Slavery — pa: 1.
Caveats — — . 73.
proceedings in civil actions — 78.

By act of Barbadoes 1688 — all negroes shall have
Clothes once a year, i.e. Drawers & Caps for Men. &
Petticoats & Caps for women. under pen. of 5/.
Slave dying in custody of Pro. Mars. for want of Food
the pr. m. responsible to the owners.

Slaves guilty larceny through necessity, yet punished
but not to be paid for

Reward for killing runaways.

Fine of a Slave who shall "out of Wantoness, or only
"of Bloody Mindedness, or cruel Intention willfully
kill a Slave of his own to forfeit £15. Stg. &
double if kills another Man's Slave.

Slaves running away & absenting themselves thirty
days to suffer death — 1692. c. 377.

+ The subject of a preceding Lecture, with which the present was immediately connected, was an Enquiry into the Rights of persons, as Citizens of the United States of America.

[N.]

On the State of Slavery in Virginia.

In the preceding enquiry+ into the absolute rights of the Citizens of united America, we must not be understood as if those rights were equally, and universally the privilege of all the Inhabitants of the United States, or even of ~~those~~ all those, who may challenge this Land of Freedom as their native Country. Among the blessings which the Almighty hath showered down upon these ~~United~~ States, there is a large portion of the bitterest draught that ever flowed from the Cup of affliction. Whilst America hath been the Land of promise to Europeans, and their descendants, it hath been the Vale of Death to millions of the wretched sons of Africa. The genial Light of Liberty, which hath here shone with unrivall'd Lustre on the former, hath yielded no Comfort to the latter, but to them hath proved a pillar of Darkness, whilst it hath conducted the former to the most enviable State of human existence. Whilst we were offering up vows at the Shrine of Liberty, and sacrificing Hecatombs upon her altars; whilst we swore irreconcileable hostility to her Enemies, and hurld

Defiance

Defiance in their Faces: whilst we adjured the God of Hosts to witness our Resolution to live free, or die, and imprecated curses on their heads who refused to unite with us in establishing the Empire of Freedom; we were imposing upon our fellow men, who differ in complexion from us, a Slavery, ten thousand times more cruel than the utmost extremity of those Grievances & Oppressions, of which we complained. Such are the Inconsistencies of human nature; such the blindness of those who pluck not the Beam out of their own Eyes, whilst they can espy a Moat, in the Eyes of their Brother; such that partial System of Morality which confines rights, & injuries, to particular Complexions; such the effect of that self-love which justifies, or condemns, not according to principle, but the Agent, ~~[illegible]~~. Had we turned our eyes inwardly when we supplicated the Father of Mercies to aid the injured & oppressed; when we invoked the Author of Righteousness to attest the purity of our motives, and the justice of our cause+; and implored the God of Battles to aid our Exertions in its Defence, should we not have stood more self convicted than the contrite Publican! Should we not have left our

Gift

+ The American Standard at the Commencement of those Hostilities which terminated in the Revolution had these words upon it - An Appeal to Heaven!

Gift upon the Altar, that we might be first
reconciled to our Brethren whom we held in Bondage.
Should we not have loos'd their Chains, & broken
their Fetters? Or if the difficulties & dangers
of such an experiment prohibited the Attempt
during the Convulsions of a revolution, is it not
our duty to embrace the first moment of constitu-
-tional health & Vigour, to effectuate so desirable
an Object, and to remove from us a Stigma, with
which our Enemies will never fail to upbraid us,
nor our Consciences to reproach us. To form a
just estimate of this obligation, to demonstrate
the incompatibility of a State of Slavery with the
principles of our Government, and of that Revo-
-lution upon which it is founded, and to elucidate
the practicability of its total, though gradual,
Abolition, it will be proper to consider the nature
of Slavery, its properties, Attendants, & conseguen-
-ces in general; its rise, progress, & present state
not only in this Commonwealth, but in such of our
Sister States as have either perfected, or commen-
-ced the great work of its extirpation; with the
means they have adopted to effect it, and those

which

which the circumstances & situation of our country may render it most expedient for us to pursue, for the attainment of the same noble, and important end.

According to Justinian†, the first general division of persons, in respect to their rights, is into Freemen and Slaves. It is equally the glory & the happiness of that country from which the Citizens of the United States derive their origin, that the several traces of Slavery, such as at present exists in there of the United States, are utterly extinguished. It is not my design to enquire whether it ever had existence there, nor to compare the situation of villeins, during the existence of pure villeinage, with that of modern domestic Slaves. The records of those times, at least, such as have reach'd this quarter of the Globe, are too few to throw a satisfactory light upon the subject. — Suffice it that our Ancestors migrating hither brought not with them any prototype of that Slavery which hath been established among us. The first introduction of it into Virginia was by the arrival of a Dutch Ship from the coast of Africa, having twenty negroes on board, who were sold here in the year 1620.† In the year 1638. we find them in Massachusetts.†

† Lit: 1. Tit: 2.

† Stith 182.

† Dr. Belknap's answers to S.C. 7 Queries.

+ The Author here takes the liberty of making his acknowledgements to the reverend Jeremy Belknap, D.D. of Boston, and to Zepheniat Swift esq.r Representative in Congress from Connecticut for their obliging communications: he hath occasionally made use of them in several parts of this Lecture, where he may have omitted referring to them.

They as were introduced into Connecticut soon after the Settlement of that Colony; that is to say about the same period.+ Thus early had our forefathers sown the seeds of an evil, which, like a leprosy, hath descended upon their posterity with accumulated Rancour, visiting the sins of the Fathers upon succeeding generations. — The Climate of the northern states less favourable to the Constitution of the natives of Africa,+ than the Southern, proved alike unfavourable to their propagation, and to the increase of their numbers by importations. As the southern Colonies advanced in population, not only importations encreased there, but nature herself under a climate more congenial to the African Constitution assisted in multiplying the blacks in those parts, no less than in diminishing their numbers in the more rigorous climates of the north; this influence of Climate moreover contributed extremely to encrease or diminish the value of the Slave to the purchasers, in the different Colonies. White labourers, whose Constitutions were better adapted to the severe Winters of the New-England Colonies, were there found to be preferable to the negroes,+ who, accustomed to the influence of an ardent Sun, became almost torpid in those

+ Letter from Zeph: Swift to S. C. J.

+ Dr. Belknap Zep: Swift

+ Dr. Belknap. Zep. Swift.

Countries, not less adapted to give vigour to their laborious exercises, than unfavourable to the multiplication of their species: in those Colonies where the winters were not only milder, and of shorter duration, but succeeded by an intense Summer heat, as invigorating to the African, as debilitating to the European Constitution, the Negroes were not barely capable of performing more labour than the Europeans, or their Descendants, but the multiplication of the Species was at least equal; and, where they met with humane treatment, perhaps greater than among the whites. The purchaser therefore calculated not only the value of the labour of his Slave, but, if a female, he regarded her as "the fruitful mother of an hundred more": and many of these unfortunate people have there been in this State, whose descendants even in the compass of two or three generations have gone near to realise the Calculation. The great increase of Slavery in the Southern, in proportion to the northern States in the Union, is therefore not attributable, solely, to the effect of Sentiment, but to natural Causes; as well as those Considerations of profit, which have, perhaps,

an equal influence over the Conduct of
Mankind in general, in whatever Country, or under
whatever Climate their destiny hath placed them.
What else but Considerations of this nature could
have influenced the Merchants of the Greest nation,
at that time in the world, to embark in ~~the~~ 30 nefarious
a Traffic, as that of the human race, attended, as the Afrian
Slave trade has been, with the most atrocious Aggrava-
-tions of cruelty, perfidy, & Intrigues, the objects of which
has been the perpetual fomentation of predatory and
intestine Wars.[2] What, but similar Considerations, could
prevail on the Government of the same Country, even
in these days to patronize a Commerce so diametrically
opposite to the generally received maxims of that
Government.[2] It is to the Operation of these Consider-
-ations in the parent Country, not less than to their
influence in the Colonies, that the rise, increase, &
continuance of Slavery in those British Colonies
which now constitute United America, are to be
Attributed, as I shall endeavour to shew in the
course of the present Enquiry. It is now time to
enquire into the nature of Slavery, in general, and
take a view of its consequences, & Appendants in
this Commonwealth, in particular.

Slavery, says a well informed Writer[†] on the
Subject, has been attended with circumstances so —

[†] Hargrave; case of Negro Somerset.

varioues in different Countries, as to render it difficult to give a general definition of it. Justinian calls it a Constitution of the law of nations, by which one man is made subject to another, contrary to nature.† Grotius describes it to be an obligation to serve another for life, in consideration of Diet, and other common necessaries.* Dr. Rutherforth, rejecting this Definition informs us, that perfect Slavery is an obligation to be directed by another in all one's actions.† Baron Montesquieu defines it to be the establishment of a right, which gives one man such a power over another, as renders him absolute master of his life & fortune.‡ These Definitions appear not to embrace the subject fully, since they respect the Condition of the Slave, in regard to his Master only, and not in regard to the State, as well as the Master. The Author last mentioned observes that the Constitution of a State may be free, & the subject not so. — The subject free, & not the Constitution of the State.# — pursuing this Idea, instead of attempting a general definition of Slavery; I shall, by considering it under a threefold aspect, endeavour to give a just Idea of its nature.

† Lib: 1. Tit: 3. sect: 2.

* Lib: 2. c: 5. sect: 27.

† Lib: 1. c. 20. pa: 474.

‡ Lib: 15. c. 1.

Lib: 12. c. 1.

I. When a nation is, from any external cause, deprived of the right of being governed by its own Laws, only, such a nation may be considered as in a State of political Slavery. Such is the State of conquered Countries, and generally, of Colonies, & other dependant

Governments. Such was the State of United America before the revolution. In this Case the personal rights of the subject may be so far secured by wholesome laws, as that the individual may be esteemed free, whilst the State is subject to a higher power: this subjection of one nation, or people, to the will of another constitutes the first species of Slavery, which, in order to distinguish it from the other two, I have called political; inasmuch as it exists only in respect to the Governments, & not to the individuals of the two Countries. Of this it is not our Business to speak, at present.

II. Civil liberty being no other than natural liberty so far restrained by human laws, and no farther, as is necessary and expedient for the general advantage of the public†, whenever that liberty is, by the laws of the State, further restrained than is necessary & expedient for the general advantage, a State of civil Slavery commences immediately: this may affect the whole Society, and every description of persons in it, and yet the Constitution of the State be perfectly free. And this happens whenever the laws of a State respect the form, or energy of the Government, more than the happiness of the Citizen; as in Venice, where the most oppressive species of civil Slavery exists, extending to every individual in the State, from the poorest Gondolier to

† I. B. C. 125.

the members of the Senate, & the Doge himself.

This species of Slavery also exists whenever there is an inequality of rights, & priviledges, between the Subjects or Citizens of the same State, except such as necessarily result from the exercise of a public office; for the pre-eminence of one class of men must be founded & erected upon the depression of another; and the measure of exaltation in the former, is that of the slavery of the latter. In all Governments however constituted, or by what description soever denominated, where the distinction of rank prevails, or is admitted by the Constitution, this species of slavery exists. It existed in every nation, & in every Government in Europe before the french revolution. It existed in the American Colonies before they became independant States; and notwithstanding the maxims of equality which have been adopted in their several Constitutions, it exists in most, if not all, of them, at this day, in the persons of our free negroes, & mulattoes; whose civil incapacities are almost as numerous as the civil rights of our free white citizens. A brief enumeration of them, may not be improper before we proceed to the third head.

paine's rights of man.

Free negroes and Mulattoes are by our —

Constitution excluded from the rights of Suffrage,† and by consequence, I apprehend, from office too: they were formerly incapable of serving in the Militia, except as Drummers or pioneers, but now I presume they are enrolled in the Lists of those that bear Arms, though formerly punishable for presuming to appear at a muster field† During the revolution war many of them were enlisted as soldiers in the regular Army. Even Slaves were not rejected from military Service at that period, and such as served faithfully during the period of their enlistment were emancipated by an act passed after the conclusion of the war†. An act of Justice to which they were entitled upon every principle. All but house keepers, and persons residing upon the frontiers are prohibited from keeping, or carrying any Gun, powder, shot, club, or other Weapon offensive or defensive*; Resistance to a White person, in any case, was, formerly, and now, in any case except a wanton assault on the Negro or Mulattor, is, punishable by whipping‡. no negroe or mulattor can be a witness in any prose= cution, or civil suit in which a white person is a party†. Free negroes together with Slaves were formerly denied the benefit of Clergy in cases where it was allowed to white persons; but they are now upon an equal footing as to the allowance of Clergy, though not as to the consequences of that allowance, inasmuch as

* 1723. c. 2.

† Oct: 1783. c: 3.

‡ 1748. c. 31. & dō 1794. c. 103.

† 1794. c. 141.

† The Constitution of Virginia art: 7. declares that the right of suffrage shall remain as then exercised: the Act of 1723. c. 4. (3 dō 1733) sect: 23. declared that no free negroe, mulattor, or Indian, shall have any vote at the election of Burgesses, or any other election whatsoever. – This act it is presumed was in force at the adoption of the Constitution. – The Act of 1785. c: 55. (2 dō of 1794. c. 17.) also expressly excludes them from the right of suffrage.

† They were enrolled in the Militia under the Laws of the State 1705. c. 1. &c but the Act of 2. Cong. c. 33. for establishing an uniform Militia throughout the United States seems to have excluded all but free white men from bearing arms in the Militia.

‡ The following note must come in at page 16.

"About the same time (the reign of Queen Elizabeth) a
"traffic in the human species, called negroes, was introduced
"into England, which is one of the most odious & unnatural
"branches of trade the sordid & avaricious mind of mortals ever
"invented. It had been carried on before this period by Genoese
"traders, who bought a patent from Charles the fifth, con-
"taining an exclusive right of carrying negroes from the porter-
=queen Settlements in africa, to America and the West Indies:
"but the English nation had not yet engaged in the iniquitous
"traffic. —— One William Hawkins, an expert English Sea-
=man, having made several voyages to the coast of Guinea,
"and from thence to Brasil and the west Indies, had acquired
"considerable knowledge of the Countries. At his death he
"left his Journals with his son John Hawkins, in which
"he described the Lands of America & the west Indies as
"exceedingly rich and fertile, but utterly neglected for want
"of hands to improve them. He represented the natives of
"Europe as unequal to the task in such a scorching climate;
"but those of africa as well adapted to undergo the Labours
"requisite. Upon which John Hawkins immediately
"formed a design of transporting africans into the
"western world; and having drawn a plan for the Execution
"of it, he laid it before some of his opulent neighbours for
"encouragement and approbation. To them it appeared
"promising and advantageous. A Subscription was opened
"and speedily filled up, by Sir Lionel Duckett, Sir Thomas
"Lodge, Sir William Winter & others, who plainly perceived
"the vast profits that would result from such a trade.
accordingly,

+1794. c. 103. = as the Court may superadd other corporal punish- 12
= ment to the burning in the hand usually inflicted upon
white persons, in the like Cases. — Emancipated Negroes
may be sold to pay the debts of their former matter
contracted before their Emancipation; and they
may be hired out to satisfy their Taxes where no suffi-
= cient distress can be had. — Their Children are to be
bound out apprentices by the overseers of the poor.
Free negroes have all the advantages in capital
Cases, which white men are entitled to, except a
trial by a Jury of their own complexion: & a Slave
suing for his freedom shall have the same privilege.
Free negroes residing, or employed to labour in any
town must be registered; the same thing is required
of such as go at large in any County — the penalty
1794. in both Cases is a fine upon the person employing, or
c. 163. harbouring them, and Imprisonment of the negroe.
The Migration of free Negroes or mulattoes to
1794. this State is also prohibited; and those who do
c. 164. migrate hither may be sent back to the place
from whence they came. Any person, not being a
negroe, having one fourth or more negroe blood in
him is deemed a mulattoe. The law makes no other
distinction between negroes & mulattoes, whether
Slaves or Freemen. — These Incapacities and
Disabilities are evidently the fruit of the third
species of slavery of which it remains to speak;

or

" Accordingly three ships were fitted out, and manned by an
" hundred select Sailors, whom Hawkins encouraged to go with
" him by promises of good treatment and great pay. In the
" year 1562. he set sail for Africa, and in a few weeks
" arrived at the Country now called Sierra Leone, where he
" began his Commerce with the negroes. While he trafficked
" with them, he found the means of giving them a charming
" description of the Country to which he was bound; the
" unsuspicious Africans listened to him with apparent
" joy and satisfaction, and seemed remarkably fond of
" his European trinkets, food and Clothes. He pointed out
" to them the barrenness of the Country, and their naked &
" wretched Condition, and promised if any of them were
" weary of their miserable Circumstances, and would go
" along with him, he would carry them to a plentiful
" Land, where they should live happily, and receive an
" abundant recompense for their Labours. He told them
" that the Country was inhabited by such men as himself
" and his jovial companions, and assured them of kind
" usage and great friendship. — In short the negroes
" were overcome by his flattering promises, and three
" hundred stout fellows accepted his offer, and consented
" to embark along with him. Every thing being settled
" on the most amicable terms between them, Hawkins
" made preparations for his voyage. But in the night
" before his departure his negroes were attacked by a
" large body from a different quarter; Hawkins, being
alarmed

or, rather, they are Scions from the same common Stock: which is,

III. That Condition in which one man is subject to be directed by another in all his actions; and this constitutes a state of domestic Slavery; to which state all the Incapacities & Disabilities of civil Slavery are incident, with the weight of other numerous calamities superadded thereto. And here it may be proper to make a short enquiry into the origin and foundation of domestic Slavery in other Countries, previous to its fatal Introduction into this.

