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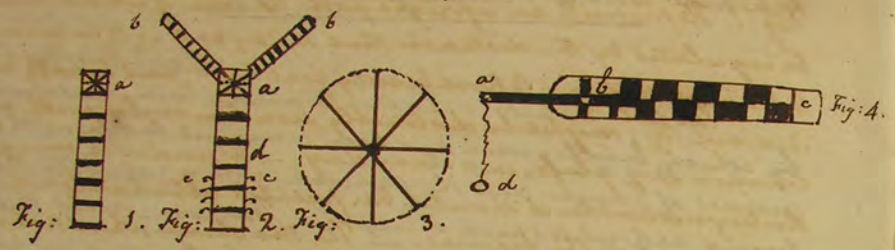
An Idea of the Telegraphe, or newly invented machine used in France for conveying Intelligence.

Decr. 5: 1794.

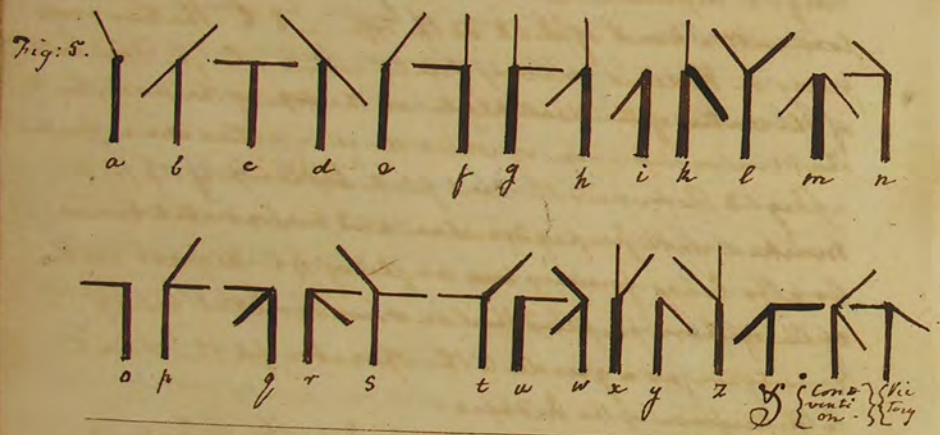
The late papers mention a newly invented machine by which Intelligence has been conveyed to & from the armies of France and the Capital, with a rapidity that seemd at first to shock belief. — Barrere, one of the Deputies in the national Convention spoke of it in a manner that induced a belief that there was a vast concentration & reflection of light, by which letters were rendered legible at a great distance by means of Telescopes. — A subsequent account mentions that the machine is very simple, consisting altogether of an upright post, & two cross pieces, by the help of which sixteen different signs can be expressed very distinctly: that these signs are adapted to the most useful letters of the Alphabet, & by this means the Intelligence is conveyed from station to station very easily. The latter account is so simple, that one would wonder that the discovery was never before made: the difficulty at first seemd to be how two cross pieces could express so many as sixteen different signs. – This difficulty, like many others, vanishes when examined into. The whole Alphabet, & probably many other Characters, were it necessary to form such, may be very distinctly expressed by the aid of so simple a machine, as that

last

The Telegraphe.



Alphabet.



Numerals.

The numbers 1. 2. 3. 4. 5. 6. may be expressed by the same characters that are used for a, e, i, o, u, y – no. 7. may be expressed by the Characters for, &. – no. 8. 9. 10. by q. z. & x. – or the whole perhaps better thus.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. } z. may be used
2. x. z. a. e. i o. u. y. &. } for a stop.

and both Indexes let down denote the end of a word.

last mentioned. – In the opposite page the figure of such a machine may be seen.

Fig: 1. Represents an upright post, the size of which must be regulated by the distance that the signal is to be conveyd to the next station. A post twenty feet high, and twenty inches in diameter, might be distinctly seen ten miles with a common spy glass, in a clear day. – to render it more distinguishable it should be painted alternately white & black, as in the figure. – The machine when not in use will appear as in this figure.

Fig: 2. Represents the machine in use. – a – the upright post with a kind of dial at the top. – b. b. the two cross pieces or Indexes, moving freely round a large iron bolt, in the center of the dial plate at the top of the post, by the elevation or depression of which the characters are expressed.

Fig: 3. Represents the dial plate or Regulator at the top of the post. marked with perpendicular and horizontal lines; as as also lines forming ~~an~~ angles of 45. degrees with each of those perpendicular & horizontal lines. These lines serve as a guide to the Operator for the elevation or depression of the Indexes.

Fig: 4. Represents one of the Indexes; they may be made of different lengths according to the distance to the next station. a. – an Iron handle, four feet long from the Center of Motion b. – the whole length of the Index being 12. feet, and from one foot tapering off to eight Inches in breadth: painted white, & black to render it more conspicuous – From the ring – a – at the extremity of the Iron handle there hangs a rope, at the end of which there is an iron ring – d –, which is to be put over the Hooks – c, c. Fig: 2. in order to elevate the Indexes to the

the proper heigth. The hooks, four in number on each side the post, must be placed at such distances as that the Index should be raised perpendicular, when they is put over the lowest — the second, must give an elevation of 45. degrees. — at the third, the Index should be perfectly horizontal — and at the fourth, depressed 45. degrees. — There should be two ropes of equal lengths to one of the Indexes, in order to elevate it to the perpendicular, by being fastened to opposite sides of the post, one rope being insufficient without great trouble.

Fig: 5. &c. gives the Alphabet, consisting of twenty four Letters, expressed by the different elevation or depression of the Indexes. — I have subjoined a Character for the word <u>and</u>, one for the word Convention, and one for Victory. The first occurs frequently in composition. The two latter generally find a place in the French Dispatches. For the greater Convenience & dispatch, these Characters should be distinctly painted upon the lower part of the post, & numbered, that the operator may by a glance of the Eye discover the figure he is to represent. These numbers may either correspond with the order of the Alphabet, or be regulated by a Key, as Cyphers are, the Key being in possession of the persons to whom the intelligence is intended to be conveyed. All the intermediate Operators being governed by the numbers only. —

A single glance at the Alphabet will suffice to shew that these letters may be distinctly known as far as far as they can be seen. — The vowels, & the half vowel y, are all expressed by a single Index. — The rest of the letters by two. — no letters is formed by a smaller angle than 45. degrees; nor is there any intermediate angle between 45, and 90. degrees: hence there is no danger of mistake or confusion where the Indexes can be seen tollerably distinctly.

By means of the lines marked upon the dial-plate and the hooks at the sides of the post, a person of the commonest understanding, may by mere inspection adjust the Indexes, according to the characters as they are proposed to be numbered. The only ~~only~~ skill required, is, that he should understand numbers from one to twenty four, and be capable of discerning the difference between a right angle, & one of 45. degrees.

Numerals may be easily expressed, by referring them to the letters, least in use, and to the vowels, which are seldom used following each other. Where numbers ~~—~~ or dates are to be expressed, a recurrence to these may save much trouble.

If the upper part of the post Fig: 1. be made moveable upon the same principle that the body of a wind-mill turns round the same telegraphic would serve to correspond with any number of stations in different directions: for the Telegraphic ought to front the station precisely to which the intelligence is intended to be conveyed.

The Indexes should be made of light pine board an Inch & a half thick at the Axis, but tapering off to about three quarters of an Inch at the further extremity. The Iron handle should of such length & weight, that a single

single person of very little strength may elevate the Index to its proper situation — but not so heavy as to prevent the Index from descending freely by its own weight, even in a hard winds. If the distance from the Axis to the further extremity be three times as far as that to the end of the Iron handle, it would probably be very easily worked, whatever be the size of the Index. — An Index twenty feet long, upon a post thirty feet high might be seen at a great distance in a clear day, with the aid of a Telescope, or even a good common spy glass, especially if the situation of the Telegraphs were elevated, pretty much above the intermediate level, as upon a hill, or on the Bank of a river.

Such is the simplicity of this machine that it might be constructed in five minutes at any place where the Trunk of a tree & a couple of Fence rails could be found. — Or it may be constructed of common boards only, and with very little trouble fixed upon the ridge of a house, the steeple of a church, or the top of a ship's mast, for the purpose of giving intelligence across a river, or to any place within sight of the house. — The signal for commencing Operation may be given by hoisting a flag, a sheet, or table cloth on one of the Indexes, for a few minutes. — To mark the end of words, both Indexes may be let down for half a minute*. Stops are not very

+ The upper numerary numbers, 27. & 28. might be used, the former to the end of a word; the latter, of a sentence.

necessary — but the letter Z. may very conveniently represent a period. — +

The Operation being begun, the Character exhibited at the first station should be instantly repeated at the second, & from thence at the third, & so on to the last. The simplicity of the movements is such, that any character may be expressed in a quarter of a minute. Hence, the Intelligence to any given distance may be conveyed at the rate of one minute for every four stations, with an allowance of the time taken up in expressing it at the first station.

If the distance from one station to another be such, as to require the Indexes to be very large, they might be made in the same manner that the sails of a Windmill are, and a pully being fixed at the end of the handles, two persons would be sufficient to adjust them.

It still remains to reconcile this Idea to Barrere's report of the Machine — That report as published is very unsatisfactory, probably because the relaters did not understand it: perhaps it was not intended to give a compleat Idea of the Machine. — I will however hazard a Conjecture which possibly may remove the seeming contrariety between the two Accounts that have been published.

Opposite the centre of the dial plate a, Fig: 2. let a large lamp with a large reflecter behind, be fixed to the upright post, and another lamp & reflecter be placed at d, on the same side of the post, so as to form a perpendicular. Now if similar

+ where a stop is not at first understood, the question of the perpendicular stop may be used as a signal of Repetition.

similar lamps & reflectors be ~~fl~~ suspended at the extremities of the Indexes, the angles of Elevation or depression will be as distinctly seen in the night by this means, as by means of the Indexes in the day time. — Whether any expedient can be fallen upon to surmount the impediments arising from hazy weather, I am not prepared to say.

After all I do not insist that the Idea that I have suggested is a just one of the French Telegraphe. But I am inclined to believe that the machinery in that which I have attempted to describe, is as simple, and the Operation as easy, as a first essay would be likely to produce. — With a small model, the Indexes of which are but seven Inches long, clear of the post, and one Inch broad, of the natural colour of the pine, I communicated two or three compleat sentences 292. yards — (i.e. from my own door to Mrs Banisters). And so easily are the Characters retained, that the next day after I had finished the model, my eldest son, not quite fourteen, decyphered a whole sentence by memory, only, without the aid of the Key.

Whether such a machine wile ever be of use in America no man can say. In the internal, level, woody Country it would undoubtedly be of no great use. — But I strongly incline to suppose that Intelligence might be conveyed from the Capes of Virginia

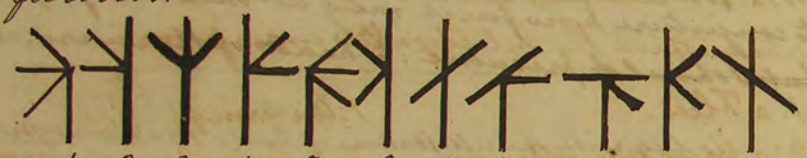
Virginia to Richmond, by the route of James river, or to the federal City on the potomack, in less than three hours, by adopting proper stations for the machines to be fixed at. — And if my Idea of the eastern states be just, there can be little doubt that in half a day Intelligence might be conveyed from Boston to Philad., and from thence to Richmond, in the other half. I am not sufficiently acquainted with the southern states to conjecture how far it may be made useful there, but I should presume, to the heads of the rivers, at least.

December 15. 1794.

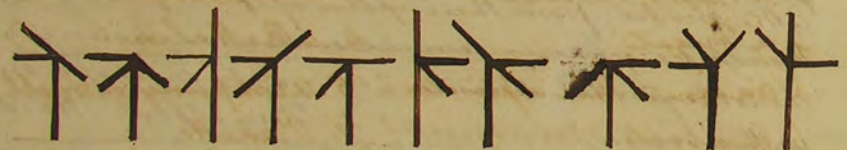
To day with the assistance of Doctor Madison Prest. of W. & M. College, I made an experiment with my little model, from the Cupola of the Capitol. The Bishop decyphered several sentences distinctly at the College, the distance 200. yards short of a mile, with a Telescope adjusted to land objects. He was of opinion that the same little instrument would have answered at the distance of three miles. When the Telegraphe was held opposite to that part of the Cupola which is painted red, it was very distinct indeed. — but when held clear of all objects but the Sky it was much less so. The Indexes were painted white, or rather a white paper was pasted upon them. —

NB. The size of the model used to day was twenty Inches in height to the top of the upright post, & one Inch and a half broad — the Indexes seven Inches long & one broad.

By the addition of a third index, the following additional Characters might be expressed. The utility of such an encrease of the Characters I do not immediately see, except as it might tend to shorten the Correspondence. The addition of a third Index would not encumber the machinery, or perplex the Alphabet. For all single characters or letters, should be expressed by one, or at most two Indexes; the number of three, being wholly reserved for words.



1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11.



12. 13. 14. 15. 16. 17. 18. 19. 20. 21.

22. 23. 24. 25. 26. 27. 28. 29.

It is not impossible that the number of these characters may be further multiplied. But I incline to think they would be the more liable

liable to create confusion, than really beneficial; for the eye does not so readily discern the characteristic difference where there are three Indexes, as where there are only two. Besides these Characters might be adapted to different words, according to the nature of the Intelligence to be conveyed, & the Scene from which it is to be conveyed: thus no: 1. may express both a Fleet and an Army, according to the Department which the Intelligence comes from.

1. a Fleet.	1. An Army.
2. a Squadron or Division	2. a Brigade or division
3. a Ship of the Line	3. a Regiment.
4. a Frigate	4. a Battalion.
5. an armed Ship or privateer	5. a Company or small party.
6. Gunboats	6. Picketts
7. Boats	7. Light horse.
8. Transports	8. Waggons.
9. Merchant Vessels	9. Barns, Granaries.
10. Anchored	10. Encamped.
11. Weighed Anchor; sailed.	11. Decamped; marched.
12. Landed;	12. Arrived.
13. In line of Battle	13. In order of Battle

&c. &c. &c.

Subjects to be treated of.

1. private credit – as to its extent, except between traders.
2. Imprisonment for debt. – 1. upon mesne process – 2. upon Ca: sa:
   1. upon mesne process. – and herein of Bail. – 2. upon a Ca: sa.
   and the Security given for prison bounds; &c.
3: Replevy of goods taken in Sto –
4. The punishment of Death in capital Cases.

Notes on Slavery in Virginia, as relating to a species of property.

2. B. C. 399. ad finem.

Our former enquiries respecting Slavery in Virginia having been limited to a consideration of the condition of Slaves, as persons, I shall now endeavour to trace the several laws which relate to them as a species of property; In the course of this enquiry we shall find them sometimes partaking of the nature of personal property, merely; sometimes they have been declared to be real property, under certain Exceptions which have brought them to some resemblance of the ancient villeins in England, whilst in other respects they appeared to be a species of property sui generis, reduceable to no particular class that is known to the Institutions of either of the English, or the civil law.

Slavery, as distinguished from Villeinage, if it ever had existence in England, having been abolished before the settlement of Virginia, it is difficult to ascertain at this distance of time in what light property in Slaves was considered at the first introduction of them into this Country. By the civil law they appear to have been regarded as chattels,* and it is probable they were ~~regarded~~ considered in the same light by the first proprietors of them in this Country. ~~An Act passed~~ 1664. c: 27* & another in 1673. c: 1.* for the establishing the right of dower of widdows, ~~which take a particular notice of slaves~~, gives reason to suppose that this was the case.

* Just: Ins: lib: 1. p. 23.

* pure: 129.
* purvis 185.

as they take no particular notice of Slaves,
Case, at that time. — This Idea is in some measure confirmed
* pur: 173. by an Act passed in 1671. c. 4.* Providing how negroes belonging
to Orphans of intestates shall be disposed of, which declares
that sheep, horses & cattle should be delivered in kind to the
orphans when they came of age, but that the general Assembly
considering the difficulty of procuring negroes in kind, as
also the value & hazard of their lives, thereby authorized the
County courts to cause such negroes to be duly appraised
and sold, or preserved in kind, as from the nature of the
Case they should judge most expedient. — This is the only
Act in ~~the revisal~~ ~~copy of~~ Purvis; ~~or compilation~~ Collection that in
any manner relates to Slaves as a Species of property.
We may therefore conclude that from their first intro=
=duction in 1620. to the year 1705. they were regarded
altogether as Chattels personal. In that year an Act passed*
~~c. 22~~ ~~Jd. 1733.~~ declaring that all negroe, mulatto & Indian Slaves
* 1705. should be held, taken & adjudged to be real estate & not
c. 3. Chattels, and should descend to the heirs & widows of ~~persons~~ persons
dying intestate, in like manner as lands in fee simple.
But there were some exceptions & limitations which
still distinguished them very materially from
landed property. — First the Act was declared not
to extend to Merchants or factors importing Slaves for
sale, in which Case they were to be still held & taken
as personal estate to all intents & purposes. — But the
points in which they differed from property in Lands, in other
Cases, were. Secondly that they were still liable to be taken
in Execution for the payment of the testators debts in the
same manner as other Chattels. — thirdly, that they should
not escheat: fourthly that the Alienation of a Slave need
not be recorded, which ~~was not so~~ is declared to be required
in Case of Alienations of Lands. fifthly, that possession

*It may well be questioned whether the legislature by this act did not mean to abolish all claims in remainder to Slaves, except such as were saved by the subsequent proviso in the act, viz, all remainders theretofore limited. For it was held at common law, that if the first Devisee sold or gave the Chattel to another, it defeated the title of him in remainder, & it was only in Chancery that such remainders were established. — The Case of Hyde vs Parrot — 1. Peere Williams pa: 1. & 2. Vernon 331. could scarcely have been known in this Country, though decided so long ago as 1696. The first Edition of Mr. Vernon's reports in which it was probably first printed appeared in 1726. & the first Edn of Peere Williams in 1740. and the Session at which this act was passed commenced Febry 1. 1727.

‡ ~~The Act of 1705 of Maccacc provided that the widows Dower in Slaves should be set apart & appraised~~. The Act of 1705. moreover provided that a widow seized of Slaves in right of dower, transporting them out of the Colony without Consent of the Heir should forfeit her Dower; & if the husband of such widow shall do the like, the heir might enter & hold the Wife's Dower during the Life of the Husband. and the Act of 1792 (Edn 1794. c. 103) contains the same provision.

1794. ~~1793.~~

15

possession of a Slave should not give his owner a right to vote at any Election — sixthly — That a Slave might be recovered by action personal: with a proviso however that a writ de partitione faciendo, or of Dower, might be prosecuted for a Slave. Lastly, that the Heir should be accountable to the younger Children for an equal proportion of the value of all except the Dower-Slaves.‡ — This act was ~~perhaps~~ amended & explained by another passed in the year 1727. c. 4 which declared, that the property in Slaves might be transferred by bale, or Gift either with or without Deed, or by will in writing, or nuncupative, as if they were chattels: ~~and~~ That no remainder of a Slave should be limited otherwise than the remainder of a personal chattel might be limited by the common law, except such as had before been limited as thereby excepted. — 3d. That the right of a Feme covert to a Slave shall vest in the husband ~~absolutely~~ absolutely; & that of a feme sole, on her marriage. 4th. That Infants above eighteen years of age might bequeath Slaves by will in writing — 5th. That Slaves should not be forfeited but in such Cases as lands might be. — 6th. That no Executor or admor should have any power to dispose of any Slave of his Testor except for payment of debts. & then only, when there should be a deficiency of personal Estate.‡ — 7th. That the Slaves of the mother, other than Dower Slaves, shall descend in like manner as those of the Father. — But this act went one important step further, by declaring 8thly That Slaves might be annexed to Lands by Deed or will, and settled, conveyed or devised in tail, or for life or lives, and should descend and pass as part of the Freehold in possession, reversion and remainder with the Lands. Yet even in this Case they were made liable to be taken in Exo for payment of the debts of the Tenant in tail, with an Exception in favor of a Feme Covert Tenant in Tail of Slaves

+ c: 11. Edo. 1733.

‡ 1748. c: 3. (1769) 1794. c: 170.

‡ See Governor Dinwiddies Message to the General Assembly April 8th. 1752.

‡‡ By the Act of 1785. c. 61, Edo. 1794. c. 92. the Slaves of a Tenant for Life dying between the first of March & 31st. of Decr. shall be delivered to him in Remainder or Reversion well clothed, & with them, three Barrels of Corn for every Slave old & young. By the same Act the hire of the Slaves is in this Case to be apportioned between the Tenant for Life, & the person in Remr. or Reversion

1794. c. 92.

φ. ~~By the Act of 1792~~ In 1792, Edo. 1794. c. 103. they were again declared to be personal Estate, except that the widows of persons or consanguinity their dowers intestate shall have the use for life only, & not the absolute property therein; & after the death of the widow they shall go to the heirs of the Husband, according to the course prescribed in the Law of Descents. Edo 1794. c. 92.

1794. c. 92.

* The Act of 1764. c. 6. Requires the name of Slaves taken in Exo to be endorsed upon the writ; & the Act of 1793. Concerning Executions requires the Officer taking them to support them, & the Expence to be defrayed out of the sales. These provisions are retained in the Edo: 1794. c. 151.

+ 1794. c. 151.

whose title under any Settlement made in ~~pursuance~~ pursuance of that Act could not be barred after the Husbands death. By this law, entailed Slaves seemed in great measure to have been assimilated to villeins regardant, in England; The Act of 1710. c. 2. Sect: 17 (Edo 1733.) declared that where any person should die intestate whilst his Crop of Indian Corn, Wheat, or other Grain, or Tobacco, is on the ground, the Servants & Slaves employed in the Crop should be continued on the plantation till the 25. of Decr. following, & the Crop taken as a part in the Exors or admors hands, after which the Slaves should be delivered to the heir &c. And that no Executor or Admor should be answerable for the price of negroes dying during that period — This Act was afterwards, 1730. c. 8. explained, & the period restricted to that between the first day of March & 25th. of Decr. ~~and no remain as to this day~~. By the Act of 1723. c. 4. Slaves condemned to die for any capital offence, or killed in the attempt to disperse unlawful Assemblies, the pursuit of rebels, or Conspirators, or seizing the Arms of such as were prohibited the use of them, should be valued, & paid for by the Country[a]. By the Act of 1748. c. 2. (Edo 1753, pa: 222) Slaves were declared personal estate, in future — But this Act was repealed by the King in Council. By the Act of 1748. c. 3. (also repealed by the King in Council,) the Widows of a person dying intestate should be entitled to a full third part of his Slaves, as of Dower, for her natural Life, after which they should pass to the heir who should be accountable to younger Children for their proportionate value of all the Slaves whereof the intestate died possessed. By the Acts of 1748. c. 6. & 8. no Slave is distreinable for fines or forfeitures if other suffn. distress can be had[a]; nor can a Slave be taken in Exo for any debt under £10. if other goods suffn. to pay the Debt be there to the Officer within his Bailiwick. — By the Act of 1757. c. 3. & 1758. c. 1.

‡ See also 1748. c. 3 } Edo 1769.

[a] V. Edo 1794. ch: 103.

~ 1794. c. 88. b-c: 151.

+ The Act of 1787. c. 22. to explain & amend the last mentioned acts, shall be construed to extend only to Gifts of Slaves where the Donors have remained in possession, and not to ~~cases~~ Gifts where the possession hath been in the Donee, or others claiming under him. ~~These provisions were enacted in 1792~~. 1794. c. 103.

The Act to prevent frauds & Perjuries, 1785. c. 64, Edo 1794. c. 10. avoids all Gifts of Goods & Chattels, made with intent to defraud Creditors; or upon a consideration not deemed valuable in Law, unless recorded within eight months; & all pretended loans of goods & chattels to any person who shall have been five years in possession, unless made in writing proved & recorded, as aforesaid.

Edo. 1794. c. 103. But these provisions are now entirely repealed by Sessions acts of 1800. c. 70. which enacts - See Dict: Ind: Lit: 1. Tit: 6. Sect. 3. Lit: 3. Tit: 12.

