a/n Course of Descents — 1.
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1. Littletons Tenures. twice
2. The same with Coke's Com: twice.
3. Sheppards Touchstone – ~~twice~~.
4. Blackstones Com: 2. vol. twice.
5. Bacon of Uses.
6. Wrights Tenures.
7. powel on Mortgages.
8. — on Contracts
9 — on Devises. – Fearne on contingent Rem^{rs}. &c
10. ~~[illegible]~~. } W. N. Com
11. Swinburne on wills.
12. plowdens Commentaries. ~~twice~~ –
13. ~~Cokes reports~~ – ~~twice~~. W. N. Com
14. Blackstones Com: vol: 3. twice
15. System of pleading.
16. Heath's Maxims.
17. Gilberts H. Com: pleas.
18. Cokes Inst: part 2^d.
19 — part 3^d. & 4.
20. Blackstones Com: vol. 1. twice.
21. — vol: 4. 22. Succ^s. of Virg^a – Hale, Hawkins, Leach
21. Woods Conveyancing or Horsemans, Mallory Dallas
22. Lillies Entries &c.
23. The Reporters, seriatim + ☞ beginning with the latest.
24. Occasional tracts.
26. Laws of Virginia –
27. Laws of United States –
28. Tracts on the Constitutions & Laws of V. & U. S.

☞ Lord Coke advises the Student to read the latest reporters first. Vide Coke on Littleton 2d p.

A short view of the rules of Inheritance in Virginia according to the several Acts for directing the course of Descents.

Antecedent to the late revolution the common law of England, and all Statutes made in aide thereof prior to the fourth year of James the first, being recognized in our law as the law of the land, the rules respecting landed property in Virginia were conformable to the laws of England as established at the period above mentioned; at least so far as respected the law of Inheritances, as at common law regulated by the Statute de Donis conditionali by virtue of which it was held that Lands in Virginia might be entailed as well as in England. Many Acts of the legislature of Virginia seem calculated to favor the doctrine of entails, by declaring that the ordinary methods of docking entails in the Courts of law in England should be ineffectual for that purpose in Virginia. In the year 1734. if the estate were under the value of £200. sterling, the entail might be docked by Writ of ad quod Dammum; for the method of proceeding therein I must refer to

9. Ann: c. 13. S. 4.
22. Geo. 2. c. 1. S. 14.
1734. c. 6. not in the revisal of 1752. but in that of 1769. pa. 146. with some alterations introduced by act of 1792. c. 1.

+ The act of 1764. c. 14. authorises Tenants in tail to make Leases not exceeding twenty one years, or three lives under certain restrictions — Edo 1769. pa: 458.

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* 1. The first general rule deducible from this important act, is, that Inheritances shall lineally descend to the issue of the person having title thereto, in infinitum.

2. The second general rule is, that if there be no lineal descendant, the inheritance shall ascend to the Father ~~[illegible]~~ or other nearest lineal male ancestor, or ancestors, in preference to the female Ancestor or ancestors, and collateral kindred in the same degree: but the mother or other nearer lineal female ancestor, or collateral kinsman, or their descendents, shall be preferred to a more remote lineal male ancestor, or ancestors.

[Written vertically in the left margin: "ancestor, or collateral kinsman, or their descendents, shall be preferred to a more remote lineal male ancestor, or ancestors." with "in the same degree" interlined]

Mercers Abr: 202. [+] to the Act of ~~that year~~ 1748. c. 1. s. 15. 16. — + But as soon as the revolution took effect the legislature

Octo: 1776. Rev: Co: 45. passed an Act declaring Tenants of Lands or Slaves in tail to hold the same in fee = simple, which Act took effect on the 7th day of October 1776. and was confirmed by the

1785. c. 62. Act of 1785. c: 62. which removes all doubts as to the day on which the former Act was to have its commencement.

From the before mentioned period. viz Oct: 7. 1776. to the Commencement of the

1785. c. 60. Act of 1785. c: 60. entituled an Act directing the course of Descents, which took effect on the first day of January 1787. all Lands in Virginia descended according to the course of inheritance in fee simple, by the rules of the common law of England; that Act however utterly changed the course of Descents, scarcely agreeing with the common law in any one principle; I shall endeavour to collect such general rules as I concieve are deducible from it. after which, I shall, as far as I am able, attempt, to shew what innovations in respect to those rules have been introduced by the subsequent Acts passed upon the same subject. *

~~2d~~ general rule under the act of 1785. c: 60.

2. Bl: Com: 208.

2. ~~The first~~ general rule to be collected from this Act, is, That inheritances shall lineally descend to the issue of the person having title thereto ~~last seized~~, in infinitum; in parcenary.

This is in part the rule of the common law; But with this material distinction between them, that the word issue, at the common law is limited to certain particular descendants, in exclusion of all the rest, as to the eldest son, in exclusion of his Brothers & sisters; or to the eldest son of such eldest son, in exclusion of his Uncles & Aunts, as well as of his Brothers & Sisters, whereas the rule of our law means Children, or other Descendants, comprehends the whole of a ~~without regard to sex or primogeniture~~; all of whom, of whatever Age or sex, or however remote (if in esse at the time of the death of the intestate) shall have a portion of the inheritance. Thus, if I. S. die leaving a son, a Daughter, & two grandchildren, the issue of a son or Daughter deceased, the Grandchildren shall take a portion of the inheritance as well as the Son and Daughter: whereas by the common law the eldest son, only, or if he were dead leaving issue a son, or a Daughter, that son, or Daughter should have succeeded to the whole Inheri= =tance in exclusion of all the rest.

Another essential distinction between the common law rule, & ~~that~~ the rule in our laws, is this. That by the common law any Descendant of I. S. the person last actually seized, to whom the inheritance should have descended, if in esse, at the time of the death of I. S. although born at any remote period after that event takes place, may succeed to the Inheritance, unless barred by the Statute of limitations; whereas, by the Act of 1785. c:60. s. 11. no right to the inheritance shall accrue to any person whatever, other than the Children of the intestate, unless they be in being, and capable in law to take as heirs, at the time of the intestate's death. Thus, if I. S. have one son only, who dies in the lifetime of his father leaving two Daughters, and his wife ensient, or big with Child of another Daughter; and before the birth of such other Daughter I. S. the Grandfather dies. By the law of England the inheritance should descend to the two Daughters of the Son of I. S. as parceners, until the birth of the third daughter happened: and then such third daughter should succeed to

+ The rule in the civil Law is, "Qui in utero erunt, ita "fuere civili intelligentia in rerum natura "esse, cum de eorum commodo agatur.

And this may be carried so far, by the common Law, that the same estate may be frequently devested by the subsequent birth of nearer presumptive heirs, before it fixes in an heir apparent. As if an Estate is given to an only child, who dies, it may first descend to an Aunt, who may be stripp'd of it by an afterborn Uncle, on whom a subsequent Sister may enter, and who may again be depriced of the estate by the birth of a Brother. vi: Chr: notes on B. C. vol. 2. 208.

to one third part of the inheritance, as a Coparcener, with her sisters. And if such after born Child had been a Son, he should have had the whole inheritance in exclusion of his sisters: whereas, such after born Child under the provisions of the Act of 1785. would, I apprehend, be totally excluded from any participation in the Inheritance. For I understand the words of the Act, viz. "unless they be in being, and capable", according vi: 2. Bl: Com: 169. to the common law construction; viz, such as 1. Salk: 228. are already born. And that this is the true Con- 1. Inst: 29. b. = struction may be inferred from the provisions in favor of posthumous Children, contained in an Act to take the Benefit of a Remainder, as if born, & which the Stat: 10. & 11. W: 3. c: 16. which have been 1785. c. 62. likewise introduced in our own statute books, but do not extend to the Case here spoken of; posthumous Children, other than the Children of the intestate himself, remaining in the same condition with respect to inheritances, as they were, in respect to remainders, before the last mentioned Statutes.

Third general rule

3. If there be no lineal descendant, the Inheritance shall ascend to the Father; & other nearest lineal Ancestor of the intestate; unless there be collateral kindred in a nearer degree:

lineal male Ancestor, or ancestors; ~~[illegible]~~ ~~[illegible]~~ in preference to the lineal female ancestor or ancestors and collateral kindred in the same degree. ~~[illegible]~~ But the mother or other nearer lineal female ancestor, or collateral kinsman in the same degree or ~~[illegible]~~ their descendants shall be preferred to a more remote ~~ancestors, [illegible]~~ ~~[illegible]~~. lineal male ancestor, or ancestors.

Thus the Father shall succeed to the whole Inheritance in Exclusion of the mother Brothers & Sisters, & their descendants. — The Grandfather, in Exclusion of the Grandmother, Uncles & Aunts & their Descendants — and the Great Grandfathers, or Great Grandfather if there be but one, in exclusion of the Great Grandmothers, and all the collateral relations of the deceased, or their Descendants, in the same Degree — But the mother Brothers & sisters & their descendants in infinitum shall be preferred to the Grand=father, & so of the rest. — For we may remember, that according to the rules of Consangui=nity the Father, mother, Brothers, & sisters are all related to the Intestate in the same degree: & The Grandfathers, Grandmothers, Uncles & Aunts are in like manner related to him in the same degree with each other. And this preference to the lineal male Ancestor or Ancestors, is

the only preference which our law makes in favor of that sex: for in all cases of lineal descendants, or collateral heirs, no regard is paid to sex or primogeniture.

~~degree~~, ~~if such Ancestor be a male~~; in ~~which case such collaterals~~ or their descendants ~~shall be preferred~~; ~~or, in equal degree, if such Ancestor be a female; in which case the collaterals~~ or their descendants ~~shall be admitted to a portion of the inheritance~~.

Thus the Father shall succeed to the whole Inheritance in exclusion of the Brothers, and sisters, of the intestate. But these last, and their descendants in infinitum, shall be preferred to the Grandfather, and shall be admitted to ~~an equal~~ portion of the inheritance with the mother, if there be no father. For we may remember that according to the rules of Consanguinity the Father, mother, Brothers and sisters are all related to the intestate in the same degree.

2. Bl. Com: 206. 207.

This rule however is not universal: for in the Case of an infant, the acts of 1790. & 1792. introduce a very considerable altera=tion in it, of which we shall speak hereafter.

The ascendible quality communicated to real Estates by the Act of 1785. is diametrically in opposition to one of the fundamental Maxims of the common law, according to which Inheri=tance

✢ And here it may be proper to notice another departure from the rules of the common-law, for by that law, the lineal descendants in infinitum of any person deceased shall represent their Ancestor; that is, shall stand in the same place as the person himself would have done, had he been living. And their Representatives shall take neither more nor less, but just so much as their principals would have done: thus the Child, grandchild, or great grandchild (either male or female) of an eldest Son, or eldest Brother, or eldest uncle succeeds before the younger Son, & so in infinitum. According to which rule, wherever the Father, if alive would be the next heir, ~~[illegible]~~ his Child, (or Children if daughters) should represent him; that is to say should take neither more nor less than he would have done. But in this case the Children of a deceased Father do not represent him; but come into the Inheritance, jure propinquitatis, i.e. in their own rights, and not Jure Representationis, or in right of their Father. For the mother shall come in with them and shall have an equal portion of the inheritance with them; and if there be Children on the part of the Mother of the half blood to those on the part of the Father, they also shall be admitted into the Inheritance; so that the Children on the part of the Father do not take, the same; neither more nor less, that their father if living would have taken; therefore they do not represent him in this Case. And even in the Case of succession among the lineal descendants or collateral kinsmen of the intestate, we shall find that the Children sometimes claim jure propinquitatis (as being all in equal degree); though in some other Cases the right of Representation is admitted: as where ~~[illegible]~~ Nephews, or Nieces come into the partition with their Uncles & Aunts; as

2. Bl. Com: 208. 210. 212.
1. Inst: 11.

Inheritances should rather escheat than violate the laws of gravitation: ~~[illegible]~~
~~[illegible]~~
the female Ancestor, in the same degree ~~[illegible]~~
~~[illegible]~~
gives to the male = stocks.
~~[illegible]~~

✢ ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

✢ Collateral kindred in the same degree, of consanguinity with a female Ancestor, shall be admitted to an equal portion of the inheritance with her; and the descendants of such of them as are dead, shall be admitted to their Ancestors portion thereof;

Thus the Brothers & Sisters shall share the inheritance with the Mother; and if any of the Brothers or Sisters be dead, the Descendants of such Brother or Sister shall inherit that portion of the ~~inheritance~~ Estate to which their Ancestor if living, would have been entitled. In this latter Case, the Children of the deceased Brother or Sister are said to take per stirpes, by Stocks, but the Mother, Brothers & Sisters who are living take per Capita, or by heads.

+ And here it must be observed that if there be — two great grandfathers living, on the same side, each of them (if there be no person nearer to whom the Inheritance may descend,) shall be entituled to an equal portion of the moiety — but if there be only one, he shall have the whole moiety in Exclusion of the ~~Grand~~ other great grand=father's Descendants, or Wife though living: which is one answer to the Objections against the great number of heirs, who are admitted to share the inheritance: which Objection is further narrowed, by that clause which declares that no person, other than Children of the intestate, shall have any portion of the Inheritance unless they be in being at the time of the intestates Death; of which we have before noticed, and shall again have occasion to remark on.

But the act of 1792. c. 93. renders it at least doubtful whether this rule applies to the Lands acquired by Descent, or by purchase from either Father, or mother; which according to the strict words of that Act may be considered as excepted from the general Course therein prescribed. — If this be the Case, such Lands, if there be neither Child, Father, mother, Brother nor Sister, nor any of their Descendants must either go according to the Course of the common Law; or be liable to escheat, for want of heirs, or belong to the first Occupant. whereas Lands acquired by purchase, except from a Father or Mother, shall follow the Course here marked out.

Fourth ~~[illegible]~~ general Rule. by the Act 1785. c. 60.

which allows of no such participation between the paternal & maternal Stocks in any Case; but would rather that the Land should escheat than descend to any other than the blood of the first purchaser, how remote soever he may be from the person last actually seized.

4th. If there be neither Child, Father, Mother, Brother, Sister, nor descendant from either of them, the inheritance shall be divided into Moieties, one of which shall go to the paternal, the other to the maternal kindred, respectively, according to the foregoing rule; ~~respectively~~; but if there be no kindred on the one part, the whole shall go to the other part. — [This also is diametrically opposite to the rules of the common Law. ~~contrary~~]

Thus the Grandfathers, respectively, shall be preferred to the Grandmothers. Uncles, & Aunts, of the same side; & these last, & their descendants, shall succeed all together, in like manner as the Mother, Brothers, & Sisters, & their descendants should have done. +

~~Fourth~~ Fifth general rule

5th. Collateral heirs may be of the half blood only: but they shall only inherit half portions.

This rule is expressly contrary to the maxims of the common law, by which the half blood are wholly excluded from any portion of the inheritance, which shall rather escheat for want of heirs.

2. Bl. Com: 297.

+ But this rule is narrowed by the act of 1794 - c. 93. for if an infant die without issue having title to any real estate of inheritance, derived by purchase or descent from the Father from whom that neither the Mother of such infant, nor any issue which she may have by any person other than the father of such ~~issue~~ infant, shall succeed to, or enjoy the same or any part thereof, if there be living any Brother or Sister of such infant, on the part of the Father, or any brother or sister of the Father or any lineal descendant of them. And the same law is, if the lands were derived from the mother, mutatis mutandis.

But although a brother or sister of the half blood is in the Virginia excluded from any portion of the inheritance, an Uncle or Aunt, or more remote relation of the half blood is not.

If there be two Brothers & a Sister of the whole blood, and a Brother of the half blood, and one of the Brothers of the whole blood die, in this Case the Inheritance being divided into five parts. the Brother & sister of the whole blood, shall have two parts each. and the Brother of the half blood one, only. And, in this Case, if the mother had also been living the inheritance should have been divided into seven parts, of which she should have two, & the remaining five parts, be divided as beforementioned.

~~Fifth~~ Sixth general rule

6: Bastards may inherit, or transmit an inheritance on the part of their mother; and if the parents of a Bastard marry, & the Bastard be afterwards recognized by the Father, he shall inherit, or transmit an inheritance on the part of the Father.

This rule is also diametrically opposed to the common law principle, by which

1. Bl. Com: 459. Bastards, are rendered incapable of inheriting even from their mothers. — And this rule extends to all persons, who would have been Bastards at the common law, as being the issue of marriages deemed null in law,

Eighth general rule

8th. Where several persons succeed to the Inheritance at the same time, if they be all related to the intestate in equal degree, they shall take per capita: i.e. by persons but if part of them be more remote than the others, the more remote shall take per stirpes - that is to say the share of their deceased parent. + But the

In the former case we find that the jus representationis, or right of representation which is one of the fundamental maxims of the common law is entirely done away. For by the common law, the representative of any person deceased stands precisely in the same place that the Ancestor himself, if living would have done - Thus if John Stiles die leaving his Grand Daughters three the Children of one Daughter deceased, two Children of a second Daughter deceased, & one of a third Daughter deceased, in this Case the Inheritance by the law of England should have been divided into only three portions, of which the three Daughters of the eldest Daughter should have had one, the two Daughters of the second another, and the Daughter of the third the third portion: but by our Law the Inheritance shall be divided into six portions, of which each of the Grand-daughters shall have one. And here with the Roman Law agrees. — But where some of those entitled to partition are more remote from the Intestate than the rest, in this Case The representatives

+ But no right of representation shall be admitted, where the Inheritance is directed to go to the Lineal Ancestor, or Ancestors of the Intestate, if living; but it shall descend to the surviving Lineal Ancestor, or Ancestors, or such Collateral Kinsmen, as shall be entitled to partition according to the foregoing rule.

such issue, by the provisions of this Act, as also of the Act of 1788. c. 32. being declared legitimate.

9th (Gen. rule VII.) If there be no kindred either on the part of the father, or of the mother, the Husband or Wife of the intestate shall succeed to the inheritance: and if the Husband, or Wife be dead, the inheritance shall go to his or her kindred, as if he or she had survived the intestate, & the Estate had descended from such wife or husband.

This also is an express deviation from the Maxims of the common law, by which the husband, or Wife, as such, can never succeed to the inheritance of each other. It is still further removed from the principles thereof in this instance, that a Stranger to the blood of the intestate may by possibility be his next immediate heir. Thus if

+ If J. S. be an alien, and afterwards be naturalized & purchase land, & marry, and his wife die, and J. S. afterwards die without issue, and without heirs, the Men aliens, the next of kin to his wife deceased, although utter Strangers to his blood shall succeed to his Inheritance.

10th. The lineal descendants in infinitum of any person deceased shall represent their Ancestor, that is, shall stand in the same place as the person himself would have done had he been living at the death of the deceased & entitled in the lineal ancestor

+ The representatives of any person deceased who if alive would have become entitled to the possession shall take neither more nor less, but just so much as their principals unless such principal be also the ancestor of the intestate would have done. As if there be two sisters Margaret & Charlotte, and Margaret dies leaving six daughters, and then John Stiles the father of the two sisters dies without other issue, these six Daughters shall take among them exactly the same as their mother Margaret would have done had she been living: That is a moiety of the Lands of John Stiles in Coparcenary: and this also by the common laws, with which

2. B. C. 217. ours still agree in this respect — So if John Stiles had had two sons, only, & one had died in his lifetime, the issue of such son should have succeeded to his Fathers portion of the Inheritance by virtue of the Act of 1785. c. 60. s. 14 civiz. But if John Stiles had died without any Descendants, or lineal Ancestor, his Brothers & Sisters, Uncles & Aunts, should not take as representing their deceased Father or mother, but in their own rights, as next of kin to the intestate. Therefore if J. S. die leaving a Brothers of the whole Blood on the part of his Father, deceased, & two of the half blood on the part of his mother deceased, they shall take equal portions, of the Inheritance instead

~~of the ancestor of the intestate.~~

~~The former part of this rule agrees with~~ + ~~The latter arises under~~

2. Bl. Com. 216. ~~the common laws~~ ~~that~~ ~~the~~ ~~sect~~ ~~of the Act of 1785. c. 60. which, in case of the Fathers death gives to the Mother an equal portion of the inheritance with the Brothers and Sisters. & also the Grandmothers shall have an equal portion with the Brothers & Sisters. — And this rule is further guarded by the following~~

Eighth Ninth general rule.