Just: lib: 1. Tit: 3. Slaves, says Justinian, are either born such or become so. They are born Slaves when they are the Children of Bond women; and they become Slaves either by the Law of nations, that is by Captivity; for it is the practice of our generals to sell their Captives, being accustomed to preserve, & not to destroy them: or by the civil Law, which happens when a free person above the age of twenty suffers himself to be sold for the sake of sharing the price given for him. The admirable Author of the Commentaries on the Laws of England thus combats the reasona- 1. B. C. 423. = blenes of all these grounds." The Conqueror, says he, according to the Civilians, had a right to the

"allarmed with the shrieks & cries of dying persons, ordered
"his men to the assistance of his Slaves, and having surround=
="ed the Assailants, carried a number of them on board
"as prisoners of war. The next day he set sail for Hispa=
="niola with his Cargoe of human creatures; but
"during the passage, treated the prisoners of war in a
"different manner from his volunteers. Upon his
"arrival he disposed of his Cargoe to great advantage;
"and endeavoured to inculcate on the Spaniards who bought
"the negroes the same distinction to be observed: but
"they, having purchased all at the same rate, con=
="sidered them as Slaves of the same condition, and
"consequently treated all alike."

Hawkins having returned to England, soon after made preparations for a second voyage. "In his passage he "fell in with the Minion Man of War, which accompanied "him to the coast of africa. After his arrival he began "as formerly to traffic with the negroes, endeavouring "by persuasions and prospects of reward to induce "them to go along with him. But now they were more "reserved and jealous of his designs, and as none of their "neighbours had returned, they were apprehensive he had "killed and eat them. The Crew of the Man of War "observing the africans backward and suspicious, "began to laugh at his gentle and dilatory methods of "proceeding, and proposed having immediate recourse to force

the life of his Captive; and having spared that, has a right to deal with him as he pleases. But it is an untrue position, when taken generally, that by the law of nature or nations, a man may kill his Enemy: he has only a right to kill him in particular Cases; in Cases of absolute necessity for self defence; and it is plain that this absolute necessity did not subsist, since the victor did not actually kill him but made him prisoner. War is itself justifiable only on principles of self preservation; and therefore it gives no other right over prisoners but merely to disable them from doing harm to us by confining their persons: much less can it give a right to kill, torture, abuse, plunder, or even to enslave, an Enemy, when the War is over. Since, therefore the right of making Slaves by captivity, depends on a supposed right of Slaughter, that Foundation failing, the consequence drawn from it must fail likewise. But, secondly, it is said Slavery may begin Jure civili; when one man sells himself to another. This if only meant of Contracts to serve, or work for, another, is very just: but when applied to strict Slavery in the Sense of the laws of old Rome or modern Barbary, is also impossible. Every sale implies a price, a quid pro quo, an

" force and compulsion. But Hawkins considered it as cruel
" and unjust, and tried by persuasion, promises and threats
" to prevail on them to desist from a purpose so unwarrant-
= able and barberous. In vain did he urge his authority
" and instructions from the Queen: the bold & headstrong
" Sailors would hear of no restraints. Drunkenness
" and Avarice are deaf to the voice of humanity. They
" pursue their violent design, and, after several unsuc-
= cessful Attacks, in which many of them lost their
" Lives, the Cargoe was at length compleated by
" Barbarity and force.

" Hence arose that horrid and inhuman practice
" of dragging Africans into Slavery; which has
" since been so pursued, in defiance of every principle
" of justice and religion. Had negroes been bought
" from the Flames, to which in some Countries they
" were devoted on their falling prisoners of War, &
" in others, sacrificed at the funeral obsequies of the
" great and powerful among themselves; in short
" had they by this traffic been delivered from Torture
" or Death European Merchants might have some
" excuse to plead in its vindication. But according
" to the common mode in which it has been conducted,
" we must confess it a difficult matter to conceive
" a single Argument in its defence. And though

Policy

equivalent given to the seller in lieu of what
he transfers to the buyer: but what equivalent
can be given for Life, & Liberty, both of which, in
absolute Slavery, are held to be in the masters dis-
= posal? His property, also, the very price he seems
to receive, devolves ipso facto to his Master, the
instant he becomes a Slave. In this Case therefore
the buyer gives nothing, & the seller receives
nothing: of what validity then can a sale be,
which destroys the very principles upon which
all Sales are founded? Lastly we are told, that
besides these two ways by which Slaves are
acquired, they may also be hereditary; "servi
nascuntur"; the Children of acquired Slaves
are "jure naturæ", by a negative kind of birth-
= right, Slaves also. But this, being built on
the two former rights, must fall together
with them. If neither Captivity, nor the Sale
of one's self, can by the Law of nature &
reason reduce the parent to Slavery,
much less can they reduce the Offspring."
Thus by the most clear, manly, & convincing
reasoning does this excellent Author refute
every claim upon which the practice of Slavery

" policy has given Countenance & sanction to the trade,
" yet every candid and impartial man must confess,
" that it is atrocious and unjustifiable in every light,
" in which it can be viewed, and turns Merchants
" into a band of robbers, and trade into atrocious
" Acts of fraud, and violence." Historical Account
of South Carolina & Georgia - Anonymous.
London printed in 1779. page 20. &c.

" The number of Negroe Slaves bartered for in one year
" (viz. 1768. on the Coast of Africa from Cape Blanco, to
" Rio Congo, amounted to 104,100. Souls, whereof more
" than half (viz. 53,100. were shipped in Account of
" British Merchants, and 6,300. on the Account of British
" Americans. The Law of Retribution. by Granville
Sharpe Esq^r. page 147. note.

=

is founded, or by which it has been supposed
to be justified, at least, in modern times. But
were we even to admit, that a Captive taken in a
just War, might by his conqueror be reduced to
a state of Slavery, this could not justify the claim
of Europeans to reduce the natives of Africa
to that State: it is a melancholy, though well
known fact, that in order to furnish supplies
of these unhappy people for the purposes
of the Slave trade, the Europeans have constant-
=ly, by the most insidious (I had almost said
infernal) Arts, fomented a kind of perpetual
warfare among the ignorant & miserable
people of Africa; and instances have not
been wanting, where, by the most shameful breach
of faith, they have trepann'd & made Slaves
of the Sellers as well as the sold.* That such
horrid practices have been sanctioned by a
civilized nation; that a nation ardent in
the Cause of Liberty, and enjoying its blessings
in the fullest extent, can continue to vindi-
=cate a right established upon such a
Foundation,

* This note begins at the bottom of page 12. & which I now take beginning at this mark :*:

foundation; that a people who have declared
"That all men are by nature equally free and
independent," and have made this declaration
Bill of Rights art: 1. the first article in the foundation of their Government
established by them, should in deficience of so
sacred a truth, recognized by them in so solemn
a manner, and on so important an occasion,
tollerate a practice incompatible therewith, is such
an evidence of the weakness & inconsistency of
human nature, as every man who hath a spark
of patriotic fire in his bosom must wish to see
removed from his own country. If ever there
was a cause, if ever an occasion, in which all
hearts should be united, every nerve strained,
and every power exerted, surely the restoration of
human nature to its unalienable rights is such:
whatever Obstacles therefore, may hitherto have
retarded the attempt, he that can appreciate
the honor, and happiness of his Country, will
think it time that we should attempt to
surmount them.

But, how loudly soever reason, Justice, &
(may I not add) Religion+, condemn the practice
of Slavery, it is acknowledged to have been very
ancient

+ See the various tracts on this subject, by Granville Sharpe Esq: of London.

+ The Condition of a villein had most of the Incidents I have before described in giving the Idea of Slavery, in general. His services were uncertain & indeterminate, such as his Lord thought fit to require; or as some of our ancient writers express it, he knew not in the evening what he was to do in the morning, he was bound to do whatever he was commanded. He was liable to beating, imprisonment, and every other Chastisement his Lord could devise, except killing & maiming. He was incapable of acquiring property for his own benefit; he was himself the subject of property; as such saleable and transmissible. If he was a villein regardant he passed with the Land to which he was annexed, but might be severed at the will of his Lord; if he was a villein in gross, he was an hereditament, or a chattel real, according to his Lords interest; being descendible to the heir, where the Lord was absolute owner, and transmissible to the Executor where the Lord had only a term of years in him. Lastly, the Slavery extended to the issue, if the Father was a villein, our law deriving the Condition of the Child from that of the Father, contrary to the Roman law, in which the rule was, partus sequitur ventrem. Hargraves Case of negros Somerset page 26. & 27.

The same writer refers the origin of Villeinage in England

Harg: 22.

ancient, & almost universal. The Greeks the Romans & the ancient Germans also practised it, as well as the more ancient Jews & Egyptians. By the Germans it was transmitted to the various kingdoms & States which arose in Europe out of the ruins of the Roman Empire. In England it subsisted for some Ages under the name of villeinage.+ In Asia it seems to have been general, & in Africa universal, and so remains to this day: in Europe it hath long since declined; it's first declension there, is said to have been in Spain, so early as the eighth Century; and it is alledged to have been general about the middle of the fourteenth, and was near expiring in the sixteenth. when the discovery of the American continent, and the eastern & western Coasts of Africa gave rise to the introduction of a new species of Slavery. It took its origin from the Portuguese, who, in order to supply the Spaniards with persons able to sustain the fatigue of cultivating their new possessions in America, particularly the Islands, opened a trade between Africa & America for the sale of Negroes, about the year 1508. The expedient of having Slaves for labour was not long peculiar to the Spaniards, being afterwards adopted by other European Colonies: and though some

+ Harg: 16.

England, principally, to the wars between the British, Saxon, Danish & Norman nations contending for the sovereignty of that Country, in opposition to the opinion of Judge Fitzherbert, who supposes villeinage to have commenced at the Conquest. 16: 27. 28. — And this he proves from Spelman & other Antiquaries. 16: — the writ de nativo habendo, by which the Lord was enabled to recover his villein that had absconded from him, creates a presumption that all the natives of England were at some period reduced to a state of villeinage; the word natives, which signified a villein, most clearly designating the person meant thereby to be a native: this etymon is obvious, as well from the import of the word natives, as from the history of the more remote ages of the Inhabitants of Britain. Sir Edward Coke's etymology, "quia plerumque nascuntur servi," is one of those puerile conceits, which so frequently occur in his works, & are unworthy of so great a Man. Barrington in his Observations upon magna Carta c: 4: observes, that the villeins who held by servile tenures were considered as so many Negroes on a sugar plantation: the words "~~nativus~~ liber Homo," in

some attempts have been made to stop its progress in most of the United States, & several of them have the fairest prospects of success in attempting the extirpation of it, yet in others, it hath taken such deep root, as to require the most strenuous exertions to eradicate it.

The first introduction of negroes into Virginia happened, as we have already mentioned, in the year 1620. from that period to the year 1662. there is no existing compilation of our laws, in print, now to be met with. In the revision made in that year, we find an act declaring that no Englishmen, tradesmen, or others, who shall bring in any Indians as servants, and assign them over to any other, shall sell them for slaves, nor for any other time than Englishmen of like age should serve by act of assembly.

1662. c: 136.

1662. sep. 2. c: 12. The succeeding session All Children born in this Country were declared to be bond, or free, according to the Condition of the mother. In 1667. it was declared

1667. c. 2. "That the conferring of Baptism doth not alter the "Condition of the person baptised as to his Bondage "or freedom" — this was done, "that divers masters "freed from this doubt may more carefully endeavour

in Magna Carta. c. 14. with all deference to Sir Edward Coke, who says they mean a free-holder, I understand as meaning a free man+, as contradistinguished from a villein: for in the very next sentence the words "et villanus alterius quam noster", occur. Villiens must certainly have been numerous at that day, to have obtained a place in the great Charter. It is no less an evidence that their condition was in a State of melioration.

In Poland, at this day, the Peasants seem to be in an absolute State of Slavery, or at least of Villeinage, to the nobility, who are the Land-holders.

+ Liber Homo &c. "the Title of Freemen was formerly confined to the nobility & Gentry who were descended of free ancestors. — Burgh's political Disquisitions vol. 3. p. 400. who cites Spelman's Glossary, voce: Liber Homo.

* Among the Israelites, according to the Mosaical Law, "If a Man smote his Servant, or his Maid with a rod, and he died under his hand, he should surely be punished. Notwithstanding, if he continue a day or two, he should not be punished: for, saith the Text, he is
Ex. c. 21. his money. Our Legislators appear to have adopted the reason of the latter clause, without the humanity of the former part of the law. —

endeavour the propagating of Christianity, by permitting their Slaves to be baptised". It would have been happy for this unfortunate race of Men if the same tender regard for their Bodies, had always manifested itself in our Laws, as is shewn for their Souls in this act. But this was not the case, for two years after we meet with
1669. c. 1. an Act, declaring, "That if any Slave resist his Master, or others, by his Masters orders correcting him, and by the extremity of the correction should chance to die, such death should not be accounted felony; but the Master or other person appointed by his Master to punish him, be acquit from molestation: since it could not be presumed that prepensive malice which alone makes Murder felony should induce any man to destroy his own Estate".* This cruel & tyrannical
1705. c. 49. 1723. c. 4. 1748. c. 31. act, was, at three different periods+ reenacted with very little alteration; and was not finally
1788. c. 23. repealed till the year 1788. above a Century after it had first disgraced our Code. In 1668. we meet with the first traces of Emancipation in an Act
1668. c. 7. which subjects negroe women set free to the tax
1670. c. 5. on tytheables. Two years after, an Act passed prohibiting

prohibiting Indians or negroes, manumitted,
or otherwise set free, though baptised, from purchasing
Christian Servants. From this act it is evident that
Indians had before that time been made Slaves
as well as negroes, though we have not Traces of
the original Act by which they were reduced to
1670. c. 12. that Condition. An act of the same Session recites
that disputes had arisen whether Indians
taken in war by any other nation, and by that
nation sold to the English, are Servants for life,
or for a term of years, and declaring that all
Servants, not being Christians, imported into this
Country by shipping, shall be Slaves for their
Lifetime; but, that what shall come by Land,
shall serve, if Boys & Girls, until thirty years of
Age; if Men & Women twelve years, & no longer.
1679. c. 1. On a rupture with the Indians in the year 1679. it
was, for the better encouragement of Soldiers, declared
that what Indian prisoners should be taken in war
should be free purchase to the Soldier taking
1682. c. 1. them. Three years after it was declared that all
Servants brought into this Country by sea or Land,
not being Christians, whether Negroes, Moors,
Mulattoes or Indians, except Turks & Moors
in Amity with Great Britain, and all Indians

+ Hannah & others Indians, agt Davis. — Since this adjudication I have met with a manuscript act of Assembly made in 1691. c. 9. entituled "An act for a free trade with Indians" — the enacting clause of which is in the very words of the Act of 1705. c. 52. A similar title to an act of that Session occurs in the 2 dition of 1733. pa: 94. and the chapter is numbered as in the manuscript. — If this manuscript be authentic (which there is some reason to presume, it being copied in some blank leaves at the End of of Purvis's Ldō, and apparently written about the time of the passage of the act,) it would seem that no Indians brought into Virginia for more than a Century, nor any of their descendants, can be retained in Slavery in this Commonwealth.

which should thereafter be sold by neighbouring 122
Indians, or any others trafficking with us, as Slaves, should be Slaves to all intents & purposes. This
1705. c. 49. Act was reenacted in the year 1705. & afterwards
1753. c. 2. in 1753. nearly in the same terms. — In 1705. an
Act was made, authorising a free and open trade for all persons, at all times, and at all places, with all
1705. c. 52 Indians whatsoever. — On the authority of this Act, the General Court in april term 1787. decided that no Indians brought into Virginia since the passing thereof, ~~were~~ nor their Descendants, can be Slaves in this Commonwealth. + In October
1778. c. 1. 1778. the general Assembly passed the first Act which occurs in our Code for prohibiting the Importation of Slaves; thereby declaring that no Slave should thereafter be brought into this Commonwealth by Land, or by Water; and that every Slave imported contrary thereto, should upon such Importation be free: with an exception as to such as might belong to persons migrating from other States, or be claimed by descent, devise, or marriage, or be at that time the actual property of any Citizen of this Commonwealth, residing in any other of the United States, or belonging to travellers making a transient

transient stay, and carrying their Slaves away with them. — In 1785. this Act unfortunately underwent some alteration, by declaring that Slaves thereafter brought into this Commonwealth, and kept therein one whole year together, or so long at different times as shall amount to a year, shall be free. By this means the difficulty of proving the right to freedom will be not a little augmented: for the Fact of the first Importation, where the right to Freedom immediately ensued, might have been always proved without difficulty; but where a Slave is subject to removal from place to place, and his Right to freedom is postponed for so long a time as a whole year, or perhaps several years, the provisions in favor of Liberty may be too easily evaded. The same Act declares that no persons shall thenceforth be Slaves in this Commonwealth, except such as were so on the first day of that Session (Oct: 17. 1785.) and the descendants of the Females of them. This Act was re-enacted in the revisal made in 1792.+ In 1793. an additional act passed, authorising & requiring any Justice of the peace having notice of the Importation of any Slave directly or indirectly from any part of Africa or the West Indies, to cause such

+ See Acts of 1794. c. 103.

