thro' the Inclemency of the Air, by their Journies to and from *St. Jago*," is an Allegation so void of all Truth, as to appear totally incredible to every one of the Respondents: It may be as truly said, that a pleasant Jaunt from *London* to *Greenwich*, partly by Land and partly by Water, could hazard the Health of a Mariner, as it is to say that an easy pleasant Journey from *Kingston* to *Spanish-Town* could endanger the Health or Life of any Person whatsoever; on the contrary, that same Journey is a most comfortable thing to any sea-faring Man after a long Voyage, and it can hardly miss to be as conducive to Health, as it is truly pleasant in itself. Is it not strange then that such dutiful and most humble Petitioners should thus undutifully proceed to amuse Majesty with an Allegation so notoriously untrue, as to be capable of being disproved by thousands of Men, and indeed by all Manner of Persons, who have been in, and do actually know both the said Towns?

2dly. That tho' there is no Law for holding the Courts of Appeals, Chancery Ordinary and Meetings of the Council and Assembly at *St. Jago de la Vega*, yet as the holding of the said Courts is (as your Petitioners most humbly apprehend) by Virtue of your most excellent Majesty's Royal Prerogative, they have been, and still continue to be held at *St. Jago de la Vega*, as a Consequence of your Majesty's Governor residing there.

*Remarks on Paragraph the fifth.
Reason the second.*

(1.) It is not very warrantable for the Petitioners thus to distinguish between *Law* and *Prerogative*, because the just Prerogatives of the Crown make a Part of the Law of the Kingdom: Supposing then that the said Courts had been

at first erected by mere Prerogative, yet still they were instituted according to Law, and therefore to make an Innovation upon them now is plainly to invade both *Law* and *Prerogative*; for the Royal Privilege of instituting Courts in an infant Colony, carries no Right of innovating or destroying them when instituted; because there is a *Jus quaesitum*⁴² to the Subject by the Royal Act of Institution, and that Right having been enjoyed for ninety-nine Years, and having been declared and confirmed by Charters and Laws which (for a valuable Consideration) are made perpetual, can never be legally or justly annihilated by *mere Prerogative*: For to dispense with such perpetual and fundamental Laws, is against the *Petition of Right*, and cannot therefore appertain to Prerogative: The King can make a Denizen by mere Prerogative, but yet he cannot so unmake him; and the Reason is already given: The Petitioners need not make Gifts to great Men unless they please, but when they once make a Donation (and Denization is nothing else) they can never recal it by Law or yet by all their Policy.

(2d.) But this is not the only Point of Law in which they seem to be mistaken; for they are very much out in saying that *there is no Law for holding the Courts of Appeals, &c. at St. Jago*; because from the time of issuing the said Proclamation in the Year 1655, as to the instituting a civil Government in this then infant Colony, until the *Restoration*, the Will of the Conqueror was the Law of the Country! His imperial Edicts and Proclamations were received as Laws, and had all the Authority and Force of them; insomuch that when Laws were afterwards made, and Courts of Justice erected, they were all modelled upon the original Plan of the Conquerors *and Lord Paramount of Jamaica*; now the true and clear Consequence of all this is, *That the Courts of Appeals, Chancery and Ordinary, as well as the Writs for electing Members of the Assembly, and the Proclamations for calling Assemblies and proroguing them when called, were all most certainly mere Creatures of the Law*; and that they are nothing else now but what the Law originally made them; and what that was, is uncontrollably evident from the Records of the Council, as well as from the Records of the said respective Courts, and from these *sole clarius elucescit*,⁴³ that the said Courts, Council, Assembly and Records, were all, and at all Times (Martial-Law Time only excepted

42. ["The right to inquire or seek redress."]

43. ["It shines brighter than the sun."]

with Respect to the Council) held, kept and preserved at *St. Jago de la Vega* and not elsewhere.

(3.) That the Case was so in Time past, and that it ought and must remain so in Time to come doth admit of a legal Demonstration, which may be attempted thus; All the King's Writs issuing out of the said Courts, are of a certain, settled, fixed Stile and Tenor; thus for Example, an exact Copy of a Writ of Error is hereunto annexed, from which it appears that it is tested at *St. Jago de la Vega* (as all other Writs of Error issued since the Year 1681, or even since the said Conquest, are and ought to be) 'tis likewise returnable into his Majesty's Council *to be held at St. Jago de la Vega* (and not else where) and it concludes in these Words (*to wit*)

That our Governor and Council may cause to be done what of Right and according to the Laws and Customs of our Kingdom of *Great Britain*, and of this our Island of *Jamaica* should be done, and have thou *then* and *there* *this Writ*. Witness his Excellency, &c.

This Writ therefore doth contain an express Command from the King to the Governor of *Jamaica* for the Time being, to hold the Court of Appeals at *St. Jago de la Vega* and at no other Place, because it would be an Error upon the Face of the Record, to hold a Court of Errors at any other Place than that at which the said Writ is returnable as aforesaid. But what is further observable from the Tenor of the Writ is, that it contains an express Command to the Governor and Council to cause to be done what of Right, and according to the *Laws and Customs* of his Majesty's Island of *Jamaica* should be done: Now it cannot be denied that it is and hath been the antient and notorious Custom of *Jamaica* to hold all the said Courts at *St. Jago de la Vega*, and not elsewhere; and 'tis no less certain that every such antient, uniform, general Custom of the Country, maketh a Part of the Law of the Land; it is therefore consequential that the Law for holding the said Courts and Assemblies at *Spanish-Town* is as certain, plain and positive, as it is that the King's Writs are significant Particles of the Law, and that the said Custom as to the holding the said Courts, &c. at *St. Jago*, is and hath been antient, universal, uniform, and notorious. To this may be added, that it is the Nature of all such *regal Writs* to *command* and not to *persuade*, and that therefore the Exigency of the Writ must necessarily be complied with in every particular, and thus the said Writ "not only requires to do

what of Right ought to be done," but it also prescribes the Form and precise Method of doing that same Matter of Right, for it is not enough that Right be done, unless it be done according to the Laws and Customs of *Jamaica*; but that Exigency of the Writ can never be complied with, unless the Court be held at the Place where the Writ is returnable, and that is *St. Jago de la Vega*.

(4.) But since the Records of all the said other Courts, as well as these of the Court of Appeals, are kept at *Spanish-Town*, it seems to be plain enough to common Reason, that it could never be the true Intent and Policy of the Law to keep the Records at one Town, and to hold the Courts at another no less than sixteen Miles distant from the said Records: And since the said Records are expressly settled at *St. Jago* by a positive Law as aforesaid, it must be a Mistake to say that there is no Law for holding the Courts at the Town where the Records are kept, because they cannot according to Law, nor yet according to the Nature of the Thing, be held any where else.

(5.) The King's Writs are called *Briefes Le Roy*, or Royal Abridgments of the Law, and they are so called because they contain *multum in parvo*:⁴⁴ they are these Rules of Law, *per quas brevis Rerum Enarratio traditur*;⁴⁵ and when a Rule of this Kind is transgressed even in the most minute Point, it ceaseth to be a Rule, for it is defaced, if not defeated, by the Transgression. "Et (ut ait Sabinus) quasi Causae Conjectio est; quae simul cùm in aliquo vitiata est, perdit Officium suum."⁴⁶ *Fitzherbert* in his Preface to his *Natura Brevium*,⁴⁷ saith of them, that they be those Foundations whereupon the whole Law doth depend." (And for all this see the first *Regula Juris*⁴⁸ taken from the 17th Title of the *Digests*, and annexed to *Justinian's Institutions*, and the Lord *Coke's* first *Institution*, Page 73, Sect. 101, Title *Escuage*.) Now if this Doctrine be true (and it seems to be plainly laid down by the said Books of very good Authority) it will from thence fairly follow, that the said Writs are not only the most lively Particles of the legal System, but also that to alter, change or innovate

44. ["Much in a small space."]