† ~~By the Roman~~ ~~it was~~ By the Roman law emancipated Slaves were not liable to be seized for payment of their masters debts, but in 1792. the legislature declared that Slaves emancipated should nevertheless be liable to be taken in Exo for the debts of their masters contracted before the Emancipation. The same Act requires that emancipated Slaves over 45. years of age, & Males under 21. & Females under 18. shall be supported by their former masters. Edo. 1794. c. 103.

1794. c. 103.

no Gift of a slave shall pass any estate unless it be made by will in writing proved & recorded, or by deed, proved by two witnesses or acknowledged within three months; and all former verbal Gifts were declared void, if without possession, unless confirmed by Deed or will, within two years thereafter; but five years possession of a slave under a formerly gift was sufficient to exclude the right thereto†. The Act of 1764. c. 6. ~~requires the name of the slave taken in Exo to be~~ endorsed on the ~~bill~~ ~~to~~ The Act of 1769. c. 19. subjected the master of a slave suffering him to go at large & hire himself to the penalty of £10. to which the Act of May 1782. c. 32. superadded that the slave might be sold by order of Court, & twenty five p Cent of the Amt. of his value be applied by the Court towards lessening the County levy. — The Act of Oct. 1776. c. 26. declared that Slaves were no longer subject to be entailed; By the Act of May 1782. the manumission of Slaves by their owners was permitted, under certain restrictions†. By the Act of 1784 c. 32. not more than one third part of the persons employed in the navigation of any bay or river Craft below the Falls of the Rivers shall consist of Slaves, under penalty of £100. for each offence. — By the Act of Oct: 1778. c. 1. The further importation of Slaves was prohibited under the penalty of £1000. and the seller or buyer was further subjected to the penalty of £600. each, with an exception as to persons removing into the State, and such as might claim Slaves in other States, by Descent, devise, or marriage; as also to travellers & persons transient. — The Act of 1790. c. 13 provides that where one or more Slaves shall descend from a person intestate, & an equal division can not be made among the Claimants, the ~~Court~~ Court of Chancery, or ~~Court of~~ the Court of

1794. c. 57. and then taken in Exo to be supported by the Officer - &c:

2.

1

the county or corporation by which the Admor is granted may direct the sale thereof and distribution of the money arising therefrom among the claimants. — By the act of 1782. c. 8. Edo. 1794. c. 83. Slaves found in the possession, or upon the lands of a person from whom any Tax

1794. c. 83. Levy, fine, forfeiture or amercement is due; may be distrained for the same, notwithstanding they shall be comprehend in any Deed or mortgage.

From this abstract of the various laws relative to Slaves in this State, it is difficult to assign to them a place either under the head of real, or personal, property, strictly. The various exceptions contained in the acts declaring them to be real Estate, sufficiently demonstrate that the Legislature were aware that they were not susceptible of all the Qualities of that species of property: and the provisions still retained in our Code equally shew the Aversion of the Legislature to restore them to a place among personal Chattels. When

1795. c. 3. real Estate, they were subject to be taken in Execution for debt, even when ~~entailed~~ annexed to lands & entailed. They should not escheat; they might be transferred without Deed; they were recoverable by action personal; and the Heir should be accountable to the younger Children of his deceased Father for a proportion of their value; The right of a Feme therein should vest in the Husband; an infant of eighteen years might

1727. c. 4. dispose of them by will; and no Remainder therein could be created, otherwise than of a Chattel personal by the common Law.

1794 c. 82. When declared to be personal Estate, the Widow shall not be entitled to more than a life estate therein: the Executor shall

Edo. not sell them tile all the other personal assets are exhausted;

Edo. 1831 they shall remain upon the Land where employed in making a Crop tile the End of the year; a Gift of them without Deed is not valid unless accompanied by possession. They shall not be taken

* Act of 1727. c. 4. s. 7. The act of 1748. c. 3. s. 29. expressly requires the Sale to be made at public Auction. And it has been ruled, that until the repeal of the act declaring Slaves to be real Estate, as the Executor had an authority only, & not an Interest in the Slaves of his Testator, the sale of a Slave by an Executor, by private Contract did not transfer any title. because the Executor had not pursued his authority agreeably to the directions of the last act, in which the words at public auction are introduced as an amendment to the former act.* The act of 1792. Edo 1794. c. 103. s. 43. declaring Slaves to be personal Estate gives the Executor an Interest in them; and the act of 1794. c. 170. which prohibits the Sale of Slaves for payment of debts, is silent, as to the manner in which they are to be sold.

* Gleason & Philips. Accomack
^ D. C. May term 1800.

*

At some future day I propose to take a further view of this complicated subject, and therein to consider.

I. First, the operation & effect of the act of 1705. c. 3. sect: 1. & 2. independently of the remainder of the act.

1. As operating upon the Slaves themselves, and thereby converting them to a species of property heretofore, perhaps, known to the common law of England, & therefore

2. Secondly, as the rights of the heir at common law might be thereby established:

3. As the rights of widows, might be thereby affected.

4. As the Rights of Husbands might be thereby affected.

5. As the Rights of Executors and administrators might be thereby affected.

II. I shall proceed to consider how those several rights may be separately affected by the subsequent clauses of that act.

III. I shall take a view of the act of the same Session c: 7. for distribution of intestates estates; and of some intermediate acts (viz: 1711. c. 2. & 1726. c: 3.)

taken in Exo or distrained, if other sufficient property can be had. These instances prove that Slaves are stile a favorite species of property among us. The laws respecting them are not always founded in perfect Justice: A man marries a Woman possessed of Slaves in her own Right; they become his instantly upon the marriage; they may be taken in Execution to satisfy his previous Debts; if he dies in the lifetime of the wife, she shall have the use ~~only~~ of one third part of her own Slaves, only, during her life. if he is indebted, she shall have the use only of one third of the surplus of them if there be any, after payment of his Debts. ~~if~~ She shall not presume to remove them out of the State under penalty of forfeiting her whole Dower. It is easy to perceive that these provisions were not enacted by a female Legislature.* The evident preference to this species of property also creates a presumption no less obvious than alarming, that this preference will prove a Barrier to every project that can be formed for the abolition of slavery among us. We are not content with the present possession of Slaves; we regard their posterity to all future generations as our legitimate property, of which we can not be justly deprived; to men who have imbibed these notions, it is in vain to say any thing respecting the pre-eminent claims of human nature, for with them property is more sacred than Liberty, & dearer than Life; - it is in vain to argue that what they do not possess they cannot in fact be deprived of; that the birth of a Child costs nothing to any one but the mother; and that a moderate compensation for food, Raiment and protection during Infancy

is the utmost that the person who affords them is in Justice entitled to, & that a few years service after the Age of Infancy is past will amply compensate the ~~[illegible]~~ trifling Expence, & stile more trifling portion of Care that the unfortunate blacks recieve from us, tile they are able to work. — But it is to be hoped that the number of them among us who are deaf to the claims of nature, humanity, & Justice is proportionably small, and daily diminishing; may the day soon arrive when with one heart, with one voice, and with one hand we may unite our efforts to remove the accursed Thing from our Country, from our posterity, & from our own Consciences.

Appendix to 3. B. C. 348.

Of proceedings upon Motions. ~~Of Summary Convictions.~~

Judgements upon proceedings in a summary way, that is, without the ordinary forms of Law in civil Cases, and without the solemnity of a Jury, having been much countenanced by our Legislature of late years, it may not be improper to consider them in a distinct view

Our Bill of rights appears not to be very favourable to these kinds of proceedings, the 11th. Article declaring that in controversies respecting property, & in suits between Man & Man, the ancient trial by Jury is preferable to any other, & ought to be held sacred. Upon this principle, it was formerly provided that all issues in fact in the high Court of Chancery should be tried by a Jury + ~~Rev. Co. 68.~~ but this being found inconvenient the Act was repealed, Oct: 1783. c. 26. which declared that thenceforward the mode of Trial in the H. C. of Chancery should be the same as had been theretofore used & practised in Virginia under the former Govern^t. and the practice has ever since conformed thereto. yet ~~in some special Cases~~ the Chancellor may still if he pleases direct a Trial by Jury at the Bar of his own Court, or in any Court, according to the Circumstances of the Case, & Convenience of the Parties: but he may nevertheless decide all matters of fact himself, if he thinks proper so to do.

+ Oct: 1776. c: 15.

But the Cases in which we mean to speak of the trial by Jury, and the ordinary process of the common law, as being dispensed with in Virginia, are not confined to chancery Causes, in which last long established practice, concurring with the Recognition of the powers of a Court of Chancery in our State Constitution, may be supposed to authorize a Deviation from the rules of the common Law.

~~Though I will consider the proceedings which are on account of the smallness of the demand are permitted to be held before a single Magistrate, there Cost being limited to five Dollars, or 200 lbs of Tobacco.~~

The Cases in which the Trial by Jury, and the ordinary proceedings of the common Law are dispensed with, may be divided into four Heads -

1. Those Cases in which by reason of the smalness of the demand, it hath been thought expedient to admit of a more summary recovery.

2.dly - Where the Defendant being a public Officer is called upon to answer for some supposed Delinquency.

3.dly Those Cases where the Delinquency of the Defendant, or the Equity of the plaintiffs Demand requires the most speedy aid to prevent him from suffering by the Defendants Default ~~or Fraud~~.

4th - Where the Defendant hath already recieved the utmost Indulgence of the Law.

1. As to the first Class. 1st By the Act of 1710. c. 11. all demands not exceeding 20/. sterling or 200. lbs of Tobo were recoverable & finally determinable by any one Justice of the peace. — the Act of 1748. c: 4. limited the Jurisdiction of a single Justice to 25/. currency, or 200. lbs of Tobo, & provided that in such Case no Execution should be granted by such Justice agt the Body of the Defendant. The Act of 1792. (Rdo of 1794. c: 67.) extends the Juris= = diction of a single Justice to Causes where the sum demanded shall not exceed five Dollars, or 200 lbs. of Tobo and the Act of 1805. c. 32. further extends it to ten Drs. or 400 lbs of Tobo with the like restriction as to granting an Execution agt the Body of the Deft.

2dly By the Act of 1748. c. 4. it was provided that all demands where the Debt so did not amount to more than £5. (except such as were under 25/. or 200 lbs of Tobo) might be prosecuted by Petition to the County Court, & decided without the solemnity of a Jury. The Act of 1794. c. 67. — has increased this sum to 20 Dollars, or 800. lbs. of Tobo. — Actions of Detinue & Trover, where the thing demanded or the value thereof shall not exceed 20. Dollars or 800. lbs of Tobo are to be prosecuted in the same manner. In these Cases the Clerk of the Court shall draw the petition stating how the Debt became due, and shall issue a summons to the Sheriff with a Copy of the Act &c. which being ~~for the D. to find out, as Copies of Petitions & Judgments ought~~ executed ~~what must be~~ at least ten days before the return day, the Court shall proceed to give Judgement in a summary Way. Penalties incurred under any Act of assembly, amounting to more than 5. Dollars & not exceeding 20 Drs are recoverable in the same manner.

3.dly Where Judgement is rendered agt any high Sheriff ~~for the default of his under Sheriff~~, or the heirs Exors or Admors of any high Sheriff, for the default or misconduct of his under Sheriff, it shall be lawful for the Court of the County whereof he is Sheriff, or of the District Court including such County upon Motion to them made by such H. Sheriff, his heirs, Exors or admors to give Judgt. agt such Deputy and his Securities, their heirs, Exors or Admors, for the full amt. of the fine, penalty, amercement, or Judgt. assessed or rendered agt such High Sheriff &c. provided the party have ten days notice of such motion. 1793. c. 18. Edo 1794. c. 80. 161.

The Act of 1795. c. 16. binds the heads of Depty Sheriffs & their Securities to the H. Sheriff & his Securities, and,

The Act of 1787. c. 10 – Edo 1794. c. 71. s. 7. gives a similar recovery by Motion agt an Attorney receiving money for his Client, & failing to pay it.

in the same manner, & Execution may thereupon be awarded as in other Cases.

2.dly In certain Cases where the Defendant is a public Officer the Law authorizes a recovery against him and in some Cases agt his Securities, on Motion, the party having ten days previous notice. This happens – 1.st In the Case of public Collectors, or other public Debtors. The Act of 1794. c. 84. authorises Judgt. on motion to be rendered agt any person receiving public money from the Treasury for public use, and misapplying the same. Or indebted to the Cth. by Bond or other Specialty whether taken in the name of the Govr. Treasurer, or any other Acting in a public Capacity, or on behalf of the Cth. – Or agt any Sheriff or Collr. of the public Taxes, who shall fail to account for & pay the same into the Treasury in the manner and at the time prescribed by Law, provided the Defendant have ten days previous notice of such motion. The Act of 1794. c. 102. gives to the ~~Overseers of the poor~~ like remedy agt Collectors of the poor rates; ~~Church~~ to ~~landowners Overseers of the poor, their Executors administrators~~. – 2.dly Against Sheriffs & Coroners ~~making Executions or~~ failing in their Duty in serving Executions, ~~or~~ either in behalf of the public, or any private person, the same summary proceeding is given by various Acts; as also agt their Securities in certain Cases: and in all these Cases the Defendant is liable to Damages for the non performance of his Duty, ~~as well as for~~ the principal Debt. – These summary proceedings

1702. c. 8. 1707. c. 40. 1789. c. 13. c. 42. 1791. c. 3. 1794. c. 84 151. &c.

being calculated to enforce the regular performance of their duty by public officers, who might otherwise be tempted to swerve from it, to the great obstruction of Justice, and injury to the Individual, are highly necessary. It may however be doubted whether the extension of them ~~the summary proceedings~~ to such a number of Cases as we shall hereafter meet with, will not contribute to sap the foundations of the Trial by Jury, & finally subvert it. But of this hereafter.

3d & 4th. — ~~3d~~ 12 Summary Convictions are allowed in such particular Cases, as from delinquency of the defendant, or the Equity of the plaintiffs demand ~~may~~ seem to require a speedy remedy to prevent him from suffering by the ~~fraud or~~ fraud, or default of the Deft. ~~[illegible]~~. Where Judgement hath passed agt a Defendant and his Appearance bail, or agt the Sheriff where no bail, or insufficient Bail has been returned by him, ~~by~~ for the Default of the Defendant in not appearing according to the writ, the Law permits the Bail, or the Sheriff, his Exors or admors, or any other person on behalf of his Estate, to obtain an Attachment agt the Estate of the Defendant, on Motion, and upon Execution & return thereof the Court shall order so much of the Estate seized as will be sufficient to satisfy the Judgement and costs, to be sold: and out of the Money such Judgt shall be satisfied. — Or the Bail, his Heirs, Exors or admors ~~may in their Option~~ who have paid the Amt of the Judgt or any part thereof, may obtain

† 1753. c:1. Octo: 1777. c:17. 1780. c:67. 1794. c:66. s:29. c:67. s:26.

† 1786. c:15. 1794. c:145.

2dly Where a debtor is removing out of a County privately, or absends & conceals himself so that the ordinary process of law cannot be served upon him, upon any Justice of the place where he is, upon complaint made ~~[illegible]~~ by the Creditor may grant an Attachment against his Estate or Effects ~~[illegible]~~ debtor, returnable to the next County Court. ~~[illegible]~~ Brighton; which being returned executed, ~~and~~ the goods or effects attached shall not be replevied, it shall be entitled to the Judgt. for his whole debt, & may take Exo thereon, & the goods or effects shall be sold towards satisfaction thereof, in like manner as goods sold by Fi: fa: — or if any person at whom the Attachmt. shall issue hath money or effects in the hands of any other person he shall be summoned as a Garnishee to answer upon oath what he is indebted, or what ~~[illegible]~~ effects of the debtor he hath in his hands, and Judgt. may be rendered against the same against the Garnishee.

But these attachments may be replevied by giving Bail to the Sheriff or other officer serving the same, or by appearing at Court & pleading in Bar. —

And every Justice before granting an Attachment shall take Bond & Security of the creditor in double the sum attached, payable to the Deft, for satisfying & paying all Costs & Damages that may be awarded against the Plff, in case he be cast in his suit, for suing out such Attachment: which Bond shall be returned to the Court, & every Attm. issued without such Bond shall be held void, & be disallowed — 1748. c. 4. 1794. c. 78.

but Attm. may be issued & served on a Sunday.

obtain Judgt. in the Court where the original Judgt was rendered against the principal his heirs Exors or Admrs on motion, with ten days notice, for the amount of the sum paid — and shall thereupon have Execution.

1786. c: 15. 1794 c: 145.

3dly In all cases where Judgement is obtained agt any person his heirs, Exors or Admrs, as Security for another upon any note, Bill, Bond or obligation, in any Court of record within the Clw. and the Amt. of such Judgt. or any part thereof shall have been paid by such Security &c. such Security &c may obtain Judgt. on motion with ten days notice agt the principal debtor, his heirs, Exors, or admrs. for the full amt. of the sum paid, in any Court where Judgt shall have been rendered against such Security &c. — A similar remedy is given to one Security agt a Co-Security, where the principal shall be insolvent — or in this last case the Court may apportion the debt between the Securities — ~~1794. c. 175.~~ &c

1794. c: 175.

4th The like remedy is given to Securities, & Co-Securities who shall have satisfied any Exo awarded or issued upon any Bond, Obligation or recognizance upon which by the laws of the Clw. Exo can be awarded without Judgement. These acts however contain some provisions calculated to prevent the Security from neglect or collusion with the Obligee ~~from~~ suffering Judgement to pass so as to distress the principal debtor. — On the other hand a Security apprehending himself in danger of suffering by the Insolvency or Departure of his principal from the C. W. may give notice to the Creditor to bring suit, which unless he does within a reasonable time, he shall forfeit his right of action agt the Security. — And Securities or their Representatives may proceed in like manner with the Exors or Admrs of the Creditor.

4 Judgments in a summary way may be rendered also by Law, in certain Cases where the defendant hath already received the utmost Indulgence of the Law

Where any Distress is made for rent arrear, if the goods distrained be replevied, and a replevin Bond taken for pay.t of the money at the end of three months; or if they be sold on three months credit and Bond be taken for the Am.t of the purchase money, pursuant to the directions of the Act concerning Rents, and such Bond be not discharged accord.g to the Condition thereof. Judg.t may be thereon rendered against the Obligors on Motion with ten days notice to the Obligors. — The like remedy is given where an Exo hath been issued and levied, and the goods seized have been restored upon a Bond given for the forthcoming thereof at the day & place of Sale; in this Case the remedy is extended for against the Representatives of the Obligee and Obligors. — The like remedy was formerly given in all Cases where goods were taken in Execution, and sold on three months credit, or replevied by the Defendant, on condition of paying the same within three months — but that remedy was altered by the Act of 1787. c. 7. which introduced a new proceeding upon Executions, and laid the Foundation of some of the most extraordinary Innovations on the long established rules and Maxims of the common Law: substituting the Oath of the party, for proof by witnesses, and the Discretion of the Minister of a Court of Justice, for the Judgement of the Court itself; and finally subjecting a party to process of Execution, against his Body or Estate upon —

1748. c: 10. 1794. c: 89. 1769. c: 3. 1788. c: 77. 1792. c. 5. 1794. c. 157. 1748. c: 8.

proceedings in pais, without process, without notice, without proof, and without Judgement. It would probably puzzle even legislative ingenuity to carry their contempt or neglect of the maxims of the common law further. — To explain this it will ~~only~~ be necessary to refer to the Act of 1787. and the subsequent Acts made on the subject of Executions.

Inconveniences, either real or supposed, having arisen from the Act permitting goods taken in Exo to be replevied for three months, which was an optional in the Deft, the General Assembly by the Act of 1787. c. 7. abolished the right of replevying, for three months, at the option of the Deft, but permitted the Sheriff where the goods could not be sold for three fourths of their value, to replevy them for twelve months — and the Bonds taken in pursuance of that Act were to have the force of Judgements; and if not paid according to the Condition, the Creditor, his Attorney, or Assignee might lodge the same with the Clerk of the Court with an affidavit that the money or part thereof is still due, & thereupon the Clerk might issue Execution; upon which no security could be taken. — These Bonds were likewise made assignable, and when assigned, if the Sheriff returned no goods, or not sufficient to pay the Debt, the Clerk was authorised to issue an Execution against the Assignor of the Bond, for the Amount of the Debt therein mentioned, or such part as might appear to be still due. — And by the Act of 1794. c. 176. Writs of capias ad satisfaciendum, or elegit, as well as writs of fi: fa: might be issued on replevy Bonds.

1787. c: 7.
1791. c: 3.
1792. c. 5.
1794. c: 151. 176.

By the Act of 1795. c. 2. The Court on motion by the ~~obligee~~ Assignee, of a Bond, who hath assigned the same over, may ~~grant~~ Judgt. agt any prior Assignor. his Exors &c. on ten days notice.

And by the Act of 1798. c. 3. even notices of motions for Judgts agt Sheriffs and other officers engaged in the Collection of the Revenue, are declared to be unnecessary, and this Act has been enforced by the General Court. But this very extraordinary mode of proceeding was altered the succeeding year, 1799. c. 2. & 1800. c. 42. and ten days is again necessary to be given to Sheriffs and Collectors, as formerly: and this last method of proceeding is again confirmed by the Act of 1801. c. 1.

Subjects worthy of notice to the M: H: S.

1. The curious green Circle in the graso platt at Maysville.
2. The singular peculiarities of the intermitting Spring upon the Holstein.
3. The Sinks, or Funnels, in Green brier County & other Counties westward.
4. Major Long's & Mr. Musser's Account of the Water Spout which broke near Green Briar river Sept: 26. 1795. the Saturday preceding the great Freshet in Jas river Sept: 27. & 28. 1795.
5. Bartletts story of the hostile devasions of Bees at his Hives
6. Number of Cattle passing through Staunton Sept: 1. to 14: 1795.
7. The Shell banks and large Whale Skeletons about Swan's point, on James river.
8. Large Skeleton of a Whale found near Tar-borough in North Carolina.
9. Skeleton of Mammoth found in the Salt-licks of of Rutful County - Frank Walkers Acct. of it.
10. The Ascent of Lightning at Matoaca.
11. Petrefaction at Col. Flemings.
12. The potomack at Alexandria blown dry to the main channel by a violent wind at North west, March 10. 1796. Col: Simms
13. Winchester suddenly overflowed. Sept: 27. 1795. P. Bush.
14. Col. Taliaferro's threshing Machine.
15. A Curious kind of Bellows invented by a poor Blacksmith in Campbell County - P. Carrington Jun.
16. part of a Whale's Skeleton found near Ludwells Mill, a few years ago.
17. Ant-hills in the Allegany.
18. Negro turned white, at New London - Mr. Prentis.