* Although it be true that the number of Slaves in the whole State bears the proportion of 292,427. to 747,610. the whole number of souls; in the State, that is, nearly as two to five; yet this proportion is by no means uniform throughout the state. — in the forty four Counties lying upon the Bay, & the great rivers of the State, and comprehended by a line including Brunswick, Cumberland, Goochland, Hanover, Spottsylvania, Stafford, prince William & Fairfax and the Counties easterly and thereof, the number of Slaves is 196,542. and the number of free persons, including free negroes & mulattoes, 198,371. only. So that the blacks in that populous and extensive district of Country are more numerous than the whites. In the second Class, comprehending nineteen Counties, and extending from the last mentioned line to the blue ridge, and including the populous Counties of Frederick & Berkeley, beyond the blue ridge, there are 82,286. Slaves, & 136,251. free persons; the number of free persons in this Class not being two to one, to the Slaves. In the third Class the proportion is considerably encreased; the eleven Counties of which it consists contain only 11,218. Slaves, & 76,281. free persons. This Class reaches to the Alleganey Ridge of mountains: the fourth & last Class, comprehending fourteen Counties westward

Edo of 1794. c. 164.

such Slave to be immediately apprehended & transported out of the Commonwealth. † — Such is the rise, progress, & present foundation of Slavery in Virginia so far as I have been able to trace it. The present number of Slaves in Virginia, is immense, as appears by the Census taken in 1791. amounting to no less than 292,427. Souls: nearly two fifths of the whole population of the Commonwealth. * We may console ourselves with the hope that this proportion will not encrease, the further Importation of Slaves being prohibited, whilst the free migrations of white people hither is encouraged. But this hope affords no other relief from the Evil of Slavery, than a diminution of those apprehensions which are naturally excited by the Detention of so large a number of oppressed individuals among us, and the possibility, that they may one day be roused to an attempt to shake off their Chains.

Whatever Inclination the first inhabitants of Virginia might have to encourage Slavery, a Disposition to check its progress, & Increase, manifested itself in the Legislature even before the close of the last Century. So long ago as the year 1699. we find the title of an Act, laying an Imposition upon Servants, & Slaves, imported into

† Edition of 1733. c. 12.

westward of the third class, contains only 2381. Slaves and 41,288. free persons. It is obvious from this Statement that almost all the dangers & Inconveniences which may be apprehended from a State of Slavery on the one hand, or an Attempt to abolish it, on the other, will be confined to the people eastward of the Blue-ridge of Mountains.

⁂ The following is a List of the acts, or titles of acts, imposing Duties on Slaves imported, which occur in the various Compilations of our Laws, or in the Sessions acts, or Journals.

1699. c. 12. Title only retained. Edition of 1733: pa: 113.
1701. c. 5. The same ---------- 116.
1704. c: 4. The same ---------- 122.
1705. c. 1. The same ---------- 126.
1710. c. 1. The same ---------- 239.
1712. c. 3. The same ---------- 282.
1723. c. 1. Repeald by proclamation ---------- 333.
1727. c. 1. Enacted with a suspending clause, & the royal Assent refused ---------- 376. 469.
1732. c. 3. printed at large ----------
1734. c. 3. printed at Large in Sessions Acts
1736. c. 1. The same.
1738. c. 6. The same.
1740. c. 2. The same.
1742. c. 2. The same.
From this period I have not been able to refer to the Sessions Acts.
1752. c. 1. printed at large in the Edition of 1769. p: 281.
1754. c. 1. The same ---------- 319.
1755. c. 2. Sessions Acts. 10 p Cent in Addition to all former duties - 1759. c. 1.

into this Country; which was either continued, revived, or encreased, by a variety of temporary acts, passed between that period and the revolution in 1776.⁂ — One of these acts passed in 1723. by a marginal note, appears to have been repealed by proclamation Oct: 24: 1724. In 1727. Another act with the same title occurs, which being passed with a suspending clause, the royal Assent was refused, as we are informed by another marginal note. In 1732. A duty of five per Cent was laid on Slaves imported, to be paid by the buyers; a measure calculated to render it as little obnoxious as possible to the English Merchants trading to Africa, and not improbably suggested by them, to the privy Council in England. The preamble to this act is in these remarkable words. "We your majesty's most dutiful & loyal subjects &c. taking into our serious consideration "the exigencies of your Government here, and that the "Duty laid upon liquors will not be sufficient to defray "the necessary expences thereof, do humbly represent to "your majesty, that no other duty can be laid upon "our imports or export, without oppressing your subjects, "than a duty upon Slaves imported to be paid by the "Buyers, agreeable to your majesty's Instructions "to your Lieut: Governor." This act was only for the short period of four years, but seems to have been continued from time to time till the year 1751. when the duty expired, but was revived the next year. In the year 1740.

1759. c. 1. printed at Large. Edition of 1769. . . . pa: 369.
1763. c. 1. Journals of that Session.
1766. c. 3. & 4. printed at Large. Edition of 1769. 461. 462.
—— c: 15. Additional Duty, the title only is printed, being repeald by the Crown } Ib: . . 473.
1769. c: 7. 8. & 12. Title only printed - Edition of 1785. pa: 6. 7.
1772. c. 15. Title only printed - - - - - - Ibidem . . 24.

☩ ☞ The following extract from a petition to the Throne presented from the House of ~~Delegates~~ Burgesses of Virginia — April 1. 1772. will shew the sense of the people of Virginia on the subject of Slavery at that period.

" The many instances of your majestys benevolent intentions and most gracious disposition to promote the prosperity and happiness of your Subjects in the Colonies, encourage us to look up to the Throne, and implore your majestys paternal assistance in averting a Calamity of a most alarming nature. "

"The Importation of Slaves into the Colonies from the Coast of Africa hath long been considered as a trade of great Inhumanity, and, under its present encouragement, we have too much reason to fear will endanger the very existence of your majestys american dominions. "

" We are sensible that some of your majestys Subjects in Great-Britain may reap Emoluments from this sort of Traffic, but when we consider that it greatly retards the Settlement of the Colonies, with more useful Inhabitants, and may, in Time, have the most destructive influence, we presume to hope that the Interest of a few will be disregarded when placed in competition with the Security and Happiness

the year 1740. an additional duty of five ℔ Cent was imposed for four years, for the purpose of an Expedition against the Spaniards, &c. to be likewise paid by the Buyers: and in 1742. the whole duty was continued till July 1. 1747. The act of 1752. by which these duties were revived and continued (as well as several former Acts) takes notice that the Duty had been found no ways burthensome to the Traders in Slaves. In 1754. an additional duty of five per Cent. was imposed for the term of three years, by an Act for encouraging and protecting the Settlers on the Mississipi: this duty, like all the former, was to be paid by the Buyers. In 1759. a duty of 20. ℔ Cent was imposed upon all Slaves imported into Virginia from Maryland, North Carolina, or other places in America, to continue for seven years. in 1769. the same duty was further continued. In the same Session the duty of five ℔ Cent was continued for three years; and an additional duty of ten per Cent. to be likewise paid by the Buyers was imposed for seven years; and a further duty of five per Cent. was by a seperate Act of the same Session imposed for the better support of the contingent Charges of Government, to be paid by the Buyers. In 1772. all these Duties were further continued for the Term of five years from the Expiration of the Acts then in force: the Assembly at the same time petitioned the Throne ☩, to remove all those restraints

and Happiness of such numbers of your majesty's dutiful and loyal subjects."

"Deeply impressid with these Sentiments, we most humbly beseech your Majesty to remove all those restraints on your majesty's Governors of this Colony, which inhibit their assenting to such Laws as might check so very pernicious a Commerce." Journals of the Ho. of Burgesses. pa. 131.

This Petition produced no effect, as appears from the first Clause of our Constitution, where among other Acts of misrule, "the inhuman Use of the royal negative" in refusing us permission to exclude Slaves from among us by Law, is enumerated, among the Reasons for seperating from Great-Britain.

which inhibited his Majesty's Governors assenting to such laws as might check so very pernicious a Commerce, as that of Slavery.

In the course of this Enquiry it is easy to trace the desire of the Legislature to put a stop to the further importation of Slaves; and had not this Desire been uniformly opposed on the part of the Crown, it is highly probable that Event would have taken effect at a much earlier period than it did. A Duty of five p Cent, to be paid by the Buyers, at first, with difficulty obtained the royal assent. Requisitions from the Crown for Aids, on particular Occasions, afforded a pretext from time to time for encreasing the duty from five, to ten, & finally to twenty per Cent, with which the Buyer was uniformly made chargeable. The wishes of the people of this Colony, were not sufficient to counter-balance the Interest of the English ~~Africans~~ Merchants, trading to Africa and it is probable, that however disposed to put a stop to so infamous a traffic by Laws, we should never have been able to effect it, so long as we might have continued dependent on the British Government: an object sufficient of itself to have justified a Revolution. That the Legislature of Virginia were sincerely disposed to put a stop to it,

+ It may not be improper here to note, that the first Congress of the United States, at their third Session, Dec.r 1793. passed an Act to prohibit the Carrying on the Slave trade from the United States to any foreign place or Country, the provisions of which seem well calculated to restrain the Citizens of United America from embarking in so infamous, ~~provisions~~ a traffick.

it cannot be doubted; for even during the Tumults & Convulsion of the Revolution, we have seen that they availed themselves of the earliest Opportunity, to crush forever so pernicious and infamous a Commerce, by an Act passed in October 1778. the penalties of which though apparently lessened by the Act of 1792. are still equal to the value of the Slaves, being two hundred Dollars upon the importer, and one hundred Dollars upon every person buying or selling an imported Slave. +

A system uniformly persisted in for nearly a whole Century, and finally carried into effect, so soon as the Legislature was unrestrained "by the inhuman exercise of the royal negative", evinces the Sincerity of that disposition which the Legislature had shewn during so long a period, to put a check to the growing Evil. From the time that the Duty was raised above five per Cent, it is probable that the Importation of Slaves into this Colony decreased. The demand for them in the more southern Colonies probably contributed also to lessen the numbers imported into this: for some years immediately preceeding the revolution, the Importation of Slaves into ~~this~~ Virginia might almost be considered

considered as at an End: and probably would have been entirely so, if the Ingenuity of the Merchant had not found out the means of evading the heavy Duty, by pretended Sales, at which the Slaves were bought in by some friend, at a Quarter of their real value. —

Tedious and uninteresting as this detail must appear to all others, a Citizen of Virginia will feel some satisfaction at reading so clear a Vindication of his Country, from the Opprobrium, but too lavishly bestowed upon her, of fostering Slavery in her Bosom, whilst she boasts a sacred Regard to the Liberty of her Citizens, and of Mankind in general. The Acrimony of such Censures must abate, at least in the Breasts of the candid, upon an impartial review of the Subject as here brought before them; and if in addition to what we have already advanced, they consider the difficulties attendant on any plan for the Abolition of Slavery in a Country, where so large a proportion of the Inhabitants are Slaves; and where a still larger proportion of the cultivators of the Earth are of that Description of Men, they will probably feel Emotions of sympathy and compassion, both for the Slave, & for his Master, succeed to those hasty prejudices

prejudices, which even the best Dispositions are not exempt from contracting upon subjects where there is a deficiency of information.

We are next to consider the Condition of Slaves in Virginia, or the legal Consequences attendant on a State of Slavery in this Commonwealth; and here it is not my Intention to notice those Laws, which consider Slaves, merely as property, and have from time been enacted to regulate the disposition of them, as such; for there will be more properly considered elsewhere; my Intention at present is therefore to take a view of such Laws, only, as regard Slaves, as a distinct Class of persons, whose rights, if indeed they possess any, are reduced to a much narrower Compass, than those, of which we have been speaking before.

Civil rights we may remember are reducible to three primary heads; The right of personal Security; the right of personal Liberty; and the Right of private property. In a State of Slavery the two last are wholly abolished, the person of the Slave being at the absolute disposal of his Master; and property, what he is incapable of, in that

☞ + The following remarks are intended to be here inserted as part of the text, & not as a note. - insert them after the Word Use.

Hence it will appear how perfectly irreconcileable a State of Slavery is to the principles of a Democracy, which ~~from made indeed to be~~ the basis and Foundation of our Government. For our Bill of Rights art: 1. declares "that all men are by nature equally free
" and independent, & have certain rights of which they
" cannot deprive, or divest their posterity - namely the
" Enjoyment of life and Liberty, with the means of
" acquiring and possessing property." This is indeed no ~~little~~ more than a recognition of the first principles of the law of nature, which teaches us this Equality, and ~~and~~ enjoins every man whatever advantages he may possess over another, as to the various Qualities and Endowments of Body or mind, to practise the precepts of the law of nature to those who are in them respects his inferiors, no less than it enjoins ~~them~~ his inferiors to practise them towards him. Since he has no more right to insult them, than they have to injure him. Nor does the bare unkindness of nature or of Fortune condemn a + Stevens Rights: vol. 1. c. 17. man to a worse Condition than others, as to the Enjoyment of common privileges. + - It would be hard to reconcile ~~it~~ reducing the Negroes to a State of Slavery to these principles, unless we first degrade them below the rank of human beings, not only politically, but

pa: 15. that State, either of acquiring, or holding, to his own use. + Slavery, says Hargrave, always imports an obligation of perpetual service, which only the Consent of the master can dissolve: it also generally gives to the master an arbitrary power of administring every sort of Correction, how= = ever inhuman, not immediately affecting life or Limb, and even them, in some Countries, as formerly in Rome, and at this day among the Asiatics & Africans, are left exposed to the arbitrary will of the master, or protected only by fines & other slight punishments. The property of the Slave also is absolutely the property of his master, the Slave himself being the subject of property, and as such saleable, or transmissible at the will of his master. - A Slavery, so malig= = nant as that here described, does not ~~even~~ leave to its wretched victims the least vestige of any civil right, and even divests them of all their natural rights. It does not, however, appear that the Rigors of Slavery in this Country were ever as great, as those above described: yet it must be confessed, that, at times, they have fallen very little short of them.

The first several Laws respecting Slaves, now to be met

† In Decr. term 1788. one John Hufton was tried in the General Court for the murder of a Slave; the Jury found him guilty of Manslaughter, and the Court upon a motion in arrest of Judgement discharged him, without any punishment. The General Assembly being then sitting, some of the members of the Court mentioned the Case, to some leading Characters in the Legislature, and the Act was at the same Session repealed.

Barbeyrac's notes on Puff: v. 1.

but also physically, & morally. — The Roman Lawyers look upon them only properly as persons, who are free, putting Slaves into the Rank of goods and Chattels; and the policy of our Legislatures, as well as the practice of Slave-holders in America in general seems conformable to that Idea: but surely it is time that we should admit the Evidence of moral truth, and learn to regard them as our fellow Men, & equals, except in those particulars where Accident, or perhaps nature may have given us some Advantage, a recompense for which they perhaps enjoy in other respects.

1669. c. 1. met with in our Code, is that of 1669, already mentioned, which declared that the death of a Slave resisting his master, or other person correcting him by his order, happening by extremity of the Correction, should not be accounted Felony. The
† 1705. c. 49. 1723. c. 4. 1748. c. 31. Alterations which this Law underwent in three successive Acts, were by no means calculated effectually to mitigate its severity; it seems rather to have been augmented by the Act of 1723. which declared that a person indicted for the murder of a Slave, and found guilty of manslaughter, † Should not incur any punishment for the same.

1788. c. 23. All these Acts were at length repealed in 1788. So that Homicide of a Slave stands now upon the same footing, as in the Case of any other person.

1672. c. 8. In 1672. it was declared ~~by~~ lawful for any person pursuing any runaway negro, Mulatto, Indian Slave, or Servant for life, by virtue of an hue and cry, to kill them in Case of Resistance, without being questioned for the same. A few

1680. c. 10. years afterwards this Act was extended to persons employed to apprehend runaways.

1705. c. 49. In 1705. these Acts underwent some small Alteration, two Justices being authorized by proclamation to outlaw runaways, who might thereafter be killed

be killed and destroyed by any person whatsoever, by such ways & means as he might think fit, without Accusation or Impeachment of any Crime for so doing: And if any such Slave were apprehended, he might be punished at the discretion of the County Court, either by dismembering or in any other manner not touching life. The inhuman rigor of this act was afterwards extended
1723. c. 4. 1748. c. 31. to the venial Offence of going abroad by night, if the Slave were notoriously guilty of it. — Such are the Cruelties to which a state of Slavery gives birth: Such the Horrors to which the human mind is capable of being reconciled, by its Adoption. The dawn of humanity at length appeared in the year
1769. c. 19. 1769. when the power of dismembering, even under the Authority of a County-Court, was restricted to the single offence of attempting to ravish a white woman, in which case the punishment is perhaps not more than commensurate to the Crime. In
1772. c. 9. 1772. some restraints were laid upon the practice of outlawing Slaves, requiring that it should appear to the satisfaction of the Justices that the Slaves were outlying, and doing Mischief. These loose Expressions of the Act left too much in the
9 Geo. 1794. c. 103. discretion of Men, not much addicted to weighing their Import. — In 1792. every thing relative to the outlawry

outlawry of slaves was expunged from our Code, and I trust will never again find a place in it. By the Act of 1680. a negroe, mulattoe or Indian, bond, or free, presuming to lift his hand in opposition to any Christian, should receive thirty Lashes on his bare back for every offence. The same Act prohibited Slaves from carrying any Club, Staff, Gun, Sword, or other weapon offensive or defensive. 1680. c. 10. 1705. c. 49.