Q. 11. No right to the inheritance shall accrue to any person whatsoever, other than the Children of the intestate, unless they be in being, and capable in law to take as heirs at the time of the intestates death.

This rule was sufficiently explained under the second here laid down. ~~under the 5th~~ But although this rule excludes posthumous heirs in general, from the succession, yet we must be careful to remember that it does not extend to the Children of the intestate; ~~person dying~~ ~~intestate~~, who are still further secured by the Act of 1785. c: 61. which declares that every nuncupative and testamentary made when a testator had no Child living, wherein any Child he might have is unprovided for or not mentioned, if at the time of his death he leave a Child, or leave his Wife

instead of the whole going to the Brothers on the part of the Father jure representationis; or the portion of the mother being divided between her two sons, as representing her. — And this Doctrine of the right of representation is Still further narrowed by the next rule.

8th: No right to the Inheritance &c. pa: 11.

+ Children pretermitted in their fathers will further provided for 1794. c. 170.

‡ A consequence of this rule is, ~~that~~ I presume, is that as all the persons make but one heir, the act & entry of one shall enure as the act & entry of the whole; and the heirs of him who was never actually in possession shall nevertheless be entitled to partition with the rest, in the same manner as if he had actually entered into the lands in his life time, as was before observed.

12.

ensient of a Child which shall be born, shall have no effect during the life of such after born Child, and shall be void unless the Child die without having been married, or before he or she shall have attained the age of twenty one years. — also, Posthumous Children if unprovided for by settlement, and neither provided for, nor disinherited, but only pretermitted by the Testator shall succeed to the same portion of the + fathers Estate, as if such father had died intestate.

10: ~~9th~~. Where more than one person succeed to the inheritance ~~at the same time~~, they shall take as parceners, and not as joint-tenants, or tenants in common.

~~Fourth~~ Tenth general rule.

One of the Consequences of this rule is the doctrine of succession in stirpes, or represen=tation as explained under the 7th head. and more fully in 2. Bl. Com: 217. 218. to which I refer you, & also to the Act of 1785. c. 60. S. 14.

‡ A ~~second~~ consequence of this rule is that the heirs may sue & be sued jointly for any matter respecting their joint in Inheritance; which Tenants in common can not. Co. Litt: 200. 2. Wilson 232. 2. B. C. 194.

2. B. 6. 188. Co. Litt: 164.

1790. c. 13.

A ~~second~~ further Consequence is that they may have an Action of waste agt each other, which in the Case of joint-tenants may be doubtful. Moreover the jus accrescendi

‡ The correlative rule of the common law is, that upon failure of issue of the last proprietor, the estate shall descend to the blood of the first purchaser; or that it shall result back to the heirs of the body of that Ancestor, from whom it either really has, or is
2. B. C. 223. supposed by fiction of law to ~~have~~ originally descended. A consequence of which was, that if the Lands descended from the fathers side, no relation of the mother, as such, ~~shall~~ could ever inherit: because he could not possibly be of the blood of the first purchaser; and vice versâ: But
Ib: 236. the Lands shall rather escheat to the Lord of the Feud, than violate this fundamental principle of the feodal System. And even where Lands descended from the first purchaser himself, the common law still preferr'd a ~~most~~ remote collateral relation on the part of the Father, how far so ever removed, to the Brother of the half blood, or other nearest collateral; relation on the part of the mother: which absurd preference, as it has no foundation in reason, or in nature, our law has carefully abolished, not only in the last Case, here spoken of, but in all cases whatsoever. And this upon the soundest reason and principle I conceive; for the right of disposing of Property after one's death, being once admitted, it is most reasonable that the law should prefer those relations of the deceased, which he himself would most probably have preferred, if he had made a will. Now the Inheritance being once indefeasibly vested in ~~any~~ person, it would seem that the disposition of the Law

or right of survivorship between joint: Coparceners, tenants doth not take place among Coparceners. And although this right of survivorship be
1786. c. 60. now abolished, yet the Act by which that rule was established, was posterior in it's Commencement to the law of Descents, a few months – it took effect July 1. 1787.
~~Tenth~~ Eleventh general rule } 11th, ~~[illegible]~~ Lastly. – The person ~~[illegible]~~ having Title to any Estate of Inheritance is considered as the first purchaser; that is to say, Any relation either in the paternal or maternal line, ascending, or collateral, may succeed to the inheritance subject to the preceeding rules, without regard to the Blood of that ancestor from whom the Estate was derived: ‡ ~~[illegible]~~

Exceptions. ~~[illegible]~~ all o[f] the preceding rules are drawn from the Act of 1785. c. 60. But by the alterations made by ~~[illegible]~~ the Act of 1790. c. 13. The rule is materially changed; but ~~[illegible]~~ may be thus laid down. – "If an infant die without issue having title "to an inheritance derived by purchase, or descent "from one parent, the other parent shall not "succeed to the inheritance, or any part thereof, "if there be living any Brother or Sister of such "infant, or any Brother or Sister of the parent from "whom the inheritance was derived, or any lineal "descendant of either of them."
vi: 1789. c. 9. Commencement of Laws. This Act had its commencement on the first day of March 1791. – it underwent ~~[illegible]~~ an alteration

laws ought to conform to what may be presumed to be his will; and not to the will of any other person who may formerly have possessed it, and either actually hath, or may be presumed to have, exercised his will over it, already.

Thus having collated all the fundamental rules of our law, & compared them with those of the former rules of inheritance in this Country, in lieu of which they have been substituted; and finding an irreconcileable opposition in every one of the latter, to those of the former, we may I apprehend be justified in concluding, that by the Act of 1785. c. 60. the common law rules of inheritance were wholly, and entirely abolished, ~~in Virginia~~, and an entire new system of Jurisprudence, ~~was~~ thereby substituted for it in Virginia; the grounds ~~and~~ foundation of which are wholly incompatible with those Rules & maxims which were generated by, an interwoven with the feudal system; of which it appears to have been the policy and intention of the framers of our laws, to eradicate every Germ, and obliterate every former trace.

And how we may be permitted to remark, that with such extreme caution, and perspicuity were the rules of this Act framed, that I have never been able to suppose any case, whatsoever, arising under it, which might not be solved immediately, without difficulty, except one, which possibly never may happen. And that is where an Alien becomes naturalized, & dies without heirs of his own body, having been married to citizens of the Commonwealth, both of whom have died in the Lifetime of their children, and both of whom have died in the Lifetime of their parents. In this case it might perhaps be doubted, whether the heirs of both wives should have the inheritance; though that doubt would probably soon be over-ruled, in favor of the heirs of both, since it would perhaps be difficult to assign any good reason for preferring the heirs of the one, to the heirs of the other: and our laws from partialities

an alteration by an Act, ~~passed~~ on the 8th day of December 1792. — during the period of its existence it is not improbable that many cases occurred which render it worthy of being understood at this time. Its operation and effect will however be extremely difficult to trace: we may hazard conjectures; but they must be mere conjectures on the subject.

Let us put this case.

John Stiles, the propositus, being an infant dies without issue, having Letters to Lands derived to him from his mother Lucy Baker deceased; his father Geoffry Stiles, his paternal Grandfather George Stiles, his maternal Grandfather Andrew Baker, and several maternal Uncles & Aunts being living; but having neither Brother, nor sister of his own living. — How will the inheritance descend.

I. By the Act of 1785. Geoffry Stiles, his Father, should have had the inheritance, not only in preference to all the relations above mentioned, but even to the Brothers & Sisters & Mother of the infant if there had been such living. But by the Act of 1790. "the Father shall not succeed to, or enjoy the inheritance if there be living any Brother or Sister, or any Brother or Sister of his Mother, or any of their descendants: and here are Brothers & Sisters of the Mother; therefore the Father in this case can not inherit. But can the

note.

+ By the Statute 1. Jas 1. c. 4. S. 6. Any Child sent beyond Seas for a popish education, was disabled from inheriting, having, or enjoying any Lands within the realm of England; but the Statute contained no declaration who should have the Lands. And thereupon a subsequent Statute, 3. Jas 1. c. 5. S. 17 was made, declaring that his next of kin, not being a popish recusant shall have & enjoy the Land, until such time as the person beyond Seas shall conform himself to the Injunctions of the Statute.

the Brothers & Sisters of the Mother take the Lands? — I should apprehend they can not.

1. Because by the general rule prescribed in the Act of 1786. both the Grandfathers shall succeed, each to a moiety of the Estate, before the Uncles & Aunts shall be admitted to any portion of it. — Now the Grandfathers are not mentioned in the Act of 1790. Of course I should conclude that the order of succession, as to them, remains unaltered: for if in the case now put, the Father had died in the Lifetime of the infant, the Inheritance should have gone immediately to the two Grandfathers by Moieties.

2. Because here is no declaration contained in the law that the Brother or Sister, Uncle or Aunt shall succeed to the inheritance, notwithstanding the priority established in favor of the Father & Grandfathers by the Act of 1785. but merely a declaration that the Father shall not succeed to, or enjoy the inheritance, if there be such persons living, as this Case supposes: this disability is merely personal, & may be temporary, perhaps: + for if the maternal Uncles & Aunts should die, there seems no longer any reason for excluding the father

+ 4: A fourth reason is, that there is no ground upon which we can possibly suppose that the Laws meant to prefer the maternal Uncles, & Aunts, in this Case, to the maternal Grandfather, whose priority is established by the Act of 1785. and not taken away by this Act; — for although it should be alledged that the Laws for good reasons meant to exclude the paternal — Grandfather, yet, those reasons could never be applied to the maternal Grandfather in this Case. No Implication therefore necessarily arises in favor of the maternal Uncles & Aunts; and without an absolute necessity, no Implication is ever to be admitted.

father from the inheritance; a reason which certainly had its commencement in that unnatural principle mentioned by Lr Ld: Coke, that to commit the guardianship of a Child to his next heir, was quasi Agnum committere Lupo ad devorandum. 16.

3. A third reason why the maternal Uncles & Aunts should not succeed to the inheritance in this Case, is, because under the Act of 1785. the paternal Uncles & Aunts shall come into the inheritance with them, taking one moiety thereof, whereas if the maternal Uncles & Aunts were to succeed alone, they would take the whole Inheritance. And according to that Act, where the first degree of Consanguinity is joined, either lineal or ascending, without heirs, the inheritance shall go by moieties to the most remote relation on either side, before the whole shall unite in either the paternal or maternal Stock. And here is nothing in the Act of 1790. which abolishes that rule. +

II. If the maternal Uncles & Aunts can not take the Inheritance, can the Grandfathers inherit it? 2

I apprehend not. The words of the Act of 1785. are, if there be no Father, then to the Mother &c. If there be no Mother &c. Then to the

Grandfathers

† But such an implication is altogether inadmissible; for even in Wills, no implication is ever allowed which is not absolutely, & indispensibly necessary. Now the implication in favor of the Uncles & Aunts, succeeding in preference to the Grandfathers, is full as strong, as that the Grandfathers shall succeed notwithstanding the Life of the Father — and that the Law did not intend to prefer the Grandfathers to the Father is evident from this; that if there be neither Children, nor Brethren of the mother, nor any descendant from them living at the death of the Infant, the Father shall be heir to the Infant in preference to the mother's Father, although he may still be in Life: and we must be wholly at a loss for any principle, upon which the Father's Father, shall be preferred to the Father himself.

† for the word then. most clearly postpones the event which the Law directs, to the Event which it contemplates; viz: the Death of the Father.

Grandfathers; which seems to be equivalent to this — "if there be neither Father, nor mother," &c. † but here is a Father: it is true he can not take the Estate during the life of his Wife's Brothers, or Sisters, or any of their descendants then in being: but as we have before observed, here is no provision in the Law that the inheritance shall vest in the next heir, & without such a provision the Grandfathers must, I presume be excluded. To this it may be answered, that the father being pretermitted by the Law, & there being neither mother, nor Brother, nor Sister, it is the same as if there were neither Father, nor mother &c and therefore the Grandfathers should take presently, by implication, notwithstanding the Life of the Father. †

III. But let us put this Case, That the Infant's mother, from whom the Land was derived by purchase, were still in Life, and that there were also Brothers & Sisters of the Infant living, the Father being also living. Should the mother Brothers & Sisters have succeeded in that Case jointly? 2

Here two, I should presume they could not, the father being still living, until whose death by the Act of 1785. the Title of the

Mothers

Mother, Brothers & Sisters could not accrue. Now, by the Act of 1790. the parent from whom the Land is derived by purchase, if he or she survive the infant, is not excluded from the succession, though the other parent be. From hence I infer, that the Act does not give the estate by implication to those relations, during whose life, the parent from whom the land was not derived, is incapable of inheriting — As if John Stiles the Father give Lands to his Son, an Infant, in fee, and the infant die without issue under age, during the lifetime of his Mother, here the Father should presently succeed to the Inheritance, notwithstanding the life of the Mother, in exclusion of the Brothers & Sisters of the infant. — And in this Case, if the Lands had been ~~derived from the~~ given to the infant by his Mother and the Father should die in the lifetime of the infant & then the infant die, the Mother should enjoy the Inheritance in preference to her Brothers & Sisters: yet if the Father had survived the Infant the succession of the Mother according to the Act of 1705. must have been suspended until the death of the Father. The same reasoning will apply to the

+ In all these Cases the obstruction to the descent occa=
= sioned by the life of the Father, who is general heir
to his Son, seems to resemble those Cases at common
law, where the Succession of a special heir may
be obstructed by the life of a general heir. Thus
the Succession of an after-born Son of a person ^attainted ^pardoned
is impeded by a Brother born before the Attainder.
For although the elder brother can not inherit any
Lands to which his father if living might have been
heir, because his blood is corrupt, yet the younger
Son is not benefitted thereby; but the Lands shall
rather escheat for want of heirs, than descend
to the younger Son, whilst his elder ^Brother, or any of his
Issue, are in life: and yet if the elder brother had died
without issue the younger might well have inherited.
2. Bl. Com: 255.

the Grandfathers & Grandmothers, under the Act of 1785. hence I conclude that no Estate by implication is raised in favor of the Uncles and Aunts, by the Act of 1790. — but that they are incapable of succeeding to the Inheri=tance during the life of the Grandfathers, & shall not take it exclusively of, but in common, with the Grandmothers. Thus new perplexities seem to spring out of every new Case; nor can we resort to any one rule that presents itself to my mind, "unless we suppose the "Inheritance to be in abeyance during the joint "lives of the pretermitted parent, and the person, "~~all his descendants~~ during whose life or lives "that parent is excluded from the Inheritance."

1.) The fee simple, or inheritance
2. Com: 107. of Lands & tenements, says Blackstone, is generally vested, & resides in some person or other. Yet sometimes the fee may be in abeyance, that is in expectation, remembrance, & contemplation of the Law. Thus in a grant to John for life, and
Vearne Contra afterwards to the heirs of Richard, the Inheritance is
4) Vearne 307. 315. in abeyance during the joint lives of Richard & John.
So if a Devise be made to A. in fee, and if A. die ^with age, ^or without Issue at the time of his death, then to the right heirs of B. in fee. This Limitation I presume would be good, by way of executory devise, and if B. should survive A. the ~~Estate~~

3)

+ where a Feoffment was made to the use of a man and such wife as he should afterwards marry, for term of their lives, and he afterwards married, it was held that the husband & wife had a joint Estate, though vested at different times: because the use of the wife's Estate was in abeyance & dormant till the Intermarriage, and then had relation back & took effect from the original time of the Creation. Dyer 340. 1. Rep: 101. - 2. Bl. Com: 182.

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He could descend to the Heir at the contingency happened. vi: infra.

Fearne 306.

Fearne 317.

1. Eq: Ca: 188.
Fearne 318.

Inheritance would remain in abeyance during the life of B. for it could not be known to whom the inheritance should descend by virtue of that devise, until the death of B. nam non est Hæres viventis: for it is not necessary that an executory devise should vest immediately upon the determination of the precedent estate, and being limited to take effect upon an event, ~~which must take effect happen during a life in being~~ which depends upon a life in being, it is good. As was adjudged in the Case of Taylor v Biddal - cited in Fearne 318. 1. Eq: Ca: 188. c. 11.

In this Case the testator having parted with the whole fee, by the first devise to A. in fee, nothing remained to his heirs, who therefore upon the death of A. living B. could have no right to enter. It may be alledged indeed, that the heir of A. might enter & hold the Land until the death of B. for inasmuch as the fee was granted to A. & his heirs, his heirs after his death should have the Land, until it could be known who should succeed thereto, as the right heir of B. —— But what if the devise had been to A. in fee; but if A. die without issue under the Age of twenty one years, then to B. for Life, and after the death of

of B. to the right heirs of C. — now if A. dies without issue under the Age of twenty one years, living B. the whole fee will pass from ~~vested~~ A. & his heirs, at once, and B's Estate for life immediately commence. Then if B. die in the lifetime of C. in this Case there is no person in whom the Estate can possibly vest. — For the Testator ~~had~~ parted with the whole fee, as in the former Case, and the Estate of ~~A~~ & his heirs was spent, upon the Commencement of B's Life estate; and B's life estate being also spent, before it can be known who is entituled to the Inheritance, on the death of C. it must remain in Abeyance until that Event takes place. — Yet this is a good Executory devise, for it is a rule that wherever one Limitation of a devise is taken to be executory, all subsequent limitations must likewise be so taken.

Reeve 393, 4. Carth: 310.

2)

When a person dies, the freehold of his Glebe is in abeyance, until a Successor be named, and then it vests in the Successor. Litt Sect: 647.

Litt: s. 647.

And according to Littleton the fee simple of all Glebe Lands which are granted to a Parson & his Successors, remains always in Abeyance;

1: Inst: 8. 6. for by a Grant to a sole Corporation & his successors the fee passeth out of the Grantor, yet the person, or incumbent himself hath only a freehold, & not the fee simple in him — nor is it in any other: but the right of the fee simple is in abeyance. Litt: Sec: 646.

Litt: s. 646.

If an Earl whose dignity is limited to him & his heirs dieth having issue one Daughter the dignity shall descend to that Daughter.

Co. Litt. 165.

But if he have two ~~or more~~ the dignity shall be in abeyance, till the King shall declare his pleasure, for he may confer it on which of them he pleases. — But if he do nothing with it, & one die, the survivor I apprehend should ~~take~~ succeed to the dignity, for here is no longer any uncertainty who is entitled to it.

2. B. C. 217.

In all the Cases which we have before put there is no person to whom the inheritance can descend, during the life of the pretermitted Ancestor. Yet there is one Case, in which I presume the Inheritance would not be in abeyance: and that is, where an Infant having Lands by descent or purchase from his Father deceased, shall die without issue, having a Mother, Brothers & Sisters, living.