45. ["Through which rules a brief account of affairs is handed down."]

46. ["And (as Sabinus says) just as in the case of a line of reasoning in a law case when it is tainted in some respect, it loses its force altogether."]

47. ["The Nature of Writs."]

48. ["Rules of law."]

them, is to sap the Foundations of the whole Law: And therefore to say (as the Petitioners do) *that there is no Law* for holding the said Courts at *St. Jago*, altho' the same have been held there without Interruption for seventy Years and upwards, and that too in Conformity to the Tenor and in Pursuance of the Exigency of the King's antient Writs, and of the Conqueror's said Proclamation, is really to speak without Book and to talk of Law at Random without understanding that Subject, or having any sufficient Share of that Sort of Learning.

We mean not to upbraid mere Merchants, Factors and Agents for not being thorough paced Lawyers; but it's thought that they ought not to be debarred from natural Sense, and that the *Law of Reason* is as much exposed to, and ought to be as much obeyed and followed by them, as it is by all other Men; and thus from the Light of Nature it is clear, that when we get a Privilege we get all that is naturally incident to that Privilege; and therefore when *St. Jago* got and *acquired* the Privilege of having the *Custody* of the Records, it thereby got and acquired the just Right and legal Title of having all the chief Courts of this Country held there; and accordingly all our supreme and chief Courts of Justice have been held there (and no where else) since ever we had any. For it is a Rule in Reason, a Maxim in Law, and a certain and eternal Principle in Nature, that "*Quando aliquid conceditur omnia concessa videntur, sine quibus concessum explicari nequit.*"⁴⁹ From all which it is most evident, plain and certain, that there are truly *Law* and *Reason*, as well as consuetudinary, legal Privilege grounded on both these for holding our Courts at *St. Jago de la Vega*, and no where else in this Island; and consequently to hold a Court of Chancery, &c. at *Kingston*, would certainly be against Law as much as it would be against Privilege, Sense and Reason; because that Court cannot well and rightly proceed to hear Causes without it's own Records, and it cannot legally order them to be carried or transferred from *Spanish-Town* to *Kingston*, because such a Translation is prohibited and expressly restrained by the said antient, positive, perpetual and fundamental Laws of this Island; and may not the *transgressing of*, or the *dispensing with* these occasion terrible Convulsions in our Country? And what can be more against the Genius and true Spirit of all Law? Or what is more likely to distract any Nation,

49. ["When something is yielded all things seem to have been yielded without which the thing yielded is not able to be explained."]

Country or People, than is *that of dispensing* with their publick Rights and Immunities, and with consuetudinary Liberties, Franchises and Privileges, all flowing from positive and perpetual Laws, and all grounded upon uninterrupted and immemorial Possession? But the Respondents having invincibly proved by their Case before stated, that there is the highest Justice, the clearest Law, the best Right and the strongest Reason in the World not only for having originally instituted and held the said Courts at *St. Jago*, but also for continuing to hold them there and not elsewhere; 'tis therefore unnecessary to proceed further in multiplying Remarks upon the said illiterate fifth Paragraph; for as *Feltham* quaintly observed, "Est Tempus quando nihil, est Tempus quando aliquid, nullum autem Tempus quo omnia dicenda sunt"⁵⁰; let therefore (in Conformity to that Sentiment) the Words of *Horace* close our Remarks upon the said fifth Paragraph,

Jam satis est, ne me, Crispina Scrinia Lippi
Compilâsse putes: Verbum non amplius addam.⁵¹

3d. That all or most of the Suits in the different Courts

have arisen and do arise from the Dealings of the Merchants here, for themselves, or as Factors, Agents or Attornies for the Merchants of *Great-Britain, Ireland and America*, who are put to excessive Charges in attending at *St. Jago de la Vega*, which beside the Neglect of their Affairs while absent from *Kingston*, loss of their Healths and risque of their Lives, frequently amounts to more than the Profits arising to them on the Manufactories and Commodities they import into this Island.

Remarks upon Paragraph the sixth. Reason the Third.

(1.) The Petitioners appear not to be over candid in this Relation, or yet very judicious in the Application of it; for as it is not probable that they spend more upon Law-suits than the Value of the Profits of the Commodities imported; so if they did, the Importers would be great Losers, and the Petitioners would

50. ["There is a time when nothing must be said, there is a time when something must be said, but there is no time in which all things must be said."]

51. ["Now it is enough, lest you may think that I have robbed the bookcases of beary Crispinus. I shall not add another word."]

thereby appear to be very injudicious and improvident Agents and Factors. (2.) The Petitioners are under no Necessity of coming to *Spanish-Town* about Law-suits, because they can be carried on without endangering their Health and Lives, and even without their Presence; and in Fact, they generally are so carried on by Lawyers, Solicitors and Attornies: And therefore (3.) the Translation of the Courts could make no Alterations as to the Expences of Clients; and tho' such Expences might at some Times be thought too heavy at either of the Towns: Yet that is but a slight Inconvenience with respect to the Publick, or to the Peace of Society; because it is a hindrance to Barretry, and doth actually prevent many trifling, frivolous and vexatious Law-suits. This 3d Reason is therefore, in Truth's impartial Scales, of as little Weight, as are all the other foregoing Allegations of the said Petitioners.

4th. That your Petitioners are summoned up from *Kingston* to serve as Jurors for one whole Month at a Time every Year, the Juries for the whole Country being chiefly from *Kingston*, as the great Body of the People resides there, to the great Damage of their Affairs and Credit, and at a most intolerable Expence.

*Remarks upon Paragraph the seventh.
Reason the fourth.*

(1.) If the great Body of People resides at *Kingston*, that is but a poor Reason for dispeopling *Spanish-Town*, thereby to make that *great Body still greater*. (2.) There is an Act of the Country for regulating Juries, and for making the Duty of Jurors more equal and easy; in Virtue of which Act, the Parish of *Kingston* is put upon the very same Regulation with every other Parish in this Island, and it hath therefore no Cause to complain. But since it is more populous than any other Parish, it is for that Cause, just, reasonable and necessary, that *Kingston* should furnish more Jurors than any other Parish; and in Fact the People of *Kingston* serve upon Juries only in their Turn, according to due Course, but no longer than all the rest of the People in this Island do serve: This Complaint is therefore upon the very Face of it sufficiently ridiculous, and needs no Remedy, as having been made without any Foundation, or the least Appearance of Solidity.

5th. That *Kingston* is the only Place of natural Strength in this Island, and is now by the Skill and indefatigable Endeavours of his Excellency

Charles Knowles, Esq; your Majesty's present Governor, rendering impregnable by Art, so that your Majesty's Subjects in this Island, could at this Place not only repel any Invasion, but maintain and defend themselves in Possession of *Kingston* and it's Neighbourhood 'till Succours might be sent from *England*, and suppress any Insurrection of Slaves which could happen; whereas *St. Jago de la Vega* being a defenceless Village, in an open Campaign, Part of the Island, and near an open Bay called *Old-Harbour*, might in one Night be plundered and burnt by the Crew of a Privateer or small Ship of War, or destroyed by an Insurrection of a few of it's own neighbouring Slaves.

Remarks upon Paragraph the eighth. Reason the fifth.