This was afterwards extended to all negroes, mulattoes, and Indians whatsoever, with a few exceptions in favour of housekeepers, residents on a frontier plantation, & such as were enlisted in the militia. — Slaves, by these and other Acts, are prohibited from going abroad without leave in writing from their Masters, and if they do, may be whipped: any person suffering a Slave to remain on his plantation for four hours together, or dealing with him without leave in writing from his master, is subject to a fine.+ These provisions were in general re-enacted in 1792. but the punishment to be inflicted on a negroe or mulattoe, for lifting his hand against a white person, is restricted to those Cases, where the former is not wantonly assaulted. In this Act the word Indian appears to have been designedly omitted: the small number of their people, or their descendants remaining among us, concurring with a more liberal way of thinking, probably gave occasion to this circumstance. 1723. c. 4. 1705. c. 49. 1723. c. 4. 1748. c. 31. 1753. c. 2. 1785. c. 77. Edo of 1794. c: 103. 131.

The

+ Here lie herein the following.
"A Runaway Slave may be apprehended & committed to Jail, & if not claimed within three months (being first advertised) he shall be hired out, having an Iron Collar first put about his neck: and if not claimed within a year shall be sold. 1753. c. 2.

The Act of 1748. c. 31. made it felony without benefit of Clergy for a Slave to prepare, exhibit, or administer any medicine whatever, without the order or consent of the Master; but allowed Clergy if it appeared that the medicine was not administered with an ill intent; the Act of 1792. with more Justice directs that in such Case he shall be acquitted. — To consult, advise, or conspire to rebel, or to plot, or conspire the death of any person whatsoever is still felony without benefit of Clergy in a Slave. — Riots, routs, unlawful assemblies, trespasses and seditious speeches by Slaves, are punishable with stripes, at the discretion of a Justice of peace. — The Master of a Slave permitting him to go at large and trade as a freeman, is subject to a fine; and if he suffers the Slave to hire himself out the latter may be sold, and twenty five p Cent. of the price be applied to the use of the County. — Negroes & Mulattoes, whether Slaves or not, are incapable of being witnesses, but against, or between negroes & mulattoes; they are not permitted to intermarry with any white person; yet no punishment is annexed to the Offence in the Slave, nor is the marriage void; but the white person contracting the marriage, & the Clergyman by whom it is celebrated are liable to fine and imprisonment.

= 1794. c: 103.

1748. c. 31. 1794. c. 103.

1785. c. 77. 1794. c. 103.

1769. c. 19. = May 1782. c. 32. 1794. 16:

1785. c. 77. 1794. 16.

= 1753. c. 2. 1794. 16.

imprisonment; and this is probably the only instance in which our laws will be found more favourable to a Negroe than a white person. Then provisions though introduced into our Code at different periods, were all re-enacted in 1792.

Edo. of 1794. c. 103.

From this melancholy review it will appear that not only the right of property, and the right of personal liberty, but even the right of personal Security, has been, at times, either wholly annihilated, or reduced to a shadow: and even in these days, the protection of the latter seems to be confined to very few Cases. Many actions indifferent in themselves, being permitted by the law of nature to all mankind, and by the laws of Society to all free persons, are either rendered highly criminal in a Slave, or subject him to some kind of punishment or restraint. Nor is it in this respect only, that his Condition is rendered thus deplorable by laws. The measure of punishment for the same Offence, is often, and the manner of trial and Conviction is always, different in the Case of a Slave, and a free-man. If the latter be accused of any Crime, he is entitled to an Examination before the Court of the County where the Offence is alledged to have been committed;

whose

whose decision, if in his favor, is held to be a legal, and final acquittal, but it is not final if against him: for after this, both a grand jury, and a petit jury of the County, must successively pronounce him guilty; the former by the concurrent voices of twelve, at least, of their body, and the latter by their unanimous verdict upon oath. He may take exception to the proceedings against him by a motion in arrest of Judgement; and in this case, or if there be found a special Verdict, the same unanimity between his Judges, as between his Jurors, is necessary to his Condemnation: lastly, though the punishment which the laws pronounces for his offence amount to death itself, he shall in many cases have the benefit of clergy, unless he has before received it. But in the case of a Slave, the mode was formerly, and still remains essentially different. How early this distinction was adopted I have not been able to discover. The title of an Act occurs, which passed in

1705. c. 11. the year 1705. for the Speedy and easy prosecution of Slaves committing capital Crimes. In 1723.

1723. c. 4. the Governor was authorised, whenever any Slave was committed for any capital Offence, to issue a special Commission of oyer and terminer, to such persons

persons as he should think fit, the number being left to his discretion, who should thereupon proceed to the trial of such Slave, taking for Evidence the Confession of the defendant, the oath of one, or more credible witnesses, or such testimony of negroes, mulattoes, or Indians, bond or free, with pregnant circumstances, as to them should seem convincing, without the solemnity of a Jury.

1748. c. 31. No Exception, formerly, could be taken to the proceedings on the trial of a Slave, but that proviso is omitted in the act of 1792. and the Justices moreover seem bound

Edi 1794. c. 103. to allow him Counsel for his Defence, whom fee shall be paid by his Master. In Case of Conviction Execution of the Sentence was probably very speedily performed, since the act of 1748. provides that, thereafter, it should not be performed in less than ten days, except in Case of Insurrection or Rebellion; and further, that if the Court be divided in Opinion the accused should be acquitted. In

1764. c. 9. 1764. An Act passed authorizing General, instead of Special Commissions of oyer & terminer, constituting all the Justices of any County, Judges for the trial of Slaves, committing capital Offences, within their respective Counties; any four of whom, one being of the Quorum, should constitute a Court for that

1772. c. 9. purpose. In 1772. one step further was made in favor of humanity, by an Act declaring that no Slave

Slave shall thereafter be condemned to die unless four of the Court should concur in Opinion of his Guilt. - The Act of 1786. c. 58. confirmed by that of 1792. constitutes the Justices of every County and Corporation Justices of oyer & terminer for the trial of Slaves; requires five Justices, at least, to constitute a Court, and unanimity in the Court for his Condemnation; allows him Counsel for his Defence to be paid by his owner, and, I apprehend, admits him to object to the proceedings against him; & finally enlarges the time of Execution to thirty days, instead of ten, except in Cases of Conspiracy, Insurrection or Rebellion, and extends the Benefit of Clergy to him in all Cases, where any other person should have the benefit thereof, except in the Cases before mentioned.

9 do 1794. c: 103.

To an attentive observer these gradual, and almost imperceptible Amendments in our Jurisprudence respecting Slaves, will be found, upon the whole, of infinite importance to that unhappy race. The mode of trial in criminal Cases, in especially, is rendered infinitely more beneficial to them, than formerly, though perhaps still liable to Exception for want of the Aid of a Jury: the Solemnity of an Oath administered the moment that the trial commences, may be considered as operating more forcibly on the Mind, than a general Oath of Office, taken

taken, perhaps, twenty years before. Una=
=nimity, may also be more readily expected to
take place among five Men, than among twelve.
These objections to the want of a Jury are not
without weight: on the other hand it may be
observed that if the number of Triers, be not
equal to a full Jury, they may yet be con=
=sidered as more select; a circumstance of
infinitely greater importance to the Slave.
The Unanimity requisite in the Court in order
to Conviction, is a more happy requisition
to the accused, than may at first appear.
The Opinions of the Court must be delivered
openly, immediately, and seriatim, beginning
with the youngest Judge. A single voice in favor
of the accused, is an acquittal, for Unanimi=
=ty is not necessary, as with a Jury, to acquit,
as well as to condemn: there is less danger
in this mode of trial, where the Suffrages are to
be openly delivered, that a few will be brought
over to the Opinion of a Majority, as may
too often happen among Jurors, whose Deli=
=berations are in private, & whom Impatience
of Confinement may go further than real Con=
=viction, to produce the requisite Unanimity.

That

That this happens not unfrequently in civil Cases, there is too much reason to believe; that it may also happen in ~~civil~~ criminal Cases, especially where the party accused is not one of their equals, might, not unreasonably, be apprehended. In Newyork, before the revolution, a Slave accused of a capital Crime, should have been tried by a Jury if his master required it. This, is perhaps stile the Law of that State. Such a provision might not be amiss in this; but considering the ordinary run of Juries in the County Courts, I should presume the privilege would be rarely insisted upon.

Slaves, we have seen, are now entituled to the Benefit of Clergy in all Cases where it is allowed to any other Offenders, except in Cases of consulting, advising, or conspiring to rebel, or make insurrection; or plotting, or conspiring to murder any person; or preparing, exhibiting, or administering Medicines with an ill intent. The same Lenity was not extended to them formerly. The Act of 1748. c. 31. denied it to a Slave in Case of Manslaughter; or the felonious breaking & entering any house, in the night time: or the breaking & entering any house in the day time, and taking therefrom goods to the value of twenty Shillings

shillings. The act of 1764. c. 9. extended the Benefit of Clergy, to a Slave convicted of the manslaughter of a Slave; and the act of 1772. c. 9. extended it further, to a Slave convicted of house breaking in the night time, unless such breaking be Burglary; in the latter case other offenders would be equally deprived of it. But wherever the Benefit of Clergy is allowed to a Slave the Court, besides burning him in the hand (the usual punishment inflicted on free persons) may inflict such further corporal punishment as they may think fit: this also seems to be the case in the case of free Negroes and mulattoes. By the act of 1723. c. 4. it was enacted, that when any negroe or mulattoe shall be found, upon due proof made, or pregnant circumstances, to have given false testimony, every such offender shall without further trial, have his ears successively nailed to the pillory for the space of an hour, and then cut off, and moreover receive thirty nine Lashes on his bare back, or such other punishment as the Court shall think proper not extending to Life or Limb. This act, with the exception of the words pregnat circumstances was re-enacted in 1792. The punishment for perjury, in the case of a white person, is only a fine & Imprisonment. A Slave convicted of

1794. c. 103.

Hog stealing

1748. c. 33.
1794. c. 98.

Hogstealing shall for the first offence receive thirty nine Lashes: any other person twenty five: but the latter is also subject to a fine of thirty Dollars, besides paying eight Dollars to the Owner of the Hog. The punishment for the second and third Offence, of this kind, is the same in the case of a free person, as of a Slave; namely by the pillory & loss of ears, for the second Offence: the third is declared felony, to which Clergy is, however, allowed. The preceding are the only positive distinctions which now remain between the punishment of a Slave, and a white person, in those Cases, where the latter is liable to a determinate corporal punishment. But we must not forget that many actions, which are either not punishable at all, when perpetrated by a white person, or at most, by fine and Imprisonment, only, are liable to severe corporal punishment, when done by a Slave; nay, even to death itself, in some Cases. To go abroad without a written ~~permission~~ permission; to keep or carry a Gun, or other weapon; to utter any seditious Speech; to be present at any unlawful Assembly of Slaves; to lift the hand in opposition to a white person, unless wantonly assaulted, are

1794. c. 103. are all offences punishable by whipping. To attempt the Chastity of a White-woman, forcibly, is punishable by dismemberment: Such an Attempt would be a high Misdemeanour in a white free Man, but the punishment would be far short of that of a Slave. — To administer medicine

Ibidem. without the order or consent of the Master, unless it appear not to have been done with an ill intent; to consult, advise, or conspire to rebel or make insurrection; or to conspire or plot to murder any person, we have seen, are all capital Offences, from which the Benefit of Clergy is utterly excluded. But a bare Intention to commit a Felony, is not punishable, in the Case of a free White Man; and even the Attempt if not attended with an actual breach of the peace, or prevented by such Circumstances, only, as do not tend to lessen the guilt of the Offender, is at most a Misdemeanour by the Common Law: and in [redacted] statutable Offences in general, to consult, advise, and even to procure any person to commit a Felony, does not constitute the Crime of Felony in the Adviser or procurer, unless the Felony be actually perpetrated.

From

From this view of our Jurisprudence respecting Slaves, we are unavoidably led to remark, how frequently the laws of nature have been set aside in favor of institutions, the pure result of prejudice, Usurpation, and tyranny. We have found actions, innocent, or indifferent, punishable with a rigor scarcely due to any, but the most atrocious, Offences against civil Society; Justice distributed by an unequal measure to the master and the Slave; and even the hand of Mercy arrested, where Mercy might have been extended to the wretched Culprit, had his complexion been the same with that of his Judges: for, the short period of ten days between his Condemnation & Execution, was often insufficient to obtain a pardon for a Slave, ~~convicted~~ convicted in a remote part of the Country, whilst a free man, condemned at the Seat of Government, & tried before the Governor himself, in whom the power of pardoning was vested, had a respite of thirty days to implore the Clemency of the Executive Authority. — It may be urged, & I believe with

with truth, that these rigors do not proceed from a sanguinary temper in the people of Virginia, but from those political considerations indispensibly necessary, where Slavery prevails to any great extent: I am moreover happy to observe that our police respecting this unhappy class of people, is not only less rigorous than formerly, but perhaps milder than in any other Country+, where there are so many Slaves, or so large a proportion of them, in respect to the free inhabitants: it is also, I trust, unjust to censure the present Generation for the existence of Slavery in Virginia; for I think it unquestionably true that a very large proportion of our fellow-citizens lament that as a misfortune, which is imputed to them as a Reproach; it being evident from what has been already shewn upon the Subject, that, antecedent to the Revolution, no exertion to abolish, or even to check the progress of Slavery, in Virginia, could have received the smallest countenance from the Crown, without whose Assent the limited wishes and Executions of every individual here, would have been wholly fruitless & ineffectual: it

+ See Jefferson's notes. 259. — The marquis de Chastellux Travels: I have not noted the page: The Law of Retribution; by Granville Sharpe. pa: 151. 238 notes. The Just Limitation of Slavery: by the same Author — pa 15. note. Ibidem pa: 33. 50. 86: append: no: 2. — Encyclopédie. Tit: Esclave.

it is, perhaps, also demonstrable, that at no period since the revolution, could the Abolition of Slavery in this State have been safely undertaken until the Foundations of our newly established Governments had been found capable of supporting the Fabric itself, under any shock, which so arduous an attempt might have produced. But these obstacles being now happily removed Considerations of policy, as well as Justice and Humanity, must evince the necessity of eradicating the Evil, before it becomes impossible to do it, without tearing up the roots of civil Society with it.

Having in the preceeding part of this enquiry shewn the origin & foundation of Slavery, or the manner in which Men have become Slaves, in Virginia; as also who are liable to be retained in Slavery, in Virginia, at present, with the legal Consequences attendant upon their Condition; it only remains to consider the mode by which Slaves have been or may be emancipated, and the legal Consequences thereof, in this State.

Manumission among the Israelites, if the Bondman were an Hebrew, was enjoyned after six years Service, by the Mosaical Laws, unless the Servant chose to continue

continual with his Master, in which Case the Master
carried him before the Judges, and took an Awl, and
thrust it through his Ear into the Door, and from thence-
forth he became a Servant forever: but if he sent him
away free, he was bound to furnish him liberally out of his
flock, & out of his floor, & out of his winepress. Among
the Romans, in the time of the Commonwealth, Liberty
could be conferred only three ways. By testament, by
the Census, & by the Vindicta, or Lictors rod. A man was
said to be free by the Census, "liber Censu," when his name
was inserted in the Censor's roll, with the approbation of
his Master. When he was freed by the Vindicta, the Master
placing his hand upon the head of the Slave, said in the
presence of the Prætor, it is my desire that this man
may be free, "hunc Hominem liberum esse volo"; to
which the Prætor replied, I pronounce him free
after the manner of the Romans, "dico eum liberum esse
more Quiritum". - Then the Lictor, receiving the
Vindicta struck the new freed man several blows
with it, upon the head, face, & back, after which his
name was registered in the roll of freed-Men, and his
head being close shaved, a Cap was given him as a token
of Liberty. Under the imperial Constitutions Liberty
might have been conferred by several other Methods,
as in the face of the Church, in the presence of Friends,
or by Letter, or by Testament. - But it was not in the
power of every Master to manumit at will; for if

Exod: c: 21.
Deut: c. 15.

Ibid:

Harris's Just:
in notis.

Just. Inst:
Lib: 1. Tit: 5.

it

Just: Inst: Lib: 1. Tit: 6.

it were done with an intent to defraud Creditors the Act was void: That is, if the Master were insolvent at the time of manumission, or became insolvent by manumission, and intentionally manumitted his Slave for the purpose of defrauding his creditors. A minor, under the age of twenty years could not manumit his Slave but for a just Cause assigned, which must have been approved by a Council, consisting of the prator, five Senators, & five Knights. — In England, the mode of enfranchising Villeins is said to have been thus prescribed by a Law of William the Conqueror. "If any person is willing to enfranchise his Slave, let him with his right hand, deliver the Slave to the Sheriff in a full County, proclaim him exempt from the Bond of servitude by manumission, Shew him open gates, and ways, and deliver him free Arms, towit, a Lance and a Sword; thereupon he is a free man." — But after that period freedom was more generally conferred by Deed, of which Mr. Harris, in his notes upon Justinian, has furnished a precedent.