Here I should apprehend the Brothers &

sisters, on the part of the Father, or their descendants, should be presently entitled to the whole estate: for the Mother, Brothers & sisters succeed all together, at the same time, and on the same event, & not successively to each other, as to the Father; now, inasmuch as the act of 1790. totally excludes the mother from any part of the inheritance, the Brothers & Sisters, who come into partition with her by the Act of 1785. shall take the whole. But it would have been otherwise had there been no Brother or Sister of the Infant, nor descendants from either of them, but, only, Brothers & sisters of the Father, from whom the inheritance descended; for these, being postponed by the act of 1785. not only to the Mother, but also to the Grandfather; and being also wholly excluded by that Act from one moiety of the Estate, if there be any kindred on the part of the Mother, the inheritance for the reasons above assigned, would during the joint lives of the Mother, & the paternal Uncles & Aunts, or such of them as were in esse at the time of the infants death have

remained in Abeyance.

Here we must remember that the utmost limit for which the inheritance, under this construction, can remain in Abeyance, is for a Life, or Lives, in Being, at the time of the infants death. For if there be no Brother nor Sister, nor Uncle nor Aunt of the infant, nor any of their descendants in being, at the time of the infants death, the parent shall immediately succeed to the inheritance. And when the parent dies, the inheritance shall go to the person next in the order of succession according to the Act of 1785. — If on the contrary, the Brother, or Sister &c. die without descendants, here the Obstacle to the parents succession seems also to be removed.

These points however remain to be settled by the Courts of Judicature. ~~The Act having [illegible] alterations~~ It will now be proper ~~before we consider the [illegible]~~ to notice one or two particular Circumstances (not yet touch'd upon) arising under ~~the Act [illegible]~~ this Act

1. By this Act, one of the rules of the common

common law, by which all purchased Lands, were considered in the same light as feudum novum, (to shield it against antiquum) & therefore that ~~it was impossible~~ any heir, whether ex parte paternâ, or maternâ, may succeed to the Inheritance, is abrogated, in the case of an infant, so far as relates to his next heir in the descending line; whereas before the Act of 1790. all estates derived by descent were assimulated to estates taken by purchase, which rule is in this instance reversed. Lands purchased of the Father or Mother, being put upon the same footing with such as are derived by Descent.

2. Although the Father or Mother be excluded from the inheritance the Brothers or Sisters of the half-blood are not: nor are more remote collaterals of the half blood, the grandfather against mother, or ~~to bar paternal kindred~~ not even those of the pretermitted parent excluded. Hence we may conclude that the legislature considered only the danger which might arise to an infant from his Guardian being his next heir, without recurring to the ~~former~~ principle of the Common Law, that the ~~descent was cast~~ ordained

~~take the whole Inheritance immediately, to the exclusion of them of the half blood. But if there were neither Brother nor Sister,~~ Inheritance should be confined to the blood of that parent from whom it was derived.

Hactenus.

1792. c:

But by the Act of 1792. c: 93. this last rule was altered; the Brothers and sisters of the half blood to the infant on the part of the pretermitted parent, being, also, in like manner, excluded, from the Inheritance, if there be living any Brother or Sister of such infant on the part of the parent from whom the Estate was derived; or any Brother or Sister of such parent, or any descendant of either of them. —

The same rules & Conclusions which in apply in the Case of a pretermitted parent seem also to apply in the Case of the Brother and sister of the half blood, under the fifth and sixth Sections of this latter Act, if there be only Brothers & sisters of the infant on the part of the other parent.

But if there be neither mother, nor Brother, nor Sister of the Infant ~~on the part of the pretermitted parent, nor of the half blood~~, nor any descendant of them, by the Act of 1785. the inheritance should hence been divided into two Moieties, one of which

Should

should go to the paternal, ~~stocks~~. & the other to the maternal, stocks.

But the Act of 1792. sect: 7. has introduced a new difficulty, by declaring that if there be no mother, nor Brother, nor sister, nor their descendants, and the Estate shall not have been derived by purchase or Descent from either the father or the mother, then the Estate shall be divided into Moieties. &c.

Let us put this Case.

If an infant die without issue having neither Father, Mother, Brother, nor sister, nor any of their descendants, how shall the inheritance descend.

By the common laws the nearest collateral relation (of the whole blood) on the part of the Father, unless the lands descended from the Mother, & then the nearest collateral relation on her part, should take the inheritance according to the order of primogeniture, & succession to the male stocks in exclusion of all others.

In the Act of 1705. two principles occur. First that the lineal Male Ancestor shall be preferred to collateral kindred in the same degree. — and, Secondly, That all the collateral

memo to revise this note } +

I presume not. — For the Act of 1789. c. 9. which declares that whensoever one law, which shall have repealed another, shall be itself repealed, the former law shall not be revived, without express words to that effect, prevents us from adopting this conclusion, because the Act of 1785. was, as has been shewn, a total repeal of the common law; and the Act of 1790. c. 13. must be construed accordingly — for by that Act one positive rule is substituted for another positive rule in the Act of 1785. both which ~~may~~ might well have stood together if the legislature had declared to whom the Lands should descend, without any recurrence to the common law. Now ~~by~~ the Act of 1785. has repealed the common law so far as respects any preference to the [next] eldest ~~[illegible]~~ heir male ~~of the whole blood~~, in all Cases whatsoever, and has substituted younger Brothers & Sisters [and their descendants], as Coheirs with elder Brothers; and Uncles, Aunts, ~~[illegible]~~ & Cousins, [on both sides] as coheirs with the eldest uncle on the part of the parent from whom the Lands are derived; and the latter Acts plainly do not mean to disinherit them. — For if J. S. die [without Issue] having title to Lands on the part of the Father, and having two Brothers, & two Sisters on the part of the Father, and one Brother [and sister] on the part of the Mother, and the Mother still living, in this Case, it will not be ~~denied~~ alledged that the elder Brother of J. S. shall take the whole Estate by the common law. And if he can not, and the Father

collateral kindred in the same degree shall come into the partition [pari passu, or] together, without regard to sex, or primogeniture. A third principle in that Act, is, that after the first degree of Consanguinity be passed, without finding some person in whom, or in whose Descendants the Estate shall vest, according to the rules of ~~that act~~ [thereof], the Estate shall be divided into moieties. But this principle by the Act of 1792. being subverted in the Case of an infant, how are the two former to operate. — Shall the whole Inheritance go to the Grandfather of the Infant, on the side from whence the Estate ~~were~~ [was] derived to him? Or shall it go to his Uncles & Aunts, on the same side generally, according to the rules of parcenary, established by the Act of 1785? Or lastly, shall it go to the ~~next~~ collateral heir according to the Course of the common law? Here we seem to have lost our Clue. The Act of 1785. totally abolished the common law principle in this Instance. Has this Act of 1792. revived it? + ~~[illegible]~~ For the ascent to the Grand father being

+ But suppose the estate had not ~~been~~ descended but had been purchased by from the onother, could the common law principle be revived in that case. If so, the relations on the part of the father would take in exclusion of those ex parte materna and in contradiction to the apparent intent of the act of 1792.

Father be dead, then if the Brothers & Sisters must come into the partition with him, be cause they were not intended to be disinherited, they must take under the Act of 1785. as being still in force; and if the Father be alive, he shall take under that Act, in preference to them: so that the common Law can not be revived in that case. But if the Lands in this Case were derived from the mother instead of the Father, the Brother on the part of the mother could not take the Lands by the common Law for the reason above given; neither could he take it under the Act of 1785. in parcenary with his Sister, for during the life of ~~his Father~~ Mother she is entitled to a portion with them, of Lands purchased of herself.

being coupled with the partition of the Estate into moieties, it would seem, that this clause of the Act of 1792. which prevents the partition of an Infant's land, in the Case here put, would controul the ascent to the Grandfather. — And not only controul the succession in that instance, but in all others, which were by the Act of 1785. to take effect after the partition into moieties. — And this being the Case, it would seem that if the succession be not according to the course of the common Law; + which ~~must~~ must be considered to be in Abeyance.

Another difficulty may possibly occur under this clause, which is, whether the rule contained therein be not general, or whether it be confined to the Case of Infants Lands, only. — The words of that clause taken seperately & independantly of the two preceeding ones, are general. And had the clause in the Act of 1785. stood as that of 1792. does, I should have concluded that it ought to recieve a general Construction and Application to all Cases whatsoever, whether of Infants or Adults. But taking it as connected with the Act of 1792. as altered by that

that of 1792. ~~In which case it seems probable~~ that it was not the intention of the legislature to extend its application beyond the case of Infants: for if it were to receive a different construction, the whole system contained in the Act would be so deranged & perplexed†, that it would scarcely be possible to reconcile one part of it to another. I shall not take upon me to make any further remarks upon the effects produced by these Alterations, except to shew in what cases the Acts apply, which will be more readily known by shewing in what cases they do not apply.

1. They do not apply, I presume, in any case but where an Infant dies without issue, having title to any real Estate of Inheritance.

2. They do not apply if the Lands be derived by Descent or Purchase from any other person than a deceased parent; ~~or if the Estate be derived by Descent from the Mother of such Infant~~. For the words are, "derived from the Father" &c. Therefore if there be Grandfather, Father & Son, and the Father die, whereby Lands descend to the Son, and then the Grandfather dies, whereby other Lands

† For if a Man had Lands derived from his Father, they should go to the nearest collateral heir at common Law, on the part of the Father, in exclusion of all others, whilst the Lands purchased by himself should go in the course directed by the Act of 1785.

Lands descend to him on the part of the Father, yet these last Lands are not within the Acts. I presume, inasmuch as they did not descend from the Father.

But if there be a Father, 2 two sons, & the Father dies, and then one of the sons dies, & then the other son being stile an infant dies, in this case it may be doubted, whether if Lands had descended from the Father to one of the sons, & from him to his Brother, they ~~had lands~~ would not have been within the Act; inasmuch as they descended mediately from the Father to the second son, though immediately to the first; & the reason of the law in both cases seems to be the same. — Ides Decare.

Hackensack revised

I have before taken notice that the Act of 1785. took effect on the 1st day of January 1787. — that the Act of 1790. commenced on the first day of March 1791. It remains only to take notice of the commencement, suspension, and effect of the Act of 1792.

By a clause in that Act it was to commence from the passage, which happened on the 8th Day of December 1792. — it contained a repealing clause, which, I presume took effect immediately, so as to repeal both

† In The Case of Harrison et al vs Allen, Wythes reports, pa: ~~[illegible]~~; ~~[illegible]~~ the Chancellor decided that the Act of 1785. c. 62. was not repealed by the Act of 1792. c. 93. — or if it were repealed, yet it was resuscitated by the Act suspending all the public Laws of that Session — c. 150.

But the General Court, in a parallel Case adjourned from Prince Edward District Court, decided, contrary. This it is true was a Criminal Case. But in other respects, there was no difference between the two Cases. Ephraim Potters Case †. In the General Court nov.r term 1795. — Wm Baker's Case † April 10. 1794. had been previously decided by Judge Nelson & Tucker, in the same manner, at the Winchester District Court.

† my note book No. 5. pa: 35

† my Note book No. 3: page 36.

See those Cases at large in my note books. — and when this book shall be transcribed, it will be proper to insert them here at full length, together with the Case of Harrison v Allen.

The Court of appeals, however, in another Case, depending upon the same point decided, that —

both the Act of 1785. & that of 1792. im= mediately. On the 28.th day of the same month the Assembly passed "an Act declaring what Acts of that Session should be imme= diately in force, & to suspend the Operation of all other Acts passed during that Session of Assembly which are of a public and permanent nature" — which declares that the Operation of all the Acts passed during that Session of Assembly, which are of a public & permanent nature shall be, & the same are thereby suspended until the first day of October 1793.

c. 29. of the Sessions Acts as published Edn 1794. c. 150.

There is a proviso in which the titles of several Acts containing similar clauses directing their immediate Commencement are enumerated, & the Acts excepted, out of the general enacting clause above recited, but the title of this Act is entirely omitted.

In consequence of this Oversight, perhaps the common Law which had been (if I may so express it) repealed by the Act of 1785. ~~[illegible]~~ may have been restored in full force from the 28.th day of December 1792. to the first day of October 1793. †

†B. The Act of 8. Geo. 2. (1734.) c: 6. is not in any of the Editions of the Laws of Virginia, except one, that I have ever seen. — In Meures Abridgement pa: 202. Title Intails, there is a transcript of Sect: 6. which does not contain some of the directions in the Act of 1748. And upon that difference the title to some lands whereon an Ejectt. was depending between Tho. Adams junr. & — Boughton, was decided in K. & 2. District Court Septr. 1792.

The following summary may not be without use.

1st. From the 25th day of Octr. 1710. until August 1734. the 22d day of ~~October, 1748~~. no estate tail in lands or tenements could be docked by fine & recovery, or by any other means whatsoever except by Act of Assembly.

9. Ann. c: 13. 1710

8. Geo. 2. c: 6. 1734.

2d. After the 22d day of August 1734. ~~October 1748~~. Estates tail in Lands not exceeding £200. Sty in value, & not being parcel of, or contiguous to other entailed lands of the same party might be docked by writ of ad quod Damn: but Estates above that value could only be dock'd by Act of Assembly.

8. Geo. 2. c. 6. 22. G. 2. c: 1. 1748.

3d. All Tenants in taille of Lands &c on the seventh day of October 1776. were thenceforth declared to hold the same in fee simple.

Oct: 1776. c: 26.

4th. After the same period all limitations of an Estate of inheritance which before that time as the law was, should have created an Estate tail, should thenceforward be construed to have created an Estate in fee simple, ~~in the person~~

1785. c. 62.

5. The common law rules of inheritance were wholly abrogated, and the succession

1785. c. 60.

to real Estates according to the rules
contained in the Act of 1785. c: 60. took
effect on the first day of January 1787.

1786. c. 60.
96: c: 115.

6. The jus accrescendi between Joint=
=tenants of Lands, &c was abolished on
the first day of July 1787. by the Act of
1786. c: 60. 115.

1790. c. 13.
1789. c. 9.

7. The Act of 1790. c. 13. whereby the
order of succession to the estates of Infants
was in certain Cases altered took Effect
on the first day of March 1791.

~~1792. c. 150.~~
~~2do 1794.~~

8. That Act, as also the Act of 1785.
c: 60. were repealed on the 8th day of
December 1792. — On which day

1792. c. 26.

9th. The Act of 1792. c: 93. took effect,
but was suspended on the 28th day of
the same month.

96:

10th. From the 28th of December 1792.
to the first day of October 1793. the Common
law rules of Inheritance again prevailed
in Virginia, by the suspension of the Act of
1792. c: 93. if the Act of 1785. were not in fact revived
thereby. Vide Wythe's opinion

96:

11. On the first day of October 1793.
The suspension of the last mentioned Act
ceased & it is now the rule of Inheritance in Virga.

3. B.C. 385.

Trials by Jury.

Although our system of Jurisprudence seems to favor the trial by Jury, yet there is perhaps no part of our Code of Laws, perhaps, so defective as that which relates to this important species of trial. The disregard to the characters & qualifications of Jurors, which every where obtains in the practice of our Courts will in time, if not remedied, bring that most valuable mode of Trial to dispute; nor will it be matter of wonder, if even in criminal Cases, though liable to fewer Objections, it should be considered rather as a pledge of indemnity to the person accused, than as a guarantee for the due conviction of Offenders, as well as for the protection of the innocent. The most beneficial parts of the system in England seem to have been almost lost sight of here. In civil Cases the Jurors are summoned the instant that the trial is to take place, by persons the least qualified to determine upon their Capacity, and the most indifferent about their Characters. Where the Courts are held in Country places, the Juries, after the first day or two instead of being composed of the most respectable freeholders in the County, Men above the suspicion of improper bias or Corruption, Men whose understandings may be presumed to be above the Common

common level, are made up generally of idle loiterers about a Court, who contrive to get themselves summoned as witnesses, that they may have their Expences borne, & who are in every other point of view the most unfit persons to decide upon the controversies of the Suitors. The parties & their Attornies are unprepared for a challenge, & the trial proceeds not unfrequently without a fourth part of competent Jurymen to decide the Question, ~~[illegible]~~. Hence the number of new trials granted because the Jury have not understood, or have misapplied the Evidence. Hence in time must result to the Courts an Influence in Questions of fact, which may in time become highly pernicious. Hence the number of Special Verdicts, Demurrers to Evidence & points reserved, which the parties mutually apprehensive of a Decision by an incompetent Jury are ever ready to propose or agree to. — These Inconveniences might be greatly diminished, perhaps totally removed, were a due regard paid to the Qualifications of Jurors, not only in respect to Estate, which indeed is noticed by our laws, but in respect to other more necessary qualifications, Ability Integrity, & Impartiality. — The trial by Jury would then merit every Eulogium which has ever been bestowed on it.

The technical forms with which the mode of impanelling Jurors in England appears to be involved

no doubt contributed to prevent its adoption
in this Country. Until the revolution there being
but one superior Court of common Law Jurisdiction
and that held at the Seat of Government, the
want of competent Jurors was not so obvious,
nor so extensive as at this day, when there are
nineteen. — The County Courts rarely sat above
a day or two. — The most respectable freeholders
in the County generally attended on the first day, &
sometimes a tollerable Jury might have been
collected on the second day of the Court. But the
Terms being now lengthened to six days, the Courts
after the first & second days are but thinly attended.
In the District Courts after the trials of Criminals
are over, it is with difficulty a Jury of any kind
can be procured, except in the Towns. There, they
are generally composed of one class of people,
who can not always be supposed to be perfectly free
from some Bias, however upright in their
Intentions. In small towns, such as ours, the
Duty falls heavy upon the few who are summoned
day after day during the whole, or the greater part
of a Term to attend the Courts. — In Questions arising
in the neighbourhood an imperceptible influence
is too apt to govern them according to their Friendships
or Dislikes: Questions are not unfrequently prejudged
before the Suit is commenced, according to the first
Impressions of the nature of the Dispute; and often wrong Impressions
The Testimony of Witnesses is rarely strong enough to

† Let no person above the age of fifty years be placed or continued upon the Jurors roll provided that no person above that age who shall be summoned as a Juror in the manner herein directed be exempted from attending for that reason alone.

‡ — Instead of the remainder of this tract, insert at large the Draught of a Bill concerning Juries, in my interleaved Report of the Committee of Revisors, page 64. beginning thus,

"The trial by Jury being one of the most important Pillars of a free Government &c.

‡ This period might be encreased - The least populous County in Virga contains a sufficient number of Jurors qualified as herein directed to make the periods of service new enough at five years Distance.

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†† To be inserted after the word effaces. } In criminal cases, although the Law seems to have been more provident, the

in the other page at the Bottom } wholly to ~~reform~~ efface. All these circumstances appear to cry aloud for reform. To suggest a perfect plan may not be easy: but to offer one which might promise an amend^t of this mode of trial would not be a very arduous task. — Let us make the Attempt.