Reverend Sir,

Williamsburg - Jany. 12th. 1795

Tho' the objects of the Massachusetts historical Society do not appear to be confined to historical subjects, only, yet I doubt whether Matters of mere Curiosity, such as those extraordinary phenomena in nature, to which the writers on natural history seem to pay particular attention, may be regarded as within the pale of their pursuit - As a Testimony of my gratitude for the honor done me by that Society, I shall, however, venture to communicate some few facts, which have fallen occasionally either under my own immediate observation, or have been received from persons on whose veracity I can rely - Should they appear to you to fall properly within the views of the Society you will do me the favor to communicate them; if not, you will be pleased to suppress them -

1. At Maycox in the County of prince George, upon the South Bank of James river, there is, on the North front of Mr. Meades house, upon a Lawn which has been levelled, and the surface taken off six or eight Inches, or perhaps deeper, a Circle about thirty feet in Diameter, which during the Spring and Summer is always observable, though the Lawn is kept constantly mowed, by a deep tinge, about a foot in breadth: its appearance corresponds with the effect produced by plaister of Paris, when strewed over Clover - This Circle I noticed in 1783 - I saw it again in 1788 and I am told it is still perceivable - The Earth was levelled about the year 1776 or 1777 - Mr. Meade informed me that it had been continually visible, from that period - The Grass is of the same kind - I asked him if he could upon any principles account for its appearance - He conjectured that the spot was formerly merely the scite of an Indian Town-house, there being formerly an Indian Town at this place, and that the Circle was produced, either by the rotting of Stakes, stuck into the Ground, to form the Inclosure, or by the Earth below, sticking to the Stakes, and brought up to the Surface by pulling up the stakes - Upon enquiring how long since this Indian Town had been discontinued, I found no reason to suppose it had existed within the last Century - Neither of these Conjectures have been satisfactory to my mind; for if the house had been formed by stakes, as supposed, after having rotted, and been exposed to the action of the Sun, Air, and Rain for a Century, it might have been expected that the vestiges of the Manure would either have been exhaled, or dissolved, and communicated gradually to the adjacent Earth; whereas I cannot learn that the breadth of the periphery has been either sensibly increased or diminished - The same objection appears to the second Conjecture; and I will candidly acknowledge myself at a loss to substitute a third, in the room of either. *

2. Mr. Jefferson, in his notes, pa. 61. notices a Syphon Fountain near the North Holstein, in this State. I went to see it in the Spring 1792 when on a Journey to Washington district Court. The account given me of it by several persons who lived near, or had visited it at different times, was, that it flowed generally for three or four hours, at a time, very rapidly, and then ceased for the same length of Time, or more; a friend of mine who visited it since I did, informed me that it flowed rapidly for about half an hour after he got to it / being then flowing / and then ceased for about the same time, when the flux was renewed; he staid I think two hours during which the flux and Intermissions were

* Chambers in his Dictionary, art: Fairy Circles, mentions this phenomenon, as not unfrequent, and ascribes it to the effect of lightning - The duration of the Circle at Maycox renders it difficult to conceive that such an effect could have been continued for so great a length of time, by any change which a single flash of lightening could produce -

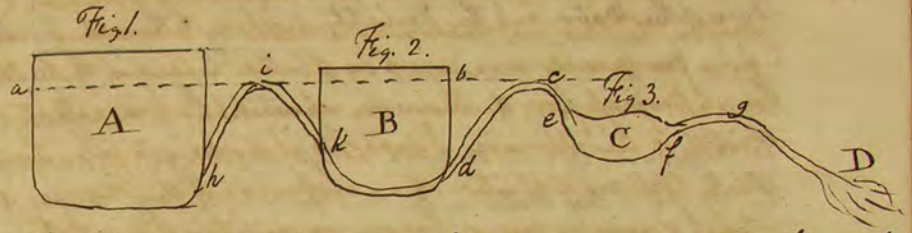
were repeated as before mentioned. When I saw it, the flux was repeated in somewhat less than every two minutes, and continued from three quarters of a minute to something more than a minute: the flux was uniformly preceded by a rumbling Noise for a few seconds, occasioned by the rapid flowing of the Water in its progress from the Reservoir, where it had been collected to the Mouth of the Spring. I supposed it discharged from thirty to sixty Gallons of Water at each period of the Flux, for it sometimes came in much larger quantities than at others. Three persons, who had often seen it, ~~before~~, declared they had never seen it discharge so often nor in such small Quantities before. I was obliged to pursue my Journey after spending near an hour at the place.

I have frequently reflected on these various phenomena; the doctrine of Syphon Fountains, where the intermissions and fluxes are regular is easily enough explained; but how account for those different periods which the Fluxes and Intermissions continue, according to different observations, of the truth of all which I am persuaded? I have supposed we must refer them to several reservoirs communicating with one another by Syphons, and so situated that there may be periodical interruptions of the communication between some; while there is no interruption of that Communication between others. To explain this Idea, I will attempt, though a most wretched Draughtsman, to give the Solution by something of that nature.

Let A, B, and C (Fig. 1, 2. & 3) be three reservoirs, of which A supplies B, by the Syphon h i k; and B supplies

C

C by the Syphon d c e; and C empties itself at D by the Syphon f g D of which D is the mouth or apparent intermittent Spring.



Now, A cannot supply B, untill the Water in A rises above the neck of the Syphon h i k, at i; nor can ~~then~~ B supply C untill the Water in B rises above the neck of the Syphon d c e, at c. nor can C empty itself untill the Water therein rises above g the neck of the Syphon f g D.

Suppose all three empty; the Water must rise in A, above the level of i, before B receives any; and again C must be completely filled before it can discharge any at D, the mouth of the Spring.

At this Time A and B may be supposed to be filled as far as the line a b c; if the Syphon f g D can at this Time discharge as much Water in a Minute, as the reservoir C receives in two minutes through the Syphon d c e, the flux from C will be interrupted as often as the water is ~~interrupted~~ reduced to the aperture f, of the Syphon f g D untill the Water be again raised as high as the neck of the Syphon g. this I apprehend may account for the frequent discharges of the Fountain during the time that I observed it: again, if the Syphon d c e can discharge as much water in two hours, as the Reservoir B receives through the Syphon h i k, in four hours, the flux from B to C will be

sus-

suspended for nearly the same period, as often as the Water in B is reduced below the aperture d, of the Syphon d c e. But the pressure of the Water, and the Quantity discharged through the Syphon h i k, being increased, according to the height of the Water in the main Reservoir A above the aperture h, of the Syphon h i k, the Reservoir B will be more or less rapidly filled according to the height of the Water in A and the intermission between B & C, in the same proportion more or less frequent. Hence, I conclude, the Intermissions and Fluxes were more frequent when seen by my friend Mr. N. than they had been observed by the other Gentlemen at other Times. Since it is probable that the observations of Mr. N. might have been made immediately after, or during a rainy Season, and the others during long continued Seasons of dry Weather; hence also, it might even happen that the Fountain may be dry for a much longer period than any, already mentioned; and hence too, it may continue running for a much longer period without interruption, or at least with such short intermissions as to escape observation. For whenever the water in A should fall below h, the flux would be suspended untill it rose again above i. And had moreover filled both B & C again. And whenever the level was above i, the pressure of the water both at h and d, would expel a much larger quantity through both Syphons, than when the Water in A was reduced below i. So that the frequency of the Intermissions and Fluxes, from B to C, will depend upon the Quantity of Water in A. And whenever that is so full as to expel the Water from A to B, as rapidly as it flows from B to C – and in like manner from

B to C as fast as C can empty itself by the Syphon f g D there will be no intermission observable, but a constant uninterrupted Stream.*

3. The Sinks, as they are called, in Greenbrier County, and in some others which lie upon the Allegany Ridge of Mountains, are large holes resembling Funnels, by which the Water, that falls in Rain, and melted Snow, is immediately conveyed into the Bosom of the Earth again: At Louisville, a little Township where the District Court is held in Greenbrier County, there is a plain stretching from North to South about one third of a Mile and about an hundred and fifty or two hundred Yards wide: being skirted by woods on each side, and at both extremities. There are eight or nine of these Sinks, all ranging in a line with each other, in this little plain. The smallest is not perhaps more than forty or fifty feet diameter: others are nearly twice as large – the depth of them varies, from fifteen to twenty feet, or perhaps twenty five feet. At the Bottom is to be seen a large heap of leaves, grass &c. quite dry. That there are drains by which the Rain and melted Snow are conveyed into the earth again, appears from a Spring, which breaks out in the Town, and is lost in one of these Sinks in less than one hundred and fifty Yards. In approaching Louisville you cross a Stream sufficient to turn a Mill at the Time I saw it, which empties itself into one of these funnels within twenty yards of the Road, and is no more seen. I first remarked the appearance of these Funnels near the Syphon Spring, abovementioned. I could observe there, that they were

* Mr. mentions a similar Fountain in his Letters, Lett. 4. Sect. 30.

were much more extensive than those I have described, forming in some Instances a crater of several Acres, overgrown with Timber trees, in some part of which, and generally not very far from the Center, one of these Funnels appeared, which carried off the whole Water which fell within the perimeter of the Crater - As far as I could judge from travelling along the road, and going through a forest, where there was no Road for a mile or two, very little Rain or Snow falls in that part of the Country, which is not returned to the earth immediately, through these funnels - The same might be observed near the Town of Louisville, above mentioned, which is situated upon a high Mountain, on which there is a level of many miles in extent, through which the Sinks continually occur, as I am informed -

These Circumstances lead to two Conjectures: 1st. That these Mountains have been formed by fire - 2d. that the whole interior of the Mountains is composed of vast Caverns, which form immense reservoirs of Water from whence the numerous Rivers and Streams which gush out on every side of these mountains, and empty themselves into the Chesapeak on one side, and into the Mississipi on the other, are supplied - The holes formed upon the surface of boiled pitch, or Wax, which has stood to cool, if I may compare small things with great, will afford some Idea of the primitive formation of these Sinks - The existence of Caverns in mountains, is, I believe generally admitted as an Evidence of their production by fire - The existence

-istence of them in this part of the Country is not only proved by these Circumstances, but there are many which have been resorted to during the War, and are so still, for the purpose of collecting the nitrous Earth of which the people in this part of the Country make their Saltpetre, and from thence their Gunpowder - The latter is said to be much stronger than imported powder -

4. I cannot quit the neighbourhood of Louisville, without mentioning a prodigious fall of Water in the neighbourhood of it, and close upon the Banks of Greenbrier ~~County~~ River, in June 1794. A Mr. Muster, from whom I had the Account informed me that an immense cloud appeared to him at the distance of three miles, to settle on the apex of the mountain, where it continued above an hour - The rain that fell descended in such Torrents, as to sweep down ~~Torrents~~ Rocks of an immense size, some not less than eight or ten feet cubic bulk: these bore down in their course immense trees, and left the marks of their progress in the sides of the mountains; but the most extraordinary evidence of the immensity of the torrent was in a valley below, where in several different places, the soil was entirely swept away for four or five Acres together, and the naked rock left bare at the depth of several feet - This fall of rain Mr. Muster described by the name of the Water-Spout - If his Idea be just, we must either suppose the Waterspout was formed in the Greenbrier County River, which in that Spot is not more than

than two hundred yards wide, and fordable, or reject the The-ory of Water Spouts, as given us by Doctor Franklin and other philosophers - I rather incline to adhere to the Doctor's Theory, having twice seen a phaenomenon on land, which con-firmed in my Mind the cause of Waterspouts, as assigned by Doctor Franklin. The first happened in the principal Street of this Town about the year 1777. A column of straws, feathers, dust and other light substances appeared near the mid-dle of the street, somewhat eastward of the Town Court-house; it ascended an hundred and fifty feet at the least, and was about six feet in diameter - The straws &c. could be ~~seen~~ distinctly seen whirled about, and rising from the ground upwards, till having gained the summit they were projected beyond the column, and either blown to a distance, or fell down on the outside of the Column. The column did not remain in one place, but removed gently in a kind of spiral path, fifteen or twenty yards, where the whirling discontinued and I lost sight of it, after observing it several minutes - It was during a remarkably fine calm morning that this happened, and the whirlwind by which the column was raised, appeared to be not much stronger than a plea-sant breeze, if one might judge from the gentle movement of the straws &c. The second was exactly similar, but more violent, and was seen near Osborne's, on James river - it encountered the limbs of some trees, in its progress, which were very violently agitated by it. The latter hap-pened about ten years ago. The same spiral agitation, which carried up

up the straws &c. would, I think, if the whirlwind were violent, be suf-ficient to carry up water in the Manner that Doctor Franklin seems to suppose - If therefore this extraordinary Torrent is to be presumed to have been occasioned by any thing analogous to the Water Spout, I am inclined to conjecture that it might have had its Origin in the Ri-ver, and that it continued until it reached the Apex of the Mountain, when the final dissolution of it took place - These I offer merely as conjectures - It is not impossible that I may visit that part of the Country in a year or two, and if I should, I shall make a point of vi-siting the spot, where this immense Water Spout is supposed to have bursted -

5. The last September, being being within 50 Miles of the na-tural Bridge, mentioned by Mr. Jefferson, in his Notes, page 38. I de-termined to visit it, and found it deserving every thing he has said of it.* I carried a line to measure it, and subjoin its height &c.

From the summit of the precipice to the bottom	feet 196.9 Inches
Apparent thickness of the Arch seen from a Cliff some Yards below the summit of the precipice	57.0
The widest part of the Arch below, from one abut-ment to the opposite on the northwest side -	70.6
Height of the Arch - - - - - - -	139.6
Width of the Arch below on the South East side	54.
Conjectural Width of the Arch near the summit	90-
Length of the Causey from Abutment to Abutment not measured, but supposed to be about - -	200-
Breadth of the Causey supposed, not measured - -	60-

The line which we carried was held at one end by my servant at the Bottom, and cut off at the top of the precipice and afterwards ac-curately

* Volney mentions a similar natural Arch in Syria. 160 feet long, 85 feet wide, and near 200 feet high, above the Torrent, French measure. See his Travels into Syria. Vol. 1. pa: 297.

curately measured. The other admeasurements are not altogether as exact. In this Journey we fell into the ordinary Road by which the Cattle drivers from the back parts of Virginia and North Carolina pass on to the Northward. In the Course of one day, and till eleven o'Clock of the second we met ten droves of Cattle, the numbers of which, except the first, which was the smallest, we kept an exact account of: they amounted to 1107. At Staunton, I was informed that upwards of eighty droves had passed through during my stay there, which was just a fortnight. Rating them according to those we met, there must have been near ten thousand. They were in general destined for Carlisle and Lancaster in Pennsylvania some for Baltimore and some for Philadelphia. What an Idea does this give us of the productiveness of the Countries they came from, and the Consumption of those they were going to! On our return from the natural bridge we were entertained with the following story by a Man who keeps a public house about three Miles from it. He averred what he said to be a fact, in the most solemn manner; a Gentleman with me who knew him, assured me he was a man of veracity. I therefore give you his story as he told it. About three years ago he perceived some Bees which were hived in his yard flying about as is general when they swarm; the usual methods were used to bring them to settle, but in vain. After some time he approached near enough to perceive they were fighting: the conflict continued without intermission, the whole day: as night came on they separated, one party to a hive that stood on a bench about ten yards distance from another bench, on which there was also a hive, to which the other party retreated. There were several other hives on both benches. The next day the Combat was renewed with equal fury as the day before: the ground was covered with the bodies of slaughtered Bees, from these two Hives; those in the other Hives continuing their labour as usual, and observing a strict neutrality: the evening again parted

parted the Combatants, and again was the battle renewed with the morning. Victory finally declared itself in favor of one of the swarms who in the afternoon returned to their own Hive, leaving the ground covered with their Friends and Foes, and the other Hive without a single Inhabitant. This story no doubt savours both of the ludicrous and the marvellous; but my friend, from his knowledge of our host (whose name was Bartlett) appeared to be fully convinced of the truth of it; and from the serious assertions of the man himself, I am much inclined to the same opinion. Had the unfortunate *M. Bailly been informed of this fact, he might possibly have retracted his opinion, that "les abeilles sont le seul "peuple qui ait conservé le coutume d'envoyer au loin des "Colonies, parce qu'elles n'ont point encore imaginé l'excellent "remede de se détruire dans sa patrie, pour s'éviter l'ennui "de vivre dans une terre étrangere".

6. I cannot quit the Mountains without mentioning that Alligators (of a very small size, and perhaps a different species from those found in the Atlantic Rivers of South Carolina and Georgia) have been caught at Morgan Town, on the Monongahela River, within ten Miles of the Pennsylvania line; this is further North than I recollect to have heard of them elsewhere; whether these may be supposed to be bred in the Mississipi and from thence to have ascended towards its head branches on the North East; or whether they are natives of those parts, whose caught. I have not been able to ascertain: they are said to be very frequently caught at Morgan Town, but I have never seen one

* late Marquis of Paris. Author of a treatise on astronomy &c. he was guillotined as I have heard.

one of them - But the Skeleton of a much more remarkable Inhabit-
-ant of the Southwestern part of the State is said to have been lately
discovered by some workmen in sinking a saltpit, on the Salines of
the Holstein, the property of Mr. Preston, one of the Representatives
in Congress - At the depth of eight or ten feet from the surface - They
met with the Fauces of an animal supposed to be the Mammoth;
the points of the Jaw-bone, which was perfect, as far as they dis-
covered, were five or six feet asunder - The workmen finding them-
-selves incommoded by the Skeleton abandon'd the pit, and sunk an-
-other - Mr. Preston was then absent: it is to be wished that he would
cause the whole skeleton, which is probably entire, to be dug up;
it might throw much light on the Question concerning this Dacq-
-uitem - These pits lie nearly in the Latitude 37°. 15'. they are
the same that Mr. Jefferson mentions - page 74 of his Notes - I
am indebted to Mr. F. Walker, late Representative in Congress for
this Account -

7. At Judge Flemings, in Chesterfield County, about
fifteen Miles above Richmond, and not far from James-River, - I
saw about three years ago, a remarkable petrefaction: it was
part of a large Pine tree, equal in bulk to the breach of an eighteen,
or perhaps twenty four pound Iron-Cannon, and between two or
three feet in length - the grain of the wood and the different colours
of it were perfectly visible: it appeared that the sap of the tree
had rotted off before the petrifaction began: Mr. Fleming in-
formed me that it was found within a mile of his house, in a
little slash of water; that either the whole, or the greater part of
the tree still remained there in a petrified state; he had this
Block

Block brought away in a Cart as a Curiosity -

8. Doctor Franklin contends that lightening frequently as-
-cends to the Clouds; of this I have seen, at different times, several
strong evidences - I shall mention one of which, with three other
persons, I was an eyewitness in the Summer 1782 or 1783 - a
small, but rather dark cloud was passing on the South side of
my house, near Petersburg; it happened that Mrs. Tucker, an-
other lady, myself, and a gentleman who was on a visit, were all
looking out of the Windows towards the same spot, when we beheld
a flame burst from the Earth, near a tree which we could dis-
-tinctly see; a noise like the report of a Cannon or rather the
bursting of a bombshell, instantly succeeded: there was no suc-
-cession of rumbling thunder: it appeared that the dust, or earth was
thrown up, where the flame burst out, exactly as it is thrown up by
a Bomb that hath buried itself before it bursts - The flame was as
evident, and the Phaenomenon bore as perfect a resemblance in
every respect to the bursting of a Bomb, as it is possible to conceive -
The spot where it happened was close by the road side, not more
than three hundred yards distant, and so palpable, that the
gentleman who was with me consented to go across the River to
examine the effect produced - We were at no loss to find it; an
old tree, the one we had all noticed, was split from Bottom to top:
at the root there appeared to have been a dislodgement of a
small portion of earth; about twelve feet from the old tree stood
a healthy pine tree twenty or thirty feet higher than the old tree,
which was of oak, I think - The pine tree was split, from about
six

six or eight feet above the top of the old oak tree, to its summit, but remained without injury below - None of us saw the lightening fly from the oak to the pine tree; but that it did so is evident - First, be-cause all four agreed that the flame burst out at the foot of the oak; Secondly, because the appearance of the earth at its root confirmed what our Eyes had before persuaded us to believe, that the root of the old tree was the spot where we saw the flame; thirdly because a healthy vigorous pine is a better conductor than a dead tree, which was probably dry; consequently had the lightening struck the pine tree first, it would not have deserted it in favor of the dry dead tree; lastly because the lightening seems to have ascended to the summit of the old tree, and then to have flown off to the pine, as a further conductor, towards its object the Cloud, instead of descending after it had reached the pine tree - I have mentioned this fact, because I do not recollect that any of the phænomena mentioned by Doctor Franklin (whose Book I have not seen for more than twenty years) were attended with circumstances so perfectly convincing -

9. If the interior and mountainous parts of Virginia afford a scope for the researches of the curious, the plains and the Seacoasts are not destitute of objects to bewilder us in the laby-rinth of conjecture - In addition to the account given by the reverend Mr. Spooner, in his topographical account of prince George County, in this State, of the skeletons of two whales found in that County (Hist. Coll. vol. 3. pa: 88) which he might have add-ded, were found within five miles of each other, I have seen part of a skeleton of a third, found in the Banks of James River, near the late Mr. John Heartwell Cocke's, near Swan's Point, in Surry County, not twenty five miles from either of the former; and

~~only~~ and of a fourth found in the Bank of the Potowmack, near the mouth of Pope's Creek, upon the Lands of Daniel Mc. Carty Esq.r - Both the last were found at a very considerable height above the surface of the River; not less, from what I could gather, than twenty or thirty feet - In the same places, immense Strata of Shells, and other marine productions are met with: many of them perfect, and even retaining some degree of polish; others reduced to fragments; others to mere powder - The most perfect seem to be a very large kind of Scallop-shells, some as large as the Bottom of a plate; there is however this distinction between these Shells, and Scallop Shells; the former are uniformly concave, whereas the Scallop has one concave, and one flat shell; I never could meet with a flat shell that appeared to belong to those found here; on the contrary, I once found two concave Shells, in a Bank, exactly fitted to each other, and closed; the inside was full of powdered shells; I do not recollect that these shells were united by a Hinge; on the con-trary, I think there was no hinge; but their perfect conform-ity to each other left no doubt in my mind that they originally were united; this species of shell fish is no more ~~than~~ to be met with in our Waters, than the Mammoth in our Mountains - These Banks of Shells are to be met with in every part of our Country, hereabouts, where there is either a Watercourse, or a well dug: if they would be acceptable I will procure some and send by way of Norfolk - About ten years ago, the skeleton of a whale, about sixty feet in length, was found near Tar-borough in North Carolina, a considerable Distance above albemarle Sound - A Gentleman shewed me a tooth belonging to it, which I suppos-ed

-ed belonged to a Fish of the Shark-kind; it was about three Inches long, and two broad, at the back, being shaped like the point of a lance; and serrated at the edges; it was not more than half an Inch thick, retained a fine polish, it was of an ash, or amber colour, I remembered seeing a large Shark many years ago, with a triple row of teeth similarly shaped, but not more than three quarters of an Inch in length: from hence I drew my conjecture, as to the species of fish it belonged to, but I have been told that there are whales in the northern Seas which have such teeth as I have ~~do~~ here described -

What a Scope for Conjecture, what a field for the Imagination, what a mine for the laborious researches of Philosophers and Theorists, do not these things afford! Shall we conclude that this whole plain Country, perhaps, from the Neversunk, in Newyork, to the extremity of Florida, hath been formed by gradual alluvions, adopting therewith this Reflexion of Monsr. Buffon "que le tems qui nous manque, ne manque point a la nature" Or shall we say that the skeletons ~~of the skeletons~~ of these animals found twenty or thirty feet above the highest flux of modern Tides, if they prove any thing, prove that this part of the habitable globe, has been, long since, the first creation of animals, submerged in the ocean? If so, whither have the waters retired, that once covered this plain, and the whole Earth to an equal Height therewith? does it not lead to a conjecture that the interior parts of the Globe, instead of being the most solid, as some Theorists have supposed, is cavernous throughout, and that some convulsion of nature by breaking the vault of the vast abyss, prepared

prepared a place for the Waters to retreat, and left this new World to become habitable+? Or shall we reject them in favor of a still bolder Theory, by supposing the plains of the american Continent to have been formed in one of those convulsive Epochs of nature when the Ocean hath retreated from its Shores, and then returned again with an impetuosity capable of overwhelming the highest mountains, bringing with it whatever Substances formed the Bed of the Atlantic, throwing them up against the sides of the Mountains, and then retreating again to its Bed - These Conjectures remind me of the observation of a French author - "Il n'y a point de petit philosophe qui n'a formé la terre" - I shall therefore abandon them, and conclude the subject in the words of the same Author - "Je n'entreprends point d'estimer les forces de la nature: mais comme ces forces sont tres-grandes, on risque moins à les etendre qu'à les borner" -

Permit me to conclude this Farrago of a letter, with a very sincere wish for the prosperity of the Society, and assurances of the most perfect respect and esteem to yourself.

I am, Sir,

Your obliged hble Servt

S. G. Tucker

+ Il est tres certain qu'en general les mers baissent toujours de plus en plus, et qu'elles baisseront encore a mesure qu'il se fera quelque nouvel affaissement, soit par l'effet des Volcans, et des tremblements de terre, soit par des causes plus constantes et plus simples: car toutes les parties cavernueuses de l'interieur du Globe ne sont pas encore affaissées. Epoques de la nature (Paris 1778.) pa. 128.

+ The Children of the Kings Embassadors born abroad were always held to be natural Subjects. - 7. Co. Calvins Case.

Of Aliens.