16: Harris's Just: in notis.

Harris's Just: in not:

In what manner manumission was performed in this Country during the first Century after the Introduction of Slavery does not appear: the Act of 1668. before mentioned†, Shews it to have been practised before that period. In 1723. an Act was passed, prohibiting the manumission of Slaves, upon any pretence whatsoever, except for meritorious Services, to be adjudged, & allowed by the Gover-

ante pa: 20.

1723. c. 4.

= nor

⁂ There are more free Negroes & mulattoes in Virginia alone, than are to be found in the four New England States. and Vermont in addition to them. The progress of Emancipation in this State is therefore much greater than our eastern Brethren may at first suppose. There are only 1087. free negroes & mulattoes, in the States of newyork, New Jersy and Pennsylvania, more, than in Virginia. Those who take a subject in the Gross, have little Idea of the result of an exact Scrutiny. Out of 20848. Inhabitants on the eastern shore of Virginia 1185. were free Negroes & mulattoes when the Census was taken. The number is since much augmented.

May 1782. c. 21.

Governor & Council. This claim was reenacted in 1748. and continued to be the Law, until after the revolution was accomplished. The number of manumissions under such restrictions must necessarily have been very few. In May 1782. an act passed authorising, generally, the manumission of Slaves, but requiring such as might be set free, not being of sound mind or body, or being above the age of forty five years, or Males under twenty one, or Females under eighteen, to be supported by the person liberating them, or out of his Estate. The act of manumission may be performed either by will, or by Deed, under the hand & Seal of the party, acknowledged by him, or proved by two witnesses in the Court of the County where he resides. There is reason to believe that great numbers have been emancipated since the passing of this act: By the Census of 1791. it appears that the number of free negroes, mulattoes, and Indians, in Virginia, was then 12866. It would be a large allowance, to suppose that there were 1800. free negroes & mulattoes in Virginia, when the act took effect, so that upwards of ten thousand ⁂ must have been indebted to it for their Freedom. The number of Indians & their descendants in Virginia at present is too small to require particular notice. The progress of Emancipation in Virginia, is at this time

* The Act of 1795. c. 11. Enacts that any person held in slavery may make complaint to a Magistrate, or to the Court of the district County or Corporation wherein he resides, if not elsewhere. The Magistrate, if the complaint be made to him, shall issue his warrant to summon the owner before him, & compel him to give Bond & security to suffer the Complainant to appear at the next Court & petition the Court to be admitted to sue in forma pauperis. if the Owner refuse. the Magistrate shall order the Complainant into the Custody of the Officer serving the warrant at the Expence of the master, who shall keep him until the sitting of the Court, & then produce him before it. — Upon Petition to the Court, if the Court be satisfied as to the material facts they shall assign the Compld Counsil, who shall state the facts with his Opinion thereon to the Court; and unless from the circumstances so stated, & the Opinion thereon given the Court shall see manifest reason to deny their interference they shall order the Clerk to issue process agt the owner, & the Complainant shall remain in the Custody of the Sheriff until the Owner shall give Bond & security to Leave him forthcoming to answer the Judgt. of the Court. And by the general Law in Cases of paupers suits. the Complainant shall have writs of subpoena gratis. and by the practice of the Courts he is permitted to attend the taking the depositions of witnesses, and go & come freely to & from Court, for the prosecution of his suit.

1794. c. 103.

time continual, but not rapid; a second Census will enable us to form a better Judgement of it than at present. The Act passed in 1792. accords in some degree with the Justinian Code, by providing that Slaves emancipated may be taken in Execution to satisfy any debt contracted by the person emancipating them, before such Emancipation is made. *

Just. Inst: Lib. 1. Tit. 5.

Among the Romans, the libertini, or freed-men, were formerly distinguished by a three fold division. They sometimes obtained what was called the greater liberty, thereby becoming Roman-Citizens. To this privilege then who were enfranchised by Testament, by the Census, or by the Vindicta, appear to have been alone admitted: Sometimes they obtained the lesser Liberty only, and became Latins; whose Condition is thus described by Justinian. "They never enjoyed the right "of succession; [to estates]. — for although they had the "lives of free men, yet with their last breath they lost "both their lives and liberties; for their possessions, "like the goods of Slaves, were detained by the manu- "mittor." Sometimes they obtained only the inferior Liberty, being called Dedititii: Such were Slaves who had been condemned as Criminals, and afterwards obtained Manumission through the Indulgence of their Masters: their Condition was equalled with that of conquered revolters, whom the Romans called, in Reproach, Dedititii, quia se suaque omnia dedi- dennah

Harris's Instt. Lib: 3. Tit: 8.

dedidierunt: but all these distinctions were
Inst: Lib: 1. abolished by Justinian, by whom all freed men in
Tit: 5. S. 3. general were made Citizens of Rome, without regard
to the form of manumission. — In England, the
presenting the Villein with free arms, seems to have
been the symbol of his restoration to all the rights
which a feudatory was entitled to. With us, we
have seen that Emancipation does not confer the right
of Citizenship on the person emancipated; on the contrary
that both he and his posterity, of the same complexion
with himself, must always labour under many
civil incapacities. If he is absolved from personal
restraint, or corporal punishment, by a master, yet
the laws restrain his Actions in many instances,
where there is none upon a free white-man. If he
can maintain a suit, he can not be a witness,
a Juror, or a Judge in any controversy between one
of his own Complexion and a white person. If he
can acquire property in Lands, he can not exercise
the right of suffrage, which such a property would
confer upon his former master; much less can he
assist in making those Laws by which he is bound.
Yet, even under these disabilities, his present Condition
bears an enviable pre-eminence over his former state.
Postponing the Liberty of loco-motion, which was formerly
denied him, it is in his choice to submit to that civil
inferiority

* The number of slaves in the United States at the time of the late Census was something under 700,000.

† Mr. Jefferson most forcibly paints the unhappy influence on the manners of the people produced by the existence of slavery among us. The whole Commerce between Master & Slave, says he, is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it, for man is an imitative animal. This quality is the germ of education in him. From his cradle to his grave he is learning what he sees others do. If a parent had no other motive, either in his philanthrophy or — his self love, for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. But generally it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners & morals undepraved by such circumstances. And with what execrations should the statesman be loaded, who permitting one half the citizens thus to trample on the rights

inferiority, inseperably attached to his condition in this Country, or seek some more favourable Climate, where all distinctions between men are either totally abolished, or less regarded than in this.

The Extirpation of Slavery from the United States, is a Task equally arduous and momentous. To restore the Blessings of liberty to near a million * of oppressed individuals, who have groaned under the Yoke of Bondage, and to their descendants, is an object, which those who trust in providence, will be convinced would not be unaided by the divine Author of our Being, should we invoke his Blessing upon our Endeavours. Yet human prudence, ~~perhaps~~, forbids that we should precipitately engage in a work of such hazard as a general, and simultaneous Emancipation. The Mind of Man must in some measure be formed for his future Condition. The early impressions of obedience and submission, which Slaves have received among us, and the no less habitual Arrogance & Assumption of superiority, among the Whites, ~~equally~~ contribute, equally, to unfit the former for Freedom, and the latter for Equality †. — To expel them all at once, from the United States, would in fact be to devote them only to a lingering death by Famine, by Disease, and other accumulated Miseries: "we have in History but

rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the amor patriæ of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labour for another: in which he must lock up the faculties of his nature, contribute as far as depends on his individual endeavours to the evanishment of the human race, or entail his own miserable condition on the endless generations proceeding from him. With the morals of the people, their industry also, is destroyed. For in a warm climate, no man will labour for himself who can make another labour for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labour. And can the liberties of a nation be ever thought secure when we have removed their only firm basis, a conviction in the minds of the people, that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep forever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural

Law from Jas Sullivan 3d Sy. Dr. Belk. 74.

Dr. Belknap

"History but one picture of a similar enterprise, and there we see it was necessary not only to open the sea by a miracle, for them to pass, but more necessary to close it again to prevent their return." To retain them among us, would be nothing more than to throw so many of the human race upon the Earth without the means of subsistence: they would soon become idle, profligate, & miserable. Unfit for their new condition, and unwilling to return to their former laborious course, they would become the Caterpillars of the Earth, and the Tigers of the human race. The recent history of the French West-Indies exhibits a melancholy picture of the probable consequences of a general, and momentary Emancipation in any of the States, where Slavery has made a considerable progress. In Massachusetts the abolition of it was effected by a single stroke; a clause in their Constitution: but the whites at that time, were as sixty five to one, in proportion to the blacks. The whole number of free persons in the United States, South of Delaware State, are 1,233,829. and there are 648.439. Slaves; the proportion being less than two to one. Of the Cultivators of the Earth in the same District, it is probable that there are four Slaves for one free white man. — To discharge the former from

=ral interference! The Almighty has no attribute which can take side with us in such a contest. — But it is impossible to be temperate and to pursue this subject through the various considerations of pol=-=cy, of morals, of history natural & civil. We must be contented to hope they will force their way into every one's mind. I think a change already perceptible since the origin of the present revolution. The spirit of the master is abating that of the slave rising from the dust, his condition mollifying, the way I hope preparing, under the auspices of hea=-=ven, for a total emancipation, and that this is dis=posed, in the order of events, to be with the consent of their masters, rather than by their extirpation.

Notes on Virginia, 298.

† What is here advanced is not to be understood as implying an Opinion that the labour of Slaves is more productive than that of freemen. — The Author of the Treatise on the Wealth of nations, informs us, "That is appears from the experience of all ages & nations, that the work "done by freemen comes cheaper in the end than that done "by Slaves. That it is found to do so, even in Boston, "Newyork & Philadelphia, where the wages of common "Labour are very high." Vol: 1. pa: 123. Lond: Edn Oct: Admitting this conclusion, it would not remove the Objection that emancipated Slaves would not willingly labour.

from their present condition, would be attended with an immediate general famine, in those parts of the United States, from which not all the productions of the other States, could deliver them; Similar evils might reasonably be apprehended from the adoption of the measure by any one of the southern states; for in all of them the proportion of Slaves is too great, not to be attended with calamitous effects, if they were immediately set free.† There are serious, I had almost said, insur=-=mountable Obstacles, to a general, simultaneous Emancipation. There are other Considerations not to be disregarded. A great part of the property of Individuals consists in Slaves. The laws have sanctioned this species of property. Can the laws take away the property of an individual without his own Consent, or without a just Compensation.[2] Will those who do not hold Slaves agree to be taxed to make this Compensation.[2] Creditors also, who have trusted their Debtors upon the faith of this visible property will be defrauded.[2] If Justice demands the Emancipation of the Slave, she also, under these circumstances, seems to plead for the Owner, and for his Creditor. The Claims of nature, it will be said are stronger than those which arise from

from Social institutions, only. I admit it, but
nature also dictates to us to provide for our own
Safety, and authorizes all necessary measures for
that purpose. Had we shewn, that our own
Security, nay, our very existence might be endan-
-gered by the hasty adoption of any measure for the
immediate relief of the whole of this unhappy
race. Must we then quit the subject in despair
of the success of any project for the Amendment of
their, as well as our own, Condition? I think
not. - Strenuously as I feel my mind opposed to
a simultaneous Emancipation, for the reasons
already mentioned, the Abolition of Slavery in
the United States, and especially in that State,
to which I am attached by every tie that nature
and Society form, is now my first, and will probably
be my last, expiring wish. But here let me avoid the
imputation of inconsistency, by observing, that the
Abolition of Slavery may be effected without the
Emancipation of a single Slave; without depriving
any man of the property which he possesses, and
without defrauding a Creditor who has trusted him
on the faith of that property. The experiment in
this mode has already been begun in some of our
sister States. Pennsylvania, under the direction of

† Doctor Franklin it is said drew the Bill for the gradual abolition of slavery in Pa.

+ It is probable that similar laws have been passed in some other states; but I have not been able to procure a note of them.

‡ The object of the Amendment proposed to be offered to the Legislature was to emancipate all Negroes born after a certain period; and further directing that they should continue with their parents to a certain age, then be brought up, at the public expence to labour, arts or sciences, according to their genius, till the females should be eighteen, and the males twenty one years of age, when they should be colonized to such a place as the circumstances of the time should render most proper; sending them out with arms, implements of household and of the handicraft arts, seeds, pairs of the useful domestic animals, &c. to declare them a free and independant people, and extend to them our alliance and protection, till they shall have acquired strength; and to send vessels at the same time to other parts of the world for an equal number of white inhabitants; to induce whom to migrate hither, proper encouragements should be proposed. Notes on Virga 251.

of the immortal Franklin†, began the work of gradual Abolition of Slavery in the year 1780, by enlisting Nature herself, on the side of humanity. Connecticut followed the Example four years after+. New York very lately made an Essay which miscarried, by a very inconsiderable majority. Mr. Jefferson informs us, that the Committee of Revisors, of which he was a member, had prepared a Bill for the Emancipation of all Negroes born after passing that act. This is conformable to the Pennsylvania & Connecticut Laws. — Why the measure was not brought forward in the General Assembly I have never heard. possibly because objections were foreseen ~~not only to the principle of the Bills in general, but especially~~ to that part of the Bill which relates to the disposal of the Blacks, after they had attained a certain age.‡ It certainly seems liable to many, both as to the policy & the practicability of it. To establish such a Colony in the Territories of the United States would probably lay the foundation of intestine Wars, which would terminate only in their extirpation, or final Expulsion. To attempt it in any other Quarter of the Globe would ~~probably~~ be attended with the utmost Cruelty to the Colonists, themselves, and the destruction of their whole Race. If the plan ~~were avoided in operation~~ were at this moment in operation it would require the annual Exportation of 12000, persons. This requisite number, must for

for a series of years be considerably increased, in order to keep pace with the increasing population of those people. In twenty years it would amount to upwards of twenty thousand persons; which is ~~more than~~ half the number which are now supposed to be annually exported from Africa. — Where should we find ships sufficient? for even in the miserable trade from Africa a ship is not supposed to carry more than one Slave for every ton of her burthen. — Where would a Fund to support this expence be found? Five times the present Revenue of the State would barely defray the charge of their passage. Where provisions for their support after their arrival — Where those necessaries which must preserve them from perishing — Where a territory sufficient to support them? — Or where could they be received as friends, & not as Invaders? To colonize them in the United States might seem less difficult. If the Territory to be assigned them were beyond the Settle= ments of the Whites, would they not be ~~placed~~ put upon a forlorn hope against the Indians? Would not the Expence of transporting them thither, & supporting them, at least for the first & second year, be also far beyond the Revenues & ability of the State. The expence attending a small army in that Country hath been found enormous. To transport as many Colonists annually, as we have shewn were necessary to eradicate the Evil, would probably require five times as much money as the support of such

+ I will probably be asked, why not retain the blacks among us and incorporate them into the State? Deep rooted prejudices entertained by the Whites; ten thousand recollections by the Blacks, of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances will divide us into parties and produce convulsions, which will probably never end but in the extermination of one or the other race. To these objections which are political may be added others which are physical & moral. The first difference which strikes us is that of Colour. — &c — The circumstance of superior Beauty is thought worthy attention in the propagation of our horses, dogs, and other domestic animals; why not in that of man? &c. In general their existence appears to participate more of sensation than reflection. Comparing them by their faculties of memory, reason & Imagination, it appears to me that in memory they are equal to the whites; in reason much inferior, that in Imagination they are dull, tasteless & anomalous. &c. The Improvement of the Blacks in body and mind, in the first instance of their mixture with the whites, has been observed by every one, and proves that their inferiority is not the effect merely of their Condition of life. We know that among the Romans, about the Augustan Age, especially, the Condition of their Slaves was much more deplorable, than that of the Blacks on the continent of America. Yet among the Romans their Slaves were often their rarest Artists. They excelled too in Science, insomuch as to be usually employed as Tutors to their Masters Children. Epictetus, Terence, & Phædrus were Slaves

such an Army. But the expence would not stop there: they must be assisted & supported at least for another year after their arrival in their new settlements. Suppose them arrived — Illiterate and ignorant as they are, is it probable that they would be capable of instituting such a Government in their new Colony, as would be necessary for their own internal happiness, or to secure them from destruction from without? European Emigrants, from whatever country they arrive, have been accustomed to the restraint of Laws, and to respect for Government. Their people accustomed to be ruled with a rod of Iron, will not easily submit to milder restraints. They would become Hordes of Vagabonds, Robbers, & Murderers. Without the aids of an enlightened policy, Morality, or Religion, what else could be expected from their Still savage State, & debased Condition? — "But why not retain & incorporate the Blacks into the State"? + This Question has been well answered by Mr. Jefferson, and who is there so free from prejudices among us, as candidly to declare that he has none against such a measure? The recent Scenes transacted in the French Colonies in the West Indies are enough to make one shudder with the Apprehension of realizing similar Calamities in this Country. But probably would be the Event of an attempt to smother those prejudices which

Slaves. But they were of the race of Whites. It is not their Condition then, but nature, which has produced the distinction. The Opinion that they are inferior in the faculties of reason and Imagination, must be hazarded with great Diffidence. To justify a general conclusion requires many Observations, &c. — I advance it therefore as a suspicion only, that the Blacks, whether originally a distinct race, or made distinct by Time & Circumstances, are inferior to the Whites in the Endowments both of body & mind. &c. This unfortunate difference of Colour, and perhaps of faculty, is a powerful obstacle to the Emancipation of their people. Among the Romans Emancipation required but one Effort. The Slave, when made free, might mix with, without staining the blood of his master. But with us a second is necessary, unknown to history. — See the passage at length, notes on Virginia page 252. to 266.