See Charles Pinckney's Speech & Bill for Juries in the U. S. Senator pp: 163. †

‡ 1. Let the Clerks of the respective Counties, at the Quarterly Court next preceding every District Court to be held for that District to which the County belongs, lay before the Justices of the Court then sitting, the list of taxable property, both real & personal within the County. From which ~~list~~ let an Alphabetical List of all those whose real Estate shall be of the value of £100. ~~to be made~~ or whose personal or real and personal Estate together Estate shall be of the value of £200, be made, & fairly entered in a book to be kept for that purpose, with their respective Callings Occupations, abidings, & places of residence; from time to time correcting the same, & adding thereto such as may remove into the County, or under arrive at the Age of twenty one years, which Age † no person should be capable of serving on a Jury.

x 2. From the whole number of Persons on this List, which shall be called the Jurors List, or Roll, let the Justices first of all select thirty of the most ~~fit & able~~ discreet, honest, & able persons, who have not served as Jurors at a District Court within three years ‡ next before

the objections to the present mode of summoning Jurors appear to be important; in those cases twelve men the numerical number required for the trial are summoned by a Deputy Sheriff, not unfrequently three or four, or even six months before the period fixed for the trial. I have already said that this description of men are too often the least qualified to judge, of, and the most ~~independent~~ regardless of the Character and Capacities of those whom they summon as Jurors. If a criminal possesses an Estate himself, or has friends who possess wealth, or influence, such persons employed as ~~those~~ the summoners of Jurors must not unfrequently invite the attempt, at least, to corrupt them.+ The principle of the Law is not that those who are really

+ Some years ago eleven or twelve persons were indicted in the a District court ~~of Caribbean Sea~~ for a riot; ~~in Charleston County~~ it happened that at the same term when their trial was to come on, a ~~black~~ man was sent from the same County to be tried for Horse-Stealing; the Venire summoned for his trial was composed chiefly of the Defendants for the riot; ~~although the summoners~~ the obvious reason in this Case was that they might be paid for attending as Venire men, whilst obliged to attend as Defendants.

and by Ballot choose sixteen of them, to serve as Jurors at the next district Court. — Whereupon the Clerk ~~should~~ issue a Writ of venire facias directed to the Sheriff of the City commanding him to summon the persons therein named to attend accordingly. — This Writ the Sheriff ~~should~~ be bound to obey under penalty ~~of~~ of £10. for every person not summoned unless good cause for such omission be shewn; ~~and to return~~ ~~and returned~~ to the District Court five days before the Commencement of the Term under penalty of £50. — Let every Juror ~~should~~ be summoned or deputy at House Leave of Court at least six days before the Court, & failing to attend without a reasonable excuse to be fined ~~to~~ pounds. —

3. Let it ~~Ordered~~ be the Duty of the Clerk of the District Court to make out a general panel of the Jurors summoned to attend at Court, and from the Panel so made out, the Court ~~should~~ direct, an equal number from each County as nearly as may be ~~from each County~~ to be sworn on the grand Jury which ~~should~~ not to consist of less than sixteen, nor more than twenty three Jurors. The evidence of the Jurors to continue their attendance during the whole term, to serve as petty Jurors.

4. In Criminal Cases the Jurors for the County where the Offence was committed, ~~should~~ be first called upon — if ~~required~~ to be part of the whole be challenged by the prisoner or on the part of the City. the Jurors to be chosen by Ballot from the rest of the Panel.

+But if any Juror be summond as a witness to such Court, he shall not be entitled to a Certificate of his attendance as a Juror if he charge for his attendence as a Witness. nor shall he charge for his attendance as a Witness if he shall have obtained a Certificate for his attendance as a Juror.

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are really guilty should escape punishment, but that no innocent person shall be punished. But where the road to corruption is so broad & open, innocent persons will be the most likely to suffer: for, conscious of their innocence they will neglect to take those steps which a corrupt Officer, or a corrupt Jury may think they ought to have taken; but the guilty, if they possess, directly or indirectly the means of corruption

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Defendants. But a Case which happened in Dumfries, may term 1800. is much stronger. A man is elected for murder was just upon his trial, & seven of the Jury were sworne; when it was made to appear to the Court that his Father had delivered to the Deputy Sheriff who summoned the Jury a list of twenty four persons out of which he requested that the Jury might be summoned. The Sheriff who was an unexperienced young man complyed & summ the List to a person who gave the Information to the Court; some of the persons named in the List had been summoned, and were actually sworn on the Jury before the Court had notice of the Affair. The trial, as may be supposed, was necessarily stopp'd.

+ 5. For the trial of civil Causes let the names of all the Jurors be written on small pieces of paper of the same size, rolled up in like manner, & put into a Box, from whence the Clerk shall draw out the names singly, to the number of twelve, & if no challenge be made, the twelve first drawn shall constitute the Jury for that trial. — until the Bill be returned or the Jury discharged therefrom, their names shall be put into a seperate Box, & there kept: but, immediately after the Jury is mixed with the other names in the Box. 40.

+ 6. Let each Juror receive from the Clerk of the D. Court a Certificate of his attendance and let him be allowed for his travelling Expences and attendance at the same rate that witnesses are paid: to be paid by his City & raised in the County levy.

+ 7. Let each Juryman who shall be impanelled to try any issue in any Cause shall receive 12/. from the plaintiff, to be taxed in the Bill of costs in Case he shall recover.

+ 8. Let each Juror attending a District Court for a whole term, be exempted from serving on Juries in the County Courts for one year thereafter, & be likewise exempted from attending at Musters, & on patrols except general Musters, as also from serving on patroles for the like period.

corruption will be sure to escape. Whether to this cause is to be ascribed the number of acquittals against positive evidence, (more especially in Cases of Homicide, and malicious mayhem) which an attentive observer might enumerate, the author of these pages can not pretend to decide: but from the multiplicity of such acquittals, the only inference to be drawn is, that there must be an infinite degree of perjury in the Witnesses, or of unpardonable disregard to their Duty, in the Jurors, in such Cases. How far the plea of Humanity may be admitted to counterbail the oath of Duty, is a Question which every Juror ought well to consider, where Evidence is positive, the Characters of witnesses fair & irreproachable, or the circumstances of the Case such as admit of no rational solution, but by admitting the Guilt of the party. — On the other hand Innocence can never be so safe, as in the hands of men of sound Understanding, sound hearts, and clear Consciences.

The Expence

† Q. For the trial of Causes in the County Courts, let the Justices of every County at their monthly Session next preceding the Quarterly Session of such Court choose by Ballot forty eight persons from the Jurors roll, who have neither served as Jurors in the District Court nor City Courts, if for one year next preceding (if there be a sufficient number without them) or if there be not a sufficient number that have not served in the County Courts for one year, then the choice to be made of them whose terms of service has been longest past, to serve as Jurors for the County at the next succeeding Quarterly term: And thereupon let the Clerk issue a Venire facias to the Sheriff, and the same proceedings be thereupon had, under the like penalties for neglect of, or disobedience thereto, as also for departing without leave of the Court, as in the D. Courts.

† 10. Let a grand Jury of not less than sixteen nor more than twenty four of them who attend be impannelled to enquire into, & make true presentments &c — And let the residue remain to serve on the trial of civil Causes. And let them be drawn by Ballot in the same manner as in the District Courts, and before they be sworne in any Cause let the Jury who shall be impannelled for the trial thereof receive the like term of twelve days to be stayed if the Plt prevail in the Bill of Costs.

The Expence of a better system is the only reason that I have ever heard alleged in favor of the present. No Country deserves to be free or happy, that grudges the expence of wholesome regulations; especially where the peace and happiness of society may be at stake on the one hand, and the Life, or liberty of a Citizen, on the other. But the Expence is actually incurred, although the burthen of it is most partially distributed: the Man who is com= =pelled to serve as a Juror, without recompence, serves the State for nothing, loses his own time, and pays that Expence out of his own pocket, which his fellow Citizens ought by a joint contribution to pay out of theirs. It operates as a heavy tax upon a small portion of individuals, exclusively, instead of being paid by the State at large. Is it more reasonable that five hundred Men should serve the State without recom= =pence, and at the same time bear their own Expences; or that five hundred thousand who derive benefit from their services, should not only reimburse their Expences, but pay them, also, for their services? The present system is not only extremely defective and inadequate for the purposes of distributive justice, but ~~oppressive and~~ unequal and oppressive as it relates to those who are compell'd to discharge the Duty. All these Circumstances appear to cry aloud &c — [turn back to page 38.]

11. Every person summoned as a Juror and attending accordingly shall be exempted from all Arrests & other process in civil suits, except Subpenas to attend as Witness, for every day that he shall attend, & one day for every 20. miles he shall travel in going & returning.

12. ~~A Jury of~~ Bystanders may be impannelled on a Jury if a sufficient number of those summoned do not appear.

Memo. I have prepared the Draught of a Bill on this subject — see my volume of revised Bills — ~~pa: 61~~. — both parts in one — pa: 64.

XXII. Mar: 1794. Subjects of Discussion for the Students of Law.

1. The Authority & Obligation of the Constitution of Virginia as established by Convention, in may 1776.
2. The Authority & Obligation of the common law of England in the United States of America, independent of legislative declarations.
3. The Expedience & practicability of a general Abolition of Slavery in this State, or in the United States at large.
4. The Expedience or Inexpedience of that part of the 6: U: S. which relates to direct taxes & Excises.
5. The Expedience or Inexpedience of that part of the 6: U: S. which constitutes the Senate, the court of Impeachments.
6. How far the extensive grants of lands in America to Individuals, may affect the Government; or affect the liberties of the people of the United States.
7. How far the Creation, & Existence, of a permanent national Debt is compatible with the general Interest of America.
8. Whether the Benefits or Inconveniences of the Act establishing the Course of Descents, whereby the common law rules of Inheritance have been abolished, are most likely to preponderate.
9. Whether the Trial by Jury in Virg.a is susceptible of any & what Improvement by legislative aid.
10. Whether the right of replevying Goods taken in Execution be productive of greater advantages, or Evils to the parties respectively.
11. The right of human laws to punish ~~[illegible]~~ with Death for Offences, which are not such by the Law of nature.
12. Whether the Rights of property be as secure under the Constitution & Laws of Virginia as in England.
13. Whether it be expedient that Lands be subject to be taken & sold by Execution for the payment of Debts.

Continued from vol: 6: pa: 240.

Summary view of the Representation, population, and taxes of the several Counties in Virginia, distributed into Classes, agreeably to the act for equalizing the Land-tax - Acts: 1782. c. 19. Rev. Co. 77.

First Class 10/. ₤ acre	Repre:sen:tatives.	white males above 16.	Slaves	Total popu:=lation	Land-tax 1791.	Slave tax.	Total of taxes on Lands & property
Accomack	2	2297	4262	13959.	₤ 427. 9. 8.	₤ 285.	₤ 896. 18. 2.
Amelia	2	1709	11307	18097.	502: 18. 6.	439	1049. 14. 6.
Brunswick	2.	1472.	6776.	12827.	609: 0. 7.	449.	1205. 3. 6.
Cumberland	2	885.	4434	8153.	351: 16. 4.	314.	755. 15. 10.
Chesterfield	2	1652.	7487.	14214.	565: 18. 6.	533.	1281: 17: 10.
Charles-city	2.	532.	3141.	5588.	194: 0: 4.	208.	455: 11: 10.
Caroline	2.	1799.	10292.	17489.	605: 19. 6.	643.	1476: 7: 6.
Dinwiddie	2.	1790.	7334.	13934.	632: 6: 2.	409.	1296: 0: 8.
Essex	2	908.	5440.	9122.	286. 5. 7.	354.	712: 15: 7.
Elizabeth-city	2	390.	1876.	3450.	76: 3: 6.	136.	274: 0. 1.
Fairfax	2	2138.	4574	12320.	426: 8: 4.	309.	897: 0: 4.
Glocester	2	1597.	7063.	13498.	209. 19. 2.	319.	605: 17. 2
Goochland	2.	1028.	4656.	9053.	314. 14. 7.	319.	746: 12. 7.
Greensville	2.	669.	3620.	6362.	287: 16: 8.	236.	585. 13. 8.
Henrico	3.	1823.	5819.	12000.	414. 2. 0	431.	1087. 16. 6.
Hanover	2.	1637.	8223.	14754.	520. 5. 1.	557.	1264. 9. 1.
Isle of Wight	2.	1208.	3867.	9028.	322. 17. 2.	261.	656. 14. 2.
James City	2	395.	2405.	4070.	170. 2. 1.	194.	398: 11. 1.
King William	2	723.	5151.	8128.	279. 9. 7.	356.	729. 5. 1.
King & Queen	2	995.	5143.	9377.	343. 10. 3.	333.	763. 6. 3.
King George	2	757	4157	7366.	194: 11. 1.	265.	551. 2. 7.
Lancaster	2	535.	3236.	5638.	140. 16. 5.	223.	418. 3: 11.
Carried over =	45.	26939.	120263.	228428	₤ 7876: 11. 1.	7573	₤ 18108: 17: 11.

First Class 10 ₤ acre -continued.	Repre sen: tatives	White males above 16.	Slaves	Total popu: = lation.	Land tax 1791.	Slave tax.	Total taxes on Lands & property.
Brought up	45	26939.	120263.	228428.	₤ 7876: 11. 1	₤ 7573.	₤ 18,108: 17: 11.
Middlesex	2	407	2558	4140	148. 15. 9	176.	373: 11. 9.
Norfolk	2	2650	5345	14524.	346. 10. 4	279.	720. 6. 10.
Norfolk Bor:	1	......	---	------	114. 7. 9.	93.	... 273. 10. 3.
Northampton	2	.. 857.	3244.	6889.	190. 3. 7.	249.	... 543. 15. 4
New Kent	2	... 605.	3700.	6239.	216. 16. 8	241.	.... 526. 7. 2.
Northumb.d	2	.. 1046	4460.	9163.	214. 16. 8.	304.	.... 617. 7. 8.
Nansemond	2.	... 1215.	3817.	9010.	415. 0. 6.	239.	..... 712. 14. 0
Prince Wm	2	.. 1644.	4704.	11615.	429. 10. 9	332.	.... 925. 0. 3.
Prince George	2.	.. 965.	4519.	8173.	314. 18. 1.	281.	.... 714. 11. 7.
Powhatan	2.	... 623.	4325	6822.	279. 10. 1.	299.	.... 666: 11. 1.
Princess Anne	2.	.. 1169	3202.	7793.	258. 10. 8	338.	.... 588. 2. 2.
Richmond	2.	... 704	.. 3984	6985.	202. 7. 2.	264.	... 535. 13. 8.
Spotsylvania	2.	.. 1361.	5933.	11252.	504. 6. 2	394.	... 1050. 2. 8.
Stafford	2	.. 1341.	4036.	9588.	306. 8. 5.	265.	.... 678. 4. 11.
Southampton	2	.. 1632.	5993.	12864.	591. 16. 9	352.	.... 1059. 18. 9.
Surry	2	.. 732.	3097.	6227.	283. 5. 6.	218.	.... 571. 4. 6.
Sussex	2.	. 1215.	5387.	10554.	482. 9. 5.	353.	.... 935: 19: 5.
Warwick	2	.. 176.	990.	1690.	81. 4. 0	72.	.... 170. 15. 0
Westmoreland	2	... 815	4425.	7722	245: 1. 0.	318.	.... 648. 3. 6.
York	2	... 530.	2760	5233.	134. 11. 6	185.	..... 382. 19. 0
Williamsburg	1	....	......	....	18. 18. 10	58.	..... 133. 2. 4.
Matthews	2	......	......	....	126. 6. 0.	145.	.... 300. 18. 0.
Nottoway	2	......	......	....	221. 3. 7.	355.	.... 660. 19. 7.
	89.	47226	196542	394913.	₤ 14003. 10. 3.	₤ 13383.	₤ 31,898: 17. 4.
NB. The popu:=lation of Matthews, Nott=oway, Norfolk Borough & Williamsburg included in Glocester, Amelia, Norfolk & York Counties.		Deduct	Slaves	196542.			
		Total free	persons	198371.			
		3/5. of Slaves		117925.			
		Just Census		316296.			

Second Class 7/6 per acre.	Repr.	White males above 16.	Slaves	Total popu=lation.	Land tax 1791.	Slave tax	Total taxes on Land & property.
Albemarle	2	1703.	5579.	12585.	£506.19.0	£390.	£1033.14.1.
Amherst ..	2	2056	5296.	13703.	546.18.4	374	1053. 1. 4.
Buckingham	2	1274	4168.	9779.	406.2.7.	281.	766. 9. 1.
Berkeley -	2	4253	2932.	19713.	452.2.7.	189.	910.14.1.
Bedford -	2	1785.	2754.	10531.	414.2.7.	187.	712. 8.7.
Charlotte	2	1285.	4816.	10078.	386.11.2.	336.	844. 7. 2.
Culpeper	2	3372.	8226.	22105.	678.3.10	588.	1486. 6. 4.
Campbell	2	1236.	2480.	7685.	335.13.9.	170.	590.7.3.
Fauquier	2	2674.	6642.	17892.	459.18.2.	478.	1126.18.2.
Huwanna	2	589.	1466.	3921.	220.6.1.	96.	355. 2. 7.
Frederick	2	3835.	4250.	19681.	648.10.4	290.	1211: 11.4.
Halifax	2	2214.	5565.	14722.	587.17.5.	400.	1138. 2. 5.
Lunenburg	2.	1110.	4332.	8959.	342.12.11.	316.	756. 2. 1.
London -	2.	3677.	4030.	18962.	539.15.3	282.	1074. 4. 3.
Louisa	2.	957.	4573.	8467.	400.19.11.	342.	756. 2. 1.
Mecklenburg	2	1857.	6762.	14733.	512.18.2.	481.	1161. 7. 2.
Orange	2	1317.	4421.	9921.	350.0.0.	284.	740.18.0
Prince Edw.d	2	1044.	3986.	8100.	326.16.1.	300.	705. 14. 1.
Madison	2.	included in Culpeper & Orange - - - - - - - - - - - -					
	38.	36,338.	82,286.	218,537.	£8116.8.2	£5784.	£16,423.10.1.
		Deduct Slaves -		82,286.			
		Total free persons -		136.251.			
		add 3/5. of Slaves		49,371.			
		Last Census - - -		185,622.			

Third Class 5/6. p. acre	Repr.	White males over 16.	Slaves	Total popu=lation.	Land-tax 1791.	Slave tax.	Total taxes on Land & property.
Augusta	2.	2599.	1567.	10886.	£348:10:4	£107.	£704:00.10.
Botetourt	2.	2247.	1259.	10524.	184. 13.6.	66.	378:11.6.
Franklin	2.	1266.	1073.	6842.	208: 0.3.	78.	357. 1.9.
Hampshire	2	1662.	454.	7346.	190.17.10.	30.	302.1.10.
Hardy	2	1108.	369.	7336.	112.13.9.	25.	210.10.3.
Henry +	2	1523.	1551.	8479.	151:0.0.	105.	256.10.3.
Pittsylvania	2	2008.	2979.	11579.	498.14.4.	206.	823.10.0
Rockingham	2	1816.	772.	7449.	185.18.9.	48.	346.5.11.
Rockbridge	2	1517.	682.	6548.	171.3.0.	52.	333.11.-
Shenandoah	2	2409.	512.	10510.	272.4.10.	35.	451.2.10.
Patrick +	2	.....	...	.....	104:6:0	.....	185.14.10.
	22.	18155.	11218.	87499	£2428.2.7.	£752.	£4349.1.0.
		Deduct Slaves		11218			
		Total free persons		76,281.			
		add 3/5 of Slaves		6,730.			
		Last Census		83,011.			

+NB. The taxes for the Counties of Henry & Patrick are estimated by adding 1/3. to the tax of 1792. there being no returns from those Counties in 1791. The population of Patrick is supposed to be included in that of Henry.