(1.) The *Fallacy* and *Untruth* of this whole Paragraph have been so fully, particularly, and at large exposed by our Remarks upon the said foregoing 3d Paragraph, that for avoiding *Tautology*, we shall refer to, and depend upon them same Remarks: But yet there are two such glaring Particulars in the said 8th Paragraph, that some Remarks may and shall be bestowed on them, lest otherwise the Petitioners should remain too wise in their own Conceit; and to be sure they are superlatively so, in saying, *that Kingston is now, by the indefatigable Endeavours of Charles Knowles, Esq; &c. rendring impregnable*; had they said that, that Gentleman was using indefatigable Endeavours to build a second Babel, or a Tower as high as the Heavens, with an Intention to make it the only impregnable Fort upon Earth! They would not, they could not have thereby paid him a more empty and vain Compliment than that which they have tendered unto him; for a Compliment of it's kind, is like *false Coin*, because a good and a wise Man will neither take nor give it; and his Excellency, to do him Justice, may be supposed to know so much of all the Art of Engineering, Sapping and Mining, and of the true Use of Gun-powder, Fire-arms, Great-guns, Trains of Artillery, Shells and Bombs, and of floating Fortifications, and the other *Tonitrua Belli*,⁵² as not to set up or pretend to be the Fabrificator of *impregnable Forts*; for all the Forts upon Earth (unless they could be raised on the Babel Plan) are, and must be left open above, and none of them can be rendered absolutely impregnable for that very Reason, and that is so true, that whosoever absolutely commands in the Field, seldom fails to make himself Master of the Fort; and where

52. ["Thunderings of war."]

there is a sufficiency of Artillery, and of all the other Thunder-bolts of War, he can never be precluded from the Possibility of so doing. *Impregnable Forts* may indeed be look'd for in *Utopia*, but we have no thought of seeing any of them in *Jamaica*; and therefore what is desired on our Part is only that all the said Matters may stand as they are, and that the Records may be kept where they are, until such Time *only*, as *Kingston* shall be made an *impregnable Fortification*; and this must appear to be a very modest as well as a most reasonable Request, by truly considering the vast Expence which the Country hath been at lately, in erecting at *Spanish-Town*, large, strong and ample Buildings, (but not impregnable Forts) for the better Conservation of the said Records. (2.) As to the surmised Feats of a *Crew of a Privateer or a small Ship of War*, they seem to us to be compleatly romantick; for during the late War, we often had more *French* and *Spanish* Prisoners in the Town of *St. Jago*, (for the Gaol tho' large could not hold them all) than would have been sufficient for manning two or three Privateers or small Ships of War; and yet these Men, tho' declared Enemies, were allowed to go at large to the River, and all round the Town in the Day-time, and in the Night-season, tho' they were indeed locked up, yet were they not fettered, neither were they guarded by equal or superior Numbers of Soldiers or armed Men, for they were only watched by a few Centinels put over them to alarm the Guard-house and Barracks that were in the Neighbourhood; and thus the Inhabitants of *Spanish-Town* were kept very safe, easy, and without Fear, because they well knew what was in their own Power; and the Prisoners (who were no Fools) had in the Course of their daily Walks an Opportunity of seeing with their own Eyes, that they must necessarily have been all cut to Pieces had they proceeded to make any, or the least Disturbance: *But they all held their Peace*. (3.) The Militia of *Spanish-Town* is well-armed, and so much under command, that the *Foot-Militia* have been often seen and heard to fire as *closely* as any regular Troops in the World can do! At the same Time there is in this Island a Regiment of foot as good as any in his Majesty's Service, and undoubtedly the very best that is to be found in *America*; for Colonel *Trelawny* took great Care that the private Men should be truly paid, they were well *fed* and well *clad* during all his Time, and that kept them in fine Health; the Grenadiers are as sightly Soldiers as any in the World; the Officers of this Regiment, or the most of them, have *seen Service and shrink not at Duty*; they are staunch Soldiers, and Men of Experience and try'd Bravery, they keep up good Discipline in the Regiment, and their

Arms are all good and in the finest Order: In the late War *Spanish-Town* was never left without a sufficient Guard taken from this regular Regiment, and the whole Regiment was always under marching Orders upon the shortest Notice: Now the Militia of *Spanish-Town* was and is as strong a Safe-guard to it as another Regiment would be; under these Circumstances then what would the Crew of a Privateer or small Ship of War do (after marching fourteen or fifteen Miles from Old Harbour with their Ship's Weapons and short Cutlasses in their Hands) when they came to be encountered with two Regiments of fresh Men compleatly well arm'd with good Firelocks, &c. and sufficiently resolute and well enough disciplined to fight in their own Defence, to save their own City, and to behave as all Men generally do, when they are brought to a Necessity of fighting *tanquam pro Aris et Focis*?⁵³ Could they in reason expect to fare any better than the five or six hundred *French* Invaders did in the Year 1694, who were repell'd and expell'd, by a small Body of Militia, which was got together at *Withywood*, but which was not equal in Number to the one half of the *Spanish-Town* Militia? We (the Inhabitants of *Spanish-Town*) think they could not, and that *Spanish-Town* never can be in any real Danger by the outmost Efforts of the Crew of a Privateer or small Ship of War, altho' that be as vainly as untruly surmised by the Petitioners. And therefore in place of using *indefatigable Endeavours** to save us by *impregnable Forts*, we with great Sincerity (and without the least Compliment) heartily wish that his Excellency may truly consult his own Happiness by proceeding to govern the People with sound Policy, which, as we think, can hardly be consistent with *secret, great, sudden and general Innovations*; for which End and Cause, as well as for the learned Reasons

53. ["So to speak, for altars and fires," i.e., for hearth and home.—Tr.]

* By an exact Calculation made during the late War, and in the Time of the last Martial-Law, it appeared that there were 12,000 Persons capable of bearing Arms in *Jamaica*, and in fact three 4ths of these, being 9000 Men, live and reside nearer to *Spanish-Town*, than they do to *Kingston*, and thence springeth this easy Problem, to wit, that an *Inland-Town* (such as is *St. Jago*) having nine thousand Men to come in Aid of it, is certainly safer than a Maritime Town, or an open Bay (such as *Kingston* is) can be, as having only three thousand Persons to defend it? That seems to be as plain as it is certain, that nine Men would be an over-match for three. And from the foregoing Observation it is also plain, that it is the true Interest of three 4ths of the People to have the Seat of Government and the Courts held at *Spanish-Town*, whereas one fourth Part of the Inhabitants of this Island is all that can be concerned in getting the Seat of Government changed, and the said Courts to be held at *Kingston*.

before set forth, (which are taken from Books of as good Authority as any in the Law) we shall be glad that no Change or Alteration be made of or in the King's Writs, and that there may be no new Modelling or Transmigration of his Majesty's Courts, and that there may be no intermeddling with our Freeholds, our Records, and our Laws; and that the fundamental Constitution of this Country, it's antient well-approved Customs, and it's universally received consuetudinary Liberties may not directly or indirectly be *incroached upon*, invaded or innovated: And all this we with Humility and Sincerity do request, because we know that it is our Right, and because we very plainly do foresee, that a contrary Conduct to what is here desired, may tend to turn Order into Anarchy, Amity into Animosity, and to open upon our Country the Flood-Gates of false Policy, Madness and Misery! For we cannot but exceedingly commend the Wisdom and Unanimity of all the Barons and Freeholders of *England*, when they prevailed with King *Henry* the IIIId, to assent to their *Nolumus*⁵⁴ as to such Matters; for as the Lord Coke hath it, "Omnes Comites & Barones una voce responderunt, Quod Nolunt Leges Angliae mutare, quae hucusque usitatae sunt & approbatae."⁵⁵ 1 Inst. 245.

6thly. That all the Records either of the Laws or Property of this Island are now kepted at that open Town of *St. Jago de la Vega*, in which Records your Majesty's Subjects of *Great-Britain*, *Ireland*, and the Colonies are greatly interested, as they are the Securities for the Sums credited to this Island, the Loss of which would prove the Ruin of great Numbers of your Majesty's other Subjects, as well as most of the Inhabitants of this Island.