"In the present Case it is not only the Slave who is beneath his master, it is the negroe who is beneath the White-man. No act of enfranchisement can effuse this unfortunate distinction."
Chastellux's Travels in America.

‡ The celebrated David Hume, in his Essay on national Character advances the same opinion; Doctor Beattie, in his Essay on truth controverts it with many powerful arguments. Early prejudices, had we more satisfactory Information than we can possibly possess on the subject at present, would render an Inhabitant of a Country where negroe Slavery prevails an improper Umpire between them.

which have been cherished for a period of almost two centuries. Those who secretly favor, while they affect to regret, domestic Slavery, contend that in abolishing it, we must also abolish that Scion from it, which I have denominated civil Slavery. That there must be no distinction of rights; that the descendants of Africans, as men, have an equal claim to all civil rights, as the descendants of Europeans; & upon being delivered from the yoke of Bondage have a right to be admitted to all the privileges of a Citizen. — But have not Men when they enter into a State of Society, a right to admit, or exclude any description of persons as they think proper? If it be true, as Mr. Jefferson seems to suppose, that the Africans are really an inferior ‡ race of mankind; will not sound policy advise their exclusion from a Society in which they have not yet been admitted to participate in civil rights; and even to guard against such an admission, at any future period, since it may eventually depreciate the whole national Character? And if prejudices have taken such deep root in our Minds, as to render it impossible to eradicate this Opinion, ought not so general an Error, if it be one, to be respected? — Shall we not relieve the necessities of naked, despaired Beggar, unless we will invite him to a Seat at our table; nor afford him shelter from the Inclemencies

Inclemencies of the Night Air, unless we admit him also to share our Bed.[2] To deny that we ought to abolish Slavery, without incorporating the Negroes into the State, and admitting them to a full participation of all our civil & social rights, appears to me to rest upon a similar foundation. The Experiment so far as it has been already made among us, proves that the emancipated Blacks are not ambitious of civil rights. To prevent the generation of such an Ambition appears to comport with sound policy; for if it should ever rear its head, its partizans, as well as its opponents, will be enlisted by Nature herself, and always ranged in formidable Array against each other. We must therefore endeavour to find some middle Course, between the tyrannical & iniquitous policy which holds so many human Creatures in a state of grievous Bondage, and that which would turn loose a numerous, starving, and enraged Banditti, upon the innocent Descendants of their former Oppressors. Nature, Time, and Sound policy must co-operate with each other to produce such a Change: if either be neglected, the work will be incomplete, dangerous, & not improbably destructive.

The

The plan therefore which I would presume to propose for the consideration of my Countrymen is such, as the number of Slaves, ~~among us~~, the difference of their nature, and habits, and the State of Agriculture, among us, might render it expedient, rather than desireable to adopt: And would partake partly of that propond by Mr. Jefferson, and adopted in other states; & partly of such cautionary restrictions, as a due regard to Situation & Circumstances, and even to general prejudices, might recommend to those, who engage in so arduous, & perhaps unprecedented an undertaking.

1. Let every Female born after the adoption of the plan be free, and transmit Freedom to all her descendants, both Male, & Female.

2. As a Compensation to those persons, in whose Families such Females, or their descendants may be born, for the expence and trouble of their maintenance during Infancy, let them serve such persons until the Age of twenty eight years: Let them then receive twenty Dollars in money, ~~&~~ two suits of Clothes, suited to the Season, a hat, a pair of shoes, and two Blankets. If these things be not voluntarily done let the County Courts enforce the performance, upon Complaint.

3. Let all Negro Children be registered with the Clerk

Clerk of the County or Corporation Court, where born, within one month after their birth: Let the person in whose family they are born take a Copy of this Register, and deliver it to the mother, or if she die to the Child, before it is of the Age of twenty one years. Let any Negroe claiming to be free, and above the age of puberty, be considered as of the Age of twenty eight years, if he or she be not registered, as required.

4. Let all such Negroe Servants be put upon the same footing as white Servants & Apprentices now are, in respect to food, raiment, correction, and the assignment of their Service from one to another.

5. Let the Children of Negroes & Mulattoes born in the Families of their parents, be bound to Service by the Overseers of the poor, until they shall attain to the Age of twenty one years. — Let all above that Age, who are not housekeepers, nor have voluntarily bound themselves to Service for a year before the first day of February annually, be then bound for the Remainder of the year by the overseers of the poor. Let the overseers of the poor receive fifteen per Cent of their Wages, from the person hiring them, as a Com=
=pensation for their trouble, & ten per Cent per annum out of the wages of such as they may bind Apprentices.

6. If at the Age of twenty seven years the master of a negroe or mulattoe Servant be unwilling to pay

his

+ see Spirit of Laws - 12. 15. — 1. Bl. Com. 417.

his freedom dues, above mentioned, at the expi= [164.
=ration of the succeeding year, let him bring him into the County Court, clad & furnished with necessaries as before directed, and pay into Court five dollars, for the use of the Servant, and thereupon let the Court direct him to be hired by the Overseers of the poor for the succeeding year, in the manner before directed.

7. Let no negroe or mulattoe be capable of taking, holding, or exercising, any public Office, freehold, franchise or privilege; or any Estate in lands or Tenements, other than a Lease not exceeding ~~thirty one~~ twenty one years. — Nor of keeping, or bearing Arms, + unless authorized so to do by some Act of the general Assembly, whose duration shall be limited to three years. Nor of contracting matrimony with any other than a negroe or mulattoe; nor be an Attorney; nor be a Juror; nor a Witness in any Court of Judicature, except against, or between negroes, & mulattoes. Nor be an Executor or Administrator; nor capable of making any will or testament; nor maintain any real Action; nor be a trustee of lands or Tenements himself, nor any other person be a trustee for him or to his use.

8. Let all persons born after the passing of the Act, be considered as entituled to the same mode of trial in criminal Cases, as free negroes & mulattoes are now entituled to.

+ The immense territory of Louisiana, which extends as far South as the Lat. 25. and the two Floridas would probably afford a ready Asylum for such as might chuse to become Spanish Subjects. How far their political Rights might be enlarged in that Country is however questionable: but the Climate is undoubtedly more favourable to the African Constitution than ours, & from this cause, it is not improbable that Emigrations from these States would in time be very considerable.

The restrictions in this plan may appear to savour strongly of prejudice: whoever proposes any plan for the Abolition of Slavery will find that he must either encounter, or accomodate himself to prejudice. — I have preferred the latter; not that I pretend to be wholly exempt from it, but that I might avoid as many obstacles as possible to the completion of so desireable a work, as the Abolition of Slavery. Though I am opposed to the Banishment of the negroes, I wish not to encourage their future residence among us. By denying them the most valuable privileges which civil Government affords, I wish to render it their Inclination & their Interest to seek those privileges in some other Climate. There is an immense unsettled territory on this Continent + more congenial to their natural Constitutions than ours, where they may perhaps be recieved upon more favourable terms than we can permit them to remain with us. Emigrating in small numbers, they will be able to effect a Settlements more easily than in large numbers; and without the Offence or danger of numerous Colonies. By releasing them from the Yoke of Bondage, and enabling them to seek happiness where ever they can hope to find

find it, we surely confer a Benefit, which no one can sufficiently appreciate, who has not tasted of the bitter Cup of compulsory Servitude. By excluding them from Offices, the Seeds of Ambition would be buried too deep, ever to germinate: by disarming them, we may calm our Apprehensions of their resentments arising from past sufferings; by incapacitating them from holding Lands, we should add one Inducement more to Emigration, and effectually remove the Foundation of Ambition, & party Struggles. Their personal rights, and their property, though limited, would whilst they remain among us be under the protection of the Laws; and their Condition not at all inferior to that of the labouring poor in most other Countries. Under such an Arrangement we might reasonably hope, that Time would either remove from us a Race of men, whom we wish not to incorporate with us, or obliterate those prejudices, which now form an Obstacle to such an Incorporation.

But it is not from the want of Liberality to the emancipated race of Blacks that I apprehend the most serious Objections to the Plan I have ventured

ventured to suggest. ~~The manuscript illegible~~

Those Slave holders, (whom however I trust are few) who have been in the habit of considering their fellow Creatures as no more than Cattle, & the rest of the Brute Creation, will exclaim that they are to be deprived of their property, without Compensation. Men who will shut their Ears against this moral Truth, that all Men are by nature free, and equal, will not even be convinced that they do not possess a property in an unborn Child: they will not distinguish between allowing to unborn Generations the absolute and unalienable Rights of nature, and taking away that which they now possess; they will shut their Ears against Truth, should you tell them, the Loss of the Mothers Labour for nine months, and the maintenance of a Child for a dozen or fourteen years, is amply compensated by the Services of that Child for as many years more, as he has been an expence to them. But if the voice of Reason, Justice and Humanity be not stifled by sordid Avarice, or unfeeling tyranny, it would be easy to convince even those who have entertained such erroneous notions that the right of one man over another is neither founded in nature, nor in sound policy. That

it

it can not extend to them not in being; that no man can in reality be deprived of what he doth not possess: that fourteen years labour by a young person in the prime of life, is an ample Compensation for a few months of labour lost by the mother, & for the maintenance of a Child, in that coarse homely manner that Negroes are brought up. And lastly that a State of Slavery is not only perfectly incompatible with the principles of our Government, but with the Safety & Security of their masters. History evinces this. At this moment we have the most awful demonstrations of it. Shall we then neglect a duty, which every Consideration, moral, religious, political, or selfish, recommends. Those who wish to postpone the measure do not reflect that every day renders the task more arduous to be performed. We have now 300,000. Slaves among us - thirty years hence we shall have double the number - In Sixty years we shall have 1,200,000. And in less than another Century from this day, even that enormous number will be doubled. Milo acquired strength enough to carry an Ox, by beginning with the Ox while he was yet a Calf. If we complain that the Calf is too heavy for our Shoulders, what will not the Ox be?

To

* As it may not be unacceptable to some readers to observe the operation of this plan, I shall subjoin the following Statement —

Preliminary Remarks.

1. The number of Slaves in Virginia by the late Census being found to be 292.427. they may now in round numbers be estimated at - 300,000.

2. Let it be supposed that the males & females are nearly, or altogether equal in number.

3. According to Doctor Franklin the people of America double their numbers in about twenty eight years; & according to Mr. Jefferson the negroes increase as fast as the whites. They will therefore double, at least every 30. years.

4. Let it be supposed that in thirty years one half of the present race of negroes will be extinct. -

5. Let it be supposed that in 45. years there will not remain more than one fifth of the present race alive -

6. Let it be likewise supposed that in sixty years the whole of the present race will be extinct. —

7. For Conciseness sake, let the present race be called Ante-nati: those born after the adoption of the plan, Post-nati.

From hence it will follow.

1. That the present number of Slaves being - - - - - 300,000.
2. In thirty years their numbers will amount to 600,000.
3. But at that period as one half of them will be extinct

To such as apprehend danger to our agricultural interest, and the depriving the families of those whose principal reliance is upon their Slaves, of support, it will be proper to submit a view of the gradual Operation, & Effects of this plan. They will no doubt be surprised to hear, that whenever it is adopted, the number of Slaves will not be diminished for forty years after it takes place: that it will even encrease for thirty years: that at the distance of sixty years, there will be one third of the number at it's first Commencement: that it will require above a Century to complete it; & that the number of Blacks under twenty eight, and consequently bound to Service, in the families they are born in, will always be, at least as great, as the present number of Slaves. These Circumstances I trust will remove many Objections, and that they are truly stated will appear upon Enquiry.*

It will further appear, that females only will arrive at the Age of procreation within the first forty five years; all the males during that period, continuing either in Slavery, or bound to Service till the Age of twenty eight years. The Earth cannot want cultivators

* As it may not be unacceptable to some readers to observe the operation of this plan, I shall subjoin the following Statement —

be extinct (Rem: 4.) their numbers will stand thus.

Ante-nati . . . 150,000.
post-nati . . 450,000. } . . 600,000.

4. The mean increase of the post-nati for the next thirty years will therefore be $\frac{450,000}{30}$, annually, or . . 15,000.

5. If one half of them be males, who are liable to remain Slaves, there will in the first sixteen years, be born 120,000.

6. After the first sixteen years the post natal females will begin to breed; the propation of males born to Slavery in the next twelve years may be estimated at one fourth of the whole number born after the commencement of that period — their number will be 52,500.

7. The number of Slaves living in Virginia at the End of thirty years from the adoption of the plan will be . . . . . Antenati (Rem: 3.) . . . 150,000.
postnati males born in the first 16 years . 120.000.
postnati Males born in the last 12 years 52,500 } 322,500.

8. The number of negroes at the same time will Stand thus . . . . . Slaves. 322,500.
postnati free born . . . . 277,500. } 600,000.

9. After 28 years from the first adoption, this plan of gradual Emancipation will first begin to manifest its Effects. by the compleat Emancipation of one twenty eighth part of the postnati free born during that period each succeeding year, for 28. years more; their numbers will be $\frac{277,500}{28}$, or . . 9,910.
There will be all females.

10. It being admitted that the negroes double every thirty

cultivators, whilst our population encreases as at present, and three fourths of them employed therein are held to ——— Service, and the remainder compellable to labour. For we must not lose sight of this important consideration, that these people must be bound to labour, if they do not voluntarily engage therein. Their faculties are at present only calculated for that Object; if they be not employed therein they will become Drones of the worst description. In absolving them from the yoke of Slavery, we must not forget the Interests of Society. Their interests require the Exertions of every individual in some mode or other; and those who have not wherewith to support themselves honestly without corporal labour, whatever be their complexion, ought to be compelled to labour. This is the case in England, where domestic Slavery has long been unknown. It must also be the case in every well ordered Society; and where the numbers of persons without property encrease, there the coercion of the laws becomes more immediately requisite. The proposed plan would necessarily have this Effect, and therefore ought to be accompanied with such a Regulation.

Thirdly

thirty years. the supposition that in 45. years their numbers, their numbers will be half as many more as in thirty, will not be very erroneous - if so. the whole race of blacks at that period will be } 900,000

11. Their numbers will stand thus,

Ante-nati . . . 60,000.
post-nati - 840,000. } 900,000.

12. After twenty eight years are past the number of Slaves born must continually diminish - Suppose their number born in the last 17. years, to be one fourth as many as those born in the preceding twelve years. they will be $\frac{52,500}{4}$, or } 13,125.

13. The Slaves in Virginia in forty five years will then be. . . . . Ante-nati - 60,000.
post nati males born in the first 16 years - 120,000.
Ditto. born in the next twelve years - - - 52,500.
Ditto. born in the last 17 years - - - - 13,125. } 245,625.

at this period the Emancipation of Males, will begin.

14. But after 28. years it has been shewn that 9910. negroes will annually arrive at the Age of Emancipation. their whole number in 45. yrs will be } 168,470.

15. The State of the negroes at the End of 45. years will then be . . . . . Slaves. 245,625.
post nati fully emancipated (females) 168.470.
post nati not emancipated - - - - - 485,905. } 900,000.

16. In sixty years the whole number of negroes will be 1,200,000.

17. At that period the whole of the present race will be extinct; and we may also infer that one

Though the Rigors of our police in respect to [71.
this unhappy race ought to be softened, yet its regularity, and punctual administration should be encreased, rather than relaxed. If we doubt the propriety of such measures, what must we think of the Situation of our Country when instead of 300,000. we shall have more than two Millions of Slaves among us. This must happen within a Century if we do not set about the Abolition of Slavery. Will not our posterity curse the days of their nativity with all the Anguish of Job? will they not execrate the memory of their Ancestors, who having it in their power to avert Evil, have like their first parents entailed a curse upon all future generations? We know that the Rigor of the Laws respecting Slaves unavoidably must encrease with their numbers: What a blood-stained Code must that be which is calculated for the restraint of Millions held in Bondage! Such must our unhappy Country exhibit within a Century, unless we are both wise, and just enough to avert from posterity the Calamity, and Reproach, which are otherwise unavoidable.

I am

one half of them born in the first thirty years will be also extinct; the number of Slaves born in that period has been shewn, prop: 7. to be 172.500. the number of them then living will be $\frac{172.500}{2}$, or — 86.250.

18. One half of the post-nati free born, during that period being now fully emancipated may be likewise presumed to be extinct - their numbers (prop: 8.) will be $\frac{277.500}{2}$ - - - - - - - - or — 138.750.

19. The State of the negroes at the End of sixty years will therefore be - - - -

Slaves born during the first 30 years -	86,250.	1,200,000.
Ditto born after that period - - - -	13,125.	
post nati, fully emancipated - -	138,750.	
post nati under 28. years of age	961,875.	

20. At the End of ninety years the number of negroes will be 2,400,000.

21. Of this number those only born after the first thirty years, being supposed to be living, the number of Slaves (prop: 12.) will then be reduced to - - - - — 13,125.