By the common law of England all persons born out of the Kings Dominions, or allegiance, were, with very few exceptions+, held to be Aliens. And this Maxim proceeded upon the general principle, that every man owes allegiance where he is born, and can not owe two such allegiances, or serve two masters at once‡. The Stat: 25. Edw. 3. Stat: 2. enacted that all Children born abroad, provided both their parents were at the time of their birth in allegiance to the King, and the mother had passed the seas with her husband's consent, might inherit as if born in England. And by some later Statutes‡, which perhaps were never in force here, all Children born out of the Kings Ligeance, whose Fathers were natural born subjects, were declared to be natural born subjects themselves, to all intents and purposes, without any Exception.

‡ 1. B. l. 373.

‡ 7. Ann. c. 5. 4. Geo. 2. c. 21.

According to these principles all persons born within the United States, while Colonies of Great-Britain were the natural born subjects of the Crown of G. Britain. This was indeed stipulated on the part of the Colonists emigrating to this Country, & confirmed to them expressly by the several Charters granted by Queen Elizabeth to Sir Humphrey Gilbert & Sir Walter Raleigh, and the subsequent Charters of Kings James the first; by all which the Colonists and their Heirs, & every of them were declared to be entitled to all the privileges "of free Denizens or persons native of England". - Thus stood the law

* ~~By the~~ The Resolution of the General Assembly Decr. 10. 1776. for enforcing the Statute Staple, 27. Edw. 3. c. 17. agt all the natives of G. B. who were partners with, or Agents, in this country Storekeepers or Clerks for any Merchant in G. B. except such as had uniformly manifested a friendly disposition to the Amer. Cause, or work attached to this Country by having Wives & Children here, ordered that all such persons should be required to depart, within a limited time; and that such as might thereafter be found ~~there~~ in the Colo. should be confined as Enemies & prisoners of war.

at the period of the American revolution. The natives of the Colonies and the natives of the parent State were in consequence thereof, of equal capacity to inherit or hold Lands in the different parts of the British Empire, as if they had been born ~~born~~ and their Lands ~~were all born~~ situated ~~in~~ in the same Country. and in fact many native Americans ~~born~~ did hold estates in England, and on the other hand great numbers of the natives of Great Britain, who had never been in America, possessed Estates in Lands, in the Colonies.

By the declaration of Independence the Colonies became a separate Nation from Great-Britain. Yet ~~still~~ according to the principles of the Laws of England*, which we stile retained, the natives of both Countries, born before the Separation, retained all the rights of birth; or in other words, American Natives were still capable of inheriting Lands in England, & the natives of England who remained Subjects to the Crown of Great Britain; were still capable of inheriting Lands in America, or of holding those which they already possessed. — This principle seems to have been laid down by Bracton, & is recognized in Calvins Case —

* 7. Co. pa: 28. Calvins Case.

In May 1777. an# act passed to oblige the free male Inhabitants of this State above the Age of sixteen years to give Assurance of Allegiance to this State*. This Assurance consisted in an oath abjuring all allegiance to the King of G. B. his heirs & Successors, and of

ch. 3.

Fidelity to the commonwealth of Virginia as an independent State. All recusants were thereby directed to be ~~disarmed~~ disarmed, and further, were declared incapable of holding any office in the State; serving on Juries, suing for debts; electing or being elected; or buying Lands, Tenements or Hereditaments. By the Act of Acts. 1777. c. 2. the Delinquents were subjected to double taxes. In the same Session an Act passed for sequestering British property, & enabling those indebted to British Subjects to pay off such Debts; the preamble recites, that divers persons subjects of G. B. had during our Connexion with that Kgdm acquired Estates real and personal within this Clw. and had also become entitled to Debts to a considerable amt. and such Estates ~~being~~ having been acquired & Debts incurred under the sanction of the Laws and of the Connexion then subsisting, & it not being known that their Sovereign had as yet set the example of confiscating Debts & Estates under the like circumstances, the public faith & the Laws & Usages of nations required that they shd. not be confiscated on our part; but the safety of the U. S. demanded & the same Laws & Usages of nations ~~could~~ would justify that we shd. not strengthen the hands of our Enemies during the continuance of the ~~present~~ war — Wherefore it was enacted that the Lands, Slaves &c. of whatever nature within this Clw. the property of any British Subject shall be sequestered into the hands of ~~Commr~~ Commissioners: And further

c. 9.

+ c. 9.

that any Citizen owing money to a subject of Ly. B. might pay the same or any part thereof into the Loan Office, taking a Certificate for the same in the name of the Creditor, with an Endorsement under the hand of the Commissioner, specifying the name of the payer, who shall deliver such Certif: to the Govr. & Council, whose receipt shall discharge him from so much of the debt.

+ nov: 27. 1777. } In the succeeding Month + The Congress of the U. S. "Resolved, that it be earnestly recommended to the "several States, as soon as may be, to confiscate "and make Sale of all the real & personal Estate "therein of such of their Inhabitants, & other persons, "who have forfeited the same, and the right and "protection of their respective States, & to invest the "money arising from the Sales in continental Loan Office "Certificates, to be appropriated in such manner as "the respective States shall thereafter direct."

It does not appear that any measures were taken in this State, in pursuance of this recommendation until the May Session of 1779. When an Act * passed declaring who should be deemed Citizens of this Colo. Whereby it is declared that all white persons born within the Territory "of this Colo. and all who had resided therein two years "next before the passing of that Act; & all who should "thereafter migrate into the same, other than Alien Enemies, "and give assurance of fidelity &c. to the Colo. And all Infants "whereso'ever born, whose father if living, or otherwise whose "Mother was a Citizen at the time of their birth, or who

* c: 55.

Here insert the whole preamble, as it recognizes in some measure the common law principle.

‡ The sales were directed to be made for ready money, and the Escheator's Certificate of the payment thereof entitled the purchaser to a Grant for the same free and fully exonerated from all the right, title, claim and interest legal and equitable of any British subject thereto and also from the right ~~or~~ title under any Deed of ~~for mortgage, the equity of Redemption whereof &c.~~ — ¶

‡ the Act of October 1779. c. 39. for confirming the titles of purchasers of escheated & forfeited estates, declares, that in every Case where any Estate ~~shall~~ should have been found to belong to a British subject, in which the Clerk of the General Court had certified, or ~~shall~~ should certify, that no claim had been filed to such Estate; or where any claim ~~shall~~ should have been filed and discussed for the commonwealth, the Title of the purchaser or purchasers thereto ~~shall~~ should be ~~is~~ thereby confirmed to him his heirs and assigns upon due payment of the ~~money~~ purchase money, notwithstanding any defect in the Inquisition, or, that the requisitions of the Act concerning Escheats & Forfeitures from British subjects may not have been complied with.

¶ claim and interest of every person under any deed of mortgage the equity of redemption whereof had not been foreclosed at the time of the sale.

" should migrate hither, their father if living, or otherwise, their mother becoming a citizen, or who would migrate hither without Father or mother, shall be deemed citizens of this Clw — and all others, not being citizens of any of the U.S. of Am.a shall be deemed aliens. In the same Session, an Act passed entitled an Act concerning Escheats & forfeitures from British Subjects, the preamble of which declared ‡ (that in consequence of the War waged by the U.S.A. in defence of their just rights, and their final separation from the rest of the British Empire, the Inhabitants of those parts became aliens & Enemies, ‡ & as such incapable of holding the property real or personal by them acquired ~~there~~ in this Clw. and so much thereof as was within the same became by the Laws vested in the Clw. — and it being found that the same was liable to be lost, wasted, or impaired), it was therefore declared & enacted), "that all the property " real and personal within this Clw. belonging at that " time to any British Subject, or which did belong " to any British at the time such Escheat or forfeiture " may have taken place, shall be deemed to be " vested in the Clw. the real Estate by way of Escheat, " and the personal Estate by Forfeiture. ‡

c: 14.

‡ Wars make aliens Enemies 7. Co. 25. b.

‡ These Acts taken together evince the Intention of the Legislature to have been to repeal the common law principle that the Antenati of both Countries might notwithstanding the Seperation continue to hold & inherit Lands in

in any part of the dominions which were formerly united. For the Act declaring who shall be deemed Citizens of this Commonwealth, in express terms declares that all persons not comprehended within the description therein contained shall be deemed aliens. But this could not have been the Case at the common law, according to the rule in Calvin's Case, since they were natural born Subjects with respect to the Natives of this Country, being born under the same Allegiance with them; nor could they by any ex post facto Circumstance, except an express legislative ordinance be made aliens.+ — But the Act concerning escheats & forfeitures goes still further, & pronounces them not only to be aliens but Enemies. And this Circumstance was made the foundation of the law of Confiscation & Forfeiture.

+ 7. Co. 27.

And here it will be proper to consider these two Acts seperately, & independently of each other. And first, by the Act declaring who shall be deemed Citizens of this Commonwealth, all persons (other than such as were by that act declared to be Citizens) holding Lands or Tenements within the State were liable to lose the same by escheat; ~~for~~ since by the common law, which in this respect was unaltered, no Alien can purchase, or hold Lands or Tenements, but they shall escheat to the Commonwealth; and this in the Case of an Alien friend, as well as of an Alien Enemy. ~~Now~~ But here a distinction occurs between Alien friends & Alien Enemies; for if they had

had been alien friends they might have ~~[illegible]~~ hired an house for necessary habitation; and their goods & Chattels would not have been subject to forfeiture, to which, as alien Enemies they were. They might also have resided here peaceably, & have carried on trade, maintained personal actions, &c. — But in order to vest the property in Lands of an alien friend in the Commonwealth, an Inquest of Office, called an Office of entituling is absolutely necessary; for until such Office found the Ctw. has no title + - ~~Page 5 6 52~~. nor can the Commonwealth take or part with any thing but by matter of record.# And the nature of the Inquiry in this Case is "whether I. S. be an alien, or died without lawful heirs &c. There is another Inquest of Office called an Office of Instruction; and that was, where the Estate of the Land was lawfully in the King before, but the particularity of the Land doth not appear of record so that it might be put in charge. As if one were attainted of high Treason, all his Lands by Stat: of 33. H. 8. were presently in the King: but it doth not appear ~~of what~~ to the Court of Exchequer of what Lands the person attainted was seized, at the time of his Attainder, and this Inquest is necessary to instruct the King of the certainty of the Land.* ~~5 6 52~~. And herewith the Act concerning Escheats & Forfeitures from British Subjects, seems to agree. For that Act declares

+ page case 5.6.52.

3. B.C. 258. 259. &c.

* 5.6.52.

declares that "all the property, real & personal
" within the Commonwealth belonging at that time to
" any British Subject, or which did belong to any British
" Subject at the time such Escheat & forfeiture may have
" taken place, shall be deemed to be vested in the Clo.
" the Lands, Slaves & other real Estate by way of Escheat,
" and the personal estate by forfeiture." – This Act
could operate only upon Estates ~~[illegible]~~ or property
then or before that time vested; the ~~[illegible]~~ other Act + might operate as well
upon property thereafter acquired, as upon such as was
already vested: the proceedings upon the Act concerning Escheats ~~[illegible]~~ were
in the nature of an office of instruction; ~~[illegible]~~
~~[illegible]~~ the Commonwealth being already entitled under
this legislative declaration, as fully as the King was
under the Stat: of 33. H. 8. without office; but yet
the Office of instruction was necessary in order that
the Clo. might with certainty know the Land.
But as to Lands thereafter acquired by Aliens,
there the Clo. would have no title whatsoever
until an Office of entitledy was found. Yet
such Lands were liable to be escheated; but until Office
found the Alien might hold the Lands. And this distinction
is clearly shewn in Plowden, where it is said that the
word forfeit in the Act of Attainder of Sir T. Lovel did
not vest a reversion whereof he was seized in the King
but is only effectual to cut a right or title in the King,
and that it ought to appear by record what Land or Tents
he

+ c. 55.

Plow: 246. 246.

he had; and therefore that it did not vest the — possession, nor could the King enter, without office first found:* — But if the Kings Tenant in Capite be in the manner attainted of Treason, then after the death of the person attainted, the freehold in Law shall be in the King until office found, in the nature of a common Escheat, and not in the nature of an Escheat for Treason,* ~~as p. 486~~. Now here the Legislature passed a kind of general Bill of attainder against all British Subjects holding Lands, or other property in this State, thereby confiscating the same to the use of the Clw. which is analagous to the word forfeit in Sir F. L.'s Case. Yet until an office of Instruction the Clw. could not enter or take possession. And the fact, whether a person were a British Subject or not, could not be traversed by such person, or by any one on his behalf, but he was put to his monstrans de droit, by the Act of Oct. 1779. c. 18. contrary to the common law practice whereby a party found an Alien by Inquest of Office might traverse it, & plead that he was Indigena, or natural born.‡ The legislature aware of this Circumstance, & also aware that Antenati Natives of G. B. were according to the principles of the common law quasi natural born, in Virginia, would not permit the party to avail himself of this construction Nativity, but compell'd him to shew that he was within some of those special provisions contained in the Act, in favor of Infants, Feme coverts, and others whose Cases were deemed worthy

*Plow: 485. 486.

*Plow: 486.

‡ 2. Viz: 545.

to construe the fact established by the Inquest Viz. that the Lands were the property of an British Subject.

worthy of Exceptions in their favor. This legisla=
=tive confiscation and disfranchisement is not without precedent. In the reign of
Philip & Mary Sir Thomas Wyatt was attainted of high
Treason by Act of parl^t. which declared that his Estate shd.
be vested & adjudged to be in the actual possession of the Crown
without any other Office or Inquisition. — By the Stat:
of 5. Geo. 1. c. 27. any Manufacturer &c. then or after=
=wards being in any foreign Country who shall not
return, after warning so to do, shall be deemed an
Alien — a regular Consequence of which is, that their
Lands should escheat to the Crown.

+ Plow: 551.

By the definitive Treaty of peace concluded between
Gr: B: & the U. S. it was agreed that Congress should
earnestly recommend to the Leg^s. of the respective States
to provide for the restitution of all Estates &c confiscated
belonging to real Br: Subjects; and that all persons
having any interest in confiscated Lands, should meet
with no lawful Impediment in the prosecution of their
just rights — That Congress should earnestly recommend
to the several states a reconsideration & revision of all
Acts or laws concerning the premises, & finally, that
no future Confiscations should be made. and that
no person should in future suffer any Loss, or Damage
either in his person, Liberty, or property on Account of
the part which he ~~may~~ might have taken during the War.

In the month of Oct: following* the Legislature of this
State passed an Act for the Admission of Emigrants, &
declaring the rights of Citizenship. by which it was
declared

* Oct: 1783. c: 16.

declared that all free persons born within the Cw. all persons not being natives who have obtained the rights of Citizenship, under the Act declaring who shall be deemed Citizens+; all Children wheresoever born whose Fathers or Mothers are, or were Citizens at the time of the birth of such Children, shall be deemed Citizens; and that all persons other than Alien Enemies who shall migrate into the State, & give satisfactory proof before some Court of record that they intend to reside therein, & take the Oath of fidelity to the Cw. shall be intitled to all the rights of Citizenship except electing or being elected to any office, until an actual residence for two years, after taking such Oath; and further until they shall have evinced a permanent Attachment to the State by intermarrying with a Citizen of the Cw. or of the U. S. or purchasing Lands to the value of One hundred pounds therein.

+ 1779 c. 55.

By this Act the former Act* declaring who shall be deemed Citizens, by which it was declared that all others should be deemed aliens, is expressly repealed: At the same Session, a notter Act‡ prohibiting the Migration of certain persons into this Cw. was also passed, whereby such as had borne a Commission under the U. S. of any of them; or being natives, or Residents in the U. S. on the 19th of April 1775. had voluntarily borne Arms against the U. S. within their Territories or on their Coasts, or were Owners of Privateers, or Members of the Refugee

* Repealed: 1779. c. 55.

‡ Act. 1783. c. 17.

Board of ~~Comm~~ Commissioners in New York, or had acted under their authority were prohibited from migrating to, or becoming Citizens of this State. — The succeeding year an Act+ was passed declaring that no future Confiscations should be made; provided however that the Act should not extend to any suit depending in any Court, prior to the Ratification of the Treaty of peace. No Steps were taken pursuant to the recommendations stipulated in the fifth article of the Treaty — By the Adoption of the C.U.S. that Treaty became a part of the Supreme Law of the Land, & as such paramount to the ~~Laws~~ Acts of the State Legislature. The operation of it remains to be considered. To do this, let us take a short review of the subject.

+1784. c.53

1. By the common Law, upon the Seperation between America & G. B. taking place, the natives of G. B. were constructively natural born in America, & notwithstanding that seperation might hold lands here, as if they had ~~been~~ residents in America.

2. By the Act of May 1779. c. 55. declaring who shall be deemed Citizens, they were expressly declared to be Aliens; a consequence of which I presume was that their Lands were liable to be escheated to the Commonwealth, upon the common Law principle that an Alien, whether friend

friend or Enemy, is incapable of purchasing or holding lands: the proceedings in this Case, as we have shewn were by an Inquest of Office to entitle the Crown to the lands so held.

3. By the Act of the same Session concerning Escheats & Forfeitures, they were further declared to be Enemies, as well as aliens: and it was further declared that all their property whether real or personal belonging to them then, or at any time before, ~~belonging to them~~ when such Escheat or forfeiture may have taken place, should be deemed to be vested in the Crown the real Estate by way of Escheat, and the personal Estate by way of Forfeiture. This Act, appears to have vested a Title in the State to all such Estates &c. but an Office of Instruction was necessary to shew the lands &c. with Certainty, and to put the Crown in Possession.

4. The Operation of the Treaty of Peace upon the property declared to be escheated & forfeited by the last mentioned Act might have been doubtful, had not the Act of 1784. c. 53. authorised us to pronounce that the Legislature thereby released the Right of the Commonwealth in all Cases, where no Inquest of Office had been found, & a suit thereon ~~was~~ depending, at the time of the Ratification of the Treaty: ~~And~~ it would seem that the Treaty was

was an effectual bar to the subsequent Confiscation or Escheating of any property belonging to a British Subject, which became vested at any time after the Act of 1779. concerning Escheats & Forfeitures took effect. — For that Act, as we have already observed could operate only on property then, or before vested, & not on any which might thereafter be acquired by British Subjects.

5. By the Treaty of Peace the common law principle that the Antenati of both Countries were natural born to both, and as such capable of holding or inheriting in both, seems to have been revived; in consequence of which they are now capable of holding, purchasing, or inheriting in the same manner as if they were Citizens*. And this, although they may be prohibited from migrating to, or becoming Citizens of the State. For Treaties are to receive a liberal Construction, & most beneficial for those for whom any Stipulation is made; and it was evidently the intention of the framers to restore all individuals to the same Condition they were in before the War, as far as existing Circumstances would permit, notwithstanding any part which they may have taken, either actually, or constructively, in the War. And this Construction is further

(Qu. by what part of the ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ *)

(Qu: if of all persons, or only of British Subjects)

* A regular consequence of this would seem to be, that upon the death of any Ante-natus subject of Great Britain, holding lands in this part of United States, before the separation, and continuing to hold such lands in virtue of the Treaty of peace, such lands would escheat to the Commonwealth, unless such Ante-natus had some Heir, who was either a Citizen of the United States, or, ~~[illegible]~~ if a British subject, who was also born before the separation. For, it has been contended*, that under the Equity of the ~~British~~ Treaty of peace, giving it the most liberal construction, all the rights of British Subjects in the United States, which were before that time actually vested, and had not since the separation been devested, were protected: and that where such rights relate to lands, the persons having such right, if not already Citizens, had their whole lives to become Citizens; which if they neglected to do, their lands at their death would be equally subject to escheat, as those of any Alien naturalised, and dying without any other Heirs, except Aliens.

(See When)

~~And even under the Treaty of London 1794, we may conclude, that lands purchased by British subjects, unless they were the property of British subjects when the Treaty took effect, since that Treaty took effect, are not within the benefit thereof, but will, upon the death of the purchaser if Ante-natus, or immediately upon the purchase being made, if Post-natus, be liable to escheat, in like manner as lands purchased by, or descending to other Aliens.~~

further aided by the omission of the words, all others shall be deemed aliens, in the act of Oct. 1783. c. 16. declaring the rights of Citizenship &c. at which time the preliminary articles of peace were generally known; and it was also probably known that the definitive Treaty was precisely the same with them.

6. British Subjects born since the Separation are Aliens: but such of them as were born before the Definitive treaty took place seem to be entitled to the benefits thereof, so far as they had, or might be presumed to have, any interest in lands in the United States: all others appear to be aliens in the strictest sense*, except as their cases have been remedied by the late Treaty of Amity, navigation & commerce with G. B. of which ~~hereafter~~ it now remains to say a few words.

7. By the Treaty of London, 19. of Nov. 1794. Art: 2d. it is stipulated "that all settlers or Traders within the precincts or "Jurisdictions of the British posts within the Boundary lines of "the U. S. shall continue to enjoy unmolested all their property "of every kind and shall be protected therein. They shall be at "full liberty to remain there, or to remove with all, or any "part of their Effects; and it shall also be free to them to sell "their Lands, houses, or Effects, or to retain the property "thereof at their discretion. Such of them as shall continue "to reside within the said Boundary lines shall not be compelled

+ The British act of parliament for carrying this Treaty into effect, fixes the 28th. of October 1795. the day of the Exchange of the ratifications, as the period of its commencement. vi: Stat: 37. George 3. c. 97. - passed July 4. 1797. Query, if the same day is to be regarded as the period of Commence= =ment in the U. S.

† see the preceeding note.

" compelled to become Citizens of the U. S. or to take any
" oath of Allegiance to the Govern.t thereof; but they shall be
" at full liberty to do so if they think proper, & they shall make
" and declare their Election within one year after such
" Evacuation. And all persons who shall continue there after
" the Expiration of the said year ~~shall be con~~ without having
" declared their Intention to remain British Subjects, shall
" be considered as having made their Election to become
" Citizens of the U. States." — By the ninth Article it is further agreed - "That British subjects who now† hold
" Lands in the Territories of the U. S. and American Citizens
" who now hold Lands in the British Dominions, shall
" continue to hold them, according to the nature & Tenure of
" their respective Estates & Titles therein; and may grant
" sell or devise the same to whom they please, in like
" manner as if they were natives; and that neither they nor
" their heirs or assigns shall, so far as may respect the
" said Lands, and the legal remedies incident thereto be
" regarded as Aliens". — Under the Operation of this Treaty it would seem that British Subjects within the precincts or Jurisdictions of the Western posts, who held Land there at the time of their evacuation, and ~~may~~ shall elect to remain such within one year thereafter, can not be regarded as aliens in respect to those Lands - and that all British Subjects, who actually held Lands in any part of the U. S. on the 19th. Day of Nov.r 1794†, their heirs and assigns forever ~~whatever~~ altho ~~natives~~ in all other respects Aliens, shall not be ~~considered~~ considered as aliens in respect to such Lands, and the legal remedies incident thereto. How far the words of this clause

clause may revive the Intails of such as were held by that Tenure, or may authorise the Transmission of them in that mode to latest posterity, malgrè the Acts of the State Legislatures on the subject, may perhaps become an important subject of enquiry hereafter – at present it would be altogether premature.

Thus much for the rights of British Subjects, whether Antenati, or strictly Aliens, according to the common Law – ~~How far American Citizens may be regarded as aliens, in respect to their lands, may now be proper to be considered~~ The following legislative interpretation of the Treaty of 1794. by the British parliament, may aid us in the construction which ought to be given to that Treaty as it relates to British Subjects in the United States.

The Statute 37. Geo. 3. ch. 97. sect 24. & 25. after reciting "that by the ninth article of the said treaty, it was agreed that British subjects who then held lands in the territories of the said United States, and American Citizens who then held lands in the dominions of his majesty, should continue to hold them according to the nature and tenure of their respective States and Titles therein, and might grant, sell, or devise the same to whom they should please, in like manner as if they were natives, and that neither they nor their Assigns should, so far as might respect the said lands and the legal remedies incident thereto, be regarded as Aliens; Declares that all lands, Tenements, and Hereditaments, in the Kingdom of Great Britain, or the territories and Dependencies thereto belonging, which on the said twenty eighth

day of October, 1795 (being the day of the exchange of the ratification of the said Treaty between his majesty and the said United States) were held by American Citizens, shall be held and enjoyed, granted, sold, and devised, according to the Stipulations and agreements contained in the said article; any law, custom, or usage, to the contrary notwithstanding. — Provided always, that nothing therein contained shall extend, or be construed to extend, to give any right, title, or privilege, to any person, not being a natural born Subject of that realm, which such person would not have been entitled to if that Act had not been made, other than and except such rights, Titles, and privileges as shall be necessary for the true and faithfull performance of the Stipulations in the said article contained, according to the true intent and meaning thereof, or to give to any person, not being either a natural born subject of that realm or a Citizen of the said United States, any right, title, or privilege, to which such person would not have been entitled if that act had not been made."