Remarks upon Paragraph the ninth. Reason the sixth.

This the last Paragraph of the Petition is very insidiously laid, "*et ad Captionem Vulgi*."⁵⁶ For tho' it be true that some Persons in *Great-Britain*, &c. may have an Interest in our Records, yet in fact, the Natives of this Island, and it's great Planters, who presently reside in *England*, have more Interest in them same Records, than all the rest of his Majesty's Subjects who reside in *Great-Britain* and *Ireland*, &c. But then these great Planters know better

54. ["We are unwilling."]

55. ["All the comites and barons answered with one voice that they were unwilling to change the laws of England which so far have been used and approved."]

56. ["And to snare the mob."]

Sense than to be of the Number of the Complainants, a Herd of mere Factors *Insidiosa Pecus*.⁵⁷ Few other Persons residing in *England*, &c. (excepting those great Planters) choose to settle any Money in *Jamaica* unless they can get a Security sufficient for 10,000 *l.* for every 1000 *l.* which they lend; and therefore such Lenders, and (under the foregoing Exception) all or most of all the *British* Lenders, &c. are such, and have not any material Concern with our Records, or yet with the present Question; because they rely upon the personal Security of the Borrower, more than upon any Lands, Mortgages, or the like: And thus it is, that the Respondents have greater and larger Estates in this Island, and are more truly interested in the Safety of it's Records, and have a larger Share of Property in it, secured by them, than have all the Petitioners and the whole World beside.

(2.) And therefore since all things have been thus preserved in a State of Safety, Security and good Order for the Space of fourscore and nineteen Years, and considering that upon design of keeping the Records of the Country in a manner more commodious for the People, and with a greater Nicety than heretofore they have been kept, the Country hath lately erected large, spacious and strong Buildings for that Purpose, at no less Expence than twelve or fifteen thousand Pounds, which large Sum of Money was rais'd and apply'd in Virtue of several Acts of the Assembly of *Jamaica*, of which Assembly divers of the said Planters now residing in *England*, were then Members, and as they unanimously consented to the passing of the said Acts, it cannot be reasonably supposed that they or any of them are among the Number of the Complainants: Under these Circumstances would it not be an improvident, absurd thing to sink so much Money to the Society, and to transfer our Repositories from a Place wherein long Experience hath shewn that they have been very safe for many Years, into a Place where they cannot (as appears from what hath been said) be truly safe, either in their Transmigration or yet for one single Night after it?

(3.) The Members of the Assembly of *Jamaica* are not only the greatest Proprietors of and in the Country, but they are also severally chosen out of the best of the People by all the Freeholders of the respective Parishes in this Island: They are therefore supposed to know best the true Interest of this Country, which is certainly blended with their own, as well as with that of their Constituents, insomuch that were they (the legal Representatives

57. ["The insidious herd."]

of the People) to neglect or to be mistaken as to publick Safety and Security, they could not thereby gratify or advance their own private Interest; but on the contrary, they would be respectively as great Sufferers by such a Neglect or Mistake as any others of the Freeholders of this Island could be: But since it appears by the said Act passed Anno 1681, that the then Governor, Council and Assembly were of Opinion that *St. Jago* was the most proper Place for conserving the Records, and that all the Assemblies from that Time to this were of the same Opinion, and that the present Assembly of *Jamaica* convinc'd by long Practice and certain Experience, that all the said preceding Assemblies had judged of that Matter very rightly, did therefore unanimously pass several Acts for applying 12,000 *l.* of the publick Money, for erecting publick Buildings at *Spanish-Town*, for the more commodious Conservation of the publick Records; and to the End that the said Council and Assembly and all the said Courts might not only continue to be held at *St. Jago*, but also that they might be held there for the future more commodiously and with greater Convenience in the said ample publick Buildings, than formerly could attend them when they had been held, or while they are held, in a small Court-house, and in the low, dark Council-Chamber at *Spanish-Town*. These last mentioned Money-Bills were passed in the usual Manner, and neither the People of *Kingston* or their Representatives in the present Assembly made any open Contest, or any Objection or publick Opposition to the passing of them; but how and by whom a new Song hath been lately put into their Mouth?

Politici certant, et adhuc sub Judice lis est.⁵⁸

Yet be that as it will, what hath been set forth by this Remark is sufficient to shew the true Sense of the Representatives of the People, and indeed the legal Sense of this whole Island as to all and singular the said Matters in question: For it appears to be a clear Resolution and a plain Determination of them all against the said Petitioners: Because the Governor, Council and Assembly would never have passed the last-mentioned Acts for applying 12,000 *l.* of the publick Money for erecting Buildings at *St. Jago* for the publick Service, large enough for the Reception of the Governor, Council and Assembly, and commodious enough for holding all the said Courts in

58. ["The politicians dispute and the case is still before the judge." A witticism imitating Horace's *Ars Poetica*, "The teachers dispute and still the quarrel is undecided."—Tr.]

them at one and the same Time, if it had not then been the Intention of the whole Legislature of this Island, that the Council, the Assembly and all the said Courts should be held in the said Buildings at *St. Jago de la Vega* and not elsewhere; but so it is that that is not only the open and declared Intention of the present Assembly, but from what hath been said and from said Acts, *Anno* 1681, the like appears to have been the Intention and declared Resolution of all the Assemblies that ever existed in this Island, from the Time that it was acquired by Conquest from the *Spaniards* in the said Year 1655, down to this very Day.

(4.) It is not alledged, neither can it be proved, that the said Courts are *transitory* or *itinerant*, and therefore if they were to be translated, after having been so long settled and for so many Years established, that ought to be done in the regular and usual Way by a solemn and proper Application to the Representatives of the People elected and legally assembled in Virtue of his Majesty's Royal Writs and Proclamation: That so the Assembly of this Island, with the Concurrence of the Council, and Consent of the Governor for the Time being, might make such *Addresses* to the Sovereign as should be suitable to the great Importance of such weighty Affairs, in which the Order of his Majesty's Government, the Peace of his People, and the Security of the whole Society are equally concerned; and surely such solemn and regular Addresses from publick Persons, in a legislative Capacity, and from the whole Body of the Representatives of the People do deserve more Credit and would be of more Weight than the *errant Jumble* of the present Petition, or than any other clandestine or private Petition whatsoever. But yet the said most humble Petitioners have proceeded in a quite contrary Way; for they have thought fit to apply to the Sovereign directly and immediately and without any Intervention! They have insulted his Throne by exhibiting their silly Petition *per Saltum*,⁵⁹ wisely imagining that the same will be determined upon in a summary Way, to the Prejudice of third Parties, and of the Respondents (*parte inauditâ*)⁶⁰ and without citing or hearing them. But what Right have these *Modest-Petitioners* to go out of the common Road, and to dispense with the usual and solemn Method, and with the most proper and necessary Forms of Application to the Crown? They have no such Right, but yet do they most modestly balance their own private

59. ["By a leap."]

60. ["With the other party having not been given a hearing."]

Opinions not only against the said known, necessary and established Forms, but also against the publick Laws, as well as against the authoritative Sentiments and the legal Sense of this whole Island.

Your Petitioners therefore most humbly pray that it may please your most excellent Majesty of your Royal Grace and Favour to command your Majesty's Governor of this Island to reside for Dispatch of Business, and holding your Majesty's Courts in which he presides at the Town of *Kingston*, the Metropolis of the Trade of this Island; and that your Majesty would be most graciously pleased to grant your Petitioners such Relief with respect to Courts of Judicature and Records, as to your Majesty in your Royal Wisdom and Goodness shall seem meet; and your Petitioners (as in Loyalty and Duty bound) shall ever pray.