22. And as the last mentioned numbers of Slaves are supposed to be born within 45. years, their whole number will be extinct in fifteen years more. That is, in One hundred & five years from the first Adoption of the plan.

23. By prop: 19. it appears that out of 1,200,000. negroes, there will then be 961,875. under the age of 28. years, the period of Emancipation

24. We may therefore conclude that from two thirds to three fourths of the whole number of Blacks will always be liable to Service.

I am not vain enough to presume the plan I have suggested entirely free from Objections; nor that in offering my own Ideas on the subject I have been more fortunate than others: but from the communication of sentiments between those who lament the Evil, it is possible that an effectual Remedy may at length be discovered. — Whenever that happens the golden age of our Country will begin. Till then,

——————— non hospes ab hospite tutus,
non Herus à Famulis: fratrum quos Gratia rara.

Notes,

3. B. C. 197. Note B

relative to the proceedings upon ~~Caveats~~ and petitions for lapsed Lands, and Caveats.

In all the patents for Lands in Virginia granted under the Authority of the Crown of England, there was a Condition that the same should be seated & planted in a particular Manner within three years from the date of the patent; and a further Condition that the Lands should be forfeited, in Case the Quitrents reserved in the patent should not be paid for the like Space of time. And in Case of failure in either instance, any other person who should first petition the Governor of the Colony for the same, setting forth in his petition, in what County the Land lay; to whom it was formerly granted; for what Cause it had become forfeited; and in what County the Grantee resided, and filing a Copy thereof in the Secretary's Office, might have upon obtaining ~~Order~~ a writ directed to the Sheriff of the County where the Grantee resided, summoning him to appear at the next General Court, to shew Cause why the Land so become forfeited should not be granted to the party petitioning for the same; which if he failed to do, by making sufficient proof that the Land had been seated and planted, or the Quitrents duely paid as the Cause of forfeiture alledged might be, the General Court adjudged the Lands to be forfeited & reverted in the Crown, which being certified to the Governor, and also

that the prosecutor in that suit was the first petitioner for the same & had pursued his petition with Effect, he became thereby entitled to a patent for the Lands, in the same Manner, and under the same Conditions as the former Grantee. L. V. 1710. c. 13. & do 1733. – 1748. c. 1.

And where any person intended to take up unappropriated Lands, it was requisite that the same should be surveyed and the survey returned to the Secretarys Office by a sworn Surveyor, duely commissioned, and the Breadth of every Tract so surveyed was required to be one third at least in proportion to the Length, except where the Courses might be interrupted by Rivers, Creeks, or unpassable Mountains, and Swamps, or by the Bounds of other patented Lands. – And if it happened that the Right of any other person was invaded by such survey, or if the same was not made according to Law, the Course seems to have been, that the person disposed to contest the Grant entered a Caveat against issuing the same, in the Secretary's Office, and thereupon a summons issued to the person for whom the survey was made, to appear at the next General Court, ~~why the same should not be avoided, and a patent granted to the Caveator~~ and defend his Right to the Lands: upon which nearly the same proceedings were had as in Case of a petition for lapsed Lands. 1748. c. 1.

When the revolution took place, ~~the Land Office was shut~~ by an Act passed in May 1779, ~~that~~ the reservation of royal Mines, of Quitrents, and all other reservations and Conditions in the patents from the Crown, were declared to be null and void; and that all Lands thereby granted should thereafter be held in absolute and unconditional property to all intents and purposes c. 13

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purposes whatsoever: and further, that no petition for lapsed Lands shall be admitted or received on account of any failure or forfeiture whatsoever alleged to have been incurred after the 29th day of September 1775. Thus did this Act at once put an End to petitions for lapsed Lands, but, at the same time it established & regulated the proceedings as regulated by Law at this day, upon Caveats; of which it now remains to say something.

Every person desiring ~~of taking up~~ to take up Lands in Virginia and having a Land Warrant for that purpose is to ~~enter the~~ ~~same by~~ lodge his Warrant with the Surveyor of the County where the Lands or the greater part of them lie, and to direct ~~and to direct~~ the location thereof so specially, and precisely, as that others may be enabled with Certainty to locate other Warrants on the adjacent residuum; which location is to bear date on the day it is made, and the priority is to be given by the Surveyor to the first applicant. The survey being made pursuant to the directions of the Act, the party within twelve months at farthest (which period has been from time to time extended) is to return the plat and Certificate of survey into the Land office; and if he fails to make such return in due time, or if the breadth of his plat be not one third of its length, any other person may enter a Caveat in the Land office against issuing any Grant upon such location, or survey, specifying for what cause the Grant should not issue; or if any person obtains a survey of Lands to which another hath by Law a better right, the latter may enter a Caveat in like manner to prevent his obtaining a Grant, until the title can be determined, but the Caveator must in his Caveat express the nature of the right on which he claims the Lands. He is then to take from the Register of the Land Office a certified Copy of his Caveat, and within thirty days afterwards, must deliver it

it to the Clerk of the Court of the District, or County, in which the Land lies; he must moreover obtain from the Surveyor of the County, or from the Register of the Land Office a certified Copy of the survey and plat, which within thirty days after entering the Caveat, must be delivered to the Clerk of the Court, where the suit is instituted, and on failure in either of these Instances the Caveat is void. The Clerk on receiving the same is to enter a Copy of the Caveat in his Books, and issue a Summons, reciting the Caveat for which the Caveat is entered, and requiring the Deft to appear on the first day of the next ~~District~~ Court, and defend his right; and on such process being returned executed the Court is to proceed to determine the Caveat in a summary way, without pleadings in writing, impanelling & swearing a Jury for the finding such facts as are not agreed by the Parties. A Copy of the Judgement, if in favor of the Defendant, is to be delivered to the Register of the Land office, & thereupon the Caveat is vacated; but, if not delivered within three months a new Caveat may for that Cause be entered. But if Judgement be given in favor of the plaintiff, upon delivering the same into the Land Office, together with a plat and Certificate of the Survey, and also producing a legal Certificate of new rights on his own Caveat, he shall be entitled to a Grant of the Land; but on failure thereof for six months, after the Judgement in his favor, any other person may enter a Caveat for that Cause, against issuing a Grant, upon which subsequent Caveats the same proceedings are to be had, toties quoties, as upon the original. If Judgement be given for the Defendant, he is entitled to his costs; if for the plaintiff, the Court in their Discretion may award Costs. The Court may likewise rule the plaintiff to give security for costs, and if he fails, dismiss his suit. — If a summons upon a Caveat

be either not returned at all, or returned not executed, the Caveat shall be dismiss'd with Costs by the Court, unless they shall be satisfied that it did not proceed from the neglect of the party entering the Caveat. — A practice having prevailed of entering friendly Caveats, without any intention of prosecuting them, it is moreover requisite, that the party entering a Caveat shall file an Affidavit with the Register, that the same is really and bonâ fide with intention of procuring the Grands, and not in trust for the Benefit of the person against whom it is entered, and all Caveats entered contrary to the directions of the Act are void. V.L. 1794. c. 86.

Such is the nature of this suit, and the proceedings therein. We may perceive that it bears a distant resemblance to a proceeding of the same name, in the Spiritual Courts in England, to stop the Institution of a Clerk to a Benefice, or the probate of a will &c. In the latter case the Caveat stands in force for three months, and is a Caution [Caveat] to the Ordinary that he do not wrong: so in the instance of which we have been speaking it is a Caution to the Register not to issue an unlawful patent +; and the suit consequent there upon is for his final Government in that respect between the parties.

= It was difficult to assign to this note a proper place in the Commentaries. I have chosen to annex it to the Chapter which treats of suits by which the Right to Lands is to be decided.

+ See Washington's rep: vol. 1. pa. 40 - Call's rep: 206.

Notes

On the mode of commencing and prosecuting suits in the Courts of common law, in Virginia.

Having taken a view of the method in which an action is commenced in the Courts of Westminster Hall, and of the process usually sued out to compel an appearance, where the defendant fails to pay obedience to the original writ, or Summons, it is now necessary that we should point out the method of proceeding in similar Cases in the Courts of this Commonwealth. And here it will be sufficient to remark by the way, that the process in real Actions must be commenced by Original, or by an original writ issuing out of that Court to which it is made returnable, and in which the trial is meant to be had, and not out of the Chancery, as in England; and that all subsequent proceedings are to be conformable to those in England in similar Cases, except that Estoigns, views, and Vouchers, are taken away, as are all other Excuses for the non-attendance of the Defendant, except the want of Summons, by the 4 prop provisions of the Act of 1748. c. 1. s. 21. — In mixed Actions, also, such as that of Waste, if the Plaintiff wishes to avail himself of the treble damages given by our Act, in

1794. c. 76 s. 25.

Then few observations being premised, we shall now proceed to consider the manner of commencing & prosecuting personal actions in our Courts; and herein we shall begin with,

1. The original writ, or first process in the suit.
2. Mesne process, or that by which the Defendant may be brought in, when not taken upon the first process.
3. Arrest & Bail.
4. Proceedings in Case of default, by the Defts not appearing.
5. proceedings in Case of the Defendants appearance,

in conformity to the Statutes of 52. H. 3. c. 23. & 6. Ed. 1. c. 5. he must commence his suit by original, and not by capias; but in Actions of trespass quare clausum fregit, where damages only, and not the land itself, are to be recovered, it is not necessary to begin the suit by original, but it may be commenced by capias; because here the wrong complained of is supposed to have been accompanied with force, which subjects the defendant to fine and imprisonment for the breach of the peace. In Actions of Ejectment also, which we may remember are merely a fictitious form of Action, no original writ is required, but the real defendant comes in voluntarily, and is made a party defendant at his own request. Neither is a capias necessary in this action, for the supposed Author of the trespass, having in his letter of notice disclaimed all title, and the object of the suit being only to try the right of possession, the plaintiff will be entitled to Judgement against him by default, unless he, or some other person for him, appears to defend the suit, after notice has acknowledged. — But in personal Actions as we had before occasion to remark (3. Com: 274) the original writ is altogether disused in Virginia, and the suit is commenced by a writ of Capias, instead of it

1. The writ of Capias, or capias ad respondendum, (for there are several other writs of Capias, as the writ of capias utlagatum, which lies against a person outlawed

outlawed, either in a civil suit, or upon an Indictment at the suit of the Commonwealth; and the Writ of capias ad satisfaciendum, which lies after a Judgement in any civil Action, to take the Defendant to satisfy the plaintiff for the same;) is a Writ issuing in the name of the Commonwealth from the Clerks office of that Court in which the plaintiff proposes to prosecute his action, directed to the Sheriff of the County in which the Defendant resides, or is supposed most likely to be found, commanding him to take the Body of A. B. the Defendant, and him safely to keep, so that he have him before the Court, to answer C. D. of a plea of Debt, Covenant, Trespass, or Trespass on the Case, &c according to the nature of the plaintiffs Action. ~~[illegible]~~ This Writ, & all subsequent process ~~when issued~~ from the County Courts must be executed three days before the return day; ~~[illegible]~~ and in Actions of Debt, Covenant, & Detinue, and in ~~such~~ other Actions, where ~~[illegible]~~ (for some special reasons verified by affidavit,) the plaintiff shall have obtained a Judges order to hold to Bail, the Sheriff is ~~[illegible]~~ literally bound to perform the precept thereof, by committing the Defendant to safe custody, unless he shall give Bail, or Security, for his appearance at the time appointed; which Bail, if sufficient,

sufficient, the Sheriff is bound to take, if then offered: the manner of doing this, is by the Defend.t and his Security entering into a joint Bond, in a penalty generally double the debt, with Condition for the Defendants appearance at the time required by law, which, is the first day after the End of the next term of the Court to which the writ is return=able; and thereupon the Defendant is suffered to go at large. — But in actions of Trespass, & on the Case, and all other personal actions, except those before mentioned, ~~except where~~ unless there ~~may~~ be the special order of a Judge of the Court to hold the Defendant to Bail, the Sheriff can not take bail, nor commit the Defendant to Custody for want of it, but he may return his precept executed, without doing either, provided he shall have given the Defendant personal notice of the writ, ~~or shall have left a copy thereof at his usual place of abode upon not finding the same~~ or, ~~if~~ he may take the engagement of any Attorney practising in the Court, endorsed upon the writ, to appear for the Defendant, ~~which engagement must be endorsed on the writ~~, & if the Attorney fails to appear accordingly he forfeits eight dollars (formerly to the plaintiff, because apprehend he put him to the trouble of suing out a further

1794. c. 67. s. 23. ch. 80. s: 15.

If the suit be instituted in an inferior Court, the plt must be careful to endorse upon the writ that no bail is required, unless the Defendant is a resident of any other County, unless the cause of action arose within the Jurisdiction of the Court to which the process is returnable; otherwise the writ may be avoided by a plea in abatement, which, as we shall hereafter see, must be put in before issue is joined, or Judgement by default, &c - for so careful is the law of the personal liberty of the Citizen that it will not permit him to be arrested and held to bail, or committed to prison for want of it, at a distance from his neighbours & friends, who may be willing to become bound for his appearance, unless his own act shall have deprived him of all claim to such an indulgence, by incurring the debt, or committing the trespass for which he is sued within the Jurisdiction of that tribunal before which he is to defend himself, and where it is presumable that the Witnesses to the transaction can most Conveniently attend the trial. And if &c.

further process to compel the Defendant who had not yet received personal notice of the Writ, to appear thereto, but now, for what reason it is hard to say, to the Defendant.

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And if the Defendant be not an inhabitant of the County to which the writ is directed, and be not found therein, the Sheriff instead of returning a non est inventus is bound to return the truth of the case; and where the Defendant returns that he is no Inhabitant of the County, if the writ issues from the County Court, it abates by the return, & the plaintiff can proceed no further; but if he chuses to insure the Appearance, he may, I apprehend, sue out another Capias, in the nature of an original, or new suit, until the Defendant by coming into the County shall subject himself to be taken therein; but every such writ must be considered as the Institution of a new Action, and not as the Continuation of the first writ, in the ordinary forms of an alias or pluries capias. But in this Case, if the suit be brought in the District Court, the plaintiff may sue out a testatum Capias to any other County within the same District, to which the Defendant shall have removed; and even if the Def.t be an Inhabitant of any other district, a testatum

+ So also in suits in Equity brought in the County Courts, if one or more of the defendants reside within the County, (which gives the Court Jurisdiction of the Case,) and others reside in another, or several other Counties, the Laws now permits the plaintiff to pursue his suit against them all in one and the same Court, and for that purpose will aid him with process ~~to any~~ directed to the Sheriff of any other County in which such Defendants may reside, or be found. 1797. c. 8. But this is not permitted in Actions at common Law, as has been already mentioned. And since the late division & new organization of the high Court of Chancery, where several defendants reside in different districts the plaintiff may institute his suit in either District and process may issue from the Court thereof to the Sheriff of any County in another district where any of the defendants reside.

I am well aware that there are highly respectable authorities against what is here advanced, that a Testatum capias may issue to a County in a different District from that in which a suit is brought against two or more joint obligors, &c, residing in different Districts. But in the Case of McCall v Turner, 1. Call's rep: 133. in which this point was stirred in the Court of appeals no advantage

note.

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testatum capias may issue to any County there is, provided the Defendant residing therein shall have been jointly, or jointly and severally bound with another ~~person~~ Defendant residing within the Jurisdiction of that District Court to which the writ is returnable, in any Bond, Covenant, or other ~~writing~~ special contract; for in this Case to avoid circuity of action, and multiplicity of suits, the law permits the plaintiff to pursue his remedy completely in the Court of any district where either of the defendants may reside.+

The Sheriff ~~cannot~~ can not legally return a non est inventus upon any writ, unless he shall have actually been at the house, or usual place of abode of the Defend^t. and shall have there left an attested copy of the writ - and if prevented from executing the same by any circumstance whatsoever, he must return the truth of the Case. [Hoe take in pa: 85. ad finem, & pa. 86. 87. in toto]

Q. 1. If the Sheriff return that the Defendant is not found, the plaintiff ~~can~~ may sue out an alias capias, or pluries capias, the nature of which have been sufficiently explained elsewhere, until the defendant shall be arrested; or if ~~he~~ he still continues to avoid the service of the process upon him personally, the plaintiff at his Election may sue out an Attachment against the Estate of the Defendant, upon which the Sheriff ought to take sufficient of the Defendants property into his

advantage was taken by the Defendant who was arrested of the irregular entry of an Abatement of the suit as to Speller, the other ~~inhabitant~~ Defendant who was returned no Inhabitant. But notwithstanding what was said in that Case by Judges whose opinions I hold in great respect, yet, as the Question was not brought regularly before the Court, I shall presume to give my own reasons in support of the opinion I have advanced.

The 24th Section of the Act reducing into one the several acts concerning district courts, 9 do 1794. c. 66. varies very considerably from the clause in the act of 1788. c. 67. which had been differently construed by the Judges of the general Court, some of whom supposed that where there were two or more joint obligors, process might issue to any County in any other District, in the same manner as if they had resided in the same District; and of this opinion were the late Judge Tazewell, who awarded a writ of Testatum capias from the District court of Accomack, to Powhatan County, to arrest a Defendant there, who was a co-obligor with one in Northampton County. When the Committee of Revisors was appointed, one or more of the members of that Committee differing in opinion from Judge Tazewell who was also a member thereof, it was agreed to submit the following note upon that clause to the Legislature.