Upon this we may shortly remark

1. That Lands purchased by a British Subject, within the U. S. after the 28. of October 1795, are not within the provisions of the Treaty.
2. That Lands owned by British Subjects on or before the ~~[illegible]~~ said 28th of October 1796. can not be transferred, under the Treaty, to any person, other than a British Subject, or a Citizen of the United States.
3. That no right of Suffrage, or other civil privilege whatever is annexed to the possession of such lands, being a British subject, in virtue of the said Treaty — from hence we may infer,
4. That no such right of suffrage can be exercised by any Lessee, or Tenant of any British Subject, although the Estate of such lessee or Tenant, should in quantity of interest be such, as if derived from a Citizen of the United States would be a sufficient qualification to obtain the right of suffrage; and that, upon this principle, non dat qui non habet.

Note O — 1. B. C. 387.

View of the Laws relative to Glebes & Churches.

The Act of 1661. c. 1. Enacts, that there be a Church decently built in each parish unless any parish as then settled by reason of the Fewness or poverty of the Inhabitants be incapable of sustaining so great a charge; in which Case such parishes shall be joined to the next great parish of the County, and a Chapel of ease be built in such place, at the particular Charge of that place.

1661. c. 2. for the making and proportioning the Levies & Assessments for building & repairing Churches & Chapels, provision for the poor, Maintenance of the Minister, and such other necessary uses, & for the more orderly managing all parochial Affairs, Vestries are appointed to be elected: but none shall be admitted to be of the vestry who do not subscribe to be conformable to the Doctrine & discipline of the Church of England.

1661. c. 3. No minister shall be admitted, but such as shall produce to the Governor a Testimonial of his ordination by some Bishop in England, and subscribe to be conformable to the orders & Constitutions of the Church of England.

1661. c. 10. Churchwardens to keep the Church in repair; to provide Books, ornaments, &c. as the Ability of the parish will permit.

1661. c. 3. [purvis] - That for the better encouragement and Accomodation of the Ministry there be Glebes laid out in every parish, and a convenient house built for the reception and Abode of the Minister according to his Majesty's Instructions

1667. c. 3. [purvis 156.] The like liberty shall be granted for two Acres of land, and no more, for erecting Churches, as by that Act is granted for the erection of Mills (as at present) provided that in Case of Desertion of any Structure the land shall revert to the first proprietor, he paying what he received for it.

+ The title of this Act, occurs in the Edō of 1733. page 109. an act for the better support & maintenance of the Clergy." – In a manuscript (pa: 175) Collection of public papers lent me by Mr. William Hornby, which appears to be very old, there is a Copy of the Act at large, from which I have extracted what is here inserted. – See also V. L. abridged Edō 1722. pa: 17.

1696. c. 11. + recites, that whereas the Laws then in force entitled "Glebes to be laid out" in making such provision doth appear very deficient and uncertain, it is therefore enacted that the said Act be repealed – and it is further enacted that every Vestry shall be and are authorised & impowered, where the same is not already done to purchase and lay out a Tract of land for the Glebe, in their discretion, and at the Charge of their respective parishes; and likewise to build and erect a convenient dwelling house for the reception & abode of the Minister of such parish. Provided always that if the Vestry of any parish shall find their parish to be to small and poor as not to be able to allow & maintain a Minister as aforesaid, that then upon application of the Vestry to the Governor for the time being that their parish may be united and consolidated to the next adjacent parish, the said Governor is thereby desired to unite & consolidate the said parishes.

1727. c. 6. [Edō 1733] In parishes where Glebes are not already purchased and appropriated, with convenient Tenements for the Habitation of the Ministers the vestry may purchase 200 Acres of land at the least, for a Glebe, and may erect thereon a convenient Mansion house and other necessary outhouses & declared for the habitation of the Ministers; and it is further enacted, that the Vestry of every such parish are thereby authorised impowered, and required to levy the Charge of the said several buildings, and purchase of the Glebe on the titheable persons in their respective Parishes. – And the Vestries of vacant parishes are impowered and required to put all the buildings upon the Glebe of their parish into good & sufficient repair for the reception of the succeeding Minister.

1748. c. 28. Re-enacts the provisions contained in the last mentioned Act of 1727. c. 6. Vestries right of presentation for twelve months.

1776. c. 2. Acto: sess: All dissenters of whatever Denomination from the Church by Law established. Shall be totally free & exempt from

all levies, taxes and impositions whatever towards supporting and maintaining the said Church as it now is, or hereafter may be established, and its ministers. – with an Exceptions as to arrears of Salary, & engagements already entered into by Vestries, and provi= =sion for the poor – The Act then proceeds – There shall in all time coming be saved and reserved to the use of the Church by laws established the rural tracts of Glebe lands already purchased, the Churches and Chapels already built, and such as were begun or contracted for before the passing that Act for the use of the parishes, all books plate and Ornaments belonging or appropriated to the use of the said Church, and all arrears of money or Tobacco, arising from former Assessments or otherwise; and there shall be moreover saved and reserved to the use of such parishes as may have received private Donations for the better support of the said Church and its ministers the perpetual benefit and enjoyment of all such Donations.

1779. c. 36. Acts: Sess: Repeals all & every Act providing Salaries for the ministers, and authorising the vestries to levy the same, provided nevertheless that the Vestries might levy & assess all Salaries & Arrears of Salaries due to ministers for their services to Jany 1. 1777. and moreover might make such Assessments on all Titheables, as will enable them to comply with their legal Engagements entered into before the same day. &c.

1784. c. 88. The Act for incorporating the protestant Episcopal Church, enacts that every minister of the P. E. C. now holding a parish, either by Appointment from a vestry, or induction from a Governor, and all the Vestrymen in the different parishes now instituted or which hereafter may be instituted within the Commonwealth, that is to say the minister & vestrymen of each parish respectively, or in Case of a Vacancy, the Vestry of each parish, and their successors forever, are thereby made a body corporate and politic, by the name of "the Minister and Vestry of the protestant Episcopal Church, in the parish where they respectively reside, and by the name, style & title

aforesaid

aforesaid they and their successors shall forever lawfully have, hold, use, and enjoy all and every tract or tracts of Glebe Land already purchased, the Churches & Chapels already built, with the burying grounds belonging to them, and such as were begun and contracted for before the first day of January 1777. for the use of the parishes, with their hereditaments & appurtenances; and all books, plate and ornaments appropriated to the use of, and every other thing the property of the late established Church, to the sole, & only proper use & benefit, of the P. E. C. in the parish where the respective Ministers & Vestries reside, (except the Glebe in the County of Augusta) and where the property is situate and being, agreeable to the true intent for which it was purchased or given: and by the same stile and title aforesaid, they shall be capable in law to hold, maintain, and recover all their Estates, rights & privileges, & to sue ~~[illegible]~~, & be sued. &c. and have a common seal: and to take, acquire and purchase Lands, and to demise, alien, improve & lease the same, Glebe Lands intended for the Ministers residence excepted, unless during a Vacancy, and to build & repair Churches, & dwelling houses for the use of the Minister &c. all former laws relating to Vestries and Churchwardens, and to the support of the Clergy repealed, & all former vestries dissolved the next Easter day. &c. &c. &c.

1785. c. 37. provides for the Election of Vestries, where the same had not been done pursuant to the last mentioned Act of 1784. c. 88.

1786. c. 12. Repeals the Act for incorporating the Protestant Episcopal Church: Saving to all religious Societies the property to them respectively belonging, who are thereby authorised to appoint from time to time, according to the rules of their Sect, Trustees, who shall be capable of managing & applying such property to the religious use of such Societies. and to guard against all doubts and misconstructions, it is further enacted and declared, that so much of all laws then in force as prevents any religious Society from regulating it's own discipline, shall be, and are thereby repealed.

+ See Acts of 1734. c. 19. 20. – 1736. c. 16. 22. – 1738. c. 20. 1740. c. 4. – 1742. c. 30. 31. – 1744. c. 19. 23. 25. 27. 31. – 1747. c. 2. 1753. c. 19. 21. – 1755. c. 19. – 1762. c. 26. 28. 31. 33. 34. 1769. c. 45. 49. 50. 51. 61. 62. 64. 67. — 1772. c. 47. 49. 58. Octo: 1776. c. 44. May 1777. c. 21. 25. 26. – Oct: 1777. c. 30. 34. 37. May 1778. c. 13. Oct: 1778. c. 31. May 1779. c. 37. 39. – Oct: 1779. c: 36. 46. 49. Octo: 1780. c. 19. — The above are all private acts. See also – 1730. c. 18. 19. – 1732. c. 16. 18.

1788. c. 47. declares, That the Trustees appointed in the several parishes to take Care of & manage the property belonging to the P. E. C. and their successors, shall, to all intents and purposes be considered as successors to the former Vestries, and shall have the same power of holding & managing all the property formerly vested in them, whether for charitable purposes, by private donation, or in trust for the use of individuals.

1788. c. 53. enacts. That the Trustees of any religious Society shall have full power & authority to prosecute suits heretofore instituted, and now depending, upon Bond, or otherwise for any arrearages due to the different parishes, with the ~~C. W.~~ Church wardens.

Thus far what may be considered as public Acts – there are a multiplicity of private Acts.+ Scattered among the Sessions Acts of our Legislature which may contribute to throw an additional light upon this subject.

From the whole of these private Acts, it may be collected. That the Glebes and Churches were purchased at the expence of the parishioners generally – that they were considered as having an interest therein – that on the division of parishes one part of the parish were frequently reimbursed by the other for their contributions towards the purchase of the Glebe and Church for the first parish – or the Glebes were sold, the money divided between the parishes in proportion to their number of titheables, and vested in the Vestries respectively for the purpose of purchasing other Glebes. It also appears that in some Instances, by a special provision in the Acts the Vestries were declared to be persons capable of taking the Conveyances & holding the Lands

See the Act of 1798. c. 9. – 1801. c. 5.

Copied from an old MS. lent me by Wm Hornsby.

The Charter of Virginia granted Anno. 1670.

Charles the second, by the grace of god, king of England, France, Scotland, & Ireland, defender of the faith; To all to whom these presents shall come greeting; Know ye, that we of our special grace, certain knowledge, & mere motion, have declared, & granted, & do, by these presents, for us, our heirs, & successors, declare & grant, that all the subjects of us, our heirs, & successors, from time to time inhabiting within our colony, & plantation of Virginia, shall have their immediate dependance upon the crown of England, under the rule and government of such governor or governors, as we, our heirs, & successors shall from time to time appoint in that behalf, & of or upon no other persons whatever: And further that the governor for the time being, shall be resident in that country,

Colony to be immediately dependent on the Crown of England; only.

country except we or our heirs, shall at any time require his attendance in England or elsewhere; in such case a deputy may be chosen to continue during the absence of said governor, in manner as has formerly been used, unless we, our heirs, or successors, shall think fit to nominate such deputy: and further if any governor shall happen to die, then another governor shall and may be chosen, as has been formerly used, to continue, until we our heirs or successors shall appoint another governor, & moreover that all lands now possessed by the several & respective planters of Virginia, are and shall be confirmed & established to them, & their heirs forever, where the property of any particular mans interest in any lands there, shall not be altered or prejudiced by reason thereof. And our further will & pleasure is, & we do hereby of further grace & favour, declare & grant, that for the encouragement of such of our subjects as shall from

possession of lands confirmed, but without prejudice to others.

Grants of fifty Acres to all settlers.

time to time, go to dwell in the said plantation, there shall be assigned out of the lands, not already appropriated, to every person so coming to dwell, 50 Acres, according as has been used and allowed since the first plantation, to be held of us, our heirs, & successors, as of our manner of East Greenwich within our county of Kent, in free and common

To be held in free & common Socage.

socage, and further, that all the lands possessed by any subjects inhabiting in Virginia, which have escheated, or shall escheat, to ~~the crown~~ us, our heirs, and successors, shall & may be related by such inhabitant, or successor, his heirs, or assigns, for ever, paying two pounds of ~~tob~~ composition,

Composition in lieu of lands escheated.

for every acre, which is the rate set by our Governor, according to our instructions to him in that behalf: And further that the governour & council of Virginia, for the time being, or in the absence of the governour, the deputy governor & council or any five or more of them, whereof the governor or his deputy to be always one, shall & hereby

Governor and Council to compose a Court for trial of Treason & Felony &c.

have full power & authority, to hear & determine all treasons, felonies, or other offences committed or

To proceed according to the laws & statutes of England.

done, or to be committed, or done, within the said government, so as they proceed as near as may be, according to the laws and statutes of this our kingdome of England, and lastly that we being of our royal ~~aids~~ goodness, graciously enclined to favour the subjects of us, our heirs, & successors, which now do or may hereafter inhabit in the said country of Virginia, and to give the more liberal & ample encouragement, to plantations there, do hereby declare our will & pleasure to be, that all and every clause, article, & sentence, in these our letters patent contained, shall ~~&~~ from time to time forever hereafter, as often as any ambiguity, doubts, or question, shall, or may happen to arise thereupon, be expounded, construed, deemed, and taken, to be by us meant, and intended, and shall enure, and take effect,

Charter to be most beneficially construed for the Grantees.

in the most beneficial & valuable sense, to all intents, and purposes, to the profit, & advantage, of the subjects of us, our heirs, & successors, of Virginia aforesaid, as well against us, our heirs, & successors, as against all and every

other person, or persons, whatsoever, any laws, statutes, customs, or usages, to the contrary in anywise, notwithstanding. In witness whereof, we have caused these our letters to be made patents, Witness ourselves at Westminster, the tenth of October, in the eight and twentieth year of our reign.

A.D. 1676.

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2. B. 6. 456.

Notes on the Subject of Usury.

Interest is the Compensation which a Borrower pays to the Lender, for the profit which he has an opportunity of making by the use of the Lender's money. a A part of that profit naturally belongs to the borrower, who runs the risk & takes the trouble of employing it; and part to the Lender who affords him the Opportunity of making this profit. b The proportion which the usual market rate of Interest ought to bear to the ordinary clear profit necessarily varies as profit rises or falls. b Double Interest is in Great Britain reckoned what the Merchants call a good moderate reasonable profit, by which is probably meant no more than a common, usual profit. In a Country where the ordinary rate of profit is eight or ten p Cent, it may be reasonable that one half of it should go to Interest, whenever Business is carried on with borrowed money. The Stock is at the risk of the borrower, who as it were insures it to the Lender; & four or five p Cent may in the greater part of Trades be both a sufficient profit upon the risk of this Insurance and a sufficient recompence for the trouble of employing the Stock. But the proportion between Interest & clear profit might not be the same where the ordinary rate of profit was either a good deal lower, or a good deal higher; if it were a good deal lower, one half of it perhaps could not be afforded for Interest; and more might be afforded, if it be a good deal higher. For wherever a great deal can be made by the use of Money, a great deal will commonly be given for the use of it; and wherever little can be made by it, less will commonly be given for it. c The Interest which the borrower can afford to pay

a Smith's Wealth. Pl. Eaterm 52.

b N. 98.

c N. 90

d. B. 97. to pay is in proportion to the clear profit only.[d] In
e. B. 355. Countries where interest is permitted, the Laws, in order to prevent the Extortion of usury, generally fix on the highest rate which can be taken without incurring a penalty. This rate ought always to be somewhat above the lowest price commonly paid for the use of money upon undoubted security. If it be fixed lower, the Creditor will not lend his money for less than the use of it, and the Debtor must pay him for the risk he runs in accepting the full value. Neither ought it to be much above the lowest market rate.[e]

f. B. 356. If the legal Interest of Great Britain, where money is lent to Government at three p Cent, and to private people upon good security at four and four and half, were fixed so high as eight or ten p Cent, the greater part of the money which was to be lent, would be lent to Prodigals & Projectors, who alone would be willing to give this high Interest. Sober people would give for the use of money no more than a part of what they are likely to make by the use of it and would not venture into the Competition. A great part of the Capital of the Country would thus be kept out of the Hands which are most likely to make an advantageous use of it. Where the legal Interest on the contrary is fixed a very little above the ~~market~~ lowest market ~~price~~ rate, sober people are universally preferred as borrowers, to Prodigals and Projectors.[f]

B. 357. The ordinary market price of Land depends every where upon the ordinary market rate of Interest. The superior security, and some other Advantages of Land, will generally dispose a person to be content with a smaller revenue from Land, than from lending out Money at Interest. But these Advantages will compensate for a certain difference only; and if the rent of Land

g. N. 357. Land, should fall short of the interest of money, by a greater difference, nobody would buy land, which would soon reduce its ordinary price. g

h. N. 93. a New Colony must for sometime be more under-stocked in proportion to the extent of ~~its~~ Territory, and more under-peopled in proportion to the extent of ~~its~~ Stock, than the greater part of other Countries. They have more Land, than they have Stock to cultivate. Such Land too is frequently purchased at a price below the value even of its natural produce. Stock employed in the purchase & improvement of such Lands must yield a very large profit, & consequently afford to pay a very large Interest. As the Colony increases, the profits of stock gradually diminish. When the most fertile and best situated Lands have been all occupied, less profit can be made by the Cultivation of what is inferior both in soil and situation, and less interest can be afforded. h

Such are the principles by which the rate of Interest ought to be governed, according to the opinion of the Author of the treatise on the Wealth of nations. Let us ~~see~~ see how far they have been ~~adopted~~ regarded in Virginia.

To those who proposed to themselves the Acquisition of large Estates in Lands, the use of Money must have appeared extremely valuable at the first settlement of the Colony: but the immense Quantity of Land which might be procured at a very trifling expence, would keep down the value of all uncultivated Lands, whatever Advantages of soil or situation they might possess. It therefore became another object of Importance to cultivate those which were most likely to yield an immediate profit. For this, Labourers were required; but Labourers who ~~receive~~ daily, or annual, Wages could not be had. Instead of the Farmers paying a recompence ~~for the labour~~ at the

End

end of the week, or year, for work already performed, and the product of which he had perhaps also already received, it was necessary to advance the wages of several years, before a single days work was performed by the Labourer. and this, even at the risk of losing the whole sum thus advanced. — As this was the only alternative between losing what had been already expended in the purchase of Lands, the planters found themselves obliged upon these hard terms, to cultivate their Lands, by purchasing Slaves. ~~Thirdly~~ The only means by which this could be effected was borrowing of money, which from the necessity of having it under these Circumstances, would therefore command a high rate of interest. Adequate returns were not made from the annual profit of the Lands, to repay the principal, but the Borrower considered that the encreasing value of his Lands, and the encreasing number of his Slaves (where he purchased Females as well as Males) more than compensated the Deficiency of his annual returns from the Land, by a kind of compound Interest. Money could not be borrowed for these purposes but from the Merchants in the mother Country, or their Agents here, and Bills of Exchange were substituted for the actual specie. As the African Ships were owned in England these Bills answered all the purposes of Specie to the purchasers of Slaves. They were accordingly accounted as ready money, and the Damages in Case of protest being very high, those Damages became in time the measure of Interest for money lent in that manner. As the repayment was usually expected to be made in the same manner as the Loan itself, when the Debtor was called upon to pay one Creditor, he often applied to another person, who gave him a Bill for the Amount of the Loan, and took the Borrowers own Bill, with a responsible endorser, as a security for the

Sum

sum thus lent. The Borrower having no funds in the
hands of the person on whom he drew, his Bill was sure
to return protested, and consequently the lender became entitled
to recieve a high Interest thereon, under the name of Damages.
For the security of the lender, the law gave an action of debt
jointly, or seperately, against the Drawer, and every Indorser,
of which in proportion to the lender's Caution, there were often
several. The Bill if protested had the force of a Judgement against the Executors
and Administrators of all the parties thereto. There was supposed to
be no limitation to the time in which a suit thereon might be
brought. - The Bill, in the hands of an impatient Creditor
was frequently renewed, and the Interest and Damages were every
time added to the principal - These Damages in ~~[illegible]~~
~~fixed at ten p Cent~~, ~~[illegible]~~ p annum ~~and [illegible]~~ continued
~~at the same rate for sixty years before that period fifteen p Cent~~
the year 1666. were fixed at fifteen p Cent. on the Amount of the
Bill - before that period they were thirty p Cent. In 1730. they
were fixed at ~~[illegible]~~ ten p Cent p annum. ~~and remained so until~~
~~the year 1748 when they were again raised to fifteen p Cent on the~~
~~Amount of the Bill, and the Bill carried Interest at the rate of~~
~~five p Cent p annum from the date of the protest~~. The rate of
Interest ~~was at [illegible]~~ on Bonds was fixed at six p Cent; in 1730. In 1748.
it was reduced to 5 p Cent, ~~and in [illegible]~~ ~~[illegible]~~ ~~raised~~
~~[illegible]~~, and all Contracts for a higher rate of Interest were
declared void. Thus at one and the same time there were
two different rates of Interest fixed by Law. ~~All~~ Actual
Loans of money seem to have been generally carried on by Bills
of Exchange. Where a Bond was taken for a debt before -
contracted, ~~the Bond carried an Interest of five p Cent only~~
or upon a Sale of Lands on Credit, the Interest was not to exceed
five p Cent. But if an adventurous planter wanted to make a
purchase of Slaves for ready money, or was pushed for the
payment

payment of a debt to a Creditor in England, he drew a Bill of Exchange. Tobacco being substituted in many Instances as a circulating Medium of colonial trade, the want of Specie was not felt in these transactions, and when paper money was issued for very small sums it was felt still less, except when the debtor was obliged to pay Sterling money. Hence the rate of Interest in ordinary transactions rarely exceeded the legal limits of five ⅌ Cent; but where a projector proposed to himself an extraordinary advantage by the command of Specie, or Sterling money, or was pushed to support his Credit he hesitated not to give double that Interest, and the Lawyers in favor of Bills of Exchange, sanctioned the Transaction.