*Remarks upon Paragraph the tenth,
being the Prayer of the Petition.*

It is not very easy to discern and truly to determine whether the King or the Governor be most indelicately treated by this Petition. But it appears very plainly that neither of them is used with all suitable Dignity and Decency! For why should his Excellency be more restrained as to the Point of *Residence* than any one of his Predecessors ever was? To restrain one Man's Liberty at the Desire of another Man, or even at the Request or for the mere Convenience of any Number of Men, is not an Act of *Royal Grace and Favour*; but were that to be done, it would be an Act of a very different, if not of a quite contrary Nature; and to confine one's Residence is certainly to restrain his Liberty: For the Gaol and the Stocks are only Restraints of Liberty in the mere Point of Space and Residence; this Part of the Prayer is therefore very impertinent, for tho' it might suit the Inhabitants of *Japan*, yet is it truly unworthy of the penetrating and sensible People of *Jamaica*; it might be listen'd to by a Grand Signior or a Kouli-Kan, but it deserves to be rejected with Indignation by the Sovereign of *Great Britain*.

(2.) The Prayer of this Petition is like the Conclusion of a *vicious* or *False-Syllogism*; for it is not truly contained in the Premises, and therefore it can never be fairly deduced from them; and thus as there is no direct or legal Title surmised by the Petition for *holding the said Courts at Kingston*,

or yet for *commanding* (or *confining*) *the Governor to hold them there*, it is plain that there is no *Medium*⁶¹ in the Petition capable of supporting the Prayer of it; and to pray at large and without Discretion, or, which is all one, without a sufficient *Medium concludendi*,⁶² is certainly very unphilosophical and totally unlogical.

(3.) As to the Relief prayed with Respect to *Courts of Judicature and Records!* It is shamefully ridiculous and horridly abominable, and it will evidently appear to be so, just by considering *the Character of the Petitioners*, and the *Nature of the Thing* prayed for: Now the Petitioners by Character are *Merchants, Factors and Agents*, (alias transient Persons) and in this Character, no Men in the World have or claim any Right to interfere with the Policy of the State, and as little Right have they to apply for the Repeal of publick Laws, and much less is it their Province to make Application for the Innovation or Subversion of that same supreme Court of Judicature which (of their own Confession) appears so often to have administered both Law and Justice unto them. Were the Merchants of *London* to desire a Transfer of the Courts of *Westminster-Hall* to the *Royal-Exchange*, would not they be justly laugh'd at? Certainly so; because such a Translation would be a Prejudice to the Liberty of *Westminster*: And above all, because the *Londoners* have no just Right or legal Title to make such a covetous and ridiculous Request to the Prejudice of their Neighbours. Laws are principally made for the Protection and Security of the Freeholders, Settlers and staid Inhabitants of a Colony; but in all the Countries of the World mere Merchants, Factors and Agents, and such transient Persons, have little or nothing to do with the Policy and publick Laws of that Country, by which they are permitted to carry on their Trade and Commerce: The Honour of Obedience to the Laws in being is all that such Transients can claim: But if they undervalue that Honour, their only Remedy is to withdraw from the Resentment of the Laws, and to travel into those Countries where they may have Hopes of finding Laws more favourable to *Covetousness* and to Monopoly, than any of the Laws within the *British Empire* are: Could then the Relief prayed for be legally given, and were it ever so just, rational and expedient to give it; yet is it quite out of Character for such Petitioners to ask such extraordinary Relief; and it is absolutely ridiculous in them to

61. ["Basis of fact, heart of the matter."]

62. ["Basis of fact upon which a legal conclusion is reached."]

think of obtaining it, whilst they are unable to shew any just Right, or the least Colour of a legal Title vested in them, that is sufficient to induce the granting of such Relief, or yet to justify the Reasonableness and Legality of it if ever it should happen to be granted.

(4.) The Nature of the Relief prayed for, is of such Sort, that it is not in the Power of the King to grant it legally; and were it to be otherwise granted, the Rights of the People, the fundamental Laws of the Land, *Magna Charta*, and the *consuetudinary Liberties of Freeholds* must (as hath been before demonstrated) be all overset and subverted! and ninety-nine Years Possession proceeding upon a good Title, must go for nothing, at the bare Request of the Petitioners, who, as they never were in Possession, so neither can they shew a legal Right or a just Title in or to the Premises, or to any of the least Particle of them: The Prayer of the Petition is therefore very impertinent, so that the Sovereign ought never to have been troubled with it. Immemorial and uninterrupted Possession, *justâ Causâ praeedente*, never was and never can (without the Consent of such antient Possessors) be either legally or reasonably defeated; and therefore were the Petitioners as *dutiful* and *respectful* as they pretend to be, they never would have asked the King to do what by Law he cannot, and what according to Justice and Reason he ought not to do.

The Respondents do therefore humbly hope that the Sentiment of *Cato* will be the Judgment of *Caesar* upon the present Occasion.

Quod Justum est petito, vel quod videatur honestum,
Nam Stultum est petere id quod potest Jure negari.⁶³

Having thus established the Respondents Case upon just, solid and legal Foundations; and having also examined, answered, and refuted, and even *anatomized* the Complainants Petition, we shall, to the End that *learned* and *unlearned* may be equally convinced, subjoin a few natural and easy Observations, taken from the very Bowels of the Subject, and as to which all Manner of reasonable Persons are or may be thought very competent Judges.

63. ["I seek what is right or what seems proper, for it is foolish to seek what may be rightly denied."]

Observation the first.

It is true (saith the most intelligent Lord *Verulam* in *Cap.* 24. of *Innovation*) "that what is settled by Custom, tho' it be not good, yet at least it is fit. And those Things which have gone long together are as it were confederate within themselves, whereas new Things piece not so well.

And thus in the Respondents Opinion, the Innovations aimed at can never piece well. The same Lord *Verulam* (*Cap.* 33. treating of Plantations) hath wrote as follows, *viz.* "I like (saith he) a Plantation in a pure Soil; that is, where People are not displanted to the End to plant others, for else it is rather an *Extirpation* than a *Plantation*." Now we think *Spanish-Town* is in a pure Soil, and that his Lordship (were he now what he once was) would be against the *Extirpation* of it. The same great Politician was for "trusting the Government to *Gentlemen* but not to *Merchants*; for, saith he, they look ever to the present Gain;" and we think (as is before remarked) that this is precisely the Case of the Petitioners. But tho' the Lord of *Verulam* was seemingly severe in distinguishing between *Gentlemen* and *Merchants*, yet something more severe than even that may be truly said of the said Merchants, Factors, and Agents, who, complaining without Cause, wantonly ask Relief without Reason, and

They sooth themselves, retir'd from Sight,
Secure they think their treacherous Game;
Yet their dark Plots, expos'd to Light,
Their false Contrivers brand with Shame.*

The same *Verulam* goeth on and saith,

That it hath been a great endangering to the Health of some Plantations that they are built along the Sea and Rivers in marsh and unwholesome Grounds. Therefore, though you begin there, to avoid Carriage and other like Discommodities, yet build still rather upwards from the Streams than along.

* The Petitioners used to meet privately at Night in an Upstair-Storehouse, or Garret.

Now the *Spaniards*, who built *St. Jago*, seem to have followed Lord *Verulam's* Policy; but the *mix'd People*, who built *Kingston*, have gone contrariwise to work, and consequently the *Kingstonians* have in all wet Seasons sadly suffered for it, and that proves the Truth of *Verulam's* Policy, as well as of some of the foregoing Remarks, in Relation to the *greedy Grave of Kingston, &c.*

(2.) To burn a House for the pretended Good of a City, and to destroy a City for the Good of a Country, are equally as dangerous as ridiculous.