" This clause having received various interpretations in the
" District Courts on the subject of joint, and joint and
" several obligations, and Covenants, where the Co-obligors
" reside in different districts, the Committee submit to the
" General Assembly the propriety of rendering the same
" more explicit, so as to remove all doubts, whether a writ of
capias ad respondendum

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his hands, to satisfy the plaintiff his debt and costs; but the practice seems to be, though very unwarrantably I apprehend, to levy the attachment only upon some trifling article, as a knife, a spoon, or some other portable thing, without regard to the Amount of the debt, or the comparative value of the property taken to satisfy it. But the plt by this conduct is ~~frequently deprived~~ liable to loose his debt, if his debtor thinks it not worth while (as it frequently happens,) to replevy the goods attached by giving bail to the action, and in the mean time disposes of his effects, or removes himself with them, to some other place. The Sheriff indeed, by such Conduct makes himself liable ~~to the~~ for the Amount of the debt, if the pltf can prove that ~~on~~ other property could have been found, whereupon he might have levied the Attachment, and put the Sheriff wilfully neglecting to do it: but this is often difficult, though according with the truth of the Case. The process of attachment is therefore rarely resorted to except where the Defendant is well known to be a man of considerable substance.

Whenever the writ of attachment is returned executed, whether it be levied upon goods to the value of the debt, or to the value of 10 pence only, if the defendant does not appear & give bail, if ruled so to do, the plaintiff may proceed to file his Declaration, and to enter Judgment against him for his default.

; the goods attached remaining

" Capias ad respondendum may in such Case issue from
" the Court of one District, to the Sheriff of a County in any
" other District, or not." — In consequence of which,
the clause was amended, as it now stands, thus;
" provided nevertheless, that where two or more persons
" are or shall be jointly, or jointly and severally bound
" for the performance of any contract, or for the payment
" of money or Tobacco, by Bond, Covenant, or otherwise,
" it shall be lawful to prosecute such persons jointly
" in whatever District either of them may reside,
" and process shall be issued and served accordingly,
" in any County or District wherein the non resident
" defendant, or defendants may be found." The
words in Italics were added at this time, and
appear to me to justify the interpretation that I have
given them, in the fullest extent. The act of Assembly
which declares that where a Defendant is returned
no Inhabitant, the suit shall abate, relates allogether
to the proceedings in the County courts. 9 dō 1794. c. 67. s. 32.

remaining in the Sheriff's hands until
final Judgement be entered, and then being sold
as if taken in Execution; and if there be not enough
to satisfy the Judgement, the plaintiff may
sue out an Execution for the remainder.

But if the Defendant be not taken upon the
first, or second, or third with the alias, or pluries
capias, the plaintiff, upon the return of the latter,
instead of the process of outlawry, the last resort
in England, may apply to the Court to order a
proclamation to issue, warning the Defendant
to appear at a certain day, or that Judgement
will then be rendered against him: this pro-
clamation must be published on three successive
Court days at the door of the Court house of the County
to which the pluries was directed, and three times in
the Virginia Gazette, and then if the Defendant
fails to appear, the plaintiff may proceed to Judgt.
as in other cases of default.

1794. c. 66. s. 41.

There are the several methods which our laws
furnish the plaintiff to compel an appearance;
there is yet another mode of commencing a suit,
where a debtor attempts to remove himself privily
out of the County or Corporation, or absconds, or
conceals himself so that the ordinary process of
law can not be sued out against him, which is

by

by suing out a Warrant of attachment; this is done upon complaint made to a Justice of the peace, who is in such Cases authorised to grant such warrant; and being a Special remedy, adapted to the Emergency of the Case, it may be issued, and even executed on a Sunday, provided the debtor be actually moving or absconding on that day; which is a proceeding not authorised in any other civil Case, except upon an Escape out of prison, or Custody. This Warrant may be levied upon any personal property of the party absconding, wherever found; or it may be served upon any person indebted to, or having any Effects of the party absconding in his possession, who is then called the Garnishee, and is thereupon compellable to appear at the next Court and answer upon oath what he is indebted, or what Effects he hath in his hands of the party absconding. And if the party absconding shall not replevy the Attachment, which he may do by giving sufficient Security to the Sheriff for his appearance, or by putting in bail to the Action if ruled thereto by the Court, the plaintiff shall have Judgement for his whole debt, and the goods attached shall be sold; and in Case there be a Garnishee, and Judgement be rendered against him, the plff shall have Execution against him for the Amount thereof; and in both Cases he may have Execution against the Defendants Estate, or his person, if he can be found, for any Balance that may remain due. But upon

before any person can be entitled to this extraordinary course of proceeding, he must enter into bond with security in double the sum to be attached, payable to the Defendant, with Condition that he will satisfy all costs, and also all damages which may be recovered against him for suing out the Attachment, in case he shall be cast in his suit - This Bond is to be taken by the Justice issuing the Attachment, and is to be returned to the next Court of the County or Corporation, otherwise the Attachment is void; and the Defendant will be entitled to such damages as he can prove that he hath sustained by the plaintiffs vexatious proceeding.

1794 c: 70 s

The proceedings in this last Case are evidently borrowed from those upon foreign Attachments, which by the Custom of London, and some other places may be sued out by a Creditor, and levied in the hands of a third person who is indebted to his debtor. A similar remedy, through the intervention of our Chancery Courts, is given against all persons absent from the State, who may have any Effects in the hands of any person within the Commonwealth. Of this we shall make mention more at large hereafter, in speaking of the mode of proceeding in these Courts.

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Such are the different modes in which personal actions are usually commenced in our Courts of Law, and the ordinary, and extraordinary methods which our Law furnishes to compel the Defendant to appear, and Answer the Complaint of his Adversary.

We

we must now say a few words, concerning

II. 2: ~~Appearance~~ Arrest and Bail.

If the Defendant in any Action of Debt (except Actions of debt upon penal Statutes) Covenant, or Detinue, wherein bail is required by law, and regularly demanded by endorsement upon the writ; or in any other Case where there is the order of a Judge of the Court from which the process issues to take bail, be arrested, the Sheriff at his peril must take bail (the nature and manner of doing which hath been already explained) for the Appearance of the Defendant to answer the ~~complaint~~ of plaintiffs Action; and he is moreover to return a Copy of the bail bond, with the names of the Bail which he has taken, endorsed on the writ, & if he fails in either of these particulars, the plaintiff may proceed against him for his neglect. This is done, not by commencing a special Action on the Case against him, but by making him a party to the suit, with the other Defendant, in Case the latter and enter his appearance in the Clerks office do not appear on the first rule day, that is, on the next day after the End of the term to which the writ is returnable, ~~and enter their appearance~~, and put in Special bail if the same be required. So also, if the Bail which the Sheriff may have taken for the Defendants appearance, shall appear to the plaintiff or his Attorney to be insufficient, he may except thereto, either on the first or second rule day, or at the next Court after that to which the writ is returnable, and if he chuses so may proceed against the Sheriff as in the former Case; ~~and~~ and if the Bail be adjudged insufficient by the Court, the Sheriff will be liable in the same manner as if he had not

not taken bail, or had failed to return a Copy of the bail bond, that is, he may be made a party to the suit, since every rule entered on the part of the plaintiff against the Defendant, for want of an Appearance ~~plea~~ may be entered against him also, and he is finally liable to the same Judgement, ~~and Execution~~ as the defendant himself. On the other hand he is admitted to defend the suit, in the same manner as the Defendant himself, if he had appeared & put in bail, might have done. And if at any time before final Judgt. the Defendant is permitted to appear, or puts in bail without Bail to the Action, the proceedings against the Sheriff are immediately set aside. — ~~But~~, ~~if no Judgment, & not taken out~~ If Judgement be finally ordered against him, he may apply to the Court to award an Attachment, in the nature of an Execution, against the Defendants Estate, which shall thereupon be seized ~~by the Sheriff~~ by the Coroner, or succeeding Sheriff, and sold in the same manner as goods taken upon a fieri facias; but if he neglects to make this application, he seems liable to the same Execution as the Defendant himself.

If the Sheriff takes bail, & complies with the other directions ~~precepts~~ of the Law, by returning the names of the Bail indorsed on the writ, and a Copy of the Bail-bond; and no Exception is made either to the Bail-bond, or to the sufficiency of the Bail, by the plaintiff; if the defendant does not appear, & put in bail to the Action, or special bail as it is called with us, (the nature of which has been explained already

already / the plaintiff instead of taking an assignment of the Bail-bond and bringing an action upon it, as in England, may at once, as in the former case against the Sheriff / to make the appearance Bail a party to the suit; and proceed in against him together with the Defendant, in the same manner as if he had appeared and given special bail: or he appeared in an action where no bail was required; and if the Defendant neglects to put in bail to the action until final Judgment, the Bail for his appearance will be liable to the same Judgt. and Execution as the Defendant himself. But again the law permits the same indulgence to the Bail, as in the former instance, by authorising the Court, on motion of the Bail to award an Attachment against the Defendants Estate, as in the Case of the Sheriff: but if this precaution be neglected, one and the same Execution will issue against the Defendant and Bail, in the same manner, as if they had been originally parties to the suit. — But in this Case, also the law affords the Bail a summary remedy by Judgment on ten days previous notice, against the Principal, his heirs or Executors, for the full amount of whatever he may have paid on account of such Judgt.

1794. c. 145. s. 4.

There summary proceedings, against the Sheriff, on the one

on the one hand, and against the Bail for the Defendants appearance on the other, have been found to answer the purpose of Justice much better in this Country, than that Circuity of action which the Laws of England require. It must be confessid however, that the plaintiff is often very greatly delayd by these proceedings, for as the Sheriff, or the Bail, have the same liberty of Defence as the Defendant himself would have had, if he had appeared to defend the suit, it generally happens that either to give him an opportunity of coming in and exonerating the Sheriff, or Appearance Bail, at some future stage of the proceedings, by putting in Special bail before final Judgement, or for the sake of procrastination, the suit is spun out in the same manner as if the Defendant had some solid Defence to make.

These proceedings against the Sheriff, or the Bail, as the Case may happen, are regularly set aside if the Defendant appears, and surrenders himself in Custody, or puts in Special bail, or is admitted to appear without bail, at any time before final Judgement; it is therefore not unusual for the Appearance Bail or Sheriff against whom a plaintiff hath proceeded in the manner here spoken of, to enter himself Special bail, or bail to the action, the nature of whose undertaking for the Defendant we may remember

remember is, that the Defendant shall satisfy the Judgement of the Court by paying the debt, or rendering his body in Execution; or that the Bail will do it for him. — The Judgement therefore is now to be rendred against the Deft alone, and not against him and the Sheriff, or the Bail for his Appearance, as in the former Case: And before the special Bail can be charged with the debt, the plt must first sue out a Capias ad satisfaciendum, against the Body of the Deft, upon which if to be taken the special Bail are thereby discharged: but if the writ be returned with a non est inventus, the plt may now proceed to charge the Bail, by suing out a Scire facias, or warning to him to shew Cause, if any he can, why he should not pay the debt according to the stipulations of his recognizance, the Defendant having now failed to satisfy the debt, or to render his Body in Execution. And if the Defendant be not surrendered either to the Sheriff, or before the Court, before the Appearance day of the first Scire facias which shall be returned executed, or of the second, on which the return of nichil shall be made, the Bail can never afterwards discharge himself, but by paying the debt. Where the surrender is made to the Sheriff, the Bail must give notice thereof to the Creditor, that if he chuses it, he may charge the Defendant in Custody, otherwise he seems by such neglect to be liable to a special Action on the Case, at the suit of the plt, who will thereby be entitled to recover such Damages as he can prove he hath sustained from the want of notice.

1. W. R: 318.

Although the Law permits the Bail to discharge himself by the actual surrender of the Defendant at any time before the appearance day of the first writ of Scire facias executed, or of the second returned nihil, yet it is by no means adviseable for the Bail to postpone the surrender a moment after the return of a non est inventus upon a writ of capias ad satisfaciendum; for it has been solemnly adjudged, that if the princi=
=pal die after the Capias ad satisfaciendum is so returned, ~~the Bail~~ and before the return of the Scire facias, the Bail shall nevertheless be charged; for after such a return made, the Bail can only discharge himself by an actual surrender of the Body. [1. Strange 511. 2. Str: 717. 2. Ld Ray: 1452. 2. Wils. 65.]

Thus ~~much~~ far may suffice, as to the mode of commencing a suit in our Courts, and enforcing the appearance ~~against the Def~~ of the Defendant, as also for the proceedings against the Sheriff in case he neglects to take sufficient Bail, or to return a copy of the Bail bond; and against the Bail themselves, whether for the appearance of the Deft; or for his satisfying the Judgement of the Court. ~~[illegible]~~ — we must now proceed to consider the proceedings to be observed first where the Defendant fails to appear; and secondly where he appears, either with, or without bail, or in Custody; and defends the suit, ~~which [illegible]~~ ~~[illegible]~~.

Where the Defendant fails to appear, which he is bound to do, at the rules in the Clerk's office on the first day after the end of the term to which the writ is returnable, that being the day of appearance, it is usual for the plaintiff to enter a conditional judgement against him for his default in the rule book, kept by the Clerk of the Court, the terms of which are, that unless he, the Defendant, shall appear at the rules in the Clerks office on the next rule day, (which is always one month after) that Judgement will then be rendered against him for want of Appearance. If Bail for his appearance was required by Endorsement on the writ, and the Sheriff shall have taken bail, and returned a copy of the Bail bond, it is then usual to enter the conditional order also, against the Bail for the Defendants appearance, who are thus made parties to the suit; or if the Sheriff hath neglected to take Bail, or hath taken insufficient bail, in the opinion of the plt's Attorney, the condeitional order in the former case is usually entered against the Sheriff, and in the latter, (it hath sometimes been the practice) by way of greater precaution, to make the order to both against the Sheriff, and the Bail which he has taken, to whose sufficiency the plt must except at this stage of the proceedings; if the Bail be adjudged sufficient, the proceedings against the Sheriff are discharged; but if the Bail be adjudged insufficient, the plt, I apprehend may discharge the proceedings against the Bail, and proceed only against the Sheriff. This condeitional order, whether it be entered against the Defendant alone, or the Deft and Bail; or against the Defendant and Sheriff; or against

against all three, if not set aside at the next rule day by the defendants appearance, and putting in sufficient bail to the Action, if ruled thereto, is then confirmed, and thereupon Judgement is to be entered up for the debt, or other specific thing demanded, unless the plaintiff chuses to have a writ of inquiry to ascertain what damages he may moreover be entitled to. Or if the Action sounds merely in damages, or the demand be for an uncertain sum, a writ of inquiry is awarded the plaintiff, as of course.

The Judgement thus entered at the rules in the Office if not set aside at the next term, is final, where no writ of Inquiry is necessary; it may however be set aside at the next term after it is entered, on motion by the Defendant himself, on his appearing in Court, and surrendering himself into Custody, if required so to by the plaintiff; or, giving bail to the Action, if ruled thereto by the Court; or by his Appearance only; either in person, or by his Attorney, in case the plaintiff is not entitled to demand bail: in all which cases he must immediately plead some issuable plea (by which is meant a plea in bar of the plaintiff's Action, and not a plea in Abatement, or other dilatory plea,) otherwise Judgement will immediately be entered for want of such plea. — But if this be neglected by the Defendant, still the Bail for his appearance, or the Sheriff, against whom the Judgement has been entered in the Office, may at the same term, or Motion, be permitted to enter his Appearance, and set aside the Judgement against himself, and defend the suit

suit, in the same manner as the Defendant himself might have done, after which the Judgt. against the Defendant seems to be suspended, until the event of the suit between the plaintiff & the Bail, or the Sheriff, as the case may be, shall be known. The plea thus put in by the Bail, or Sheriff seems to be considered as the plea of the Deft. himself, and the setting aside the Judgement against the former, hath been so far considered as a complete suspension of the Judgement against the latter, that it hath been held, that, where Judgement hath been confirmd against the Deft and Bail, in the Clerks Office, and the Bail hath afterwards been admitted to defend the suit, and then the Bail dies, still the suit shall proceed upon the plea put in on his behalf, notwithstanding the Abatement of the suit as to him.* And in another case, the Defendant against whom a Judgement was confirmd in the Office, was, after the death of the Bail, who had defended the suit, admitted to appear & plead thereto †.

* Anonymous Case - June 21. 1793.
† Pickett v Brampton - Nov. 18. 1794.

Whenever the Defendant himself is admitted to set aside the Office Judgement, the Bail, or Sheriff, agt whom it was rendered are thereby discharged. But when the Judgement is set aside on the motion of the Bail or Sheriff, who come in to defend the suit, they are still liable to the final Judgement, unless Bail to the Action be given, or the Deft at some future stage of the proceedings is permitted to appear without

without Bail, which rarely happens, unless where the debt is of small amount, or the Defendant is willing to confess the plts Action, on condition that his Bail, or the Sheriff may be exonerated.

In Actions where no bail is required it is the practice to permit the Defendant to ~~plead~~ set aside the Office Judgement and plead, at any time before the Jury are sworn on the writ of Inquiry, where the plaintiff hath found it necessary to have recourse to one, in order to ascertain the amount of the damages which he is entitled to recover.

The proceedings in case the Defendant appears on the first, or any succeeding rule day, will be considered in a subsequent note.

w/s

w/s