Paper money can only serve as a substitute for Specie to a certain extent, and can never be said to represent it, but when the Government, ~~on Demand~~ exchange it for Specie without reserve, whenever it is required. The paper money emitted in this Colony before the war, was for internal Commerce considered equal to Specie; but for foreign Commerce it was altogether useless. The Capacity of holding lands in Virginia enjoyed by the Merchants of Great Britain, in some degree supplied the want of Specie to make good the Balance of Trade that continually accumulated against the Colony. This kept down the rate of Interest in some measure, by substituting Land for Money in payment of debts. But when the Separation between Great Britain & the Colonies took place, the trade was diverted into other Channels. The paper money which had been greatly augmented in Quantity, and which was not only useless for foreign Commerce, but for want of adequate funds to redeem it, had become a mere ideal Currency, soon fell into such discredit that no Man would keep it by him a day, if he could meet with any thing to purchase. The rapidity of Circulation which it acquired from this Circumstance so long as the laws made it

it a legal tender, though the Effect of distress, in some degree supplied the Absence of a valuable circulating medium: it daily depreciated; but the man who recieved it in the morning hoped to get rid of it before night: the total Absence of Specie at the same time, supported it as a medium of Exchange in this daily traffick, much longer than its own Credit. ~~Then and though the shift would not think of lending money upon Interest.~~ But On the other hand those who foresaw an Advantage from a purchase to be made on Credit, did not hesitate to allow for that Credit, a rate of Interest equal to five, ten or twenty ⅌ Cent ⅌ month, in the expectation of selling what they purchased, at a still greater advance before the day of payment arrived. But when this Advantage was generally understood the vendor to guard against the effects of a rapid depreciation, fixed the value of his debt in Tobacco, which was supposed to bear a more stable relation to the value of Specie. — These Tobacco Contracts contrived at first to evade the penalties ~~against usury~~ denounced against those who demanded more for their Commodities in paper, than in Specie, and afterwards recurred to, merely to prevent the sellers being injured by the depreciation of paper, became, after the Abolition of paper Money, and the consequent introduction of Specie, a most violent engine of extortion; the Creditor availing himself of the rise or fall of that Article, to demand a new bond from his Debtor, ~~either~~ for Money, when the price of Tobacco had risen, and again for Tobacco, when the price was low, & expected to rise. Although by these means a debt was in two or three years doubled, trebled, & even quadrupled, yet these shifts appear not to have been deemed usurious: at least I have not heard of any decision to that effect. The Enormity of the Evil begun to work its own Cure, when new Sources of Speculation successively presented to avaricious Minds the means of Gratification. The

liquidated

liquidated debts of the State, and of the United States, were thrown into circulation as a tendible commodity, which the necessity of the possessors induced them to part with ~~at a great~~ ~~discount~~ and the hopes of speculators prompted them to purchase at a vast discount. The Land Offices in the various States, where principalities in client might be acquired for a few dollars in specie; the prospect, now rendered certain by the adoption of the Constitution of the United States, that the debts of the Union would appreciate as fast as they had depreciated; the golden hopes inspired by the establishment of Banks; the impulse given to Trade by an European war, which had not begun to exercise its spoliations on our Commerce; the advanced price of our produce arising from the additional demand for provision created by that War, for a time seemed to inundate the United States with wealth, which among a certain class of men encreased with such rapidity, as to give to the use of Money an almost unlimited Advantage; hence the laws which restrain immoderate interest have been universally disregarded, and the most enormous usury has been openly practised without the smallest apprehension of the consequences. Five pent a month it is said has been frequently given. Half that rate for a week, and even one pent a day, has on some occasions been offered and accepted. It is easy to perceive that no honest Commerce could long support such a defalcation from its profits. Accordingly numerous Bankruptcies have taken place, particularly in those parts of the United States where there was the greatest Quantity of Money in circulation. — Our foreign Commerce ~~having~~ no longer the same immunity as some years ago, the United States have ceased to be the Entrepot of the ~~commodities~~ produce of the Colonies of the belligerent powers, and a general deficit may be apprehended, among the Commercial part of the nation, unless some favourable change should happen very shortly in our external relations and Connexions. The produce of our lands will

will fall, accordingly, & the Lands themselves will sink still lower in value. ~~The will be the fruits of the inevitable Avarice, which has commenced in behalf of man, & perhaps every Person, and which has expended with such a lavish hand in the Decade of Money, art has opting in the appearance entirely all in any principle of integrity, which has run and bound in destroy, universally a final corruption left in society.~~

Were it possible for the Laws to restrain this Evil, nothing would be more worthy of the Attention of a wise Legislature than to purge a State from this Corruption which the Projects, ~~of speculators~~ the rapacity, and the frauds of avaricious Speculators, swindlers, Land jobbers & Usurers, infallibly produce. ~~in a State~~. Money as the means of assisting honest Industry can not be procured on any terms which would not consume the borrowers gains ~~[illegible]~~ though fourfold as great as any honest Occupation ever produced - the Farmer, the Mechanic, the retail shopkeeper, can neither of them procure the Credit necessary for their subsistence. The use of money is confined only to the hands of them who are sure to abuse it. - A moderate Interest is the life of commercial Credit. The Manufacturer gives a Credit to the Merchant, the Merchant to the Shopkeeper, the Shop-keeper to the Farmer, and the Mechanic of small capital; the Farmer in his turn can give Credit for his crops to the Merchant, ~~and then [illegible]~~ who can thus enlarge his Capital & afford to lessen his profits. The rate of Interest in these times is supposed to be such as to make a moderate compensation for the Use of Money, without lessening the gains of the purchaser so far as to encroach ~~[illegible]~~ upon his share of the profit, ~~[illegible]~~ impracticable. But where the rate of Interest bears no proportion either to the profits of

Land

Land, nor of manufactures, nor of merchandise, but merely to the hopes and expectations of projectors and speculators, and the avarice of usurers. The culture of Land, attention to manufactures, & the pursuit of an honest commerce will be equally neglected, & the State must suffer a pecuniary ~~[illegible]~~ palsy until the ~~[illegible]~~ the cause of the disease be removed.

In the Country below the Mountains in Virginia, very little of the best Lands remains to be cleared, and the far greater part of them have been cultivated, without improvement, tile they are not more productive than fresh lands of far inferior quality. This circumstance, together with the great abundance and low price of Lands in other parts of this, & the neighbouring states, — occasions there being very few purchases of Land in the middle and lower country. ~~[illegible]~~ The tracts are generally large, and the proportion that is cultivated small. — ~~[illegible]~~ It would probably be a very high estimate should we suppose the generality of Farmers to make ten p.cent. p annum upon the whole value of their Lands and Slaves. I incline to believe ~~[illegible]~~ that very few exceed eight p.c.t. and out of this, the clothing and provisions of their Slaves & Horses employed in making the Crop ought to be deducted. A nett profit of five p.cent is probably more than remains to one in twenty, for the support of himself and his Family. ~~[illegible]~~ If he wants money to encrease his Stock, even the legal Interest is probably equal to his additional profit; but the Interest which usurious Speculators pay without scruple will amount to fourfold, or tenfold his profits. Agriculture then

then can hope for no aid while Interest remains unchecked; on the contrary every Man who can find a purchaser will sell his Lands, and turn money lender; until the total neglect of Agriculture shall in its turn make the money Lenders Bankrupts. — Nor is it in this view alone that exorbitant Interest must injure Agriculture. A Farmer ought to be able to get Credit with the Merchant, at least, for his Tools, his Farming utensils, and the cloathing of his Servants, upon the faith of payment from his ensuing crop. If the use of money will command five p Cent p month, what Storekeeper can afford to lie out of his money six or eight months, without ~~a~~ proportionate advance on his goods, & what Farmer can purchase at such an advance? If the ordinary profits of Trade be twenty p Cent p annum, when Credit can be got at five p Cent, what must then profits be when sixty p Cent is counted upon as the product of money. ~~Trade~~ Who could deal with a Shop-keeper who should advance his gains ten or twelve fold? Trade then must suffer equally with Agriculture. Is the Mechanic better off? He must be supported both by the Farmer and the Merchant. Labour and Industry of every kind, must therefore be brought to a stand, or then ruinous practices must fail; and since Labour is the only true source of wealth, ~~they~~ it must accordingly eschew that Fate. — It will however be sometime before this happens. The Speculators in Lands will be ~~buoyed~~ buoyed up for a time by the prospect of their Lands rising in value. But vast Tracts of unsettled Lands are of little more value than the Parchment which Conveys them — Population first creates a value in Land. without that, it is of less value than the Waters of the Ocean: These ~~bottom~~ at least serve for an highway. Uncultivated Desarts, whatever

whatever they may promise, yield, only to population and industry. — Very few Land-jobbers have had any other object in view than selling their lands in the gross, to some Dupe, or other Speculator. The settling and cultivating the lands form no part of their plan. It is not till they are ruined, or till ~~[illegible]~~ projectors of a different character shall become purchasers, that these Lands will ever acquire more than a nominal value, or yield any real profit. Hence it is easy to foresee that this source of exorbitant usury must have an End. Bank-paper, and every other species of paper Credit have aided in blowing up the Bubble, ~~and will~~ when it bursts will fall with it. The Artificial demand for this circulating paper occasioned by these immense speculations, being lopped off with them, the Quantity of this kind of Currency will again be regulated by the demands of ~~a~~ productive Commerce, instead of unproductive Speculation.

Nor is ~~[illegible]~~ Usury more inimical to every Species of honest industry, than it is to the moral Conduct of Men. The heart that is once corroded by Avarice becomes callous to Generosity and Friendship, obdurate against the Cries of distress, regardless of Justice, and insensible of every impulse, or passion, except only the insatiable thirst of amassing.

We have said that in 1730. the rate of Interest was limited in Virginia to ~~Six~~ Six p Cent: in 1748. it was reduced to five; the Act of 1786. confirmed this Standard. In 1796. it was again raised to six p Cent, the obvious, or at least, ostensible reason for which, was, that the public pay Interest at that rate. These Acts are nearly a Transcript of the British Statutes.

* Having no Copy of either of the Charters of Virginia, except that of Charles the second, granted in the twenty eighth year of his reign. I can not be particular on this subject, nor is it perhaps material.

† Beverley's Hist. of Virg. pt 1. S. 45. County Courts were first established in 1622. — See also, Ibid: pt 4. c. 6. throughout.

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‡ Remedial Justice, the object of the establishment of judicial courts, has frequently been supposed by those who are unacquainted with the laws of Virginia, to be more tardy in this Commonwealth than in most other places. This opinion perhaps is not so well founded, as strangers may imagine; in no Country of equal population are there so many Courts of judicature, whose sessions are frequent, and whose Jurisdiction is competent to afford relief in all cases: in no Country where the ordinary modes of proceeding at common law have been adopted, have so many regulations to prevent delays, been introduced by legislative authority, and countenanced by the practice of the Courts. a Stranger

Notes concerning the judicial Courts in Virginia. - 3. B. 6. pa: 60 - Note A.

‡ Hereafter in introductory remarks in the other page &c

The establishment of Courts being a branch of the royal prerogative in England, the institution in the Colony of Virginia must have proceeded immediately, or medially from that source. We find that Courts had been established in each County† and that superior Courts, in which the Governor and Council presided, were held at James City, before the year 1661. under the name of Quarterly Courts; the stile of which was changed to that of the General Court, by an act of that Session. The Jurisdiction of the County courts extended to all Causes of whatever value or nature they might be, not touching life or member; of the latter the General Court had exclusive Jurisdiction, as also concurrent original Jurisdiction with the County Courts in suits above the value of sixteen pounds sterling, or sixteen hundred pounds of Tobacco. An appeal lay from the County Court to the General Court in all Cases, and it seems, that a further appeal lay from thence to the General Assembly. The Governor and one of the Council, or two of the Council by Commission from the Governor, made the Circuit of the County Courts, in which the Justices of the peace in the County were the ordinary Judges.† The succeeding year the Act for itinerary Judges; repealing the Act for itinerary Judges;‡ so that the system which required the Attendance of the Governor, or two of the Council, at the County Courts, was soon changed.

† Purvis - 1661. c. 19. 24. 25. 26. 31.

‡ Ed. 1733. pa. 28.

A Stranger to our Jurisprudence would probably be surprised to hear, that exclusive of the Court of Appeals, High Court of Chancery, and General Court, there are ninetien superior Courts of record, which hold pleas in all Causes criminal and civil, where the debt is equal to one hundred dollars in value, or the Action is founded on a tort, which hold their Sessions twice a year in the different districts of the Commonwealth, and sit from ten to fifteen days at each Session: that there is likewise a Court of record in every County, which sits monthly, and has unlimited jurisdiction, therein in all Causes both in Law and Equity above the value of five dollars; besides ~~in~~ eight Corporation Courts possessing like Jurisdiction within their respective limits, amounting in the whole to one hundred & twenty Courts of record: in addition to these the federal Courts have concurrent Jurisdiction in all civil Causes where either party is not a Citizen of the State. In England where there are more than six times as many people there are but four superior Courts of record; and the Jurisdiction of their inferior Courts is so limited that it seems wonderful that Justice should ~~be~~ even be tollerably administered in that Kingdom. That our

From that period to the present, the Constitution of the County Courts has undergone no material alteration. King Charles the second, by Letters patent of the 28th year of his reign, among others things declared, and granted, that the Governor and Council of Virginia for the time being, or any five of them, whereof the Governor or his deputy to be always one, should have full power and authority to hear and determine all Treasons, felonies, or other offences, committed within the Government, so as they should proceed as near as may be according to the Laws and Statutes of the Kingdom of England. The Jurisdiction of this Court as defined by a subsequent Act, extended to all Causes, matters and things whatsoever relating to, or concerning any person or persons, ecclesiastical or civil, or to any other person or things of what nature soever the same may be, whether brought before them by original process, or appeal from any other Court, or any other ways and means whatsoever: but no original process could be sued out of the General Court where the debt or thing demanded was under £10. Sterling or 2000 pounds of Tobacco, except where the Justices of a County Court, or the Vestry of a Parish had incurred a specific fine of less value. The same Act declared that the General Court, & County Courts were the only Courts of record in Virginia, and that no other Courts whatsoever should be deemed such. ~~whether the proceedings of the Inferior Courts Do appeal lay from the General Court to the Throne~~ The General Court held two terms annually, beginning the fifteenth days of April and October, which and two intermediate Courts of Oyer & Terminer were held in June & December continued eighteen days. The County Courts were held monthly, on certain days prescribed by Law. Appeals lay from the Judgment of the General Court, to the Queen or King in Council. (Both appeal to ~~and lay from the General Court~~) The County Courts were invested with Chancery as well as common Law Jurisdiction; they were likewise Courts of probat for ~~wills~~ Deeds, and wills, & the Cutting & probing the ~~con~~ right of granting Administration of Intestates Estates, & the Care of orphans & their Estates within

1705. c. 19. Edo 1733.

1710. c. 4. 11.

our judiciary system is capable of improvement will not be denied: but improvements in that branch of civil polity must be the result of Experience. The endeavours of the legislature have not been wanting for this purpose, and it is highly probable that a few years may enable them to improve a system, which, if it were the height of injustice to deny, has undergone an admirable change for the better since the revolution. The establishment of superior courts, which sit regularly in various parts of the Country, and possess appellate Jurisdiction in civil cases to a certain amount, from the Judgements of the inferior Courts, has already produced very beneficial effects, in correcting the proceedings of those Courts which are now more regular than formerly. Suitors who apprehend delay or partiality in the County Courts have now an opportunity of prosecuting their claims where the value is equal to one hundred dollars, in the Superior Courts. If the plaintiff is delayed by an Appeal from their Judgement he gains, by the delay, an additional Security for his debt, and ample Interest for his money, ~~by the delay~~, if the Judgement is affirmed. Suits at common law

within ~~their County~~ their Counties respectively.

When the revolution took place, it was thought proper to transfer the Chancery Jurisdiction of the General Court, to another Court. His jurisdiction in ecclesiastical Causes, seems to have been either abolished, or become obsolete, except in the Cases which have been transferred to the Cognizance of the high Court of Chancery. These are confined ~~only to the Cases of divorces & marriage settlements~~ arising from to incestuous marriages only, in which Cases the Court of Chancery ~~the Court of Chancery seems~~ is authorised to annul the marriage. A Court of Appeals, and a Court of Admiralty & maritime jurisdiction were likewise established; but the latter was discontinued soon after the Adoption of the Constitution of the United States. That instrument laid the foundation of the federal Courts. ~~Of all which we shall speak~~ About the same time the General Court was new organized, and District Courts were established in various parts of the Commonwealth. Of all these several Courts we shall now say something beginning with the inferior, and State Courts, and proceeding to the superior, and finally to the federal Courts, whose Jurisdiction will be found in some instances seperate, from ~~and~~ in others concurrent with, and in some fews paramount to that of the State Courts.

1788 c. 71.

1. Corporation Courts, or those Courts which by Charter, or by Act of Assembly, have been established in the ~~Cit~~ Towns of Norfolk, Williamsburg, Richmond, and some others, are Courts of limited Jurisdiction, the extent of which in great measure depends upon

* Williamsburg, Norfolk, Richmond, Petersburg, Fredericksburg, Alexandria, Winchester, and York, are the only Corporations in which Courts are established.

law for the recovery of a liquidated debt can seldom be spun out by any artifices on the part of the defendant more than ~~one~~ two or three terms after the is arrested: Litigated claims indeed are not unfrequently depending much longer; but this happens because the plaintiff is at one time unprepared to go to trial, as well as the defendant at another. Where the cause of action arises out of the State, or has been occasioned by long and mutual dealings, or is founded on a special contract, it very frequently happens that neither party can procure the necessary Documents for his claim or defence, or the attendance of his witnesses. In old Countries people are generally stationary. A witness to a Transaction in London, York, or Bristol may be found in the same place probably as long as he lives. In America the Spirit of Migration, and Change, are so prevalent that

the Act of their Incorporation; but by a general law, from which the City of Williamsburg and the Borough of Norfolk are excepted, they shall have ~~the~~ Jurisdiction only in suits between their respective Inhabitants; or between ~~a~~ Inhabitants and ~~a~~ persons not Inhabitants of the Commonwealth, and in either case only where the Contract is made, or the Cause of action accrues within the Corporation; in which cases their Jurisdiction is not limited to any particular sum, but is coextensive with that of the

1794. c. 67. County Courts. ~~So~~ They have likewise the same Jurisdiction in criminal Cases arising within their limits as the County Courts possess beyond those limits, in the Counties respectively. The manner of chusing their Magistrates depends upon the Acts of their Incorporation ~~respectively~~. But no ~~Justice~~ Magistrate of a Corporation can at the same time Act as a Justice

Ib.: of the County Court. These Courts, so far as they have been yet established*, are all Courts of record, and have concurrent Jurisdiction ~~within the County within their respective limits~~ with the District and County Courts

Ib. c. 92. in testamentary Causes, and others of a similar nature,

Ib. c. 95. as also in all Cases relative to Guardians & their Wards,

Ib. c. 120 Ideots, Lunatics, and their Estates, and the probate of

Ib. c. 90. 102. Deeds concerning lands, and Slaves, within their respective limits.

2. The County Courts, ~~and Courts~~ were established in every County of the Commonwealth, for the trial of ~~Causes~~ Suits ~~within their respective Counties~~, and for the probate of Deeds, and Wills, granting Letters of Administration ~~for~~ of Estates within their respective Counties. They have cognizance

* The Cognizance of all Causes not exceeding five dollars, of 200 lbs of Tobacco, belongs to the Justices of the Peace, any one of whom may give Judgement and award Execution against the goods and chattels of a debtor, to that amount, but he can not award Execution against the Body of the debtor. 1794. c. 67.

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that the witnesses to any transaction of three or four years standing ~~many~~ are generally dispersed, perhaps to the remotest parts of the United States, of Europe, or one of the Indies. Under such circumstances delay is indispensibly necessary to Justice. Our laws, it is true, in many instances afford a remedy in these Cases, by suffering the parties to take the Depositions of such witnesses as are out of the State, or about to leave it: but this provision is often ineffectual, by the sudden Removal of the witness, or his departure without notice. Other causes arising oftentimes from unforeseen accidents, occasion delays in litigated Actions. The death of either party; the unwillingness of persons to take upon them the administration of his Estate, are frequently causes of great procrastination. These inconveniences are beyond the reach of the Laws. They must however be taken

cognizance of all civil suits, both at common law and in Chancery, where the claim amounts to five dollars, or more*; and of all pleas of the Commonwealth, except such criminal Causes ~~where the~~ Judgement on Conviction ~~shall~~ aid. before the Act for amending the Penal Laws extend to Life or Member, and except, the prosecution of Causes to outlawry, against any person whatever. The Justices of the peace in the several Counties are Judges of these Courts, and ~~they~~ are appointed by the Governor with the advice of the Council of State, on recommendation from the County Courts. They are held monthly; but, four ~~of them~~ out of the twelve Sessions in the year, are denominated Quarterly Sessions, and, with some exceptions, are held in the months of March, May, August and November, and continue six days unless the Business be sooner ended. At these quarterly Sessions a Grand jury is sworn to make presentments of all breaches of the penal laws of the Commonwealth; and ~~all~~ such presentments as have been before made, and all other prosecutions in behalf of the Commonwealth, ~~and~~ as well as ~~all~~ civil suits at common law, and in Chancery, where the Claim exceeds twenty dollars, or 800 lbs of Tobacco, are ~~then to be tried~~ to be tried at the quarterly Sessions. At the remaining eight Sessions petitions for small debts, or for trover and conversion, or the detention of any thing, not exceeding twenty dollars, or eight hundred pounds of Tobacco, are to be tried; Deeds and wills may be proved, then administration of intestates estates granted, ~~the Guardians of Orphans may be disputed to be bound out by the Overseers of the poor;~~ Guardians, ~~and~~ Committees, of Infants, Idiots, & Lunatics, and their Estates appointed; ~~Sheriffs~~ Sheriffs and Coroners, and officers of the militia when necessary, recommended to the Governor; and surveyors of the highways and Constables appointed. Injunctions in Chancery may likewise be granted or dissolved, and all Chancery causes

1748. c. A.
1794. c. 67.
C. V. Act. 15.
1794. c. 67.
Ib. c. 73.
1794. c. 67.
96. c. 95. 120.
C. V. Act. 15.
1794. c. 80. 81. 146.
19. C. V. Act. 15

But in suits at common law, if a Defendant be returned no Inhabitant of the County, the suit, as to him shall abate*: and even if he be taken, yet if he be an Inhabitant of another County, he can not be held to bail, unless a non est inventus has been returned upon a Capias issued in the same suit, in the County in which he resides. — vs. Edo 1794. c. 80. s. 15. c. 67. s. 23.

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taken into the Account; as they frequently contribute more than any other Causes to the delays in our Courts. Upon the whole we may pronounce, that the Administration of Justice stands upon as respectable a footing in Virginia, as in any State in the Union, and perhaps in any other Country. For although it will not be contended that the judiciary system is as complete as it might be, nor the Talents of the Judges equal to those of a nation renown'd for its able and upright Judges, yet the Expence of litigation in that Country often amounts to a denial of right, where the parties are above the rank of paupers, but yet too poor to incur the enormous expence which attends the prosecution of any contested claim ~~in that~~ there. ~~Country~~: whereas in Virginia, the Cheapness of the law is perhaps one great cause of the multitude of suits, and the delays which attend their decision. These few Observations being premised, I shall now proceed to mention the judicial Courts in this Commonwealth.

1747. c. 9. causes therein depending, tried, in like manner as at the quarterly Sessions*; and if any defendant in any suit in Chancery resides within the County, and any other Defendant in another County, or in any ~~foreign~~ other Country; in the former Case, ~~the process~~ the process may be directed to such other County; and in the latter, the Court may

Ibid: appoint a day for the Defendant to appear; which if he fails to do, after due publication thereof, the Court may

1794. c. 78. proceed to make a decree against him, as if he had appeared. — An appeal lies from a Judgement on the Common Law side of these Courts, where a freehold or a franchise is in dispute, or the debt or thing demanded is of the value of one hundred dollars, or 3000 lbs of tobacco, to the district Courts; and a Writ of Error or Supersedeas lies from those Courts, to the Judgement of the County Courts in similar Cases, where the Judgement amounts to thirty three

Ib. c. 67. dollars, and one third, or one thousand pounds of Tobacco. An appeal from a decree on the Chancery side lies to the high Court of Chancery, where the debt

Ib. c. 167. or claim amounts to thirty three dollars a one third, or where Lands or Slaves are the subject of the decree. Four Justices, whose number is indeterminate, and various in the several Counties, constitute a Court ~~in all~~. They are likewise Justices of oyer and terminer for the trial

Ib. c. 103. of Slaves; and may, upon oyer and terminer, hold special Courts for the examination of free persons charged before with any criminal Offence, preparatory to their being indicted for the same in the District, or County Court, according to the nature

Ib. c. 74. of the offence; the Consideration of which more properly belongs to that part the Commentaries which treat of Crimes and Misdemeanours.

By the Constitution of the Commonwealth, as has been mentioned before, it is declared that the executive, legislative, and judiciary departments shall be seperate and distinct, except that the Justices of the County Courts shall be eligible to either house of assembly. The Constitution further declares ~~that~~ all persons holding lucrative offices ~~shall be~~ ineligible. Hence the improvement of the organization of the County Courts is rendered impracticable, without a change in the Constitution; for a great proportion, & probably a considerable majority, of the ~~members~~ of the general assembly are ~~magistrates~~ Justices of the County Courts; & stations ~~of profit~~ of both which they appear to be in general tenacious: they are therefore unwilling to accept any compensation for their services as Justices, as that w^d exclude them from a seat in the legislature. Where services are gratuitously rendered, they can not be expected to be rendered either with the same punctuality, or ability, as where they meet with due compensation. The great number of Justices in the Counties lessens the weight upon the individual, but it may well be doubted whether the public is as well served as if the duties required of them were performed by a few select persons, who were properly rewarded. Great complaints have been made of the unequal administration of Justice in the County courts, owing to the different conduct of the Justices, in holding, or omitting to ~~attend~~ hold the Courts, regularly at their stated sessions; it being often difficult, in many Counties, notwithstanding the great number of Justices, & prevail on as many ~~as~~ are necessary to constitute a court to attend from day to day. As these Courts are constituted by persons recommended by the Court, and as they have also the power of recommending Sheriffs, Coroners and Militia Officers, under the rank of a Brigadier, there is reason to apprehend that the esprit du corps will in time generate a species of Aristocracy ~~inimical~~ ~~corrupt~~ not very favourable either to the administration of Justice, or the rights of the people.