(3.) It is more easy to destroy Houses than to build them, and to suppress Settlements than to make them; but Destruction of either Kind is certainly false Policy every where, but especially in an unsettled Colony.

(4.) The People of *Kingston* have no Right to infest the *veteres Coloni*, or to remove their antient Land-Marks, and they are as little able as willing to make an adequate Satisfaction for annihilating our yearly Incomes, our Property, and our Freeholds; nor have they any Satisfaction to tender that is equal in Value to the natural Benefits of *St. Jago*. The Want of good Water, Health and Air, can never meet with an adequate Compensation at the Hands of the Monopolizers of *Kingston*. 'Tis therefore something very singular in them to pray of the King to command his Governor to reside at a Place very little better in Point of Health than is his Majesty's sickly Hospital near to *Kingston*.

(5.) The People of *Spanish-Town* are valuable Members of Society as well as the *Kingston* People are; and they have no less Right to the Protection of the Laws, the Security of their Freeholders, to their antient Possessions, and to all the Privileges and Advantages of the Government, and of the Community, than the *Kingston* People have; and yet *Kingston*, by it's being the *Seat of Commerce*, gains more in one Year (and hath done so for many Years) than *Spanish-Town* doth, by it's being the *Seat of Government*, in ten Years. *Kingston* therefore having already more than its due Proportion, and much more than an equal Share of the Privileges and Advantages of the Society, ought now to rest as contented as it hath been for the last half Century, and since ever it was a Town. Is it then just, or reasonable, and is it not false Policy, to strip *St. Jago* of a few Privileges and Advantages which it doth enjoy, in order to transfer them to *Kingston* which hath already more than an equal Share, and much more than what it ought to have? Can it contribute to the Strength and Security of the Society? Can it serve the wise Ends of Government or any good End, to ruin *Spanish-Town* unnecessarily,

and purely to gratify a Principle of Pique rather than of Judgment, and a fantastical Frolick of adding Superfluity to the avowed Riches of *Kingston*, whose Inhabitants seem to aim at the making of it (as it were) a Monopoly of Government, as well as of Trade, so far as a large Subscription can contribute towards that profound Project, and most extraordinary End.

(6.) The Multiplication of small Settlements evidently contributes very greatly towards the Security of this Island, and is a most immediate Safeguard against the Depredations of foreign or domestick Foes; and yet by a Transfer of the Seat of Government to *Kingston*, more small Settlements would be ruined in the Parish of *St. Catharine's* alone in one Year, than have been made in it, or in any one of the adjacent Parishes, for seven Years last past, and more than what will probably be made in it or them for twenty Years to come, notwithstanding all the beneficial Laws made or to be made for the Encouragement of new Settlers.

(7.) The House-Rents of *Spanish-Town* may be fairly computed at 20,000 *l. per Annum*, and three fourths of that Sum would be absolutely sunk by a Transfer of the Courts, &c. to *Kingston*, and by that same Measure the Houses themselves would soon become *Ruinates* for want of Inhabitants: These being Facts, the Consequences are as plain as the Facts are certain, to wit, that the Annihilation of so much Property in *Spanish-Town* would be a general Mischief, because it would derogate from the Strength and Security of the Island, and ought therefore to be considered as a very considerable Diminution of the general Strength and capital Stock of the whole Society.

(8.) Since the great Storm which happened in the Year 1692, *Spanish-Town* and the Parish of *St. Catharine* have paid upwards of 40,000 *l.* for Quit-Rents, yet the Town and Parish of *Kingston* have hardly paid one fifth Part of that great Sum for Quit-Rents to the Crown; *Spanish-Town* is therefore and in that particular Respect of four Times more Value to the Government than is *Kingston!* It is no Wonder then there is a murmuring in our Streets, when the People find their Town deserted, and thereupon fancy that the Seat of Government is voluntarily abdicated! And when they see that the fair *St. Jago* (a City of great Resort, during four fifth Parts of the Year, a Town well peopled on the most healthy Spot in the *West-Indies*) is brought to the very Brink of Ruin and Destruction, and that the same is just upon the Point of being turn'd into a *lonely Desert*. What can be the genuine Policy of such a Measure? And how is it possible for a sagacious People to be pleased with it?

(9.) To unpeople *Spanish-Town* is to endanger the Safety of the whole Island; for were we all to retire to *Kingston*, *Spanish-Town* would soon become a *Den of Run-aways*; and might soon afterwards fall as an easy Prey into the Hands of any Party of rebellious Negroes; and yet the late Insurrection at *Luidas* was suppress'd very quickly by a Party of *Spanish-Town* Troopers; whereas had there been no Help nearer than *Kingston*, it would have come too late for saving Captain *Fuller's* Family, and that whole Parish, the People and their Houses from Fire and Destruction.

(10.) Tho' the People of *Kingston* be so passionately in Love with their own Interest, as evidently to prefer *that* to natural Justice, to the good Order of Government, to the Harmony of Friends, and to the Peace of Society; yet are they (the Petitioners) very palpably mistaken even as to that *particular!* Because by suppressing *Spanish-Town* they would thereby suppress the neighbouring Settlements, and by Consequence lessen the Vent for that immense Quantity of Stores, Provisions and Utensils, which are annually bought up at *Kingston*, carried to *Spanish Town*, and from thence laid out and consumed among the adjacent Settlements. Now the suppressing of our Settlements must necessarily lessen that Vent, and the lessening of the Vent for Goods, by diminishing the Number of Consumers, must in a due Proportion, necessarily diminish the annual Profits of the Factors and Agents at *Kingston*. And when these Factors, Agents, *et hoc genus omne*,⁶⁴ complain of their travelling Charges to *Spanish-Town*, they do in fact complain of their *own enormous Profits*; for all such Charges are defrayed by their Constituents, and it is well known that the Agents are in Truth actual Gainers by every one individual Item of such Expences; the Practice being to charge every particular and individual Constituent with the Factor's whole Expence of coming to *Spanish-Town!* And if these transient Persons be so vastly concerned in our publick Records as they pretend to be, it will evidently appear from the following Observation that they are also fatally mistaken with regard to their said pretended Interest, when they desire to have those Records deposited at *Kingston*.

(11.) We all know (and it is a thing notorious) what a dreadful thing it is to be at *Port-Royal* in the Time of a Storm; and to be at *Kingston* upon such an Occasion is a very dismal Birth, for Ships, Wherries and Wharfs are hurled together into common Ruination and Destruction; the very Fate of

64. ["And everything of this kind."]

the Town itself hath been often doubtful, and where all things are so much exposed to the Danger of the Seas, as well as to the Vehemence of the Storm, how can the Records be preserved against the Danger of both? None therefore (but the Petitioners) can pretend to deny that the Records are infinitely more safe at *Spanish-Town*, than it's possible for them to be in *Kingston*; for as *Spanish-Town* hath nothing to fear from the overflowing of the Sea, so a Storm at *Kingston* hath at some Times been scarcely felt as *hard Weather* at *Spanish-Town*; *Kingston* hath often suffered very greatly by Storms, when at the same time *St. Jago* hath been but very little hurt by them, nor did ever the Records at *Spanish-Town* sustain any Damage by a Storm; and yet it is impossible to secure them at *Kingston*, against the Dangers and fatal Consequences of a very great Storm. Some of us have felt many shocking Earthquakes, (against which the impregnable Forts of *Kingston* can never be any Security or Safe-guard) and have also seen divers terrible Storms; but none of us can say that ever we saw that *Spanish-Town* was very greatly hurt, or yet very much endamaged by all or any of these; *the antient St. Jago de la Vega* hath for 100 Years and upwards been peculiarly happy in this Respect, for she hath been so remarkably safe against the general Ruination and Destruction, which are the usual Concomitants of Storms, Hurricanes and Earthquakes; that she hath been but very little annoyed by all or any of them during the whole Course of the last Century! And