Fourth Class 3/5 slaves	Repr:	White males over 16.	Slaves	Total popu=lation	Land tax 1791.	Slave tax	Total of taxes on Lands & property
Greenbrier	2	1463.	319.	6015.	£93:8.2.	£12.	£185:2:2.
Harrison +	2	487.	67.	2080.	.....	...	...
Monongalia +	2	1089.	154.	4768.	.....	...	...
Montgomery +	2	2846.	828.	13228.	.. 81.16.3	....	212:12:11.
Ohio	2.	1222.	281.	5212.	... 29. 6.4.	....	73: 6: 8.
Pendleton ..	2	568	73.	2452.	.. 38. 2.2	4	93:6:2.
Randolph	2	221.	19.	951.	.....	2.	19:17.6.
Rusel .. +	2	734.	190.	3338.	.. [illegible]	[illegible]	[illegible]
Bath .. +	2	.....	.....	.....	65:15:1.	....	163:8:11.
Wythe ...	2	.....	.....	.....	.....	.....	.....
Kanawha	2	.....	.....	.....	.....	.....	.....
Lee	2	.....	.....	.....	.....	.....	.....
Greyson .	2	.....	.....	.....	.....	.....	.....
Washington +	2	1287.	450.	5625.	.. 105.18:11	.....	254.3.1.
	28.	9917.	2381.	43.669	£414.6.11	£18.	£1001.17.6.

Reduced slaves	2381
Total population	41288
3/5. of slaves	1428
Just Census	42716

NB. Bath County was established since the Census – As were Lee & Greyson. – and perhaps Wythe – neither Wythe nor Kanawha are noticed in the census of the united States.

+ NB. The taxes for the Counties there mark'd, where they are extended are estimated by adding one third to the Tax of 1792. There being no returns from those Counties for the year 1791. – The taxes of Lee, Grayson, & probably Wythe, as well as the population of those Counties are probably compre=hended in those of Montgomery, Rusel & Washington – & those of Kanawha in those of Greenbrier – those of Bath in Boltsome, Greenbrier &c.

Recapitulation.

Classes	Repr: sent: atives	White males over 16.	Slaves	Total popula=tion.	Just Census	Land tax 1791/2	Total taxes
First Class	89	47226.	196542	394913.	316296.	14003.10.3	31,898.17.4.
Second Class	38.	36337.	82286	218537.	185622.	8166.8.2.	16.423.10.1.
Third Class	22.	18155.	11218.	87499.	83011.	2428.2.7.	4.349.1.0
Fourth Class	28.	9917.	2381.	43669.	42716.	414.6.11.	1,001.17.5.
	177	111635.	292427.	744618.	627645.	24962.7.11.	£53673.5.10.

Taxes paid in the fourth Class 1794.

	Dollars	Land tax	per Census	
Greenbrier	601.68	£14.11	£85:4.	£180.10.0.
Harrison	117.84.	4.15.	35 7.	35.7.0.
Monongalia	137.96.	7.13	.....	41.8.0.
Montgomery	606.31.	33.2	61.9.0	181.18.0.
Ohio	280.11.	11.3	35.18.0	84.0.8.
Pendleton	225.87.	2.9.	30.9.0	67.15.4.
Randolph	51.66	2.18.	.....	15.10.0
Rusel	270.13.	8.18	25.8.0	81.0.9.
Bath	390.11	59.6	50.5.0	117.5.0.
Wythe	615.82	30.5.	65.6.6.	184.15.3.
Kanawha	615.7	1.15.	60.15.0.	184.10.4.
Lee	93.80	3.14	3.16.0	28.3.0.
Greyston				
Washington	627.75	22.12	80.11.0	188.6.6.
		203:1.	£499.8.5.	1390.9.10.

a table exhibiting at one view the number of Representations to which the several Classes as divided by the equalising law, would be entitled under an Arrangement by the Census, &c.

NB. The first Column shews the number of Counties: the second, the present number of Representatives; the third the proportion if regulated according to the number of fighting men: The fourth, according to the Census – The fifth according to the Land-tax, and the sixth according to a combined proportion between the Census and the Land-tax.

	Number of Counties	The present Number of Representatives	proportion according to the number of fighting men.	proportion by the Census of U.S.	proportion by the Land tax.	proportion combined of Census & Land tax.	proportion combined of fighting men & Land tax.	proportion by fighting men & genuine Taxes
First Class	43.	89.	74.	89.	98.	93.	86.	79.
Second Class	19.	38.	57.	52.	56.	54.	56½	56.
Third Class	11.	22.	28.	28.	17.	20.	22½	26.
Fourth Class.	14	28.	18.	13	6.	10.	12	18
	87.	177.	177.	177.	177.	177.	177.	179.

NB. In this table the Land tax of the fourth Class is estimated at £750. instead of £414. and the benefit of all the fractions is given to the same Class, in every alternate. —

(Turnover)

View of the Constitution of Virginia

continued from book 6. pa: 255.

To secure the executive department from its present state of dependence on the legislature, some method must be devised, by which its functions may be ascertained, and its existence rendered independent of that body. This can only be effected by the Constitution. The former is infinitely the more difficult task. The positive Authority which should be vested in that department, might perhaps be limited to the following Objects.

1. The power of convening the Legislature in case of Dissapprovance on any extraordinary emergency: & of adjournance:

2. The embodying the Militia for the defence of the State, in cases of insurrection, invasion, or approaching hostilities.

3. The command of the military force of the Commonwealth, when embodied or raised for the defence of the State both by Land and by Sea.

4. The Appointment of all Officers as in the Militia, and the nomination of them as in the Army or Navy.

5th. The nomination to all civil offices, except

The following project for adjusting the proportions of representation & taxation in this Commonwealth is founded on the preceding tables.

It has been objected this plan of representation by a combined propation that property ought not to be represented. That personal rights are more valuable than the rights of prop^{y}. That in giving a Repre=sentation to prop^{y}. you give them a preference in the Government, over the poor, & destroy that leading principle which ought to prevail in a Commonwealth.

To this I answer, that if it be true that those who impose taxes ought to participate in the burthen of them, the most effectual guard agt an abuse of the power confided to them, is by establish=ing an invariable relation between taxation and representation. If this principle be admitted, any depar=ture from the prin=ciples of a combined proportion will be

1. Let the number of Representatives to the Gen^{l}. Assembly be fixed by a combined propotion between the Census of the people, according to the Constitution of the United States, & the value of all patented Lands within the State, according as the same are rated agreeably to the Act for equalising the Land-tax.

2. To this End, let the several Counties in the Commonwealth be distributed into four Classes: Let those which are rated at ten shillings per acre form the first Class; those at 7/6. the second - those at 5/6. the third - and those at 3/. the fourth Class.

3. Let the number of Delegates to be assigned to the Classes respectively be ascertained by dividing the Census of the people in each Class by $\frac{5000}{4000}$. and adding to the number thus produced, one Delegate for every £1000, to which the Land tax shall amount in such Class, at the rate of 7/6. in the £100, rejecting all fractions. - Provided that each

except the Treasurer of the State, the Lieut: Governor, Members of the privy Council, Clerks of Courts of record, Justices of the peace, Sheriffs, Coroners, & Constables, & such others, whose appointment may be specially provided for by the Constitution.

6. The granting reprieves and pardons, except in Cases of Impeachment, or of high Treason, & of remitting fines or penalties incurred in Consequence of the breach of any penal Law.

7. The appointment of such Officers, whose nomination is vested in the County Courts: & granting all Commissions in behalf of the Commonwealth.

Secondly to secure his Independence as to appointment & continuance in Office: Let each district entitled to choose Senators choose also, one in four years, from ~~his~~ electors from the body of the District, for the purpose of choosing a Governor & Lieut. Governor. Let them assemble within twenty days after they are chosen, at the seat of Govern^{t}. & there by Ballot choose a Gov^{r}. & Lieut. Gov^{r}. in the same manner that the Pres^{t}. & Vice Pres^{t}. of the U: S: are chosen. Let no person be eligible as Governor ~~twice~~ successively.

inevitably attended with inconvenience or injustice, or both. For if the representation be according to the number of people only, it might well happen, that those who had least property would pay most; on the contrary, if there be no ratio fixed between Taxes & Representation, then it might also happen, that those who were preponderating in imposing Taxes should actually pay none, or very little, their property being in a lower proportion to their numbers.

each Class shall be entitled to one Delegate although the Land Tax therein shall not amount to £1000.

4. Let the Counties in each Class be distributed into Districts, as nearly equal as may be, having regard to the proportion above mentioned, and rejecting fractions; and let the number of Delegates be assigned to each District in the like proportions. Let there be two Districts, in the smallest Class for the present; and let the ~~others~~ number of Districts in the remaining Classes be regulated in the same proportion to the number of Delegates, in each respectively, rejecting fractions.

5. Let the Delegates in each District be chosen in the same manner that Representatives to the Congress are now chosen. But if any one District shall be entitled to an equal, or a greater number of Delegates than there shall be Counties in such District, let each County choose one Delegate, and let so many others be chosen by the District at large, as will make up the Deficiency, if there be any.

6. Let each District be entitled to one Senator, to be chosen as follows: Let each County choose four Senatorial electors. — Let them assemble at the Court House

successively, nor in any case be capable of serving in that office more than eight years in any period of twelve years; nor be eligible thereto until he has attained the age of thirty five years.

Let the Lieut. Govr. be pres.t of the privy Council, & in case of the death, absence or incapacity of the Governor let him discharge the Duties of that Office, during the period for which he shall be elected: in case the votes in Council be equal let him have the casting vote.

Let a Council of State, be chosen by joint Ballot of both houses, who shall hold their offices seven years, & be ineligible a second time — Let them be removable on Impeachment and conviction of any Crimes or Misdemeanours in Office. Let their number be regulated by the Legislature, so as never to exceed eight nor be fewer than three, provided that no reduction be made, except as the appointments may become vacant by Death, resignation, disqualification, or regular deprivation.

Thirdly, Let the Salaries of the Governor, Lieut. Governor, & members of the privy Council be fixed by the Convention for the first ten years after the Constitution shall be adopted. Let their future salaries, if necessary, be altered from time to time, but not oftener than once in ten years, by the Legislature by a

at the Courthouse of the County first named in the district, & there by open suffrage, in the presence of the Sheriff of the County, proceed to elect one fit & able free holder within the District, who shall moreover be a resident therein, to be a Senator for such District.

7. That there may be a just & invariable proportion between benefits & burthens, let all taxes, Duties, Excises & imposts of every kind be apportioned among the several Classes according to the number of representatives in each respectively. Let the quota of each Class, be ~~in like~~ ~~manner~~ apportioned among the several Districts it may contain; and the quota of each District, apportioned among the several Counties thereof, in exact proportion, as near as may be, to the Census & Land tax in each ~~County~~ ~~and~~ District, & County, respectively. Let all indirect taxes collected in any Class, District, or County, be carried to the Credit of its particular quota; and let there be a general adjustment of taxes, at least once in four years, in order that those Counties, Districts, or Classes, which shall have overpaid their Quotas, may obtain a remission of taxes adequate thereto in the succeeding year, and that those which have been deficient may

law, the Operation of which shall not affect any person in Office at the time of passing thereof.

The personal independence of the Executive branch of Govt. being secured by regulations similar to those here mentioned, and those duties, over which the Legislature ought to have no control being defined by the Constitution itself, the remaining Duties thereof must be left to such laws as the circumstances of the State may from time to time indicate the Legislature to adopt.

III. The judicial department of the Govmt. was originally vested in ~~three~~ four superior Courts, viz. the Court of Appeals, High Court of Chancery, General Court, & Court of Admiralty, the latter of which has been discontinued since the adoption of the U. S. — and in the County & other inferior Courts. — The Judges of the superior Courts are appointed by joint ballot of both houses of Assembly, & hold their Offices during good behaviour but the appointment, & perhaps the continuance in Office of the Justices of the peace, who are Judges in the County Courts, was originally left dependent on the Executive unless the tenure of good behaviour be considered to belong to them as Judges; a

may be compelled to make good such deficiency.

8. The following table will exhibit at one view the number of Counties, Districts, Classes, Delegates and Senators, to be assigned at present. The future arrangements may be made once in ten years, as soon as the Census shall be completed, pursuant to the Constitution of the united States.

	number of Counties	Census.	Land-tax	Districts	Representatives	Senators
First Class	43.	316,296.	£14003.10.3.	18.	93	18.
Second Class	19.	185,622.	8116.8.2.	10.	54.	10.
Third Class	11.	83,011.	2423.2.7.	4.	22.	4.
Fourth Class	14.	42,716.	414.6.11.	2.	11.	2.
	87.	627,645.	£24,962.7.11.	34.	180.	34.

Should it be thought that the number of Delegates is too large, if the proportion by the Census be reduced to one for 5000. persons they will stand thus.

First Class	77.
Second Class	45.
Third Class	18.
Fourth Class	9.
Total	149. Representatives

a construction, which, however reasonable, it might perhaps have been difficult to maintain, since the Constitution is silent on the subject. ~~Justices of the peace~~ under the English laws & Govt. are superseded by a new commission of the peace in which they are not named. — This practice obtained also in Virga before the revolution, and has even been practised since, in some instances, but of late years has been discontinued; but every new Commission authorising the persons therein named, together with those theretofore in the Commission of the peace to exercise the office of Justices of the peace &c. In October 1778. an act passed authorising the Executive to remove any Magistrate upon complaint & proof made to them of any misconduct &c in office: which act was repealed in 1787. c. 23. as "contrary to the true spirit of the Constitution" — of which opinion the General Court appear to have been in the case of a Magistrate who had been removed from office by the Executive under that law. Upon the ground of this repeal and adjudication, the Judges of the County Courts may be considered as holding their offices by the same tenure as the Judges of

1. B. 6. 253.

Octo: 1778. c. 5. Rev. Co. 81.

Arthur Campbell

*The Judges are removeable from office on Impeachment by the house of Delegates, & conviction before the General Court, or the Court of appeals, according to the station of the person impeached, who, if a Judge of the General Court must be tried in the Court of appeals, but the Judges of the other Courts, can only be tried in the General Court. And from this Circumstance an Argument may be drawn against the Union of the ~~powers~~ ~~&~~ functions of the Judges of the General Court, with those of the high Ct. of Chancery. since in Case of Impeachment it would be impossible to decide in what Court such Impeachment should be prosecuted.

of the superior Courts. The Constitution also provides, that the Judges of the superior Courts shall have fixed, & adequate Salaries; leaving the legislature to judge what should be deemed adequate. But whatever Idea of permanency may be supposed to have been intended by the word fixed, the legislature have from time to time varied it: it has however remained unaltered for ~~the last~~ some years past. ~~twelve years~~. ~~though the Salaries of some of the Judges have been occasionally augmented and others not a little diminished in that time. The reason would be equally apparent & unprofit-able to go through the various Acts by which those Alterations have been introduced.~~ *

The separation of the judiciary power from the legislative, & executive, & the perfect independence of the former, in every respect, seems to have been an Object of the particular Attention of the people of America, not only in their federal, but in their State Constitutions. In the former this ~~tenure of office this~~ Object appears to have been more successfully attended to, than in any of the latter. Of what importance a successful arrangement of this branch

branch of the Government is to the preser=
=vation of the political balance, and the security
of the dearest rights of the individual, can
not be better illustrated, than in the ~~the words~~ two
admirable Letters, of the author of the
federalist, + to which I shall refer the Student. ~~which I shall give at length~~
~~in his own words~~.

\+ vi: 2. pub: 290, 1. &c. "As to the tenure by which the
"Judges are to hold their places; this chiefly
"concerns their duration in office, the provisions
"for their support; and the precautions for their
"responsibility."

[Here take in 2. publius 291. to 501. inclusive]

~~In the course of our future enquiries we shall have occasion to mark the points more particularly that concern the jurisdictions of each of the Courts respectively~~. The Duties of the
judiciary Department in general forms the
subject of several articles of the Bill of rights
which contain rules for the direction of
that department on those Occasions which
respect the life, liberty, or property of the
Individual, & secure him from Oppression
by either of the other branches of the Govt.
These will be pointed out under their proper
heads, in the course of our Examination of

†: Though the several distinct Jurisdictions of the Courts are not defined in the Constitution, yet we may collect from the titles given them, what their respective Jurisdictions were intended to extend to. A Court of Admiralty, and a Court of Chancery, imply courts that have no Jurisdiction in common Law Cases. The General Court, then, must be the Court to which such Cases were meant to be referred: The Court of appeals from its name seems to have been intended merely as a tribunal in which the Errors of other Courts should be ultimately corrected, except in the single Case of an Impeachment of a Judge of the General Court. In the year 1777. the General Court & Courts of Chancery were constituted, and Judges appointed pursuant to the Constitution. In 1779. the Court of Admiralty was also finally constituted, and the Judges confirmed in their Office. In the same Session an Act passed constituting the Court of appeals, which Act declared that the Judges of the High Court of Chancery, General Court and Admiralty should be Judges thereof. In 1788. when the number of Judges of the General Court had been encreased to ten, it was discovered, that this Legislative mode of constituting Judges of the Court of appeals & Offices was contrary to the

of the several subjects with which they are connected. — At present it will be sufficient to remark, that no Citizen of Virginia can be prejudiced either in his person or property, by any authority, or the abuse of any authority delegated to any branch of the State Govern^t. so long as the judiciary department remains uncorrupt, & independent of the Legislature and Executive: but whenever the reverse of this happens, by whatever means it may be effected, liberty will be no more, & property but a shadow. [see the other page †]

Pursuing the same method as I have done under the former heads, I will now add a few hints, by what mode this Independence, & integrity may be constitutionally secured: to which I shall ~~premise~~ add a word or two on the necessity of endeavouring to render the Judiciary depart^t. more select. How perhaps it is or will continue under the present Circumstances attending the appointment &c.

1. The nature of the Office ~~of a Judge~~ demands two indispensable qualifications in a Judge — Integrity, and a Knowledge of the Laws of his Country. — To which the

the Constitution, the Act was repealed, and the number of Judges reduced to five, who were balloted for & commissioned as Judges of the new Court then established. This legislative removal of Judges did not alienate much of the Independence of the Judiciary. The displaced Judges however submitted; and in so doing gave a striking proof of the necessity of a constitutional foundation for the support of their Independence. In the year 1787. An attempt had been made to unite the offices of Judges of Admiralty & Chancery, with that of a Judge of the common Law, by erecting District Courts, of which the Judges of the Court of appeals were ex officio to be Judges. That Court at their next Session refused to carry the Act into Effect, and remonstrated to the General Assembly, on the subject: the latter, charging their battery, in the next Session passed the Act above mentioned new modelling the Court of appeals, & transferred the Duty of attending the District Courts, solely to the Judges of the General Court. Considering this merely as a new Court. Considering this merely as a new Modification of the General Court, the Act was strictly constitutional: but in the year 1792. an attempt was made to transfer the Jurisdiction of the high Court of Chancery, in part

the present organisation of the general Court requires the addition of corporal strength & capacity to endure labour and fatigue.

1. To secure the Integrity of a Judge he should be placed above the reach of temptation: this can only be done by affixing to his office a salary, which shall enable him to devote his whole time & attention to the duties of that office, & place him above the temptations of avarice, or necessity. If a Judge be dependant upon other pursuits for a competent subsistence, he must of necessity at sometimes neglect either his duty, or those studies which are necessary to qualify him for the proper discharge of his duties: if he be indigent & distressed in his private circumstances, his Judgt may be warped in favor of the debtor to the prejudice of the Creditor: or what is worse, it may encourage the offer, & perhaps compell the acceptance of bribes, & other means of corruption. The secrecy in which such transactions may be conducted may bid defiance to detection, & this consideration may encourage him even to the hazard of a forfeiture

in part, to the District Courts. by authorising them to grant Injunctions to their own Judgement and to proceed thereupon according to the course of the Court of Chancery. — A motion for an Injunction was referred from one of the District Courts to the general Court for consultation, and the Court unanimously decided that the motion for the Injunction ought to be over-ruled, because the power of granting "the same could only be exercised by those who "are constituted Judges in Chancery in the "manner prescribed by the Constitution". The Arguments of the Judges, however, proceeded upon different grounds. — Two thought the offices incompatible — The others seemed to be of a different opinion, or doubted: but all concurred that without a Commission as Judges in Chancery, they could not act in that Capacity. Those who thought that the offices were incompatible, argued to this effect.