3. & 4. The District Courts, and the General Court, are kept in order to be considered, the former being a modification of the latter,

latter, ~~many~~ are, in strictness, only so many different branches ~~of~~ from the same stock. In deducing the history of the ~~first~~ last, we must necessarily begin with the ~~first~~ last.

The Constitution of the Commonwealth requires that Judges of the General Court should be appointed by joint Ballot of both houses, and be commissioned by the Governor: that they shall have fixed and adequate salaries, and hold their office during good behaviour. In October 1777. the

c. 17. General Court ~~and high Court of Chancery, which accordingly constituted, and their respective powers and limits defined, was constituted with general Jurisdiction~~ was organized, as a principal court of common Law, of general jurisdiction, to consist of five Judges, to be chosen and commissioned as the Constitution directs, any three of whom might constitute a Court, for the trial of all actions and suits at common Law, real, personal, or mixed, ~~petitions~~ where the debt or claim was of the value of ten pounds current money, or more, or where the action was brought against the Justices of an inferior Court, or the vestry of a parish; petitions for lapsed lands; and appeals, writs of error and supersedeas, or to the Judgement of any inferior Court; ~~or any writs~~ it had also full power to hear and determine all Treasons, Murders, Felonies, and other crimes & Misdemeanours which should be brought before ~~them~~ it. This court was to hold two sessions of twenty four days each beginning on the first day of March & the tenth of October yearly. In the succeeding year an Act passed for enabling the

May 1778. c. 9. Judges to hold ~~two~~ additional sessions in June & December for the trial of Criminals, only. The backwardness of the County Courts in doing Business soon occasioned a vast accumulation of suits in the general Court. In the year 1787. it was computed that the suits then depending therein could not be tried in less than five years, and they still continued to accumulate. This Inconvenience had been foreseen, & felt some years before that period; ~~insomuch that in October 1785 an Act passed for establishing Courts of Assize, in the nature of the Courts of Assize and nisi prius in England~~ Other Inconveniences were experienced

experienced from the great distances from whence
criminals were often brought to be tried, as well as from the
immense expence of Jurors and witnesses who were obliged to attend
from the remote parts of the Commonwealth. To remedy
these inconveniences
c. 40. an Act passed in 1784. for the establishment
of Courts of assize, upon the plan of those Courts, & the Courts of nisi
prius in England. Seventeen districts were appointed, nearly the same as the
present) where the Courts were to be held; the Judges of the Courts
of appeals, consisting at that time of the Judges of the high Court
of Chancery, the General Court, and Court of Admiralty were
to allot the districts among themselves, & two of them were
to attend as Judges of the Courts of assize. The writs, were to be
issued by the Clerks of assize, and returned to the general
Court, & the issue there made up; after which the record was to
be sent out to the Assize Courts, and after a verdict to be again
returned to the general Court, in order to have the Judgement
there entered up; and Execution was finally to be sued out of
and returned to that Court. This scheme appeared too complicated
to some, and pregnant with great inconvenience to others. The
1785. c. 12. Act was accordingly suspended the next year, and
1787. c. 16. repealed two years after, without any experiment being made
of its effect. In 1787. an Act passed for establishing district
c. 39. Courts. ~~From additional Judges of the Supreme Court to be appointed by this Act, & their salaries by a subsequent Act were proceeded to be~~. The Judges of the Court of Appeals,
who were required to attend as Judges of the District Courts;
But that Court, by a solemn Act declared the law which required the
Judges of the high Court of Chancery, & the Court of Admiralty
to take upon them the character of Judges at common Law, not
only in civil but in criminal Cases, was unconstitutional;
They therefore declined carrying the Act into Execution. The
Legislature being immediately convened by proclamation from
the Governor, suspended the Act till their next session, and
then repealed it, so far as it related to the Judges of the
Court

+ The Districts are, Suffolk, Petersburg, Newdendon, Washington, and the severals Courts in Botetourt, for the southern division of the State; Williamsburg, Richmond, Charlottesville, & Staunton for the middle; ~~and~~ Northumberland, Fredericksburg, Dumfries, Winchester, Hardy & Monongalia for the northern. And Accomack for the Eastern shore.

Court of Appeals: By that, and several subsequent Acts, all of which were consolidated in 1792. the General Court and districts Courts were organized and reduced to their present form, of which we shall now give a sketch.

1794. c:66.66.

The Judges of the General Court, whose number now consists of ten, allot among themselves the duty of attending the several district Courts, ~~whose number now consists of nineteen~~, two to each Court. To effect this, the state is ~~divided~~ arranged into five Circuits, in four of which, ~~from Counties are taken~~ there are, from districts, and in the fifth three ~~Districts~~, making in the whole nineteen+ ~~Districts~~; in each of which a superior Court is held, possessing the same Jurisdiction within the District, both in criminal and civil Cases, as the General Court formerly possessed throughout the state, with some small variations, which will be noticed in their proper places. ~~Courts~~ These Courts hold ~~their~~ the Circuits sessions yearly; beginning in April and September, & ending in May & October. The Judges have no separate Commissions, but act by virtue of their Commission as Judges of the General Court, which ~~in no Argument~~ proves ~~them~~ the District Courts to be only branches of that Court, as otherwise, ~~they could~~ the Judges could have no constitutional Authority therein. One Judge is sufficient to constitute a Court in all Cases, except in Criminal Cases extending to Life or Member; and even in these if the Accused shall petition to be tried, ~~without a Jury~~, one Judge constitutes a Court. The terms vary from ten to fifteen days in proportion to the population of the districts, and the number of sections. An appeal lies to these Courts from the County Courts, and from ~~the County~~ them to the Court of Appeals. Their original Jurisdiction is limited to such Debts amounting when ~~the~~ One hundred Dollars ~~or~~ upwards; nor will an appeal lie to them for a less sum: But Writs of Error, & Supersedeas are grantable ~~for~~ where the Judgement of the inferior Court is for any sum not under ten pounds. Special Actions on the Case, and Actions of Trespass, either of a personal or mixed nature, may likewise be brought therein. but in

+ Upon a Question referred to the General Court it has been held, that every Indictment must allege that the Offence was committed within the Jurisdiction of that District Court, where the Indictment is found.

in them, if the plaintiff does not ~~recover~~ obtain a Verdict for five pounds, he recovers no more costs than damages, unless the trespass is malicious, or the title to lands is brought in Question. It has been held, that if any offence is committed within any district, process from that Court may be awarded to any part of the State to apprehend the Offender: but in civil Actions, except where there are two or more parties, jointly, or jointly & severally bound ~~to~~ in any contract or obligation, one of whom resides within the District, it is held that process can not be awarded to any County ~~except [illegible]~~ without the District. Yet in the Case of a Writ of right for lands lying within one District, it has also been held, that if the Tenant resides in another district, a testatum præcipe may be awarded to that other district, after the Defendant has been returned no Inhabitant of the County where the land lies. And by a parity of reasoning it would seem that in Actions of trespass quare clausum fregit a similar remedy ought to be given: otherwise there ~~might~~ be a great defect of Justice where the trespasser resides in one district, and the lands lie in another, because these Actions must always be ~~brought~~ laid in the County where the lands lie: there is, however, no provision for this Case in the Law. The Consequence ~~would be that~~ perhaps may be that the Suit must be brought in the General Court, where the party grieved is entitled to have his ~~action~~ remedy, if he can not obtain it in any other Court. And in the Case of a Writ of Right, as above mentioned, perhaps the regular Course would have been to institute the Suit in that Court. ~~The Judges of the District Courts may adjourn any Civil Action [illegible] civil action, and with the Consent of the Accused any Question in criminal prosecution with [illegible] of a criminal adjourn any Question of law~~ The District Courts, with the Consent of the accused party, may adjourn any Question of law in a criminal Case, to the General Court for decision. And may also adjourn thither any new or difficult Question in civil Cases, ~~thither~~. The Venue may, likewise, upon good cause shewn

+ In 1792. an Act passed giving to these Courts Chancery
^ Jurisdiction. A Case soon after arose in Dumfries District court, wherein a Motion was made for an Injunction to stay Execution upon a Judgement of that Court, at a preceding term. The Case was adjourned to the General Court for novelty and difficulty. The Court certified their opinion that the motion ought to be over-ruled, because the powers & duties assigned to be performed by that Clause of the act could only be executed by those who may be constituted Judges in Chancery, in the manner prescribed by the Constitution of the Commonwealth. + The Clause was consequently not carried into Effect. –

+ Hampson v Hawkins, in Gen. Court, nov. 16. 1793.

Hence to the General Court be changed from one District to another; and any suit depending in a district Court, in which any Judge of the General Court shall be interested, unless good cause to the contrary be shewn, shall + removed to the General Court for a trial at that Bar. ^

The General Court continues to sit at the seat of Government in Richmond, & holds two sessions, the one in June, the other in November, yearly. It has no original Jurisdiction in ~~any Case below~~ civil suits, in any Case where a remedy can be had in any other tribunal, nor has it Jurisdiction in any other Case whatever, where a remedy can be had in any other Court, except those which are particularly enumerated in the Constitution, or in the Act constituting it, or in some other Statute. On the other hand its jurisdiction is general over all causes matters and things at common law, as well criminal as civil, unless there be some other tribunal to which the Cognizance of the Case belongs. – And this upon this principle, that there ought to be no right, without its remedy. Therefore where a person grieved can not obtain a remedy in any other ~~[illegible]~~ Court, he shall obtain it in the General Court, if the cause of action arises by the common law. This provision may supply all the Cases omissos of the district & County Court Jurisdictions. Of them the following are the most obvious. 1st. Where in an Action of trespass quare clausum fregit the Defendant resides in a different district from that where the Lands lie. In this Case no Action lies in the County, or District Courts, for the Action must be brought in the County or District where the Lands lie. If in the County Court the Defendant be returned no Inhabitant the suit abates; if in the District Court a capias ad respondendum (which is the process in this Case) be sued out against a Defendant in any other District than that in

in which he resides, ~~which~~ before a non est inventus has been returned in his district, upon a capias issued against him in the same suit, the writ is void. In this Case then it would seem that a competent remedy can be had, only in the general Court. — ~~2dly In an Ejectment proceeding~~

2.dly In a Writ of Right, where the Tenant of the fee resides in one district, and the lands lie in another, it may admit of some doubt, (though in one Case before alluded to the doubt ~~seems to have been~~ was over-ruled) whether proofs could be awarded to another district. — 3.d In ~~all~~ Cases where a person ~~feels himself~~ is aggrieved by the Judgement of an inferior Court, where the ~~Judgement in a~~ Debt or thing recovered or claimed is under the value of ten pounds, it is perhaps reasonable to infer that a Writ of Error lies from the General Court — and 4.th Where any person is aggrieved by the Judgement of a single Magistrate it is no less reasonable to suppose that a Writ of false Judgement ought to lie ~~lies~~, from ~~the~~ same Court; for otherwise great oppression and Injustice might be exercised towards poor persons, (suits, & controversies to a small amount, being most generally between, or ~~at law~~ against them.) And as ~~since~~ no other Court is invested with Jurisdiction in these Cases; And, ~~inasmuch~~ as these proceedings are founded upon the common Law, it would seem that the General Court, as the supreme ~~constitutional~~ court of common Law Jurisdiction should have the power of administering the remedy. It may be urged indeed that the Judgement of the County Court in the one Case, and of the single Magistrate in the other must be considered as final, since the Law does not provide any mode, or appoint any tribunal where the Judgement can be reconsidered. But inasmuch as the Law does not declare that they shall be final, the common Law principle that the erroneous Judgement of an inferior tribunal, of the County Court, may be reversed in one of these ways seems

* But the judgment of the magistrate is ~~found~~ declared to be final, and so perhaps is that of the Court upon Petitions.

seems to remain unimpeached; consequently as there is no other Court which can take cognisance of such Cases, recourse must be had, to the general Court.

The ~~Jurisdiction~~ appellate Jurisdiction of the General Court seems to be at present confined to Cases of Impeachment, except where a Judge of that Court is impeached; Indictments or Informations against the Clerks of Courts for breach of good behaviour in office; and against Counsel or Attorneys guilty of any malpractice ~~Barrators~~ in the general Court, whom licences may be thereupon suspended or wholly vacated. ~~Any person guilty of misdemeanors bearing without the state or other crime treason~~, High Treasons, Misprisions of Treason, and other offences against the Commonwealth (~~except piracies & felonies on the high seas~~) committed by any Citizen of the Commonwealth, ~~out of the state~~, and all felonies committed by Citizens out of the State (except piracies and felonies on the high seas the Cognisance of which belongs to the Courts of Admiralty of the United States) are also to be tried in the general Court. These with some other Cases chiefly of a fiscal nature particularly enumerated in the Act concerning the General Court, ~~are the only~~ together with those ~~cases~~ before noticed, seem to be the only Cases now Cognisable in the General Court, as contradistinguished from the District Courts. ~~Deeds for lands to be~~ Deeds for lands in any part of the Commonwealth may there be proved, and the Court has moreover Cognisance of testamentary And other Causes of a similar nature throughout the Commonwealth. A Mandamus also lies from this Court to the District Court, It has power moreover as was before observed to change the venue from one District to another, ~~or~~ to direct a trial to be held at their own bar. ~~No warrant~~ Three Judges constitute a Court, and the terms are limited to ten days. An appeal lies from this Court to the Court of appeals when the matter in dispute is of the value of $150. in a Trust or Tran: This Section is susceptible of many improvements. The principal inconveniences which have heretofore

manifested

manifested themselves, are the want of
Concert in the Opinions of the Judges, who being allotted
two and two together, have not an Opportunity by
consulting together to establish that Uniformity which
is much to be desired in judicial decisions; this produces
want of Confidence in the Judges, and want of respect for
their Opinions in the Suitors, and their Counsel; hence
no Question of any importance arises, in which there is
not an appeal; this in time must clog the Administration
of Justice so far as to require the Court of appeals to
sit ~~throughout~~ constantly throughout the year; nor will
the whole year suffice, if Appeals are allowed as of
course, in all Cases, whether there be, or be not any Error
supposed to exist in the Judgement of the Court from
which the Appeal is made. Another Inconvenience
which has more than once produced great mischief, is
that two Judges are necessary to constitute a criminal
Court unless the prisoner shall petition to be tried.
It has frequently happened, and the same thing must ever continue
to happen very frequently, that one of the Judges by
sickness or other incapacity has been unable to attend
the Courts where there were criminals of the most
atrocious kind to be tried - these, from a consciousness
of their guilt, are sure not to petition to be tried, unless
the Witnesses against them happen to be absent. If the same
thing should happen at the next Court, the prisoner, whatever
be his Offence, has a right to be bailed; and if there be not a
Court to try him at the third term, he shall be discharged.
Some of the most atrocious Offenders that were ever brought
to the Bar of a Court have escaped the punishment due to
their Crimes from these Circumstances. Often times it

has happened that the Witnesses who were present at the first term, could never ~~be~~ attend again: many other circumstances concur to give an atrocious offender a ~~chance~~ certainty of escaping, when there is not a full Court at the first term. To remedy this Inconvenience it would surely be better to allow a Bill of Exceptions ~~in behalf of the Evidence~~ in behalf of the prisoner, where a single Judge should preside, which ~~should~~ might be adjourned to the General Court for decision.

It would be more difficult to remedy the want of Uniformity in the Opinions of the Judges; but even that inconvenience might in time be lessened, if not wholly removed, by transferring to the Sessions of the General Court all Causes whatsoever now cognizable in the District Court of Richmond, and requiring the Attendance of a greater number of Judges than are now necessary to constitute that Court. By these means a more uniform practice, and probably more uniform Opinions, would prevail in the District Courts, which would gradually conform to the Precedents established in the General Court: whereas at present little respect is paid to any Precedent, either by the Bench, or the Bar.

5. The high Court of Chancery is a Court of Equity, possessing general Jurisdiction over all persons, and in all Causes in Chancery, where the Matter in dispute is of the value of thirty three dollars and one third. The Jurisdiction of this Court depends upon the ~~signification~~ import of the word Chancery, which conveys no very definite Meaning. Our ~~Jurisdiction~~ ~~of~~ with the Constitution, Jurisdiction & powers of the high Court of Chancery in England, affords ~~[illegible]~~, a clue to ~~direct~~ our enquiries, which is not altogether without ~~some~~ difficulty in

difficulty in the unravelling." The Jurisdiction of this Court, said the Late Lord Chancellor Hardwicke, when at the Bar, as it is a Court of equity is perhaps of all others the most difficult to be traced, both as to its foundation & the time when it had its original. But I think there have been very great Opinions, and I am apt to believe a strict search into Antiquity might enable one to shew, that this Juris= =diction also has taken it's rise from the great Seal. For the Chancery being upon the division of the Kings courts the Officina Justitiæ, from which all original Writs issued, and where the Subject was to come for remedy in all Cases; the Chancellor was applied to in all Cases for proper Writs, where the Subject wanted a remedy for his Right, or redress for a Wrong that had been done him. But in the Execution of this Authority he was confined by the rules of the common law, and could award no Writs, but such as the common law warranted: therefore when such a Case came before him, as was matter of trust, fraud, or Accident, (which are the Subjects of an Equity Jurisdiction) the Chancellor could award no Writ proper for the plaintiffs Case, because the common law afforded no remedy. Upon this it is not improbable that the Chancellors, who were most commo= =nly Churchmen, Men of Conscience, when they found those Cases grew numerous, in order to prevent the Suitors being ruined against right and Conscience, and that no Man might go away from the Kings Court without some relief, summoned the parties before them, and partly by their Authority, and partly by their Admoni= =tions, laid it upon the Conscience of the wrong doer to do right". [1. Strange 150.] — This extraordinary Court, ~~of~~ or Court of Equity

+ V.L. 1794. c. 95. 172. 1797. c. 98. accordant.

† 1. Danvers 752. 2. Vent: 352.

‡ It may be doubted whether the high Court of Chancery in Virginia hath such a power, as this, which is probably derived from the English Statutes concerning Bankruptcy.

‖ 2. Vent. 346. Quere, as to this, if the Executor when he qualified gave sufficient Security.[2]

* L.V. 1794. c. 95. accordant.

¶ 2. Vent: 265.

or Court of Equity, proceeds by the rules of Equity and Conscience, and moderates the rigor of the common Law, considering the Intention, rather than the words of the Law. It gives relief for and against Infants notwithstanding their minority; and for and against married women notwithstanding their Coverture: in some Cases a woman may sue her husband for maintenance; she may sue him when he is beyond Sea, &c. and be compelled to answer without her husband: all frauds and deceits for which there is no redress at common Law: all breaches of trust and Confidence; and accidents, as to relieve obligors, mortgagors &c. against penalties and forfeitures, where the intent was to pay the debt, are here remedied: for in Chancery a forfeiture shall not bind, where a thing may be done after, or compensation made for it.† It will give relief against the extremity of unreasonable Engagements, entered into without Consideration; oblige Creditors that are unreasonable to compound with an unfortunate debtor.‡ And make Executors give Security, and pay interest for money that is to lie long in their hands.‖ Here Executors may sue one another, or one Executor alone be sued without the rest: order may be made for the performance of a will: it may be decreed who shall have the Tuition of a Child.* — it may confirm titles to lands, though one hath lost his writings; render Conveyances defective through mistake &c. good and perfect; but not defects in a voluntary Conveyance unless where intended as a provision for younger Children.¶ This Court may likewise grant Injunctions to stay proceedings at Law, or to stay Execution upon ~~an~~ unrighteous Judgments against the Defendants in a Court of Law. Or to stay waste, or to quiet the possession of Lands. Such are the general objects of the Jurisdiction of the high Court of Chancery in England

= It may likewise set aside a Verdict at Law, and award a new trial, where Injustice has been done on a former trial. 1. Ld. Ca. Abr. 377.

Q V.L. 1794 - c. 65.
+ V.L. 1794 . c. 78. 64.
Wythe's reports 143.
... + V.L. 1794 . c. ~~78~~. 64.
* Ib: c. 118.
* Ib. c. 85.

England, which may be regarded as the prototype of our own, as a Court of Equity. ~~The Court of Chancery in Virginia, in addition to [illegible] with the power of making aside verdicts in Courts of Law and awarding new trials between the parties, for which it is probable that no precedent can be cited from the reports.~~ How far the common law Jurisdiction of the high Court of Chancery in England is to be regarded as vested in the high Court of Chancery in Virginia, is a question of some nicety, inasmuch as the General Court is declared to have general Jurisdiction over all Causes, matters and things at common law, as well criminal, as civil, except in such Cases, as by the C. U. S. or of the Commonwealth, or any Statute made by the Congress of the U. S. or the general Assembly of the C. W. are or shall be vested in any other tribunal.[Q]

The high Court of Chancery in Virginia may award process, and make a decree against an absent debtor, or other absent defendant, although he never was within the limits of its Jurisdiction[+]; it hath decreed Conveyances for lands not lying within the State, to be made, by persons served with process within its limits.[+] It may issue writs of ne exeat to prevent defendants from departing the State,[*] and writs of habeas corpus to deliver any person illegally detained in Custody.[*] May grant relief to any person having a demand against the Commonwealth, which is disallowed by the Auditor; and may upon Petition grant relief in any other case where any person hath an equitable claim against the State.[*] May require the Opinion of the General Court on any matter of law;— May direct issues to be tried in that or any other Court, according as Justice and the Convenience of the parties may require;— May take Cognizance of suits at law, ~~where a majority~~ properly cognizable in the general Court where a majority of the Judges of that Court are interested; — may grant writs

* V. L. 1794. c. 64.
† Ib. c. 167.
‡ Ib. c. 104.
# C. V. art. 14.
‡ V. L. Oct: 1777. c. 15. – 1788. c. 69. 1794. c. 64.
Q V. L. 1797. c. 5.

(‡) ^ The high Court of Chancery holds three sessions in the year, and sits at the Capitol in the City of Richmond. The terms begin in March, May, and September; the first continues eighteen days, and the two last twenty four, each: but the Court is always considered as open, so as to grant Injunctions, writs of ne exeat, Certiorari, and other process usually granted in Vacation.

By an Act passed in the year 1801. c. 14 the high Court of Chancery was ~~divided~~ new organised; the State being divided into three districts, a Court for the Eastern District consisting of the Counties ~~of~~ in general lying below the Falls was established at Williamsburg; the Counties lying between the eastern District and the Blue ridge constituted the middle District & a Court is held for the same at Richmond, as heretofore; the Counties westward of the middle District compose a third District, and a Court is held for the same at Staunton in Augusta County.

1794 c. 63.

writs of Certiorari for removing any suit in Chancery, hither depending in any County or inferior Court; may grant bills of review, after decrees made therein*. ~~This Court~~ It hath also appellate Jurisdiction, and may reverse or affirm the decree of any County or inferior Court, where the matter in dispute ~~shall~~ amounts to thirty three dollars and a third.† Lastly, this Court hath Jurisdiction ~~in the General Court, as has been already observed~~ in all cases of incestuous marriages, and may annul the same, and punish the parties by fine, and if it see fit, may cause them to give security not to cohabit again.‡

The General Court, as has been already mentioned, before the revolution possessed all the powers & Jurisdiction of a high Court of Chancery. When the revolution took place it was thought proper to separate the Court of Equity from the Court of Law. The Constitution accordingly requires that Judges in Chancery shall be appointed by joint ballot of both houses of assembly, and be commissioned by the Governor, & hold their office during good behaviour.# When the Court was first organised, three Judges were appointed, but the number was reduced to one, some years after.‡ and so continues, at present. An appeal lies from this Court ~~to the Court~~ to the Court of appeals where the matter in Controversy is of the value of one hundred and fifty dollars; and such appeal may not be made from an interlocutory decree.Q

(‡) ^ 6. The Court of Appeals, is the supreme judicial Court of the Commonwealth.* It has original Cognizance in no case whatsoever, except where a Judge of the General Court may be impeached, but it hath appellate Jurisdiction from the district Courts in all cases where the matter in Controversy amounts to one hundred dollars, and from

from the General Court and high Court of Chancery, where it amounts to one hundred and fifty dollars, or is a freehold, or Franchise, and whether it reverses or affirms the Judgement, certifies its ~~opinion~~ own Judgement to the Court from which the matter was removed, who are to enter it as their own, and award Execution thereupon accordingly.