Sic eat O nullo regnet cum fine, per aevum
 Majestas Divina; suumque in Saecula laetus
 Servet opus Deus, ille Deus, quo territa tellus
 Concutiente tremit, Montes tangente vaporant.⁶⁵

Now to put an End to this whole *serious Tragi-Comic-Case*, it is to be wished that the *particular People* of *Kingston* may never be infected with a *Misgiving* that hath been often noted to have been very incidental to the *peculiar People*, who seem to be at present almost as numerous at *Kingston* (in Proportion to the other Inhabitants, and making Allowance for Times and Circumstances, and for the Paucity of the *Jews*, occasioned by their own Folly) as ever they were at *Jerusalem!* The main *Misgiving* charged *and*

65. ["It shall proceed thus. O the Divine Majesty will rule without end for eternity and God will preserve His own work, joyful, into the ages, that God by whose shaking the frightened land trembles, the mountains smoke with His touching."]

truly charged, by all the Books of the Priests upon the Jews, *the only peculiar People*, was shortly this; *My People doth not consider!* But are not the said *particular People* infected by their Neighbours, and as much liable to this Charge as ever the *peculiar People* were? We say they are.

And as one certain Cause of our Knowledge, we do give in Evidence, that we have been lately and very credibly informed,

that there is a *Project* to be forthwith set on Foot in pursuance (as is reported) of a very high Commission, and Instructions to constitute and appoint so many Ports, Harbours, Bays, Creeks and shipping Places, for the lading and unlading of Goods and Merchandizes as shall appear necessary.

But if that ever be done, *Kingston* will most certainly be undone! Why then doth not the *particular People* consider? Are they as dull as ever the *peculiar People* were? Won't the opening of the Out-Ports carry away the *Shipping*, and by Consequence all the *Prosperity of Kingston*? Won't the Loss of the Shipping prove as fatal to *Kingston*, as the Loss of the Seat of Government can ever be to *Spanish-Town*? Why then is *Kingston* to be ruined? Because that may be done by the said Commission and Instructions! But why is *Spanish-Town* to be ruined? Because there is no such thing pretended to, as any Commission or Instruction for that Purpose! This way of Speaking may seem odd, because that way of acting is clearly ridiculous: But still our way of Speaking is assuredly true! And therefore to go on, are not both Towns then upon the Brink of Ruin? Are they not more than half ruined already if their Fate depends, or ever shall depend upon the ambulatory Pleasure of any one Man in the World? Is it not a strange Speculation that no Power in Heaven ever did, and that no Power upon Earth ever can teach the *particular* any more than the *peculiar People* to *consider*?

O glorious *Kingston*, and great Metropolis of Trade! Why wouldest thou, in Virtue of thy *Metropolitan Power* endeavour (upon the Ruin of a neighbouring Town and our capital City) to establish a Monopoly, since that is the very Bane, as well as the known Enemy of all general Trade, and of all the generous Commerce upon Earth? But the *particular People* (like the unconcerned *Gallio*) *care not for those Things*. They don't mind such Matters any more than the *peculiar People* do! These important Truths are not in the least *considered* by them, or by either of them.

Be it therefore *considered* by all *disinterested Persons*, and by all the Men of true Sense within the whole *British Empire*; that *anti-constitutional Innovations* may prove as fatal to Colonies as Plague, Pestilence, or Famine, for they may occasion Burnings, Battle and Murder; and tho' *Storms, Hurricanes* and *Earthquakes* may* make great Havock, and do indeed a World of Mischief;

* As an uncontrollable Instance of this, we all know, and it is a thing notorious, that Mr. *Trelawny* soon after the Commencement of his Government, had the Happiness to reduce the *rebellious wild Negroes* to a Submission; and thereupon old Settlers were quieted, and new Settlements were made and multiplied in all the extreme Parts of the Country, the Rebels became good Subjects, and the most useful tractable Servants in the whole Island; for they opened the Highways, prevented or suppressed all Insurrections of the Negroe and other Slaves, and they never failed to bring back all *runaway Slaves* to the Service of their respective Masters; and for these their good Services the promised Rewards were punctually paid or delivered to them; Mr. *Trelawny* always received those reduced Negroes very graciously, and he failed not to entertain them to their intire Satisfaction, when the Negroe Chiefs came with their Friends and Followers to acknowledge his mild Government, and to give Testimony of their Sincerity and Submission. By this Method of governing, the *quondam Rebels* were quite delivered from all Jealousies and Fears, they kept the Peace, and found Ease and Prosperity under the Protection of the Laws. By this Way of administering Government, the whole Country was kept easy and in the outmost Security; but upon the Change of a Governor the Manner of governing was also changed, and the Consequence of that hath been, that every Year since *Trelawny's* Departure, hath produced an open Rebellion among the said reduced Negroes; and altho' about seven or eight Months ago the Country was put to considerable Trouble and Expende in suppressing one Rebellion, which was done partly by the Assistance of some of the said wild Negroes themselves, but not without some Bloodshed among the Whites as well as among the Blacks; yet we have certain Advices that in *August* last a fresh Rebellion broke out, and that the Scene opened by killing one Serjeant *Harris*, a white Man, and burning his Habitation to the Ground; the Man-Slayers first shot *Harris*, and then cut off his Head and threw it into a River, and afterwards they retired into the Woods; and from thence they make Excursions in order to destroy small Settlements, and to rob, kill and murder white People as they shall find Opportunity. And when this Insurrection will be suppressed is uncertain. But yet the Fate of many good Settlements, and of almost all the late Settlements, doth in some Manner depend upon that doubtful Event. It is reported that Captain *Cudjoe* (one of the Negroe Chiefs) refused to go into the Woods, or to give his Assistance in going after the Rebels, or in suppressing this new Rebellion; for *Cudjoe* complains that tho' thirty Pistoles was promised to him for his last Expedition, that no more than three Pistoles were truly paid to him! He saith that he and the other Chiefs have been treated with Haughtiness and Contempt; that they have only the Name of Freedom, being obliged to live as if they were in a Chest! In short, the Peace and Safety of this Island is not a little endangered by improvidently filling the Minds of these resolute hardy Men with Indignation and Suspicion, with Desperation, Jealousies and Fears. Woe be to that * * * * * (if any such there be) that is weak, base, mean and ungenerous; Woe be to the Destroyers of Publick-Faith, fond Innovators, and to crazy, frantick, brain-sick * * * * * for these are the

yet *sudden, important, unconstitutional and unfair Innovations* are no less dreadful, because they often may, and in Fact they at some Times do prove more fatal than even these! And therefore be it also considered as aforesaid, that *Innovations* are the certain *Fore-runners of Destruction, Devastation and Extirpation*. And thus we may see with our own Eyes, and feel at our own Hearts, how doubtful the Fate of *St. Jago* seems to be, by *Innovations, Translations, and a supposed Abdication of the Seat of Government, &c.* And we cannot avoid seeing as well as feeling, that the little but once populous and well settled Village called *Passage-Fort* is already more than half ruined, and will soon be actually turned into a lonely Desert, by the said strange *Innovations*; but yet we cannot see why *Kingston* may not be as effectually ruined by a *Transmigration of the Shipping, as Spanish-Town* may or can be by the projected Translation of the said Records, &c. Is it not strange then, that neither the *particular* or yet the *peculiar People*, do ever consider this?