[Here take in the Arg.t in my note book N.o 3. page 17. &c.]

forfeiture of his office by a breach of good behaviour. If these evils may be apprehended from the want of an independant salary may be apprehended to flow in a private Channel, how much greater & more dangerous, are those which may be expected to proceed from those hopes & fears, which a dependance on the other branches of Government may excite. if the maxim, [illegible], "that a power over a mans subsistence amounts "to a power over his will". be true.[2]

2. In a country where Laws are multifarious, not unfrequently contradictory, and often intricate, Ability, is in point of importance almost an equal requisite in a Judge. This qualification is to be sought for among those Gentlemen of the bar whose long practice & Experience, & eminent talents have singled them out, and gained both the notice & the confidence of their Countrymen in general. Such men will not be prevailed upon to resign an extensive and lucrative practice, for a scanty salary, & a laborious office. Men of inferior talents, whose Experience is confined to Cases which they have heard argued, but have borne no part in the

the Argument, whose professional Emoluments have not more than defrayed the expence of their Attendance on Courts, are the persons to whom even a scanty salary might for a time hold out ~~even~~ the vain hope of independence: the bench instead of commanding the respect of the bar, must discover its own inferiority, and this discovery will not be confined to their breasts alone. all will see, and hold in contempt the Decisions of men of inferior Capacity. Hence no person will rest satisfied, or submit to a Judgement pronounced agt him by men whom Inequality to judge rightly is generally admitted. No cause will ever be determined without an Appeal to the ultimate Tribunal which is trusted with the Correction of Errors. Nor will even their decisions (since they also will be men of the same Character,) satisfy the Mind of the ~~late~~ unsuccessful litigants: the disgust & contempt must become general, and the judiciary will be pronounced the rotten part of the Constitution. Nor is this all - a spirit of litigation is always proportionate to the delay, as well as to the Chances of success in a law suit: and whenever from

‡ The Constitution wherein provides for the manner in which Delegates to the continental Congress shall be appointed: but this provision has been repealed by the Constitution of the United States. When the Constitution of Virginia was adopted ~~the~~ Congress had not yet declared the Colonies independent. That Body might be considered as a voluntary assembly from the several Colonies, professing no co-ercive authority: every thing rested upon the spontaneous assent of the Colonies to whatever was proposed. When the Declaration of Independance was made, and promulgated the draught of a Confederation was submitted to the several States, but was not accepted by them. Whether Virginia assented to them or not, I ~~do~~ can not positively informed. An amended draft was afterwards prepared & submitted to the several States, & finally ratified on the day of 1781. Virginia thus became a member of the Confederacy of the United States. By what means them Articles of Confederation were exchanged for the present Constitution, or form of Government will be mentioned hereafter.

1788. c. 67.

from the Operation of these causes, it becomes ~~both~~ usual to carry all suits by appeal to the highest Tribunal ~~and~~ in the State. The wheels of Justice must become so clogged as never to perform a complete revolution. This truth was exemplified in the general Court, where, in a very few years the suits had so multiplied by Appeals from the County courts, as well as from original suits brought therein, that the delays inseparable from its Constitution were declared by the legislature to be in many instances equal to a denial of Justice. Should the same evil take place in the Court of appeals it will be without remedy, unless by a change in the Constitution itself.

‡ Having thus taken a cursory view of the Constitution as far as relates to the distribution of the powers of the Govt. and offered some hints respecting the possibility of amending some of its real defects, I shall take a concise view of such fundamental laws, as may be proper to be ingrafted therein, & made a part thereof.

1. First – Let it be declared, that the Constitution shall be regarded as the supreme Law of the Land

Land, in all cases that do not fall within the provisions contained in the C. U. S.

2d. That the Declaration of rights made by the representatives of the good people of Virga assembled in full & free Convention held at the capitol in the City of Williamsburg on Monday the 6th of may 1776. which rights do pertain to them and their posterity as the Basis and Foundation of Government, ought to be held sacred, and regarded as a part of the Constitution of the Commonwealth.

3d. That all laws in force at the meeting of the Convention, and not inconsistent with the Constitution, remain in full force, subject to alterations by the ordinary legislature.

4th. That our Ancestors migrating to this Country brought with them the laws of the parent State so far as the same were applicable to their situation in this Country: that the common law of England, therefore so far as the same is consistant with the principles of a republican ~~and antimonarchical~~ Government of the Commonwealth; and the ~~constitution by~~ the Constitution, ~~or some~~ Acts of the ordinary legislature, shall be regarded as the law of the land.

5. That no Freeman shall be taken, or imprisoned or be dispiesed of his Freehold, or liberties, or

free

free customs, or be outlawed or exiled, or any otherwise destroyed, nor shall the Executive pass upon him or condemn him, but by lawful Judgement of his peers, or by the Laws of the land. Justice shall not be sold, denied, or deferred to any man: no person shall be twice put in jeopardy of life or limb for one and the same offence.

6: That the privilege of the writ of habeas corpus shall not be suspended, except by the authority of the Legislature, nor ~~in any case~~ by the Legislature, unless when in Cases of rebellion or insurrection or invasion, the public safety may require it. The benefits of that writ shall be extended to every person within the State without fee, and shall be so facilitated that no person on - vi: Jefferson's Draught - pa: 13.

7. That the people have a right peaceably to assemble together to consult for their common good, ~~and~~ to instruct their representatives: and that every person hath a right to petition the Legislature, or to the process of Courts, for redress of grievances, or a participation of his demands, according to the nature of his Case.

8. That printing presses shall be subject to no other restraint than liableness to prosecution for false facts printed and published.

9. That every person hath a right freely to speak, write, print, and publish his Opinions without being liable to restraint or prosecution for the same: that no writing be deemed a libel if the

the facts therein mentioned be true.

10. That no Alien [having permanently his residence] can [take] hold or exercise any Office, freehold, franchise or privilege, nor any ~~greater~~ estate in Lands or Tenements ~~than for a term of not exceeding~~ within this Commonwealth; except a Lease for a term not exceeding seven years, unless he be first naturalized according to the laws of the Commonwealth.

11. That no negro, or other person who shall have one fourth part or more of negro blood, which last are deemed mulattoes, [nor any person the issue of a negro or mul] ~~shall or shall~~ can take, hold, or exercise any Office, freehold, franchise, or privilege, or any estate in Lands or Tenements, within this Commonwealth, except a Lease for a term not exceeding ~~seven~~ [twenty one] years; nor [can a negro or mulattoe] be a witness in any Court of Judicature, except in prosecutions ag^t. or in civil suits between negros and mulattoes.

12. That no person can be a Slave in this Commonwealth except such as were so on the seventeenth day of October 1785. and the descendants of the females of them. That all females born after the 31^st. Day of Dec^r. 1800, and the Descendants of such females shall be free. But such females & their Descendants born [or brought up] in the family of any person may be held to service therein until the age of ~~thirty~~ years, as a compensation for the trouble and

and expence of maintaining them during their Infancy.

13. That marriages between white persons, and negroes or mulattoes be void; and that such as contract or celebrate them be imprisoned by a year, and grievously amerced.

14. That no Slave be convicted of, or punished for any capital offence, but by the unanimous Opinion of the Judges triers, who shall not be ~~of~~ fewer than six, and shall deliver their Opinions in open Court ~~as soon as~~ before they separate.

15. That no person convicted of Murder shall be pardoned; nor shall any convicted of Treason be pardoned, but by the Legislature.

16. That no Monopoly be granted to any person except so far as may be necessary for the encouragement of Litterature useful inventions, or new institutions beneficial to the public; nor in any Case for a longer term than 21 years.

17. That the demands and ~~other~~ Estate of a person dying intestate ~~shall~~ shall henceforth pass ~~in parcenary to his kindred male and females~~ according to the course established by the Act passed in the year 1785, entituled an Act directing the Course of Descents; ~~with~~ without regard to Sex, primogeniture, ~~whole~~ half blood, Bastardy, or any other preference or impediment whatsoever.

18. That no Estate tail, or other perpetuity in real

in original Estates, can be created by any Act of the Legislature, Will, Deed, or other Means or Conveyance whatsoever.

19. That the general Assembly shall not have Power to infringe this Constitution, or to abridge or change any of the rights thereby declared, or to alter any of the fundamental laws; or any part of the common law, or thereof, except such Acts of the ordinary Legislature as Experience may recommend to be altered; nor to abridge the rights of any person or account of his religious belief; nor to compel him to contributions other than those he shall have personally stipulated for the support of that or any other; nor to pass laws for punishing actions done, or depriving rights lawfully acquired before the existence of such laws; nor to pass any bill of attainder of Treason or Felony; nor to prescribe torture in any Case whatever; nor the punishment of Death in any other mode but by hanging the criminal by the neck, or beheading him, in Case he should prefer death in that manner.

20. That at any future period it should happen that the federal Union should be dissolved, the powers vested in Congress by the federal Constitution, shall be vested in the general Assembly; those vested in the President alone or in the Pres. with the Advice of the Senate shall be vested in the Governor alone, or in the Governor with the Advice of the Senate of this

this Commonwealth, except in cases provided for by this Constitution, and the powers vested in the Judiciary of the United States shall be vested in the ~~Courts~~ Judiciary of this Commonwealth ~~in such cases~~, until a Convention be assembled for the purpose of adjusting the future Constitution of the Commonwealth, to its new circumstances.

Mr. Jefferson's draft of a Constitution contains many valuable parts besides those which I have extracted from it. Were I to undertake to prepare a system, or Draught, I should adopt that as my first outline, interweaving the alterations here spoken of, in the body of the work.

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Among the Blessings which Almighty Providence hath showered down upon the United States in abundant Streams, there is a large portion of the bitterest draughts that ever flowed from the Cup of affliction. Whilst America hath been the Land of promise to Europeans and their Descendants, it hath been the Vale of Death to Millions of the wretched Sons of Africa; to them, the genial Light of liberty, which hath shone with unrivaled lustre, on the former, hath yielded no Comfort, but hath proved a pillar of Darkness; as if the same Sun did not shine upon the Master & the Slave. Whilst we were offering up vows at the Shrine of Liberty, & sacrificing Hecatombs upon her Altars: whilst we swore irreconcileable hostility to her Enemies, and hurld Defiance in their faces; whilst we called upon the God of Hosts to witness our Resolution to live free, or die, and execrated all that were too base hearted to unite with us in establishing the Empire of Freedom, we were imposing upon our fellow Men who differ in Complexion from us, a Slavery, ten = thousand times more cruel ~~than~~ than the utmost extremity of those Oppressions we, ourselves, complained of. Such are the Inconsistencies of human nature; such the blindness

Notes On the State of Slavery in Virginia.

+ Take in the other page —

Slavery, says a well informed writer on the subject has been attended with circumstances so various, in different Countries, as to render it difficult to give a general Definition of it. — Hargrave's Arg.t in Somerset's Case. pa: 13. & 14. Justinian calls it "a constitution of the law of nations, by which one is made subject to another contrary to nature". — Lib: 1. Tit: 3. S. 2. Grotius describes it to be "an obligation to serve another for life, in consider- Lib: 2. c. 5. S. 27. "ation of Diet, and other common necessaries". — Dr. Rutherforth, rejecting this Definition informs us, that "perfect slavery is an obligation to be Lib: 1. c. 20. p. 474. directed by another in all one's Actions." Baron Montesquieu defines it to be "the establishment of a Lib: 15. c. 1. "right, which gives one man such a power over "another, as renders him absolute Master of his "Life and fortune". — These Definitions appear not to embrace the subject fully, since they rather respect the condition of the Slave in regard to his master, only, than in regard to the State, as well as his Master. The Author last mentioned observes Lib: 12. c. 1. "That the Constitution of a State may be free, and ... the subject not. The subject free, and not the Constitution of the State. It is the disposition of the fundamental laws that Constitutes liberty in respect to the Constitution: but as it relates to the

of those who will not pluck the Beam out of their own Eyes, though they can espy a Moat in the Eyes of their Brother; such that partial system of morality which confines Rights & Injuries to the difference of Complexions; such the effect of that self love, which justifies or condemns, not according to principle, but the subject acted upon. Had we turned our Eyes inwardly when we supplicated the Father of mercy, the Author of Righteousness, and the God of Battles to aid our cause, should we not have stood more self convicted than the publicans! Should we not have left our Gift upon the Altar, & have been first reconciled to our Brothren whom we held in Bondage? Should we not have broken their Fetters, and loos'd their Chains? Let him that hath Conscience answer. To form a just estimate of this obligation, & to demonstrate how incompatible a state of Slavery is the U. S. is with the principles of our Government, & the Revolution upon which that Government was founded, it will be proper to consider the nature of Slavery, its properties, dependants, and consequences, in general; its rise & progress, & present State in this Commonwealth, together with the most probable means by which it's abolition can be effected; or if that be utterly impracticable, how far its rigors can be softened.

Turn back to page 68.

the subject, morals, customs, received examples, and particular civil laws, may favor; or check it." — Instead of attempting a general definition of Slavery, I shall, by distributing it into a threefold aspect, endeavour to give a just Idea of it.

I. When a nation is, from any external cause, deprived of the right of being governed by its own laws, only, such a nation may be considered as in a state of political Slavery. — Such is the case of conquered countries, and generally of Colonies, and other dependant Governments. — In these the personal rights of the subject may be so far secured by wholesome laws, as that the individual may be free, whilst the State remains subject to the will of an higher power: and this subjection of one nation to the will of another constitutes this species of Slavery, which I have called political.

II. "Civil liberty being no other
1. Bl. Com: 125. "than natural liberty so far restrained by human
"laws, and no farther, as is necessary & expedient
"for the general advantage of the public", —
whenever that liberty is farther restrained by the laws of a State, a state of civil Slavery commences.

commences, immediately; which may affect the whole society, and every description of persons in it, and yet the Constitution itself be free. This happens whenever the laws of a State respect the form, or energy of the Government, more than the happiness of the Citizen; as in Venice, where the most oppressive species of civil slavery exists, perhaps in an equal degree as in Turkey; a Slavery which extends to every individual in the State, from the proudest Gondolier to the members of Senate & the Doge himself.

This species of Slavery also exists whenever there is an inequality of rights, or privileges between one part of the Subjects, or Citizens and another, except such as necessarily result from the Exercise of an Office; for the advancement of one man must be founded on the depression of another, and the measure of the former's exaltation, is that of the Slavery of the latter. In all Govern^ts. however constituted, where distinctions of rank is admitted, this species of Slavery exists: but it exists in its greatest force where one class or description of Men are excluded from all civil rights whatsoever: this is the case with our free negroes, and Mulattoes, whose civil Incapacities are almost as numerous as the civil rights of free white Citizens*. Yet there remains

Paine's rights of Man.

* Free negroes and Mulattoes are excluded from the right of suffrage, by the constitution, and by Consequence, I presume, they are likewise excluded from office: they were formerly incapable of serving in the Militia, except as Drummers or pioneers, but now I presume, they are enrolled in the lists of them who bear arms. They were over punishable by the act of ~~1705~~ 1723. c. 2. for presuming to appear at muster fields. All but housekeepers, or persons residing on the frontiers are prohibited from keeping, or carrying any Gun powder, Shot, Club, or other Weapon offensive or defensive — Resistance to a white person on any occasion was formerly, and now, in any case except a wanton Assault on the negro, is punishable by whipping not exceeding thirty Lashes in the Case of a free negro or mulattoe as well as of a Slave. No negro or Mulattoe can be a witness except agt. or between negros or Mulattoes. — Free negros were formerly denied, together with Slaves, of the Benefit of Clergy in many Cases where it was allowed to a White person, but now all offenders are put upon the same footing in that respect. Emancipated Slaves may be sold to pay debts allowing in the case in respect to Consequences of the Owner contracted before Emancipation and hired out to satisfy their wages, where no Witness can be had. — Their Children are to be bound out

(1723. c. 4. 8 Geo. 1733)

1748. c. 31.

1792. c. 42.

bound outas apprentices by the overseers of the poor. Free Negroes however have all the Benefits enjoyed by any white person charged with a capital crime, unless it be a Trial by a Jury of their own Complexion, and the Evidence of the Intermarried persons against them: and a Slave suing for his freedom shall have the same privileges.

1793. c. 22. The Acts of 1793. c. 22. [redacted]. requires that free Negroes & Mulattoes residing or employd to labour in any City, Borough, or Town shall be registered; & imposes a penalty of five Dollars on the person harbouring or employing them, without a Certificate & directs that the Negroes or Mulattoes who neglect to procure them may be committed to prison — The like provision respecting free Negroes going about in the Counties. Certificates to be renewed every three years. The act of the same session

1793. c. 23. c: 23. prohibits the migration of free Negroes & Mulattoes to this State, by Land or by Water, & provides that they may be sent out of the State to the place from whence they came, imposes a penalty of £100. on any person bringing them hither, & moreover directs that any Slave brought hither from a foreign or the West Indies shall be immediately sent back at the Expence of the Importer.

one more stage of human depression, which is III. That Condition, in which one man is subject to be directed by another in all his actions; which constitutes a state of domestic Slavery; to which state all the degradation of civil Slavery is incident, with the weight of numerous calamities superadded thereto. As the second species of Slavery here spoken of, so far as it exists in this Commonwealth, has grown out of this last, it may not be improper to make some enquiry into the origin, and foundation of domestic Slavery, & its existence in other Countries, previous to its fatal Introduction into this.

Hargrave 18. "The great origin of domestic Slavery, says the writer just mentioned, is captivity in War; though sometimes it has commenced by contract. Yet neither of these foundations seems reconcileable to natural Justice, since the right of killing an Enemy, vanquished in a just war, can only exist in a case

1. Bl. Com. 423. of such absolute necessity, as is incompatible with the power of carrying him off into captivity: and that such absolute necessity did not exist appears from the Victors taking him prisoner instead of actually killing him: Nor can any price which a person may set upon his own liberty be an equivalent for life and liberty, both of which in absolute Slavery are held to be in the masters disposal. And as Slavery by Birth must

but this Act is not to extend to Seamen, or Servants attending travellers, & departing again with their Masters or masters.

† Though the pride or partiality of English writers will not permit them to acknowledge that Slavery ever existed in that island, yet from a variety of circumstances there is great reason to conclude that the Villains in England were in little better condition than actual Slaves. See Magnas Carta c: 4. & Barringtons Observations thereon page 7.

must depend upon the condition of the parent: if that of the parent can not be justified, the slavery of the child must be unlawful. We shall pass over that slavery, which in some countries is used as a punishment for crimes after Civil society, as being founded on the same necessity as the right of inflicting other punishments, & never extending to the offender's issue." 172

Hargrave 21. "It is acknowledged, however, that the practice of slavery is ancient, & almost universal; and some writers there are who deduce its Lawfulness from the use of it among the Jews, during the Theocracy. The Greeks, the Romans, and the ancient Germans also practiced it, and the latter transmitted it to the various kingdoms & states which arose in Europe out of the ruins of the Roman Empire†. In Asia it seems to have been general, & in Africa universal, and so remains to this day, though it hath long since declined ~~in this~~ in Europe: its first declension is said to have been in Spain so early as the eighth Century; and it is alledged to have been general about the middle of the fourteenth; and was near expiring in the sixteenth when the discovery of the american Continent, and the eastern & western Coasts of Africa gave rise to the introduction of a new species of Slavery. It took its rise from the portugueze, who in order to supply the spaniards with persons able to sustain the fatigue of cultivating their new possessions in America, particularly the Islands, opened a Trade between

+ My Copy of Purvis is mutilated, as far as pa: 96. there are some Acts antecedent to this here cited.