The Judges of this Court are by the Constitution required to be appointed by joint ballot of both houses, and commissioned by the Governor, and as well as the Judges of the high Court of Chancery and general Court, hold their offices during good behaviour. If they are impeached they (and all others who may be impeached except the Judges of the General Court) are to be tried in the General Court. They are to have fixed and adequate Salaries, and are incapable, as well all others holding any lucrative office, of being elected Members of either house of assembly.

The first Act for organizing the Court of Appeals declared it should be composed of the Judges of the high Court of Chancery, General Court, and Court of Admiralty: no Commission was made out for them as Judges of the Court of Appeals, nor were they balloted for as such. — About ten years after, the legislature wishing to new model the Courts, availed itself of this circumstance, & gave it an entire new Constitution. There are now five Judges who are appointed & commissioned in the manner directed by the Constitution.

This Court sits twice a year, ~~viz~~, in April & October. The duration of the terms is unlimited. The multiplicity of business renders them very long, already: they will probably encrease ~~yearly~~ in duration yearly.

JG

If a majority of the Judges of the Court of Appeals are interested in the determination of any suit therein depending, the same shall be entered of record, and the Clerk shall thereupon issue writs of summons to the Chancellor and Judges of the General Court requiring their attendance, if not disqualified, to attend at the next Session of the Court of Appeals – And the remaining Judges of the Court of Appeals who are not interested, if such there be, together with such as attend by virtue of such summons, or any five of them constitute a Special Court of Appeals for the trial of such suit, and may proceed to hear & decide the same, in like manner as the ordinary Court. – It now remains to say something of the federal Courts.

By the Co. U. S.[+] it is declared that the judicial power of the U. S. shall be vested in one supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish; the Judges of which shall hold their Offices during good behaviour, and receive a salary which shall not be diminished during their continuance in Office. The judicial power extends to all Cases in Law & equity arising under the Constitution, the Laws of the United States, & Treaties made under their authority. To all Cases affecting Ambassadors, other public ministers & Consuls; to all Cases of Admiralty & maritime Jurisdiction; to Controversies to which the United States shall be a party; to those between two, or more States; between Citizens of different States; between Citizens of the same State claiming lands under grants of different States, and between a State and foreign States. In the original Frame of the Constitution, the judicial power was still more extensive; but an Amendment hath been proposed & ratified by which it is declared that the Judicial power of the U. S. shall not be construed

+ art: 3.

construed to extend to any suit in law or Equity commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any foreign State. Amendments to C. to. S. art: 13.

The judicial courts of the United States, as organized by the Act of 1. Cong: 1. Sess: c: 20. consisted first, in a District court, in each State, and in that part of the State of Massachusetts, which is called the province of Maine: ~~the~~ of a single Judge being appointed for each District, who was by law required to reside within the same; their Courts held four Sessions in every year. Secondly, of a Circuit court, which held two Sessions, annually, in each District, and ~~[illegible]~~ consisted of two Judges of the supreme court, who alternately rode the circuits, together with the Judge of the District court, or any two of them. But for the Convenience of the Judges of the supreme court, on whom the Duty was found to fall very hard, a subsequent Act[+] required the attendance of one of them, only, at each Circuit court: and thirdly of the supreme Court, consisting of a Chief Justice, and five associate Justices, which held two Sessions, annually, at the Seat of government.

During the second session of the sixth Congress a very extensive alteration in the system was proposed, and carried into effect by an act[†] passed on the 13th day of February 1801.

+ 2: Cong: c: 66.
† 6: Cong: 2: Sess: c: 4.

which, among other provisions, divided the United States into twenty two districts; the States of Massachusetts, Pennsylvania, Virginia, and Tenessee, being each divided into two Districts: the Districts were again clafsed into six circuits, in each of which (except the sixth, comprehending the Districts of east Tenessee, West Tenessee, Kentucky, & Ohio,) three Judges, to be called circuit Judges, one of whom was to be commissioned as Chief-Judge, were authorised to be appointed, with an annual salary of two thousand dollars, each. In the sixth circuit one Circuit Judge only was to be appointed, who, together with the District Judges of Kentucky and Tenessee was authorised to hold the circuit courts for that circuit; and whenever the office of District Judge, in those districts, respectively, should become vacant, such vacancies were to be supplied by the appointment of two additional Judges for that circuit.

The appointments authorised by this Act were immediately made by the president for the time being, although not more than twenty days remained of the period for which he was elected, after passing the act, which had ~~[illegible]~~ been carried through Congress by small majorities after a strenuous opposition. As soon as the Question had been taken & carried in the House of Representatives, a Member gave notice, which was laid upon the table, that at the next Session he should move for a repeal of the Act. Some unpopular appointments of Judges, made by the President, were not calculated

The Debate was conducted with great Ability in both houses, successively, during a considerable portion of the Session, the several Speakers both in favor of the repeal, and against it, displaying a scope of Talents and Ingenuity in their arguments, which shewd them to be equally prepared to maintain their opposite Opinions. The Bill passed in the Senate by a small majority, only: but the majority in favor of the repeal was much greater in the house of Represen:-tives; it recieved the presidents Assent on the eighth day of March 1802;+ and its passage, as it respects the Construction of the Constitution of the United States, & of that principle, (supposed to be a fundamental one) which appeared, both to require, and to have secured, the absolute independence of the judiciary department, may be deemed one of the most important events that have taken place in Congress since the adoption of the Constitution. The Act of the 13th of February 1801. (6. Cong: 2. Sess. c. 4.) as also another Act passed the third day of march 1801. for altering the times and places of holding certain courts, (6. Cong: 2. Sess: c: 32.) were totally repealed: And all acts and parts of acts which were in force before the passage thereof, and which by the same were either amended,

+ see L.U.S. 7. Cong: 1. Sess: c: 8.

calculated to reconcile the opponents of the Act to its passage. The Question whether a succeeding Congress could repeal the law, and by so doing remove the newly appointed Judges from Office, soon became a popular topic of discussion in many parts of the United States. And while many who disapproved of the law were satisfied that it could not constitutionally be repealed, so as to affect the Judges who held commissions under it, others, either doubted, or declared themselves convinced of the constitutionality, as well as the expediency, & sound policy of such a measure. Accordingly, very soon after the commencement of the first Session of the seventh Congress, a motion was made in the Senate for the repeal of the Act.* ~~The discussion was conducted with great ability, and the speakers on both sides displayed~~ a great scope of talents and ingenuity in their arguments, both for and against the repeal, during a large portion of the Session. The Act recieved the Assent of the President on the eighth of March 1802.+ and its passage may be deemed one of the most important events, as it respects the true construction and operation of the Constitution of the United States, that has ever agitated the public mind since its adoption. All acts and parts of acts which were in force before the passage of the Act thereby repealed, and another, which passed on the third day of March 1801.† for altering the times & places of holding certain Courts, and which by the same were either amended

+ L.U.S. 7. Cong: 1. Sess: c: 8
† L.U.S. 6. Cong: 2. Sess: c: 32.

amended, explained, altered, or repealed are thereby revived, and declared to be in as full and complete force as if those two Acts had never been made. And by a subsequent Act of the same Session,* The Districts of the United States (excepting the Districts of Maine, Kentucky and Tennessee) are formed into six Circuits; of which, the Districts of New Hampshire Massachusetts and Rhode Island, constitute the first: Connecticut Newyork, & Vermont, the second: New Jersey & pennsylvania, the third: Maryland and Delaware, the fourth: Virginia and North Carolina the fifth: and South Carolina & Georgia the sixth: the Chief Justice of the United States, and the several associate Justices of the supreme Court, are assigned to these Circuits, respectively; and, together with the District Judges, respectively, are to hold two circuit courts, annually, in each District: but if only one of them shall attend, the circuit court may be held by the Judge so attending. And on every appointment hereafter made of a Chief Justice, or associate Justice of the supreme Court, the Judges shall allot themselves among the several Circuits as they shall think fit, and such allotment shall be entered of record. And if no allotment be made the president may make the allotment; which he seems authorised to do in the first instance after making any appointment; and the allotment made in either case is binding until another is made.

The District Courts of the United States have, exclusively of the Courts of the several States Cognizance of all Crimes & Offences which shall be cognizable under the Authority of the United States, committed within their respective districts, or upon the high Seas, where no other punishment is to be inflicted

* L. U. S. 7. Cong: 1. Sess: c: 31.

inflicted, than whipping not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months; as also exclusive Cognizance of all ~~cases of Admiralty and~~ civil causes of Admiralty and maritime Jurisdiction* and of all Captures made within the waters of the United States, or within a marine League of the coasts, or shores thereof†; of all seizures made under the laws of Impost, navigation or trade, of the United States, where the seizures are made on waters navigable from the Sea by Vessels of ten tons burthen, within their respective districts, as well as upon the high seas; saving to the suitors in all Cases the right of a common law remedy where the common law is competent to give it; and also exclusive Cognizance of all seizures made on Land, or other waters than those before mentioned, and of all suits for penalties & forfeitures incurred under the Laws of the United States,* (except in Cases of penalties incurred by breach of the laws imposing Duties on Wine licenses, Spirits distilled, or goods sold at Auction, where the distance is more than fifty miles from the place of holding a federal district Court, which are also Cognizable by the State-courts;*) as also Cognizance, concurrent with the State Courts, of all Causes where

* L. U. S. 1. Cong: 1. Sess: c. 20.
† Ibid: 3. Cong: c: 50.
* Ibid: 1. Cong: 1. Sess: c. 20.
‡ Ibid: 3: Cong: c: 48. 49. 66.

where an Alien sues for a tort, only, in violation of the Law of nations, or of any Treaty of the United States; and of all suits at common Law, where the United States sue, and the matter in dispute amounts, exclusive of costs, to one hundred dollars. They have also Jurisdiction, exclusively of the State courts of all suits against Consuls or vice Consuls, except for offences above the description above mentioned.* A writ of Error lies from the Circuit Courts to these Courts, where the matter in dispute is more than fifty dollars, exclusive of costs.† The District Courts for Virginia are now held alternately at Richmond, and Norfolk,‡ on the third Tuesday in December, March, June, & September, yearly; in addition to which the District Judge hath power to hold special Courts, at his Discretion, at either of those places, or at any other place in the District as the nature of the Business may require.‡

The circuit Courts of the United States hold two Sessions every year in each district:‖ that for Virginia was formerly held alternately at Williamsburg, and Charlottesville, but is now stationary at Richmond and sits on the twenty second days of May and November, yearly. The present Chief Justice of the United States is allotted to this Circuit, and that of North Carolina.‡

The

* L.U.S. 1. Cong: 1. Sess: c. 20.
† Ibidem.
‡ L.U.S. 7. Cong: 1. Sess: c. 31. — ‡ L.U.S. 1. Cong: 1. Sess: c. 20.
‖ L.U.S. 1. Cong: 1. Sess. c. 20. ‡ L.U.S. 7. Cong: 1. Sess: c. 31.

The Circuit courts now consist of one Judge of the Supreme court of the United States, according to the allotment made by the Act of 7. Cong: 1. Sess: c: 31. and the district Judge of the District in which the Court is held; but if one of the Judges only attends he may hold the Court, as was before mentioned. In addition to the stated sessions of these Courts, the Judges have power to appoint and hold special Sessions for the trial of Criminals, at any other time and place within the District, as Convenience may require. These Courts have original Cognisance concurrent with the State courts, in all suits at common Law, or in equity, where the matter in dispute exceeds, exclusive of costs, the value of five hundred dollars, and the United States are plaintiffs, or an Alien is a party, or the suit is between a Citizen of the State where the suit is brought, and the Citizen of another State. They have also exclusive Cognizance of all Crimes and ~~misdemeanors~~ Offences cognizable under the Authority of the United States, except where the Laws of the United States may otherwise direct, and concurrent Jurisdiction with the District Courts of the United States, of the Crimes and Offences cognizable therein. But no person can be arrested in one District for trial in another in any civil Action; and no civil suit can be brought therein against an Inhabitant of the United States, unless he be an inhabitant of the District, or found therein at the time of serving the writ: nor can these Courts

take

the Cognizance of any suit brought by an Assignee of a promissory note, or other chose in action, unless a suit might have been prosecuted therein, if no assignment had been made, except in Cases of foreign Bills of Exchange.+ Suits cognizable in these Courts, if commenced in a State court against an Alien, or a Citizen of another State, or the title of Lands be concerned, and the value of the matter in dispute exceeds five hundred dollars may on certain conditions be removed therein for trial. A writ of Error, in the nature of an appeal, where the matter in dispute exceeds two thousand dollars lies from the Supreme Court of the United States to these Courts.+

In all Cases removed by Appeal or writ of Error from the District Courts to the Circuit Courts, Judgment shall be rendered in conformity to the Opinion of the Judge of the Supreme Court presiding at the Circuit court. And in Case of disagreement ~~of~~ in opinion between the Judges presiding in the Circuit courts, in any other Case, the point upon which the disagreement shall happen shall during the same term, upon request of either party be stated under the direction of the Judges, and certified under the seal of the Court to the Supreme Court at their next Session, and shall be there finally ~~decided~~ determined.

+ L. U. S. 1. Cong: 1. Sess: c: 20.

divided; and the decision shall be remitted to the Circuit court and there entered of record, and have effect according to the nature of the judgment or order of the Supreme Court. But the Cause may still proceed in the Circuit court, if in the Opinion of the Court further proceedings can be had without prejudice to the merits. It is further provided, that Imprisonment shall not be allowed, nor punishment in any Case inflicted where the Judges of a Circuit court are divided in Opinion upon the Question touching such punishment or imprisonment.+

The Supreme Court of the United States has Juris= =diction, exclusively, in all such suits or proceedings against Ambassadors or other public ministers, or their domestics, or domestic servants, as a Court of law can exercise consistently with the Law of nations; and original, but not exclusive Jurisdiction of all suits brought by Ambassadors or other public ministers or in which a Consul, or vice Consul shall be a party.† This Court hath likewise power to issue writs of prohibition to the District Courts, when proceeding as Courts of Admiralty and maritime Jurisdiction; and writs

+ L. U. S. 7. Cong: c. 31.
† See the Case of Joseph Navarro, Consul from Genoa, reported in 2. Dallas's rep: 297.

writs of Mandamus to any courts appointed, or persons holding ~~authority~~ Office under the Authority of the United States. — A writ of Error lies from this Court, to the highest Court of Law or Equity of a State in which a Decision in that suit can be had, in any suit, where the validity of a Treaty, or a Statute of, or an authority exercised under the United States is drawn in Question, and the decision is against their validity; or where the validity of a Statute of, or an authority exercised under any State, is drawn in question, on the ground of their being repugnant to the Constitution, Treaties, or Laws of the United States, and the Decision is in favor of their validity; or, where the Construction of any clause in the Constitution, or of a Treaty, or Statute of, or Commission held under the United States, is drawn in Question and the Decision is against the right, title, privilege, or Exemption, specially set up, or claimed by either party under the same. But no other Error can be assigned, but such as immediately respects the abovementioned Questions.+

All the Courts of the United States have power to issue writs of Scire facias, habeas corpus, and all other writs not specially ~~provided~~ provided for, which

+ L.U.S. 1. Cong. 1. Sess: c. 20.

which may be necessary for the Exercise of their respective Jurisdictions, and agreeable to the principles and usages of law. The Judges both of the supreme and District courts have likewise power to issue writs of habeas corpus, where the prisoner is in custody under, or by colour of the authority of the United States.+

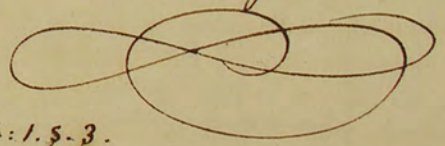
+ L. U. S. 1. Cong: 1. Sess: c: 20.

The supreme Court is hereafter to be holden at Washington, the present seat of the government of the United States, on the first monday in february, annually, by any four of the Justices thereof; but one or more may make all necessary orders touching any suit preparatory to the trial or decision thereof; and if four Justices do not attend within ten days the court shall be continued over till the next stated session. It is moreover made the Duty of the Associate Justice resident within the fourth Circuit to attend at the City of Washington on the first monday in August, annually, and he is authorised to make all necessary orders touching any suit ~~returnable~~ depending in the supreme Court, preparatory to the trial or decision thereof: and all writs & process may be made returnable to the first monday in August, as well as to the Session to be held in february; and all actions pleas & other proceedings in any cause civil, or criminal shall be continued over to the ensuing february Session+: so that there is now but one Session of the supreme Court in every year for hearing & deciding the Causes therein depending; the

+ L. U. S. 7. Cong: 1. Sess: c: 31.

the Session in August being merely preparatory.

The Senate of the United States constitutes a court for the trial of Impeachments made by the House of Representatives. When sitting for that purpose they must be upon oath, or affirmation. When the President of the United States is tried, the Chief Justice must preside; and no person can be convicted without the Concurrence of two thirds of the members present. But Judgment in Case of Impeachment can not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under the United States.* – This court, although in some respects it may be considered as the highest tribunal in the United States, possesses no authority in any civil case, nor in any criminal Case whatsoever except ~~upon~~ in the Case of Impeachments.



* C. U. S. art: 1. s. 3.

Amend^t to C. U. S. art. 3.

construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.[+]

The judicial Courts of the United States, consist of a District Court in each State, and in that part of Massachusetts which is called the province of Maine, which hold four sessions annually – 2dly of a Circuit court which holds two sessions annually in every district, as above mentioned; and 3dly of the Supreme Court which holds two sessions annually at the Seat of Government.

1. The District Courts of the United States have exclusively of the Courts of the several States Cognizance of all crimes and offences which shall be cognizable under the Authority of the United States, committed within their respective districts, or upon the high seas, where no other punishment than whipping not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months is to be inflicted; as also exclusive Cognizance of all civil causes of Admiralty and maritime jurisdiction;[+] and of all captures made within the waters of the United States or within a marine league of the coasts, or shores thereof;[†] of all seizures under the laws of imports, navigation or trade of the United States, where the seizures are made on waters navigable from the sea by vessels of ten tons burthen, within their respective districts as well as upon the high seas; saving to the suitors in all cases the right of a common law remedy, where the common law is competent to give it; and also exclusive Cognizance of all seizures on land, or other waters than those before mentioned, made, and of all suits for penalties & forfeitures incurred under the laws of the United States, except in cases of penalties incurred by breach of the laws imposing duties on Wine licenses, Spirits distilled, or Goods sold by Auction, where the distance is more than fifty miles from the place of holding a federal District Court, which are now cognizable in the State Courts.

+ 1. Cong: c: 20.

† 3. Cong. c. 50.

State-Courts.* They have likewise Cognizance concurrent with the Circuit-Courts, and with the State-Courts, of all Causes where an Alien sues for a tort only, in violation of the law of nations, or a Treaty of the United States; and of all suits at common law where the United States sue, and the matter in dispute amounts exclusive of costs to one hundred Dollars. They have also Jurisdiction, exclusively of the Courts of the several States, of all suits against Consuls or Vice Consuls, except for offences above the description before mentioned.

The District courts consist of a single Judge, who is by law required to reside in the District for which he is appointed: The District Court for Virginia sits alternately in Richmond and Williamsburg on the third Tuesday in December, March, June and September, yearly; in addition to which the District Judge has power to hold special Courts, at his discretion, at either of those places, or at any other place in the District as the nature of the Business may require. A writ of Error lies to their Courts, where the matter in dispute is more than fifty dollars, exclusive of Costs,‡ from,

2. The Circuit Courts, respectively: These consist of one, or two Judges of the Supreme Court, who alternately take the Circuits, twice a year, and the Judge of the district Court, any two of them.‡ The Circuit Court for Virginia was held at first at Williamsburg and Charlottesville alternately; but is now stationary in Richmond, where it sits on the twenty second days of May and November yearly. The Judges have power to appoint and hold special Sessions for the trial of Criminals at any other time and place within the district as Convenience may require. — The Courts have original Cognizance concurrent with the State courts in all suits at common law or in Equity, where the matter in dispute exceeds, exclusive of costs, the value of five hundred dollars, and the United States are plaintiffs, or an alien, ~~or citizens~~ is a party, or the suit is between a Citizen of the State where either suit is brought and a Citizen of another State. They have exclusive Cognizance of all Crimes and offences cognizable under the Authority of the United States

+ 3. Cong. c: 48. 49. 66.

+ 1. Cong. c. 20.

‡ 1. Cong. c. 20.

‡ 2. Cong: c: 66.

the United States, except where the Laws of the U.S. may otherwise direct, and concurrent Jurisdiction with the district Courts of the Crimes & offences cognizable therein. But no person can be arrested in one district, for trial in another in any civil Action, and no civil suit can be brought therein against an Inhabitant of the U.S. unless he be an inhabitant of the District or found therein at the time of serving the writ; nor can this Court take Cognizance of any suit brought by an Assignee of a promissory note, or other chose in action, unless a suit might have been prosecuted therein if no Assignment had been made, except in Cases of foreign Bills of Exchange.+ Certain suits cognizable in their Courts, if commenced in a State Court against an alien, or a citizen of another State, or the title of lands be concerned, and the value of the matter in dispute exceeds five hundred dollars, may on certain conditions be removed into their Courts for trial. To ~~From their Courts on Appeal~~ a writ of Error in the nature of ~~a writ of Error~~ an appeal lies where the matter in dispute exceeds two thousand dollars ~~lies in the last resort~~ ~~to the~~ exclusive of costs, lies in the last resort from.+

3. The Supreme Court of the United States; the Jurisdiction of which extends, exclusively, to all controversies of a civil nature where a State is a party; and to all such suits or proceedings against Ambassadors or other public ministers, or their domestics, or domestic Servants, as a Court of law can exercise consistently with the law of nations; and original, but not exclusive Jurisdiction of all suits brought by Ambassadors, or other public ministers, or in which a Consul or Vice-Consul shall be a party. In respect to Consuls, there was supposed to be some contrariety between the Constitution and the Law, but ~~this~~ it ~~has been~~ hath been decided otherwise.+ This Court hath likewise power to issue writs of prohibition to the district Courts, when proceeding as Courts of Admiralty and maritime Jurisdiction, and writs of Mandamus to any Courts appointed or persons holding office under the Authority of the United States. A writ of Error lies from this Court to the

+ The Case of Joseph Ravara, Consul from Genoa, against whom an Indictment was preferred in the Circuit Court of Pennsylvania, July 1793. He pleaded to the Jurisdiction, but his plea was over-ruled. See 2. Dallas 297.

the highest Court of Law or Equity of a State, in any suit, where the validity of a Treaty, or a Statute of, or an authority exercised under the United States, is drawn in in which a decision in the suit could be had question, and the decision is against their validity; or where the Validity of a Statute of, or an authority exercised under any State, is drawn in question, on the ground of their being repugnant to the Constitution, Treaties, or Laws of the United States, and the decision is in favor of their validity; Or, where the Construction of any clause in the Constitution, or of a Treaty, or Statute of, or Commission held under the United States, is drawn in question, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party under the same. But no other Case can be assigned but such as immediately respects the above-mentioned Questions. +

1. Cong. c. 20. All the Courts of the U. S. have power to issue writs of Scire facias, habeas corpus, and all other writs not specially provided for, which may be necessary for the Exercise of their respective Jurisdictions, and agreeable to the principles and usages of Law. The Judges both of the Supreme & District Courts have likewise power to issue writs of Habeas Corpus, when the prisoner is in Custody under, or by colour of the authority of the United States. +

Ib. The Supreme Court consists of a Chief Justice and five Associate Judges, any four of whom constitute a Quorum. Its Sessions begin on the first Mondays in February, and August yearly. +

Ib. This completes the Sketch of the judicial Courts established under the authority of the State of Virginia, and of the federal Government. So far as respects that State: any further notice of the Courts established in the other States would be foreign from my present design.

The Supreme Court of U. S. constitutes a Court for trying impeachments.

Nov. 29.