It shall be therefore here supposed that the *opening of the Out-Ports* is only politically *pretended*, but is not actually *intended* to be done, at the present critical Juncture! Yet be that as it will, it can never justify the People of *Kingston* for their being the first Sowers of the *Seed of Innovation*; or vindicate their Wisdom in expecting a most prodigious Crop, and a plentiful very early Harvest from such rotten Seed, unskilful Tillage, and out of a Field full of prickly Pears, Thorns and Briers; for were they to be enriched, at the Expence and Ruin of their Neighbours, by one *Innovation*, and to be ruined together with them by another, the amount of Profit and Loss might be thereby very easily ballanced.

Why then do the *Kingstonians*, out of mere Adulation to their new Governor, trust him with the Sword of their own Destruction? For tho' he may at the Beginning use it in Confidence, and seem only to flourish or to play with it; yet may not he afterwards be like other Gladiators, first begin to fret, and then falling into a Passion, may he not suddenly turn its keenest Edge against his own *particular and peculiar People*? And tho' their present Governor may have more Discretion than to treat them so, yet *there may be a Pharaoh who shall not know Joseph*: Why then should the Gates of Innovation

bitter Enemies of Mankind, the Scorpions and impoisoned Scourges of Society; they are actuated by private Pique, and they delight in open Vanity and in publick Insolence, inso-much that Cities of great Resort, are at some Times in Danger of being hurled into Ruin and Confusion through their Resentment, unless the People happen to have true Wisdom and Power, Spirit and Unanimity to check or expel them.

be left open to Successors? And why should the People teach any Governor such a shrewd Lesson against themselves? Is it not Madness to humour any Man so far as to persuade him that he hath a Right absolutely to destroy a great and populous City in Virtue of a high Commission, dormant Powers, obsolete Instructions, and new born Innovations.

Let all the People of *Kingston* believe (since they don't at all consider) that the *Inventor* of the *Maiden* was the first Man who fatally fell by it! And that all *anti-constitutional Innovators* are most likely to be *premier Sufferers*, through the Emptiness and Vanity of their own *Inventions*. But alas! they are not the only Sufferers, for *Innovators* are nothing else but *political Incendiaries!* And an Innovator is like him who setteth Fire to a Heath; a sudden Conflagration ensueth, and in a Trice we are amazed to see the whole Country in a Blaze.

Innovations deprive us the People of that sweet and pleasant Security which we enjoy under *wise* but not *fleeting Laws*, under an *established* but not a floating Government. *Innovations* are the rank Bane of Society, because they destroy Peace, Prosperity, and Tranquillity; Nay they totally *poison publick Faith*, insomuch that the People are thereby driven into an Ocean of Confusion, whereby it becomes impossible for them ever to find out any certain Rock upon which they can rest, or any certain Point on which they can with Safety depend!

O hapless City! Thrice unhappy *Kingston!* How palpably hath true Wisdom abandoned thee, ever since thou deserted thy Duty? With thine own Hands hast thou opened wide the Sluices of thine own Destruction! And from thy *own ample Subscription*, shall gush such dirty Streams of base, foul and filthy Corruption, as will with Rapidity bear thee away into the bottomless Gulph of Folly and Nonsense, of Poverty, Madness and Misery! Hath the *peculiar People* moved the ancient Land-Marks, and shall they not be *accursed?* The particular People hath broke down an old, firm Fence, but lo! a Serpent hath bit them! Woe, Woe, sempiternal Woe, hath come into the great City; for a hungry Leech hath fastned on her Veins, and a greedy Blood-sucker shall drain her to the Lees!

From all which the certain Conclusion is, *that a general Redintegration* is absolutely necessary in this Colony. That is to say, all Things ought to be forthwith restored to their former State, or to be put into the same Plight and Condition in which they were when Mr. * * * * * entered upon the Government of this Island: "But if that cannot be obtained, and if he may

not be restrained from future *Innovations*:" Then, and in that Case, it is most certain that 300 Settlements already, and long since made, in the four Parishes of *St. Dorothy*, *St. John*, *St. Thomas* in the Vale, and *St. Catharine*, will be absolutely suppressed, and turned into lonely Ruinates! And it is no less true that the three most populous Places in *Jamaica*, to wit, *Spanish-Town*, *Passage-Fort* and *Kingston*, will *thereby* and within a very short Space of Time, be all as effectually ruined, as they could be by their being fatally swallowed up in a Hurricane, or as if they were dismally buried in the Bowels of the Earth, by an Earthquake! Such are the mischievous and ever fatal Consequences of false Policy, and unsagacious Government.

——— Quis talia fandô.

Myrmidonum Dolopumque aut duri Miles Ulyssis
Temperet a Lachrymis:⁶⁶

L.S. George the second by the Grace of God of Great-Britain, France and Ireland King, and of Jamaica Lord, Defender of the Faith, &c.

To our beloved and faithful the Honourable Rose Fuller Esquire Chief Judge of our Supreme Court of Judicature of this Our said Island of Jamaica, Greeting.

Forasmuch as in the Record and Process, and also in the rendring of Judgment of a Complaint which was in Our said Court of Judicature before you and your Associates, Judges of Our said Court by Bill without Our Writ, Between A. B. of the Parish of {blank} in the Island of *Jamaica*, Esq; Plaintiff, and C. D. of the Parish of {blank} in the said Island, Gent. Defendant (as it is said) manifest Error hath intervned to the great Damage of the said C. D. as by his Complaint We have received. We being willing that if any Error therein should be found the same may be duly corrected, and that full and speedy Justice to him the said C. D. may be done in this Behalf: We command you that if Judgment thereof be given, then the Record and Process of the Complaint aforesaid, with all Things touching the same into Our next Council to be held at *Saint Jago de la Vega* before his Excellency *Charles Knowles* Esq; Captain-General, Governor and Commander in Chief of this Our said Island of *Jamaica*, and Chancellor of the same &c. and others of Our Council of the same Island distinctly and openly without Delay

66. ["What soldier of the Myrmidons, the Dolopes or harsh Ulysses would hold back tears in telling such things?"]

you send, That inspecting the Record and Proceedings thereof, Our said Governor and Council further for the Amendment of the said Error may cause to be done what of Right and according to the Laws and Customs of Our Kingdom of *Great-Britain* and of this Our said Island of *Jamaica* should be done, and have thou then and there this Writ. Witness his Excellency *Charles Knowles* Esq; Captain-General, Governor and Commander in Chief in and over this Our said Island of *Jamaica* and the Territories thereon depending in *America*, Chancellor and Vice-Admiral of the same at *Saint Jago de la Vega* the {blank} Day of {blank} in the twenty-seventh Year of Our Reign, *Annoque Domini* 1754.⁶⁷

R. P. Reg. Canc.

C. K.

From the *Jamaica Gazette*, Thursday, July 11th, 1754. Kingston, July 10th, 1754.

Copy of a Letter wrote by his Excellency's Order to several of the Custoses in this Island.

SIR,

His Excellency being desirous of doing every Thing in his Power to promote the Interest and Welfare of this Island, and finding by his Majesty's Commission and his Royal Instructions, that he has Power, by and with the Advice of his Majesty's Council, to constitute and appoint so many Ports, Harbours, Bays, Creeks and Shipping-Places for the lading and unlading of Goods and Merchandizes as to him shall appear necessary; has commanded me to acquaint you, that he purposes doing the same at the next Meeting of the Council; and desires you would let the Gentlemen Inhabitants of your Parish know the same; and that they may rest assured, such Shipping-Places as have been used and accustomed for any Time past, shall not be shut up; but that they shall fully enjoy all the Benefits of such Places, as is in his Power to grant.

I am, Sir, Your most humble Servant

JOHN REED.

FINIS.

67. ["And in the year of our Lord 1754."]