Setters africa & America for the sale of negroes about the year 1508. — The expedient of having Slaves for labour was not long peculiar to the Spaniards, being afterwards adopted by other European Colonies; and though some attempts have been made to stop the progress of it in several parts of America, it is to be feared it has taken too deep root in some, & perhaps in this Commonwealth among others, ever to be totally eradicated.

Stith's History of Virgo - 182.

The first introduction of Slavery into Virgo was by the arrival of a Dutch ship, having twenty negroes on board, from the coast of africa, which were sold here in the year 1620. — The first act of assembly in which I find the subject of Slaves mentioned passed in the year 1662.+ & declares

1662 c. 136.

that no Englishman trader or other, who shall bring in any Indians as Servants, and assign them over to any other, shall sell them for Slaves, nor for any other time than English of like ages should serve by act of assembly — Purvis - 101. The ~~same~~ same year

1662. c: 12.

an act passed declaring that all persons born in this Country should be bond or free according to the condition of the mother. — purvis 111. — In 1667. an

1667. c. 2.

act passed declaring that Baptism of Slaves doth not exempt from Bondage — purvis 155. The reason assigned for which is "that the masters being freed from doubt "may more carefully endeavour the propagation of "Christianity." — In 1668. we find the first traces

1668. c: 7.

of Emancipation, in an act which subjects negro women set free to the tax on tytheables; ~~which~~ declaring that negro women, though permitted to enjoy the privileges of Freedom, yet ought not in

all respects to be admitted to a full fruition of the Exemptions & immunities of the English."

1669. c. 1. The succeeding year the reign of Slavery appears to have received considerable augmentation by an Act which declares, That if any Slave resist his Master, or others by his masters order correcting him, and by the extremity of the Correction should chance to die, such death should not be accounted Felony; but the master or other person appointed by his master to punish him, be acquit from molestation: since it can not be presumed that prepensive malice which alone makes Murder felony, should induce any man to destroy his own estate. — This cruel and

1705. c. 49. tyrannical act, was at three different periods
1723. c. 4. re-enacted, with little alteration; and was not
1748. c. 31. finally repealed till the year 1798, above a Century after it had
1788. c. 23. first disgraced our Codes. — The Act of 1670. c. 5.

1670. c. 5. prohibits Indians, or negroes manumitted, or
1705. c. 49. otherwise set free, though baptised, from purchasing Christian Servants. From this Act it is evident that Indians had been made Slaves antecedent to that time, although we have no traces of the original Act by which they were reduced to that Condition: In the same Session an Act passed reciting

1670. c. 12. that Disputes had arisen whether Indians taken in War by any other nation and by that nation sold to the English, are Servants for life, or term of years, and declaring that all Servants not being Christians imported into this Country by shipping, shall be Slaves for their lifetime;

but that what shall come by Land, shall serve, if boys & Girls, until thirty years of age, if men & women twelve years & no longer. — In 1682. it was declared that all Servants brought into this Country by Sea or Land, not being Christians, whether Negroes, Moors, Mulattoes or Indians, except Turks & Moors whilst in Amity, and all Indians which shall hereafter be sold by neighbouring Indians, or any others trafficking with us as slaves, shall be Slaves to all intents and purposes. In the ~~ensuing~~ year 1679. on a rupture with the Indians, it had been declared for the better Encouragement of Soldiers that what Indian Prisoners should be taken in War should be free purchase to the Soldier taking the same; so that the Act of 1682. may be considered as only extending the principles of the former Act to all cases whatsoever. — In the year 1705. c. 52. + An Act passed declaring that there should be a free and open trade for all persons, at all times, & at all places, with all Indians whatsoever. On the Authority of which ~~Act~~, the General Court in April term 1787. adjudged that no Indians, nor the descendants of any Indians brought into Virginia subsequent to the passing of that Act, could be Slaves in this Commonwealth; notwithstanding an Act of the same Session declaring that all Servants, brought into this Country by Sea or Land who were not Christians in their native Country, except Turks & Moors in Amity with his majesty,

1682. c. 1.
1705. c. 49.
1679. c. 1.
1705. c. 52.
+ 1691. c. 9. in MS. in an Edn of Purvis which I have since seen to same Effect.
1705. c. 49.

shall be accounted slaves; upon the
+ Hannah a Lab } authority of ~~that~~ this Adjudication we may
v } venture to pronounce that for near ninety years
Davis } past, Indians, natives of this Country, are exempted
from Slavery, unless their female Ancestors had
before that time been reduced to that Condition.
Yet had we not such an authority, the word —
persons, (which in the Act of 1753. c. 2. by which
the Act of 1705. c. 4. is reenacted, with no other
variance, is substituted for Servants.) might
have created some doubts unfavourable to
Oct: 1778. c. 1. the rights of Indians. — In October 1778. the
General Assembly declared that no ~~person whatever~~
Slave should thereafter be brought into this Commonwealth
by Sea or Land; and that every Slave imported
contrary thereto should upon such importation
become free; with an Exception as to such Slaves
as belong to emigrants from other of the U. States,
and such as may be claimed by Descent, Devise
or Marriage, & to such as were then the actual
property of any Citizen of the C. W. although residing
in any other of the U. S. — or to Slaves brought by
travellers making a transient stay, & carrying their
1785. c. 77. slaves away with them. The Act of 1785. c. 77. reenacted
in 1792. declares that no person shall thenceforth be
Slaves in this Cth. except such as were so on the first
day of that Session (Octo. 17. 1785.) and the
Descendants of the Females of them. But that

‡ The act of 1793. c. 23. provides that if any slave shall be brought or come into this state from Africa, or the west Indies, directly, or indirectly, upon information thereof given to any Justice of the peace, it shall be his duty to cause such slave to be apprehended — immediately, and transported out of the — Commonwealth, and the Expence attending such transportation shall be paid by the person importing such slave, recoverable in the name of the Justice directing such slave to be transported, by warrant before a single Magistrate -

Clause of the Act of 1778. c. 1. which declares that all Slaves thereafter brought into this Com. should upon such importation be free, is unfortunately changed, the latter acts declaring, that Slaves thereafter brought into this Com. and kept therein one whole year together, or so long at different times as shall amount to one year shall be free. - by which means the difficulty of proving their right to freedom will be not a little augmented: for the fact of the first importation, where the right immediately accrues upon it, may in most Cases be proved without any difficulty: but where a Slave is subject to removal from place to place, and the right to his freedom is postponed for so long a time as a whole year, the proofs in favor of Liberty may be too easily avoided. ‡ Such is the origin, progress, & present foundation of Slavery in this Commonwealth, so far as I have been able to trace it. The present number of Slaves is immense, as appears by the Censes taken in the year 1791. amounting to no less than 292,427. nearly two fifths of the whole population of Virga. We may console ourselves with the hope that this proportion must continually diminish, as the Increase among the Whites from births, will probably keep place, with the Increase of the Slaves, whilst future migrations hither

+ The Act of 1699. c. 12. is the first that occurs in any Code that I have seen imposing a Duty on Slaves: a variety of Acts, continuing, encreasing or modifying the Duty, occur between that period and the revolution. viz:

1701: c. 5. .... Title only retained Edo 1733. p: 116.
1704. c: 4. .... Title retained .... Id: .... p: 122.
1705. c: 1. .... Ditto ..... 126.
1710. c: 1. .... Ditto ..... 239.
1712. c. 3. .... Ditto ..... 282.
1723. c: 1. .... Ditto - repealed by proclamation 333.
1727. c: 1. .... Ditto - Enacted with a suspending Clause & the Kings assent refused } 376.
1732. c: 3 .... printed at Large .. Ibidem .. 469.
1734. c: 3. .... Do. in Sessions act bound up with former
1736. c: 1. .... Do. .... Ditto.
1738. c. 6. .... Do .... Ditto.
1740. c. 2. .... Do .... Ditto.
1742. c. 2. .... Do .... Ditto.

1752. c. 1. .... printed at Large .. Edo of 1769. 281.
1754. c. 1. .... Do ..... 319.
1755. c: 2. Sess: acts. 1759. c. 1. .... Do ..... 369.
10. p Cent in addition to all former duties. 1763. c. 1. Journls of that Session. 1766. c. 3. & 4. .. Do ..... 461. 462.
Resolve of Ho: of Del: May 9: 1769. Journ: 41. —— c: 15. additional Duty. Title only } 473.
printed - repealed by the Crown —
1769. c: 7. & 8. & 12. Title only printed - Rev: Code 7. 6.
1772. c: 15. .... Id. .... 24.
Title printed ....
NB. The four last mentioned acts are to be found at large in the Sessions acts.

+ See Petition to the Throne 4 p: 1: 1772. Journals of Ho. of Delegates 131.

will contribute to encrease the proportion of free persons: but this hope affords no relief from the evil, than a diminution of their apprehensions, which are naturally excited by so large a number of oppressed Individuals being detained among us, and the possibility that they may one day be roused to an attempt to shake off their chains.

Whatever inclination the first Inhabitants of Virginia had to encourage Slavery, a disposition to check the progress, and increase of it has long since manifested itself in the Acts & proceedings of the Legislature. So long ago, as the year 1699. I find the title of an act laying an Imposition upon Servants & Slaves imported into this Country, which was continued by repeated temporary Acts.+ One of them passed in 1723. appears by a marginal note opposite the title, to have been repealed by proclamation Acts: 24. 1724.+ — In 1727. An Act with the same title occurs, which being enacted with a suspending clause, the royal assent was refused, as we are informed by a marginal note — In 1732. c: 3. a duty of 15 lb per Cap. was laid on Slaves imported to be paid by the Buyers, a measure calculated to render it as little obnoxious as possible to the English Merch: trading to Africa, and not improbably suggested by them to the privy Council in England, since the preamble

Edo of 1733. 1699. c. 12.
+ Edo of 1733. pa: 333.
Id: pa: 376.
Ibid: 469.

preamble

preamble of the Act contains a most humble address to the King, representing that no other Duty can be laid upon import or export, without oppression, except a Duty on Slaves to be paid by the buyers, agreeably to his majesty's Instructions, and beseeching his majesty that such a Duty might be imposed: this Act was only for the short period of four years[+], but seems to have been continued from time to time till the year 1751. when the Duty expired[‡], but was revived in 1752. for four years — the preamble of this Act, as well as of several of the former takes notice that the Duty had been found no ways burthensome to the Traders in Slaves. — in 1754. an additional duty of 5 ℔ Cent was imposed for the term of three years, by an Act for encouraging & protecting the settlers on the Mississipi: this Duty, as well as all the former was to be paid by the buyers. In 1759. Sess: 2. c: 1. an Act passed recites that great numbers of negroes and other slaves imported into Maryland, North Carolina, & other places in America had been there bought by the Inhabitants of this Colony, and from thence transported hither, whereby the Duties had been evaded, for prevention whereof a Duty of 20 ℔ Cent on the price bona fide paid is imposed on the owner or importer. This Duty was to continue for seven years, & was continued in 1769. c: 7. & 8. 1769. c. 7. — In the same Session the Duty of five per Cent was continued for three years. Also an additional

+ In 1740. c. 2. an additional 5 ℔ Cent was imposed to be paid likewise by the buyers, for an Expedition against the Spaniards &c. for four years. and by an Act passed in 742. c. 2. The whole Duty was continued till July 1. 1747.

‡ See the preamble to the Act of 1752. c. 1.

additional Duty of ten per Cent to be
also paid by the buyer, was imposed for seven
1769. c. 12. years; in the same Sesion a further Duty of 5 ℔ Ct.
was imposed by a seperate Act, for the better support
of the contingent Charges of Government, to be also
paid by the Buyers. — In 1772. all these
1772. c. 15. Duties were further continued for the Term
of five years from the 20th. of april 773.

In the course of this Enquiry it is easy to
trace the Desire of the Legislature to put a check
to the further importation of Slaves. A Duty of
5 ℔ Cent, to be paid by the buyers, at first, with
difficulty obtained the royal Assent. Requi=
=sitions from the Crown for aids, on particular
Occasions, afforded a pretext from time to
time for encreasing the Duty from five to ten,
and finally to twenty per Cent, with which
the Buyer was constantly made chargable.
The wishes of the peoples of this Colony were not
sufficient to counterbalance the interests of
of the English African merchants, & it is probable
that we never could have put a stop to so
infamous a traffic by laws, however disposed
so to do, had we continued dependent on the
British Government. That the Legislature were
sincerely disposed to put a stop to it, is evident
from this, That as soon as the Tumult of the
Revolution began in some measure to subside

+ a System uniformly persisted in for nearly a whole Century, and finally carried into effect, so soon as the legislature were ~~no longer restrained~~ unrestrained by the hand of power eternal authority, evinces a indisposition which it would be uncandid to doubt. From the time that the Duties imposed upon the importation of Slaves were raised above five per Cent, the importation decreased, and for many years antecedent to the revolution was very inconsiderable, compared with what it had formerly been in Virginia, & still continued to be in some other parts of the Continent. The difficulties attending any plan which has been yet suggested for the Abolition of slavery in a Country, where so large a proportion of the cultivators of the Earth, and of the whole number of inhabitants are Slaves, ~~will~~ ought to abate the acrimony of their Censures, who contend for such a measure, without having weighed its difficulties or its consequences.

and before any new importation of Slaves under prevailing circumstances could take place the Assembly made use of the first leisure that offered to exert forever so pernicious and disgraceful a Commerce, by passing an Act in October 1778. before mentioned, prohibiting the future importation of Slaves under very severe penalties. +

Oct: 1778. c. 1.
Rev. Code 80.

Tedious & uninteresting as this ~~disquisition~~ detail must appear to all others, a Citizen of Virginia will feel satisfaction at seeing so clear a vindication of his Country, from the Opprobrium, but too lavishly bestowed on her, of having fostered Slavery in her Bosom. Could the Acts of the Colonial legislature have had free scope, I have not a doubt but ~~that~~ the Importation of Slaves would have been prohibited ~~absolutely~~ half a Century sooner: at least it seems probable that the Duties upon Slaves imported would have amounted nearly to a prohibition. But a Commerce so beneficial to the British nation as that between africa & her Colonies, however repugnant to the avowed principles of her Constitution was not to be checked on any consideration, but the Wants & Iniquities of the Crown. Accordingly we find that the only Acts whereby an increased Duty was imposed on Slaves, contained Grants of large sums to the Royal requisition of the Crown.

Having traced the origin & progress of slavery in Virginia, as also the attempts of the Legislature to check that progress, at different periods, it may not be improper to take some notice of the laws respecting emancipation. The first of these, passed in 1723. prohibited the manumission of slaves, upon any pretence whatsoever, except for meritorious services, to be adjudged & allowed by the Gov.r & Council. 1723. c. 4.

This clause was re-enacted in 1748. The reason usually assigned for this prohibition was, to prevent the manumission of aged or infirm slaves, which must either become chargable to the parish, or perish for want of proper sustenance: accordingly the Act of may 1782. c: 21. authorising the manumission of slaves, requires that all slaves set free, not being of sound mind and body, or being above forty five years of age, or males under twenty one, or females under eighteen years of age, shall be supported by the person liberating them, out of his Estate. — The Act of manumission may be either by will, or deed under the hand & seal of the party, acknowledged by him, or proved by two witnesses in the Court of the County where he resides. This act was reenacted in 1792. with a further provision that an emancipated slave 1748. c. 31. May 1782. c. 21. Rev. Co: 159.

The number of slaves emancipated by Deed in Accomack County from Feby 1788. to may 1795. amounts to 238. besides many emancipated by wile.

Suspended Laws of 1792. c: 42.

+ It is not my intention here to notice the laws which relate to Slaves merely as a species of property: they will be more properly noticed elsewhere

slaves may be taken in Execution to satisfy any debt contracted by the person emancipating him, before such emancipation is made.

The consequences attendant on a state of slavery under our laws is the next object of inquiry. + Civil rights, we may remember are reducable to three primary heads, The right of personal security; the right of personal liberty; and the right of private property. In a state of slavery the two last are utterly abolished, the person of the slave being at the absolute disposal of his master; and property, what he can neither acquire nor hold. — Slavery, says Hargrave, always imports an obligation of perpetual service, which only the consent of the master can dissolve. it generally gives to the master an arbitrary power of administering every sort of correction, however inhuman, not immediately affecting life or limb, and even these are in some Countries, as formerly in Rome, and at this day among the Asiatics & Africans, left exposed to the arbitrary will of the master: or they are protected only by fines, and other slight punishments. — It does not appear that so malignant a species of slavery ever obtained in this Country, though it must be confessed that it fell little short of the rigor of that condition, as will appear by a review of the Acts of the Legislature on that subject.

1. Bl. Com: 129.

pa: 15.

The first & were Law respecting Slaves, now to be met with in our Codes, is that of 1669. c. 1. already 1669. c. 1.

mentioned, which declared that the death of a
Slave resisting his master, or other person correcting
him by his order, happening by extremity of the Correction,
should not be accounted Felony. — The altera=
vi:1705.c.49. =tions which this act underwent were by no
1723.c.4. means calculated effectually to mitigate its
1748.c.31. severity; perhaps it was rather encreased by
a clause in the act of 1723.c.4. which declared
that a person indicted for the murder of a Slave
and found guilty of Manslaughter should
not incur any punishment for the same:
these acts were at length repealed by the act
1788.c.23. of 1788.c.23. So that Homicide of a Slave
stands upon the same footing now, as in
the Case of any other person. — By the
1672.c.8. act of 1672.c.8. It was declared to be lawful
for any person pursuing any runaway negroe, mulatto,
Indian Slave, or Servant for Life by virtue of
an hue and cry, to kill them in Case of Resist=
=ance without being questioned for the same.
This act was afterwards in 1680.c.10. extended
1680.c.10. to persons employed to apprehend runaways.
These acts underwent some alteration in the
year 1705.c.49. by which two Justices were
1705.c.49. authorised by proclamation to outlaw run=
=aways, who might thereafter be killed and
destroyed by any person whatsoever, by such
ways & means as he might thinks fit, without
Accusation or Impeachment of any Crime for
so

for so doing: and that if any such Slave
should be apprehended, he might be punished at
the Discretion of the County Court, either by dismem=
=bering, or in any other manner not touching
life. — The rigor of this act was afterwards
extended to the venial offence of ~~being~~ going
1723.c.4. abroad by night, if the Slave were notoriously
1748.c.31. guilty of it. — Such are the cruelties to which the
practice of Slavery ~~are~~ is capable of inflicting. The
dawn of humanity appeared in 1769. when the
1769.c.19. power of dismembering, even under the authority
of the County court, was restrained to the single
instance of an attempt to ravish a white
woman, in which Case, the punishment is
perhaps not more than commensurate to the Offence.
1772.c.9. In 1772. some restraints were laid upon the
practice of outlawing Slaves, requiring that it
should appear to the satisfaction of the Justices
that they were outlying & doing Mischief.
But this act did little more than manifest an
intention, which it was not calculated to
carry into effect, in this respect, though in
some others, which we shall note hereafter, it
it contributed not a little to soften the severity of the
penal Code respecting Slaves. — The act of 1792.
concerning Slaves, I apprehend ~~virtually~~ repeals
those acts which authorised the outlawing of Slaves,
directing, in lieu thereof, that the Justices ~~shall~~
~~[illegible]~~
issue a warrant to the Sheriff to apprehend, and
~~[illegible]~~
commit them to Jail for Trial: the other parts of

the laws which related to the subject, Fornicatory being wholly omitted herein. — By the Act of 1680. c. 10. a negroe, mulattor, or Indian, bond or free, presuming to lift up his hand in opposition against any Christian, should receive thirty lashes on his bare back for every offence. — The same Act prohibited Slaves from carrying any Club, staff Gun, sword, or other weapon of defence; which was afterwards extended to all negroes, mulattoes, & Indians whatever, with some exceptions in favor of those who were housekeepers or listed in the Militia, and Slaves living many frontier plantation. — Slaves by these and other acts, are prohibited from going abroad without leave in writing, and offending herein might be whipped: any person suffering a Slave to remain on his plantation for four hours together, is subject to a Fine; or dealing with a Slave without leave in writing from his master to forfeit four times the calue to the master, & twenty dollars to any person who will sue for the same. These provisions are in general re-enacted in the act of 1792. but by this last Act the punishment to be inflicted for lifting the hand in opposition to a white person, is restricted to those cases where the negroe or mulattoe is not wantonly assaulted. The act of 1748. c. 31. made it felony without benefit of Clergy for a Slave to prepare, exhibit or administer

1680. c. 10.
1705. c. 49.
1723. c. 4.
1705. c. 49.
1723. c. 4.
1748. c: 31.
1785. c: 77.
S. L: of 1792. c. 42.
1753. c. 2.
1748. c. 31.

any medicine whatever without the order or consent of the master: but allowed Clergy if it appeared that the medicine was not administered with an ill intent; the Act of 1792. with more justice directs that in this latter case the Slave shall be acquitted. — To consult, advise, or conspire to rebel, or to plot, or conspire the death of any person whatsoever is also felony without benefit of Clergy in a slave. — Riots, rout unlawful assemblies, trespapes, & seditious speeches by Slaves, are punishable with stripes at the discretion of a Justice of peace. — The master of a Slave licencing a Slave to go at large & trade as a freeman, is subject to a fine of thirty dollars, or permitting his Slave to hire himself out. The Slave may be sold, & twenty five per cent of the money applied to ease every the County levy. Negroes & Mulattoes are incapable of being witnesses but against or between negroes or mulattoes; nor can they intermarry with a white person; though no punishment is annexed to the Offence in the Slave, nor is the marriage void. The white person contracting marriage, & the Clergyman by whom the ceremony is celebrated are liable to fine and imprisonment. These provisions though introduced at several times are all re-enacted in revisal of 1792. S. L. c. 42. 43.

From this melancholy review it will appear, that even the right of personal security, if not wholly annihilated, is rather the

Suspended acts of 1792. c. 42.
1748. c. 31.
1792. c. 4 Ibid:
1785. c. 77.
1792. Ibid:
1769. c. 19.
May 1792. c. 32.
1792. Ibid:
1785. c. 77.
1792. Ibid:
1753. c. 2.
S. L. of 1792. c. 43.

the shadow of a right, than the reality: that many actions indifferent in themselves, as being permitted by the laws of nature to all mankind, and to all free persons by the laws of society, are either rendered highly criminal in a Slave, or subject him to some kind of punishment or restraint: nor is it in this respect only, that his condition is rendered more deplorable by law. The measure of punishment to a Slave, and a free man, for the same offence is different; and the modes of trial & conviction create not a less disparity between them. If a free man be accused of any crime, he is entitled to an examination before the Court of the County, where the offence is alleged to have been committed; whose decision, if in his favor, is held to be a legal acquittal, but is not final if it be against him: a grand Jury, & a petty Jury of the county, must successively pronounce him guilty, and that by an unanimous vote, in the latter instance, and in the former by the concurrent voices of twelve at least. If any exception be taken to the proceedings, by a motion in arrest of judgement, or if a special verdict be found, the same unanimity is required in the Judges, in order to his condemnation: and lastly, though the punishment which the laws pronounces be death, he shall have the benefit of Clergy, unless that benefit be expressly taken away by law, or unless he has received it on some former occasion. But

But in the case of a Slave, the mode of trial was formerly, & still remains essentially different. I find the title of an act passed in the year 1705. for the speedy & easy prosecution of Slaves committing capital crimes – By the act of 1723. c. 4. the Govr. was authorised, whenever any Slave was committed for any capital offence, to issue a special Commission of oyer & terminer to such persons as he should think fit, the number being left to his discretion, who should thereupon proceed to the trial of such Slave, and to take for evidence the confession of the defendant, the oath of one or more credible witnesses, or such testimony of Negroes, mulattoes, or Indians bond or free, (whose testimony is inadmissible even in civil pleas between white persons) with pregnant circumstances, as to them should seem convincing, without the solemnity of a Jury: no exception to the formality of the proceedings being allowed; and Execution of the sentence, probably immediately performed, since the act of 1748. c. 31. provides that it shd. not be performed thereafter in less than ten days; and, further, that if the Court be divided in opinion, the accused should be acquitted. The act of 1764. c. 9. authorised the issuing of general Commissions of oyer & terminer to all the Justices of any County, constituting the Judges for the trial of all Slaves committing

1705. c. 11.

1723. c. 4.

1748. c. 31.

1764. c. 9.

committing capital offences within their respective Counties, any four of them, one being of the Quorum, to constitute a Court for that purpose: By the Act of 1772. c. 9. one step further was made in favor of humanity by declaring that no Slave should thereafter be condemned to die, unless four of the Court should concur in opinion of his guilt. The Act of 1786. c. 58. confirmed by the act of 1792. c. constitutes the Justices of every County & Corporation, Justices of oyer and terminer for the trial of Slaves; requires five Justices at least to constitute a Court, and unanimity in the Court for his Condemnation; allows him Counsel for his Defence, to be paid by his owner, and enlarges the time of 24 to thirty days after the Judgement, except in Cases of Conspiracy, insurrection or rebellion, and extends the benefit of Clergy to them in all Cases, where the offence is clergiable, unless he shall before have had the benefit thereof.

1772. c. 9.
1786. c. 58.
L. L. of 1792. c. 42.

It must be acknowledged that the mode of trial is rendered infinitely more beneficial to the Slave than it heretofore was. Though perhaps still liable to exception for want of the intervention of a Jury: but if the number of his triers be fewer than a common Jury, they may on the other hand be considered as

as more select, a circumstance of more importance to a Slave than the number of his Jurors: the requisite unanimity in the Court, in order to conviction, is a happy acquisition to the Slave, and their opinions being delivered immediately in order, & in open Court, there is less danger of a few being brought over to the Opinion of the many, as but too often happens among Jurors, whose deliberations are in private, & whose impatience of confinement may go further than real Conviction, to produce an apparent unanimity: that this often happens in civil cases is too notorious that it may also happen in criminal cases, especially where the party accused is not one of their equals, is not a little to be apprehended. In the State of Newyork, a Slave accused of a capital crime shall be tried by a Jury if his Master require it. Such a provision might not be amiss here; but considering the ordinary run of juries in the County courts, I should presume the privilege would be rarely insisted on.

Slaves we have seen are now entitled to the benefit of Clergy, except in Cases of Conspiracy &c, in all Cases where it is allowed to any other person: but this was not

not always the Case: the Act of 1748. c. 31.
denied it to a Slave in Case of Manslaughter,
1748. c. 31. or the felonious breaking & entering any
house in the night time: or the breaking
and entering in the day time any house,
& taking therefrom goods or chattels to the
1764. c. 9. value of twenty shillings. The Act of 1764. c. 9.
extended the benefit of Clergy to a Slave
convicted of the Manslaughter of a Slave:
1772. c. 9. the Act of 1772. c. 9. declared that a Slave
convicted of house breaking in the night shall
not be excluded of his Clergy, unless such
breaking be burglary. — But wherever the
benefit of Clergy is allowed to a Slave, the Court
binds burning him in the hand, (the ~~stock~~
~~and~~ only punishment usually inflicted, or
perhaps authorised in the Case of a ~~pikkete~~ person)
may inflict such further corporal punishment
as they may think fit. By the Act of 1748. c. 31.
1748. c. 31. copied from 1723. c. 4. if a ~~Negro~~ negro, mulatto
1723. c. 4. or Indian, shall appear to the Court to have given
false ~~testimony~~ testimony on the trial of any ~~other~~
Slave for a capital crime, the offender might
without further trial, be sentenced to the pillory,
to have his Ears cut off, & to receive thirty nine
Lashes at the publick whipping post. The
punishment of perjury in a white person is
only fine & Imprisonment. A Slave convicted of

1748. c. 33. of Hog stealing shall for the first offence
receive thirty nine Lashes: any other person
twenty five: but the latter is subject also
to a fine of thirty Dollars, besides paying eight
Dollars to the owner of the hog. — There is no
difference in the punishment for the second
& third offences. These are the only positive
distinctions which now remain between the
measure of punishment to a Slave, & to a
white person, in those Cases, where the latter
is liable to any corporal pain: but we must
not forget that many actions which are
not punishable in the latter, or at any
rate by fine & Imprisonment only, are
subject to severe corporal punishment in
a Slave; and even in some Cases to death itself.
To go abroad without a written permission; to
keep or carry a Gun, or other weapon; to utter
any seditious speech; to be present at any
unlawful assembly of Slaves; to lift the hand
in opposition to a white person, unless ~~when~~
wantonly assaulted; are all offences punish-
-able by whipping. — To attempt the Chastity of
a white woman, forcibly, is punishable by
dismemberment: such an attempt would be
a high misdemeanour in a free white person,
but the punishment would not extend beyond
fine & Imprisonment, or perhaps the pillory.

To administer medicine, unless it shall appear it was not done with an ill intent; to counsell, advise, or conspire to rebel, or make insurrection, or to plot or conspire the ~~death~~ murder of any person whatsoever, (whether such rebellion, insurrection, or murder ~~may~~ be carried into effect or not,) may perhaps be construed a capital offence, from which the benefit of Clergy is taken away: Perhaps possibly such construction ought to be confined to cases where the rebellion, insurrection or murder is effected; or prevented by such circumstances only as would not tend to lessen the guilt of the Offender. An Intention to commit a felony in a white man is not punishable, and even the attempt, if not attended with an actual breach of the peace, is at most a misdemeanour, by the common law.

From this view of our ~~criminal~~ jurisprudence as it respects Slaves, ~~it is not to be wondered at~~, we shall be led to remark how frequently the law of nature has been set aside in favor of institutions which are the pure result of prejudice, usurpation & tyranny: we have found actions innocent, or indifferent, punishable with a rigor scarcely due to the most malignant Crimes; & unjust distinctions

vi: Jeff: notes 259. &c.

+ See the marquis de Chastellux's Observations (Columbian Mag: for June 1787. pa: 479.

and the Slave; and even the hand of Mercy arrested, where Mercy might have been extended to the wretched culprit, had his complexion been the same with that of his Judges. - for the short period of ten days between Judgement & Execution was often insufficient to obtain a pardon, for a Slave, ~~who was a stranger~~ in a remote part of the Country, whilst a white Man condemned at the Seat of Govern^t had a respite of thirty days to implore the clemency of the executive Authority in his behalf. It may be urged indeed that this rigor does not proceed from a sanguinary temper in the Inhabitants of this Country, but from those political precautions which are indispensibly necessary where Slavery is admitted to any extent: I admit the truth of the remark, and am happy to think that our police respecting this unhappy class of people is not only less rigorous than formerly, but perhaps milder than in any other Country where the proportion of Slaves is so great: + I am also willing to admit, that it is unjust to censure the present Generation for the existence of Slavery in Virginia, since it is ~~evident~~ unquestionably true, that a very large proportion of our fellow Citizens lament that as a misfortune which is

imputed to them as a reproach: but all these considerations more strongly prove the necessity of attempting to eradicate the Evil, ere it be impossible to do it, without tearing up the roots of civil society with it.

notes on leaf 251.

The plan proposed by Mr. Jefferson, so far as it respects the mode by which Slavery may be gradually abolished is excellent: but the subsequent part of his plan that of colonizing them is liable to many objections as to the policy, & perhaps more as to the practicability of it. — To establish such a Colony in any part of the territory of the United States would be to lay the foundation of perpetual intestine wars: to attempt such an establishment in any other quarter of the Globe, would probably be attended with the utmost Cruelty to the Colonists and the Destruction of the whole race. If the British nation, possessing such immense resources have failed in an attempt of this nature, for the establishment of a Colony of a few hundreds, in Sierra Leona, what could be expected to be the result of such an attempt on the part of Virginia for the establishment of three hundred thousand people in a remote part of the Globe? It will be answered, that such a Colonization would not be simultaneous, but gradual. To be

effectual, it would require an annual exportation, even according to the present number of Slaves among us, of 12000. persons. — In twenty years, which is the soonest that the plan could begin to operate, in this respect, the — number would be encreased to 21600. which is more than half the number which is — annually brought from africa. The present revenues of the State would be insufficient to pay the passage of either of these numbers to any part of the [illegible] African continent, without any provi= sions for their support, — Besides, where could a territory sufficient for the support of such a Colony be found? Or where could they be received as friends, and not as Invaders? — Illiterate and ignorant as they are, is it probable that they wo. be capable of instituting such a Government in their new Colony, as would be necessary for their own internal happiness, or to secure them from Destruction from without? The difficulties — attending the Execution of such a plan are such as may be pronounced absolutely unsurmounta= ble. To banish them at once, as was done with the Moriscos in Spain, would be a still more cruel expedient as it would relate to them, & more impolitic as it might relate to ourselves. Spain has not yet recovered the ill effects which that fatal policy produced upon her agriculture, manufactures and Commerce.

The Consequences of such a step in Virga would be the total neglect of tillage in nineteenths of the state. To incorporate them with us in the State, is an expedient the Objections to which are strongly depicted by Mr. Jefferson[+]. Who is so free from prejudices, as candidly to say that he has none left such a measure.[2] The recent history of the french West-Indies is enough to make one shudder at the prospect of realizing similar Calamities in this Country. Such, probably would be the event of an Attempt to smother those prejudices which have been cherished for the Space of nearly two Centuries. Must we then quit the subject in despair of amending our own, or their Condition.[2] I think not — It may be worthy of Enquiry whether some middle course may not be adopted, which perhaps may not be pregnant with so many immediate Evils, or Obstacles. — Those who secretly favor domestic Slavery contend that in abolishing it we must also abolish what I here denominate civil Slavery, entirely. That there must be no distinction of rights: That Africans as Men, have an equal claim to all civil rights as an American, and upon being delivered from the Yoke of Servitude, have a right to be admitted to all the privileges of Citizens. But have not Men when they enter into a State of Society, a right to admit, or exclude

[+] notes on Virga 252. [here insert them]

exclude any description of persons whom they may think proper.[2] If it be true, as Mr. J— seems to suppose that the African is really an inferior race of Mankind, will not sound policy dictate to a Society in which they have not yet been admitted to participate in social rights, to take some precaution ayt such an admission as may eventually depreciate the Character of the whole Society.[2] If ~~deep rooted~~ prejudices have taken such deep root in our minds as to make it impossible to eradicate this Opinion from among us, the Error, if it be one, being general, ought it not to be respected.[2] Must we not relieve the necessities of a ~~distressed~~ indigent naked, diseased, Beggar, unless we will ~~admit~~ him to our table, nor afford him shelter from the Inclemency of the night Air, unless we admit him to ~~share~~ our Bed.[2] — To deny that we ought to abolish domestic Slavery without incorporating the Blacks among us, and admitting them to a full participation of all our civil & social rights appears to me to stand upon the same ground ation. The experiment so far as it has been made by the Emancipation of a few Individuals in other States, and in our own, offers nothing to discourage us from the prosecution of it, upon a larger Scale. The emancipated Blacks, if not remarkable for their Industry have not been noticed

noticed for a more disorderly conduct than other persons in an equal state of poverty would probably be found. They appear to have shewn no Ambition for civil rights: perhaps their very inconsiderable numbers may have kept them silent on their head; but I rather incline to impute it to their ignorance & want of Education. a circumstance which good policy may, for the present, incline us rather to favor, than to remove. — Were I to offer a plan for the Abolition of Slavery, it would be such an one as the number of Slaves among us would render it expedient, rather than desirable, to adopt. — The work must be done very gradually, perhaps more so, than even upon Mr. Jefferson's plan. Except upon similar principles, for nature must be enlisted in favor of its success: to give Freedom to 300,000. Slaves would be to let loose a Banditti, which could only be suppressed by exterminating them. Mr. Jefferson's plan would operate itself in 45, or 50. years. Perhaps 90. or 100. would answer the purpose better; but I hazard this as a Conjecture only, supposing, that the more gradual the change, the less chance will there be of any Convulsions in Consequence of it. —

1. Let it be declared as part of the Constitution of the Commonwealth of Virginia, that every female born after the adoption thereof and the Descendants of such female shall be absolutely free: but that as a Compensation for the expence & trouble of their maintenance during infancy, such as are born in the families of them whose Slaves they would have been, may be held to service therein, until the Age of thirty years. — Let all others be bound out by the overseers of the poor as apprentices for the like period.

2. Let no negroe or mulattoe be capable of taking, holding, or exercising any Office, freehold, franchise or privilege, nor any Estate in lands or Tenements, within the Commonwealth, except a Lease for a term not exceeding seven years; nor of keeping or bearing arms; nor

Sp: of Laws 15. 12. 1: B. Com: 417. of contracting Matrimony with any other than a Negroe or Mulattoe; nor be an attorney; nor a Juror; nor a witness in any Court of Judicature except against, or between Negroes & mulattoes; nor be an Executor or Admor; nor make any will or testament whatsoever; nor maintain any plea, other than an action of trespass quare clausum fregit, concerning Lands; nor be a trustee of Lands, nor any person for him.

3. — Let all negroes or mulattoes, except such as are Tenants of land, or have voluntarily hired themselves to Service be annually hired out

out to labour, by the Overseers of the poor, who shall be entitled to a compensation out of their wages, for their trouble in so doing.

4. Let every Negroe or Mulatto willing to migrate from the State be allowed the sum of Dollars to defray the charges of his passage or travelling expences, giving security to repay the same in Case of his return, & moreover being subject to fine and imprisonment if found thereafter within the State.

This plan may savour strongly of prejudice — I confess I am not wholly exempt from its influence; I wish to discourage the residence of Negroes or Mulattoes among us: by denying them the most valuable privileges which civil Government affords, I would wish them to seek an other Climate more favourable to their rights: by releasing them from the yoke of bondage, and enabling them to pursue happiness elsewhere, we surely do them a benefit, which I am inclined to think they would, under their present Circumstances think highly of. — By excluding them from Offices &c. by a constitutional act, there would be no room for legislative cabals: by disarming them, we should have nothing to fear from their resentments: by withholding landed property from them, we should take off one great incentive to Risings. — Their States

whilst they remain among us would be that of the labouring poor in all Countries. Their persons, & their property though limited, would be under protection of the Law. and we might reasonably hope that in time we should no longer have among us a race of men against whom we entertain prejudices, or their prejudices would have less ground for their support, than we imagine they have at present. — After all I am persuaded it will be difficult, perhaps impossible, to devise any plan that is wholly free from Objections — In offering my own Ideas on the subject I am far from presuming that I have been more fortunate than others: but from the communication of sentiment between those who lament the Evil, & wish to find a remedy, perhaps some palliation may be discovered, though it may be impossible to prescribe a radical Cure.

See the Marquis de Chastellux Observations on the State of Slavery in Virginia — Columbian Magazine for June 1787. pa. 479.